CITY OF BELLEVUE
BELLEVUE PLANNING COMMISSION
STUDY SESSION MINUTES

February 8, 2017
6:30 p.m.

Bellevue City Hall
City Council Conference Room 1E-113

COMMISSIONERS PRESENT:	Chair deVadoss, Commissioners Carlson, Hilhorst, Laing, Morisseau, Walter
COMMISSIONERS ABSENT:	Commissioner Barksdale
STAFF PRESENT:	Terry Cullen, Emil King, Department of Planning and Community Development; Carol Helland, Department of Development Services
COUNCIL LIAISON:	Mayor Stokes
GUEST SPEAKERS:	None
RECORDING SECRETARY:	Gerry Lindsay

CALL TO ORDER
(6:36 p.m.)

The meeting was called to order at 6:36 p.m. by Chair deVadoss who presided.

ROLL CALL
(6:36 p.m.)

Upon the call of the roll, all Commissioners were present with the exception of Commissioner Laing, who arrived at 6:37 p.m., and Commissioner Barksdale, who was excused.

APPROVAL OF AGENDA
(6:37 p.m.)

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

COMMUNICATIONS FROM CITY COUNCIL, COMMUNITY COUNCILS, BOARDS AND COMMISSIONS
(6:37 p.m.)

Mayor Stokes said he was very glad to see the Commission reviewing the work accomplished at the annual retreat. Planning is a skill that tends to move along at a certain pace, which is good when it comes to being thorough. There is a need, however, to keep moving things forward and getting things done in a timely fashion. All of the city's boards and commissions do important work, but the work of the Planning Commission is the bedrock in terms of fitting everything together. The materials and framework that flowed from the retreat will be very helpful in moving forward. The city is not what it was five years ago or even two years ago, and the Commission needs to keep that in mind in seeking to determine how the city can be better in the

future. Bellevue is seeing international as well as local business investment, and it must all be balanced with investments made by the citizens and the neighborhoods. There is a clear need to begin reviewing and revising the neighborhood subarea plans, but the work should not take a decade.

Commissioner Walter said she attended the rooming house hearing as it related to an Airbnb operating two blocks from her house. The amount of background work done by the attorney was impressive. The outcome was that the parties responsible signed acknowledgment of having not followed city ordinance, and they will now be held to a higher standard.

STAFF REPORTS
(6:44 p.m.)

Comprehensive Planning Manager Terry Cullen informed the Commission that the error made in how the transient lodging issue related to the Eastgate Land Use Code amendments has been corrected and transmitted to the Council.

With regard to transient lodging in the Neighborhood Mixed Use district, Mr. Cullen said the record reflects the use was shown as allowed with a conditional use at the January 27, 2016 meeting, but somehow it came through as a permitted use when it got adopted. He said the correction will be made and sent back to the Council. The Eastgate Land Use Code amendments are tentatively scheduled to be before the Council on March 6.

Mr. Cullen said he had received a couple of follow-up questions regarding the Factoria land use districts. He said the Eastgate Land Use Code amendments as they relate to Factoria reflect transient lodging as allowed with a conditional use in F1 and as a permitted use in F2 and F3, which is how it is reflected in the current code.

Commissioner Walter commented that transient lodging was an add-on to hotels and motels, which are permitted uses in Factoria. She asked if there ever was a discussion about adding the transient lodging use. Mr. Cullen said transient lodging is a subset of hotels and motels. The use was parsed out into two separate uses.

Land Use Director Carol Helland apologized for the errors that had been made. She explained that the use charts follow standard land use classifications and utilize standardized numbers. For hotels and motels, two numbers are provided, 13 and 15. The standard land use classifications refer to hotels, motels and transient uses such as shelters, YWCAs and YMCAs. For the sake of transparency, the Commission has been interested in making sure the code is understandable and that information is not buried in the charts or the footnotes, so the uses were broken apart. The Commission's task then became deciding the zones in which the uses should be allowed and under what process. The mistakes that were made have been corrected.

With regard to the Commission's upcoming schedule, Mr. Cullen said the Comprehensive Plan amendment cycle for 2017 has begun. Staff is working through a completeness review. Four possible amendments are under consideration: one map amendment, one combination map and text amendment, and two text amendments. A threshold review public hearing will be held in the spring. Certain hard deadlines must be met where plan amendments are concerned, and if the Commission's overall workload starts to back up, it will be necessary to schedule additional meetings.

Mr. Cullen offered his congratulations to the three Commissioners who made it into the final

eight for filling the vacant Council position: Chair deVadoss and Commissioners Laing and Walter. He said in every community he has worked in, the Planning Commission is a proving ground for elected officials.

PUBLIC COMMENT
(6:52 p.m.)

Mr. Alex Smith spoke representing the 700 112th LLC and addressed the issue of base FAR and height. He introduced his development advisor Jeff Taylor and his land use attorney Larry Martin.

Mr. Jeff Taylor, address not given, called attention to the proposed base and max FAR and allowed that in order to get from the base to the max it is required that certain public amenities be provided or pay a fee in-lieu, currently proposed to be $25 per FAR foot. He showed a map of all the different zones in the downtown that had on it a comparison of how the base FAR compares to the max FAR. He noted that the higher percentages meant less needed to be provided by way of public amenities, and the lower percentage meant more needed to be provided. The map indicated that 70 percent of the zones had a percentage above 75 percent; 20 percent of the zones had a percentage of between 50 and 75; and 10 percent of the zones had a ratio below 5 percent. A similar map using the same kind of analysis except for building height was also shared with the Commissioners. In 53 percent of the zones, the ratio between the base height and the max height was shown to be above 75 percent; 28 percent had ratios of between 50 and 75 percent; and 18 percent had ratios below 50 percent. The ratios, which were in part based on the BERK analysis, are not consistent. In some cases, building to the max height will require development to do nothing by way of providing amenities or a fee in-lieu, while in other zones, 77 percent of the max height will trigger additional payments. He also produced a chart comparing the zones with a 5:1, 6:1 or better FAR. In the case of a ratio of 5:1, he said given the example of 50,000 square feet of land would be allowed a 250,000 square foot office building. For the exact same building, in one building the developer would be required to pay a $2 million or $3 million fee, while in another zone the developer would need to pay zero, putting the former zones at a disadvantage in a competitive world.

Mr. Smith suggested there should be something more unilateral implemented, such as 85 percent of the new max as the base. In some instances where the base is so low compared to the max, it will be very difficult to provide enough public amenities to gain what is needed, defeating the purpose.

Commissioner Laing asked why it should be 85 percent rather than 90 percent or 80 percent. Mr. Smith said the majority of the higher pieces where most of the office development is going to take place falls into the 85 percent range.

Commissioner Laing allowed that the BERK analysis takes a snapshot of data in what can be called a robust real estate market. He asked if any pause should be triggered about the fact that what is being talked about is a percent or two difference from what the consultants identified as the absolute threshold of success in some of the models, and questioned whether or not 85 percent will in fact be a de facto downzone that will impose some unintended consequences. Mr. Taylor said he was trying not to be overly aggressive in using the 85 percent figure.

Mr. Larry Martin urged the Commission to move in the direction of uniformity. Applying an approach involving the FAR base to the max would be very arbitrary and would rest on old and outdated zoning laws. The Council gave direction to ensure that the amenity incentive system is

consistent with state and federal law, in particular the process should be sensitive to the requirements of RCW 82.02.020 and to nexus and rough proportionality. The state statute regulates taxing authority and precludes cities from imposing any tax, fee, charge, direct or indirect, on development, on construction, on the classification or reclassification of land. The system that has been set up could not be more clearly a charge on development. The BERK analysis goes to great pains to show how that is the case. It takes the current zone and looks at the amount of allowed development, and looks at the proposed new zone and taxes each zone by how much development will increase under the proposed zoning code. That is absolutely a charge on development. There is case law that is on point. Adopting the approach in anything close to its current form will force a property owner who is disproportionately affected to challenge the system. The system is going to go down because it is clearly illegal. Moving toward uniformity would deter future lawsuits. The amenity system clearly seeks to gain open space in the downtown. The exception in 82.02.020 regarding fees on development is Growth Management Act impact fees, one of which is for parks and open space. The city has thus far elected not to impose a park impact fee. The right thing to do will be to recommend to the City Council the elimination of the amenity incentive system in favor of adopting an impact fee system. The two ideas could be combined by setting the base FAR for everyone at 85 percent of the new maximum height and by setting in motion the adoption of a park impact fee.

Commissioner Carlson noted that adequate parking in the downtown area is one of the current items on the amenity incentive system. He asked what impacts might result from moving to the proposed approach and away from the incentive amenity system. Mr. Martin noted the proposed approach eliminates parking as a bonusable amenity. Everyone wants to accomplish the major objectives, including the pedestrian corridor and open space in the downtown. Moving toward uniformity and adopting a park impact fee would shift the burden between developers and others and put the control and responsibility of determining where the elements end up on the city.

Mr. Andy Lakha, 500 108th Avenue NE, spoke as principal of the Fortress Development Group. He said he has been a citizen of Bellevue for 20 years and has developed projects in the United States, Latin America and Europe, but not previously in Bellevue. He said he has for many years been searching for an iconic project and has finally found it. Fortress Development has been working collaboratively with the Commission for almost a year, and has brought forward a vision and worked through it. In the summer of 2015, it was agreed that a development agreement would be the way to clear the path for development. The Commission directed the staff to prepare the concept and to come back with it for the Commission to reconsider. More than six months have passed since then and nothing has come forward. No efforts have been made by the staff to respond to the Commission or to prepare the development agreement concept. The Commission was asked to direct the staff again to do what they were supposed to do six months ago. It was surprising to learn a week ago that the latest draft of the new ordinance includes an entirely new concept of a 40-foot tower setback from all internal property lines. Fortress Development has been working on its plans for four years through the CAC process and the Commission process, and the new idea has been sprung at the eleventh hour. The new concept was not recommended by the CAC, nor was it proposed by the Commission. It has received no public review or input. He said to date he has spent hundreds of thousands of dollars working through the project plan, only to discover at a late hour that it may all have been a waste. The 40-foot setback rule would make it impossible to locate even a single realistic tower on the Fortress site. When compounded with the 45-foot podium height limit and the throughblock connector requirements, it will not be possible to achieve the allowable FAR on many sites, and in other cases it will prevent development of anything taller than 45 feet. The approach will produce an apparent downzone when compared to the existing code allowances. The Commission was asked to direct staff to restore the 20-foot tower stepback that has been the

rule for the entire process.

Mr. Jack McCullough, 701 5th Avenue, Suite 6600, Seattle, introduced project manager Arnie Hall. He agreed that Fortress Development has spent much of the last year making presentations to the Commission. In the first part of the exercise, attempts were made to persuade the Commission to increase the allowed height. The CAC had recommended 300 feet but the Commission had reduced that to 250 feet. It became clear the Commission was not going to increase building heights as requested so the idea of leaving the height as proposed was floated along with the concept of a development agreement that would serve as a vehicle for allowing the Council in the future to change the height should the project warrant it. On July 27, the Commission gave direction to the staff to work with Fortress Development on the development agreement concept and to bring something back to the Commission for review. Chair deVadoss suggested the approach could possibly be used elsewhere in the downtown. Fortress Development drafted language to jumpstart the process and met with staff on October 27. The thinking at the time was that staff would begin working on language to be brought back to the Commission. More time passed, and two new versions of the ordinance came forward, and still nothing was included regarding the development agreement concept. The staff likely will say the Commission did not give them direction to include the development agreement concept in the ordinance, and they will be right in saying that. The fact is the Commission has not yet had the chance to make that decision. The concept needs to be brought before the Commission for a determination as to whether or not it belongs in the ordinance. It is understood that everyone is under pressure to get the process done, but the development agreement concept is work that has been left undone. The Commission was asked to direct staff to bring the issue to the table. With regard to the 20-foot rule, he noted that the stepback occurs above the podium height. That has been the approach operated under for the last year or more in working through the code. The midblock connector and 80-foot tower spacing requirements can be accommodated on the Fortress Development site, but when the 40-foot tower setback from all internal property lines requirement is added into the mix, less than 32 percent of the site is left to build on, meaning there is not enough roof to develop a tower that anyone would live in. The assumption is that the 40-foot rule was based on a concept of fairness and enshrining the 80-foot tower spacing by requiring a 40-foot setback on either side of each internal property line. The problem is that the approach protects the rights of parcels that may not be built on for decades and interferes with those who want to build in the near term. The 20-foot setback should be retained and a departure process should be created that would allow some future development from having to assure a full 80-foot tower separation. Seattle has a tower separation code that was adopted in 2006, and in the 11 years since there has only been one case involving a tower separation battle in the downtown, even though their blocks are a fraction of the size of those in Bellevue.

Commissioner Carlson asked if the proposed 40-foot rule would kill the Fortress Development project. Mr. Lakha said it absolutely would.

Mr. Brian Franklin, 15015 Main Street, Suite 203, spoke on behalf of PMF Investments. He said he has watched the downtown process for the almost five years it has been ongoing. Throughout the process there has been a consistent message from the East Main CAC and from the Council to avoid effectively creating a downzone. Property owners have not tried reaching for anything extra and has tried to stay consistent throughout the process. He voiced support for applying the 85 percent concept throughout the downtown in order to be consistent. In the OLB the current max FAR is 3.0 and that can easily be achieved through the current incentive system. Under the proposal, much of what is now incented will be required, so the base FAR should be increased to 4.25 for the OLB district. Nothing should be put in place that would hamper development of what are arguably the most underutilized areas of the downtown, which is the OLB along the

freeway.

Commissioner Laing said he understood the call for giving everyone 85 percent of the new max across the board as a way to be fair. He asked, however, if 85 percent is the correct number. He noted that under the current incentive system, a developer could gain sufficient bonus points for providing structured parking to max out the FAR and even have points left over. He asked how going to 85 percent while requiring the development of parking could be determined to be the right number. Mr. Franklin said the word he used was consistent, not fair. If the new base FAR were to be set at 2.5 instead of the current 3.0, and if the current incentives needed to achieve 3.0 are removed and some of what currently are incentives become requirements, developers will either have to pay $25 per foot or provide certain amenities, which is something developers have not previously had to do. In the end, to do the same project under the proposed approach would cost more than under the current approach, and that effectively would be a downzone.

Mr. Phil McBride, 11040 Main Street, spoke representing Lennox Scott and John L. Scott Realtors. He said Andrew Miller's property is adjacent and over a year ago he came forward with the notion of considering doing a project together on the two respective properties. All who have seen the proposed project have embraced it. However, with the way the new code has been proposed, it does not appear the project will get built.

Mr. Andrew Miller, 11100 Main Street, spoke representing BDR. He said his property along with the John L. Scott property will serve as the front door to the downtown from the East Main station. The desire is to build a project that continues to offer a lower scale face toward Main Street and that pushes the bulk toward the higher density downtown. The incentives should be crafted to make the project feasible. In May 2016 renderings of the project were shared with the Commission and met with a favorable response. The notion of averaging the FAR out between the A and B districts was raised at the meeting, and there was a discussion about office versus residential in the front building, and the Commission indicated a preference for form over the uses located inside. However, under the first draft or the latest version of the code, the project cannot be done, even though the project fits the desired height limits and FAR. What is missing is a mechanism in the code to get from point A to point B. In addition to the concerns raised by others, he said the biggest challenge to be addressed is how to average out the FAR. It was previously suggested that it could be done through the use of a footnote, but another way would be to include the notion as an exception to the dimensional requirements allowing projects within a walkshed having transit-oriented developments of a certain size to create a single building concept within the project limit. The proposed two buildings, which would all be built on a single parking garage, would be deemed a single building. As envisioned, the single building would need to be more than 50 percent residential in order to utilize the FAR. If the Commission likes the project as outlined, it should direct the staff to find a way to make it happen.

Mr. David Dowd, 3211 Evergreen Point Road, Medina, spoke on behalf of the Fortin Group. He pointed out the need to make a small correction in the draft code. There are several instances in which the document indicates 101st Avenue NE is a public right-of-way. The fact is that 101st Avenue NE is owned by the Fortin family and it has a tax parcel number recorded by the King County tax assessor. The city does not own an easement to turn it into a public right-of-way, and all such references should be removed.

Mr. Walter Scott, 400 112th Avenue NE, spoke on behalf of Legacy Companies. He said he has been following the process and has seen that the various developers who have stepped forward have highlighted specific problems for their specific sites. Some sites are too narrow. The Legacy site in the winter has ground water at about ten feet. Sound Transit will be driving in two

pylons on the southwest corner of the site to support the light rail line, and that will be problematic given that the load spreads as it goes deeper and will impact the ability to dig down and construct parking. Some flexibility will likely be needed, particularly in regard to parking. Legacy would like to provide plenty of parking, particularly given that Meydenbauer Center does not have enough to accommodate their events, and the close proximity of the transit station. The development community trusts the city staff having worked with them over the years and having found them to be very professional. The BERK report is to be applauded and represents a real effort to understand current market conditions. The numbers in the draft code, however, are just not where they need to be. The 85 percent rule work is workable. Some level of flexibility certainly will be needed, and the staff should be authorized to approve those exceptions. Legacy is currently acting to extend leases with its tenants, which in turn will extend the timeframe in which new development will occur. The longer the process goes on, the longer it will take to see the future development of the downtown.

STUDY SESSION
(7:47 p.m.)

Downtown Livability – Review Draft of Downtown Land Use Code Amendment

Chair deVadoss asked for some clarification based on the public comment. Land Use Director Carol Helland said the issue of the amenity incentive system would be discussed as part of the study session. With regard to the development agreement, she noted that it was included in the legislative departures found on pages 18 and 19 of the packet materials. The actual development agreement process would be part of a conformance amendment. It was never the intention of the staff to move forward without a development agreement. The staff has been working to weave together the direction received from the CAC and from the Planning Commission in response to the work of the CAC. She said she did not dispute that the notion of allowing for flexibility in the form of a development agreement regarding the property referred to by Mr. Lakha was identified, but the Commission also held a robust conversation regarding height in the Deep B district. Accordingly, the staff has not felt enabled to actually exceed the height limit given the Commission's specific conversation, and that is why the footnote proposed by the property owner's representatives was not included. To run with the proposed format would be to create an approach applicable only to the one site, which raises issues of fairness relative to piercing the maximum height limits citywide.

Commissioner Carlson agreed that the Commission had been clear about setting a height limit of 250, but never insinuated moving the 20-foot setback to 40 feet. Ms. Helland allowed that the process of writing code is iterative and is full of unintended consequences. Feedback was offered about the 80-foot tower separation requirements, and the inclusion of the 40-foot setback was an attempt at fairness. Other developers raise the "what about us" question relative to how the 80-foot separation requirement would be measured across intervening property lines when someone else goes first. The concern was that should someone put the tower portion of a building 20 feet from an interior property line, the adjacent development would have to step back 60 feet. If directed, the approach can be calibrated differently.

Commissioner Carlson commented that the 20-foot setback was developed after a great deal of negotiation, research and public input. He asked why it suddenly was doubled. Ms. Helland said the intention was not to double the setback, rather to apply the direction of the Commission with regard to separating towers by 80 feet. In amending the code, it was concluded that the 80-foot building separation applies to multiple buildings on a single site. That left the need to deal with the edges and separating towers on adjacent properties. The 40-foot setback was intended to

accommodate the 80-foot separation the Commission had directed staff to draft. If the conclusion of the Commission is that the approach ushers in an unintended consequence, the Commission can direct the staff to make a change.

Ms. Helland clarified for Commissioner Walter that the setback relates to towers and is measured from interior property lines. The existing setback from the side and rear property lines for towers above 40 feet is 20 feet.

With respect to the development agreement, Ms. Helland suggested the Commission should think more broadly across all of the downtown about a system that will work fairly for piercing the maximum building height on a single property. If deviations from the maximum building height are going to be allowed, the citywide consequences will need to be considered.

Chair deVadoss suggested there is merit to the approach proposed by Mr. Miller and Mr. McBride for their respective properties. He said he wanted to see the staff engage with them to explore an agreeable outcome. Ms. Helland said staff has in fact engaged with them. The rub comes in trying to reconcile the direction received from the Commission with their proposed project. The project as depicted in renderings is easy to approve of; drafting the approach into code is more problematic. The Commission had a conversation about the downtown boundary and the associated setbacks. The site is constrained by its location across the street from the tunnel portal and the fact that the downtown border runs along Main Street. The site is faced with a 20-foot setback, something the Commission talked about, and something the Commission expressed concerns about eliminating. The required setback serves to shrink the developable portion of the site. Additionally, while the form-based code concept is understandable, functionally there is a reason for taking a tower-by-tower approach and treating each as a separate building. Sometimes the locations of towers and the uses within them are important to the activities seen on the streets adjacent to them. While the form of the gateway project has been rearranged in keeping with the wedding cake approach, the uses proposed for the space right along Main Street are just office. What will happen between 5:00 p.m. and 6:00 a.m. daily, the space will be dark, it will not be pedestrian activated, and it will not create the desired environment in what has been noted to be a major connection between the East Main station and the downtown. The proposed building form makes for a good theoretical argument, but would be difficult to make work in light of the expectations of the CAC about activities at the street level and the Commission's feedback with regard to livability at locations where pedestrian activity will be very dense.

Chair deVadoss thanked Ms. Helland for her detailed clarification of the issues. He asked how the Commission and the staff should engage with those who have for many months been seeking closure in a timely fashion. Ms. Helland said feedback will be needed from the Commission in regard to the appropriate level of latitude when it comes to departures. To date there has been mixed feedback on the maximum height limits that have been attached, and the opportunity to pierce the maximum height limits, even through a legislative process involving Council approval of a development agreement, has ramifications.

Chair deVadoss asked staff to carry on with their agenda items.

Strategic Planning Manager Emil King briefly reviewed the process to date and the Commission's engagement points since June 2015 when the Council directed the Commission to begin working on the downtown code amendments. A number of topics have been addressed in the 20 meetings held to date. The joint Council/Commission workshop in November 2015 was a milestone, as was the early wins package in March 2016 and the two iterations of the draft Land

Use Code in November 2016 and February 2017.

Ms. Helland said the latest draft of the code includes comment bubbles with information regarding what has changed and where sections came from. In addition, all references to King County Records and Elections were changed to King County Recorder's Office; graphics and maps were added; a footer was added at the bottom of pages to help with navigation; and definitions were added and alphabetized. She said she worked with Commissioner Laing on some of the procedural requirements and identified the need for some changes which are essentially clarifications, namely that the general definitions apply in the downtown until specifically noted otherwise; clarification of how the departures have been characterized as being legislative when in fact they are project specific; clarification of the nature of the departures, where they are possible and the criteria for approving them; and identification of a flexible amenity package and clarification that support for a development not specifically identified in the amenities charts would need to come from the Council. Staff wrote the departure to reflect what was deemed to be the direction from the CAC and the Commission, but should the Commission see the need to tinker with them, additional conversation will be needed. No changes were made relative to the use charts. Commissioner Laing did note, however, the need to make it clear there is an interpretation process for the use charts and recommended that a cross reference be made to the general interpretations provisions of the code.

With respect to the dimensional charts beginning on page 41 of the packet, Ms. Helland pointed out that in the third column the minimum tower setback above 45 was added for buildings that exceed 75 feet. She reiterated that the 40-foot setback was an attempt to reconcile the 80-foot tower separation requirement as it relates to side property lines. She allowed that the approach would in fact end up being a greater separation than is currently required under the code.

Commissioner Laing noted that Mr. McCullough made reference to the issue coming up only once in Seattle. The fact is there was an article published in the *Puget Sound Business Journal* that focused on the tower spacing issue in Seattle. The basic issue is first in time, first in right. Seattle's code, however, is somewhat more nuanced than what has been proposed for Bellevue. Seattle has a rule that says the tower width cannot be more than 80 percent of the north-south façade width. The tower spacing requirements are different for the east-west side. Often where there are within a single block alley ways or public or private rights-of-way, the concern is focused on maintaining the tower spacing. That works out well when the measurement is between adjoining towers. The approach of basing it on property lines can be complicated where there is a 30-foot-wide alley. The concerns voiced by Mr. McCullough and Mr. Lakha are well taken. With regard to who should have to request a departure to allow for a de facto encroachment, he suggested it should be both the first person and the second person. Otherwise there could be the unintended consequence of rendering someone's property undevelopable.

Commissioner Hilhorst asked what problem the proposed approach was intended to fix, and what unintended consequence might result from staying with the current code requirement. Ms. Helland said the problem was the staff did not believe they had appropriately addressed the Commission's direction relative to tower separation. As previously written, the code simply required an 80-foot separation. For the owner of a property adjacent to a tower constructed under the current code requirements, which call for only a 20-foot setback, maintaining a separation of 80 feet would require setting any new tower back 60 feet, even if the existing tower is ripe for redevelopment. The 40-foot setback requirement flowed from an attempt to distribute the 80-foot tower separation requirement across an interior property line to effectuate the direction received from the Commission for 80-foot tower separations. Part of the complexity associated with the Lakha property is that it is filled with interior property lines, resulting in an even bigger hit.

Furthermore, the departure added for small sites is probably not applicable to the Lakha site.

Mr. King said the issue of having an 80-foot tower separation dates back to the middle of 2016. The current code calls for a 40-foot tower separation. Ms. Helland said the Commission's direction to require 80-foot tower separation would not be achieved by retaining the current code language, unless the 80-foot tower separation was applied only to multi-building projects. By doing so, however, there would be the unintended consequence of pushing buildings to the outside of sites.

Commissioner Laing said that approach would push tower massing toward rights-of-way, which will have the effect of moving towers closer to neighboring properties.

Commissioner Hilhorst asked if Mr. Lakha is the only property owner who has voiced concern about increasing the setback from 20 feet to 40 feet. Ms. Helland said Mr. Lakha was the only developer to raise the issue since the information went out on February 3. That is not to say his is the only property that would be impacted. With regard to the Lahka site, the Commission could determine it should be allowed to depart from the parking standards. Retaining the 40-foot setback requirement for purposes of the public hearing would likely increase the number of comments received, and it could always be changed back to something less after the hearing. Changing it to 20 feet for the public hearing would generate no creative thinking about how to achieve the 80-foot tower separation.

Commissioner Carlson said the obvious fallout from those who have firsthand knowledge of who the 80-foot rule will play out is that it will not work. Commissioner Morisseau said she did not know that was necessarily the case. There is a reason the Commission came to recommend the 80-foot tower separation consideration to begin with. She suggested staff should go back and look at how other cities have dealt with the issue. Commissioner Hilhorst concurred. The desire of the Commission all along has been to assure plenty of daylighting in the city, and the conclusion reached was that separating towers by 80 feet would help achieve that goal.

Ms. Helland proposed leaving the 40-foot setback proposal in place while looking for other alternatives for accomplishing the initial direction relative to separating towers by 80 feet. She said staff would also look at how the approach might be applied to various parcels in the downtown.

Commissioner Walter pointed out that the 80-foot tower separation rule was actually developed in concert with allowing taller buildings. Rethinking the one approach could trigger the need to rethink the other. Ms. Helland pointed out that while the two issues play hand in hand, the trigger for height did not immediate relate to the 80-foot rule. Getting rid of one will not compromise the other.

Mr. King called attention to page 8 of the packet. He noted that at a previous meeting a question was raised about one of the sentences regarding the DNTN-O1 district that encouraged transit and pedestrian facilities and activities and discouraged long-term parking and other automobile uses. Staff was directed to research where the language came from and discovered it has been in the code for many decades. At the direction of the Commission, he agreed to look at revising the language to reflect the notion that all modes should be treated equally.

Commissioner Walter referred to the land use chart on page 26 and said it appeared to her that transient lodging was permitted in all downtown districts. She said she would like the Commission to discuss whether or not permitted should be changed to conditional use. Ms.

Helland said the use charts were done as part of the early wins process, which preceded the conversation regarding Eastgate. If directed to do so, staff will separate hotels and motels from transient lodging on the chart as was done for Eastgate.

Commissioner Laing said part of the confusion that arose in regard to Eastgate centered on the fact that the classification 13 and 15 reads hotels and motels, when in fact 13, which is hotels and motels, and 15, which is transient lodging, are very different things. There should be a separate row in the table for 15, with C's in the boxes. The other Commissioners concurred and staff agreed to make the change.

Commissioner Laing commented that the way the land use charts work is that for each land use type there is a P for permitted, C for conditional use and A for administrative conditional use indicated for each zoning district. Where there are no letters shown at all, the use is not permitted. He questioned why uses that are not permitted in any zoning district should even be shown on the chart.

Commissioner Walter suggested that showing uses that are not permitted in any zoning district offers the opportunity for discussion during the review process. Commissioner Morisseau agreed and pointed out that the practice is all about consistency table to table. Ms. Helland pointed out that in fact the tables are not the same for each area of the city. The tables for the downtown are different from the tables in Bel-Red, for instance. In Bel-Red, the approach taken was to collapse some of the categories, which simplified the charts and made them more flexibility. With flexibility, however, comes the ability for the Director to make a best judgment about what box the standard land use classification uses fit into. By including uses that are not allowed in any district, it becomes clear that the Director can never reach the conclusion that building maintenance and pest control services can be permitted in the downtown. The practice provides for certainty in some areas and flexibility in others.

Commissioner Morisseau urged staff to go through the entire document looking for grammatical errors and inconsistencies. Additionally, where something is deleted from one table it should be deleted from all tables. Ms. Helland said each iteration of the draft becomes more refined, but said the point was well taken.

Commissioner Walter called attention to the building height maximum column in the chart on page 43 and said she would like to see it retained to clarity in regard to the new column of maximum building height with 15 percent or 15 feet. Ms. Helland clarified that the new column includes either the 15 percent or the 15 feet. The intention of staff was to remove the old maximum building height table and the information shown in brackets, leaving only the new maximum building height. Commissioner Walter said it was her understanding the new maximum would only be achieved with the 15 percent or 15 feet. Ms. Helland said the 15 percent or 15 feet is to be given as a right except for the highest building height. Mr. King clarified that the additional height is awarded only where interesting roof forms, façades or articulations are provided.

Commissioner Walter observed that the land use table on page 28 showed religious activities as allowed through conditional use in the DNTN-R district. Religious activities are allowed in all residential neighborhoods and it should be outright permitted in the downtown residential district as well. Ms. Helland said the land use classification of religious activities refers to churches, mosques and temples, which are allowed only through conditional use in all residential districts.

Commissioner Laing asked staff to comment on the issue raised by Mr. Dowd about 101st

Avenue NE not actually being a public right-of-way. Ms. Helland Mr. Dowd was correct and that the document would be amended to fix the error.

Commissioner Walter asked for a clarification of the social services providers land use classification relative to allowing them in residential districts. Ms. Helland said the use is allowed in as an administrative conditional use in residential districts. However, there is a footnote that restricts the use to Bellevue School District schools when under control of the school district. The is use is otherwise not permitted at all in residential districts.

Mr. King turned to the issue of the amenity incentive system. He noted that a new section beginning on page 50 of the packet had been added. Where the previous draft essentially just had a list of the 18 amenities, the new draft is more specific and represents an outgrowth of the BERK analysis and the third-party peer review by the ULI panel. While there were a number of caveats in the ULI recommendations, staff felt there was sufficient information to proceed toward flushing out the amenity incentive system.

Mr. King said tailoring the amenities by neighborhood is a concept that emanated from the work of the CAC. The idea was to place more of an emphasis on certain incentives in some neighborhoods, less of an emphasis in others, and having them not apply at all in some neighborhoods. As drafted, the section is in line with the Council principle of tying any increases in height or FAR to amenity incentive system. The fee in-lieu provision was also included in accord with direction from the Council, the CAC, the Commission and the ULI panel. There are also provisions included that call for period reviews.

With respect to tailoring by neighborhood, Mr. King reminded the Commissioners that the Comprehensive Plan for the downtown includes the notion of downtown neighborhoods that are easier to understand than the convoluted zoning districts. He said the way the amenities are laid out, they are bonused by neighborhood. In its final report, the CAC went through a number of the amenity categories, including park improvements, plazas and pedestrian connections and produced a matrix highlighting the need for specific amenities in certain neighborhoods.

Mr. King briefly reviewed the current incentive zoning system and reminded the Commissioners that a certain amount of FAR is exempt for ground floor and second-level retail uses. There is also a basic FAR and there are basic amenity requirements that all developments must provide to varying amounts. The maximum FAR can be achieved only by earning bonus points by providing certain amenities. It was clearly stated in the land use audit and by various stakeholders that as written many of the points can be garnered by doing a residential use or underground parking. The approach given the thumbs up by the Commission and the Council provides in addition to ground-floor and second-level retail an FAR exemption of up to 1.0 for affordable housing, though there is recognition of the need to coordinate the affordable housing exemption with the strategy being developed by the affordable housing technical advisory group. As proposed, affordable housing is separate from the list of 18 amenities.

It has been recognized that the recommendation of the ULI panel and various stakeholders that the basic FAR will need to be significantly increased to account for withdrawn incentives such as parking and residential, as well as to adjust for new requirements. It has also been recognized that there should be some amount of lift going from the new basic FAR to the current maximum FAR. For most zones, the BERK report proposed setting the lift at 85 percent of the current maximum FAR. In some zones, including the OLB and the MU for non-residential, there was CAC and Commission direction to significantly increase the maximum FAR as well as the maximum height. For other zones, the recommendation is to increase the allowed height but not

to increase the allowed FAR.

Commissioner Walter asked if staff has a feel for whether or not developers will put affordable housing in if the only incentive they have is additional FAR. Mr. King said much will depend on the work that comes out of the affordable housing technical advisory group. There is currently a citywide affordable housing bonus that is essentially a one-to-one bonus for up to 15 percent of the overall FAR; a small number of developers have used the bonus, which would seem to indicate a one-to-one bonus is not enticing enough. The make the bonus attractive, it will need to be in the range of two-to-one or three-to-one.

Commissioner Laing suggested the bonus may need to be as high as five-to-one, especially in the downtown environment where construction costs are vastly higher. Unless the city allows for an FAR bonus and the use of the multifamily tax exemption program, affordable housing will not be achieved in the downtown.

Commissioner Walter stressed that unless affordable housing gets developed in the downtown where people work, the workers will be forced to live elsewhere and commute in, putting more cars and buses on the streets.

Commissioner Laing asked if having up to 1.0 FAR exempted for ground-floor and second-floor retail and the same for affordable housing would allow for a development having an FAR of 7.0 in a zone that has maximum FAR of 5.0. Ms. Helland said the initial discussion did not contemplate taking advantage of multiple exemptions, even though the affordable housing was added on. In Eastgate, up to 1.0 FAR is exempted for affordable housing. Getting a full 1.0 FAR in affordable housing is unlikely, but any affordable housing added should not count against the maximum. Should a project in a zone that has a maximum FAR of 5.0 include a 0.5 FAR of affordable housing, the project could come in at 5.5 FAR. Mr. King allowed that the maximum FAR can technically be exceeded by virtue of having some FAR exempted.

By way of example, Mr. King referenced the DT-MU district and noted that the proposal increases the basic Far from 2.0 to 4.25, or 85 percent of the maximum FAR of 5.0, to accommodate for removing the incentives of parking and the residential use, leaving only 0.75 available to achieve through bonuses. The exchange rate or cost per point as articulated in the ratios equates to $25 per square foot, an amount that was in the BERK analysis and reviewed by the ULI panel. There is also a focus on trying to target 75 percent of the bonus points on the first eight amenities, which deal with public open space.

One of the scenarios analyzed by the BERK report involved a development that chooses to use only the basic FAR and pay a lesser amount per square foot for additional height. The reported identified a host of different rates, but the proposed approach is to use half the value of additional FAR, or $12.50 per square foot. Mr. King pointed out that the maximum FAR for office in the DT-MU zone is only 3.0. The basic amenity requirements amount to only 0.1 FAR, and the as of right FAR is only 0.5. To go from 0.5 up to 3.0 requires working through the incentive system. The CAC and Commission were both clear about wanting to see similar FAR for office and residential in the DT-MU zone. The direction of the Commission was to increase the maximum FAR in the zone to 5.0. Consideration was given to raising it to 85 percent of 3.0, but based on the economic modeling, the conclusion reached by staff was that the FAR should be increased to 3.25, which is higher than the only maximum. For nearly all of the other zones, the new basic FAR has been set using the 85 percent rule; the exceptions are the DT-MU district and the perimeter overlay A and B districts.

Commissioner Laing asked if a non-residential project even under the new system could actually reach an FAR of 5.0 with the bonus system. Mr. King said it would take some analysis to determine that. He agreed to run some scenarios aimed at determining how it would play out for individual projects. He pointed out that the fee in-lieu provisions would allow developers to avoid providing all amenities on site.

Commissioner Laing pointed out that both the CAC and the Commission recommended eliminating the commercial penalty. Even so, there remains some pushback to retain it, which means there will continue to be an incentive to continue building residential projects in the DT-MU. Mr. King explained that currently residential in the DT-MU has a maximum FAR of 5.0 and a basic FAR of 4.25. A project would need to work up through the incentive system of 0.75 FAR. The current proposal also has a height limit of 288 feet. Non-residential in the DT-MU also has a maximum FAR of 5.0, which represents an increase to be equal with residential. However, the BERK analysis and the staff proposal both include a different basic FAR, making commercial participate at a different level in the incentive system. Based on the Commission's recommendation, the maximum height is different for the two uses. Residential towers may reach the maximum height easier because of the smaller floor plates.

Commissioner Laing noted that for at least 20 years the Bellevue Downtown Association, the Chamber of Commerce and individual stakeholders have been asking to do away with the commercial penalty. Many voiced their opinions before the CAC which ultimately recommended unanimously to overturn it. In the early wins process, the Commission signaled that things would go in that direction, but the proposal does not in fact do that.

Mr. King offered the Commission two conditions relative to valuing height. For both conditions, the projects were assumed to be participating in the incentive system. Where there is no intent to exceed the basic FAR and/or the basic height, there is no need to get involved with the incentive system. In the first condition, a building not wanting to exceed the maximum height, the basic height is the current maximum height. The developer is at $25 per square foot, picks the amenities and is done. In the second condition, the project takes its basic FAR and through the bonus FAR exceeds the basic height. In the condition there is an amount of FAR above the basic FAR, and an amount of FAR that is a subset of that amount that is above the basic height. In the staff materials and in the text of the code examples are given for when the amount of bonus FAR will be the guiding factor.

Mr. King noted that each of the 18 amenities could be found in the packet between pages 56 and 61. He said the section also includes the fees in-lieu and the periodic review process. The new basic FARs were shown on page 41 of the packet.

Mr. King commented that most of the public comment received regarding the perceived inequity relative to the base FAR was for the OLB Central and OLB South areas. The current FAR in those areas is set at 3.0, but through the BERK analysis a new FAR of 2.5 has been recommended based on the new maximum FAR.

Commissioner Laing urged the Commissioners to go back and read the findings and recommendations of the Downtown Livability Initiative CAC, the Council Downtown Livability Initiative principles, and the Council guidance for updating the downtown incentive zoning. In kicking off downtown livability at the CAC level, there was clear direction given to avoid effecting a de facto downzoning. He said he was concerned that the process has in fact reached that point. The Commission is being asked to make changes that do not necessarily add up. The CAC had staff provide examples of how much FAR developments were earning through

structured parking and residential. Under the current system, a project can earn 120 percent of the maximum FAR by putting in structured parking. By tossing in residential and pedestrian-oriented frontage, the figure rises closer to 150 percent of the maximum FAR. The basic amenity requirements are not in fact incentives given that they are required, though they do earn extra floor area. The reality is that there is no real need to do any of the basic requirements to gain FAR given the bonus earned for structured parking. The city knew that, which is why the basic amenities were required. The whole idea of having an amenity system is based on mitigating impacts caused by projects. The proposed approach essentially allows developments to get 85 percent of the way to the maximum before seeking to squeeze out another five percent. In short, whatever the Commission decides is the acceptable maximum height should be the acceptable maximum height, and what the Commission decides is the acceptable maximum FAR should be the acceptable maximum FAR irrespective of what uses are in the buildings. The basic FAR should be 90 percent of the maximum FAR, and the last ten percent should be gained through providing an amenity from the table.

Commissioner Walter suggested the risk of that approach would be seeing developers building boxes that fit into the 90 percent window. That would mean a very uninteresting downtown. Commissioner Laing said that could be addressed by doing what Seattle does, namely requiring open space amenities and the like as part of projects. Even getting to the maximum FAR from 90 percent is a fairly heavy left. Commissioner Walter agreed with the notion of instigating a simpler program that would be easier for developers and for the staff, but stressed the need to keep an eye out for the possible downsides.

Commissioner Morisseau said the question not satisfactorily answered in her mind is what the amenity incentive system is intended to bring about. She asked if the desire is to see public open space or funding for developers who did not want to build amenities on site. She also asked if the maximum FAR can even by going with 75 percent of the amenities for open space, and questioned whether the fee in-lieu should be $25 or $28. Mr. King said the concept of focusing 75 percent of the amenities on the broad context of open space goes beyond outdoor plazas and includes street front improvements and other amenities. The amenities seek to incorporate all of the Council principles. Including a fee in-lieu option was also in the Council principles. Other cities only incentivizes a small list of things; in the South Lake Union area, Seattle requires sustainable buildings and incentivizes only affordable housing and child care. As proposed, the amenity incentive system lists 18 items and a fee in-lieu provision. It cannot be said with any degree of certainty which of the 18 items developers will chose in the coming years, and some likely will be chosen more than others.

Ms. Helland added that the fee in-lieu is capped at 50 percent of the amenity requirement, which means at least half of the amenities must occur on site. Mr. King said hopefully developers will see some of the amenities as things they will want to do anyway, and the more of them that get incorporated into projects, the better the public realm and the projects will be. The fee in-lieu number of $28 was arrived at by taking ten percent above $25 and rounding it up as the starting point for discussion. Currently there is no fee in-lieu option in place in the downtown.

Commissioner Hilhorst asked if staff had the direction needed to address the site directly across from the East Main station. Ms. Helland noted that the public had simply asked the Commission to direct staff to fix the issue. However, there is a tension between meeting the objectives across the city and the way in which some projects have been designed in anticipation of a future outcome. She added that it would be helpful for staff to know if they should be talking to developers about being able to negotiate through a development agreement. Currently the parameter for a development agreement as outlined on page 61 allows for working with the

Council to define individual amenities, cost them out, and have them support development. The development agreement process, however, does not allow for deviating from the maximum FAR and height limits. The code amendments suggested for the gateway project seek to amend things the Commission has been looking at for some time, and which were specifically talked about in November. If given direction to work with the gateway project folks with an eye on making their project work, staff would need the flexibility to reconsider the downtown boundary setback, the maximum height limit for the district, the trigger height, the tower setback, the lot coverage and the street classification issues.

Chair deVadoss suggested staff should in good faith be asked to work with the two teams to better understand the tradeoffs. Once the tradeoffs are identified, the Commission might be in a better position to provide input. Ms. Helland said staff would be happy to take that approach. She stressed that staff did not want to create a level of distrust by departing from the very clear standards given by the Commission.

Mr. King said the next steps will involve working toward a level of comfort with a draft code for purposes of conducting a public hearing. Ms. Helland added that if the Commission were to give staff the go-ahead on the current draft, the earliest a public hearing could be scheduled would be March 8 given the noticing requirements. She said focus group conversations could occur ahead of the public hearing in order to gather additional information for incorporation in the staff report.

Commissioner Laing said he would prefer to schedule the public hearing for March 22 to allow the staff and Commission more time to do what needs to be done ahead of the public hearing.

There was agreement to schedule a Commission meeting for March 1 on the understanding that the public hearing draft will have by that date already been published, and to set the public hearing for March 8.

A motion to extend the meeting by 20 minutes was made by Commissioner Hilhorst. The motion was seconded by Commissioner Laing and the motion carried unanimously.

STUDY SESSION
(10:06 p.m.)

Mr. Cullen reminded the Commissioners that the November 16, 2016, retreat was attended by Commissioners, staff members and the Council liaison Mayor Stokes. The prototype that was created prior to the retreat was discussed and consensus was sought. Part A of the prototype, which was focused on local governance and planning, was mainly for informational purpose. Part B, the suggested standards and practices, became the focus of the retreat. Part C, the guiding principles, was tabled for discussion at another time and has yet to be programmed. Following the retreat, notes from the facilitator and staff were used to add to and edit the draft Part B document. Staff has reviewed the edited version and have offered small edits in the form of footnotes at the bottom of the page.

Mr. Cullen reminded the Commissioners that Part B was put together by consensus, thus it was not up for additional discussion. He asked them to focus on the staff comments and determine whether or not they accurate reflect what was agreed on. The document will next be forwarded to Mayor Stokes who as Council liaison has the final review authority. A separate study session will then be scheduled to talk about Part C, the guiding principles. The principles will be owned by the Commission and as such it will not be necessary to have the staff and the Council liaison

play a role. The final piece will be a discussion regarding public participation. Once all is said and done, the Commission will have a comprehensive package that will be operationalized.

Commissioner Walter commented that the guideline principles, which belong to the Commission, came about at a time when there was a lot of contention between the expectations of the Commissioners and expectations of the staff. The principles were developed to show both give and take and mutual respect. When the time comes to discuss them, the staff should be part of the dialogue.

Turning to Part B, Mr. Cullen noted that the Commission had agreed on items 1, 2 and 3. The discussion regarding item 4 triggered the proposed redraft. He said the revisions to item 5 represented little more than wordsmithing. The Commissioners had agreed on items 6, 7 and 8. Additional wording for item 9 was agreed to by the Commission at the retreat. There was agreement with item 10.

With regard to item 11, Mr. Cullen said the revision was triggered by the City Attorney's review. He noted that there may, on occasion, be certain topics discussed in executive session by the City Council that could impact work the Commission has undertaken. It is possible that in certain instances the Council liaison could share confidential information with the Commission chair and/or vice-chair, but in other instances sharing such information would not be possible.

Commissioner Hilhorst asked if the paragraph could include verbiage calling for halting any work currently before the Commission or set to be given to the Commission until issues before the Council in executive session, such as property deals, are resolved.

Commissioner Walter said she would support including that idea. She said it would have been better for the Commission to halt its work on the Eastgate subarea while the Council was deliberating a property deal in regard to the homeless shelter.

Mr. Cullen said he would craft some wording to that effect and include a footnote for the Mayor's review.

Mr. Cullen noted that there was Commission agreement relative to item 12. The added sentence at the end of item 13 was added by the Commission.

Commissioner Morisseau questioned what value the added sentence brings to the paragraph. Commissioner Walter said the Commission was discussing the need to stay within the parameters. Often the Commission wanders outside the parameters in theory to look at things, but the resolutions determined are within the guiding principles. The overall conversation is richer and better for having strayed outside the box.

Commissioner Hilhorst said the Aegis project serves as a good example. The Commission was given a scope for the work but chose to look at the issue of affordable housing more holistically. The bigger conversation is what led to the final recommendation.

Mr. Cullen said the additional sentence in item 14 was brought forward at the retreat. The Commission was in agreement with respect to item 15. With regard to item 16, staff provided a comment, but the focus of the issue, public engagement, has been postponed for further discussion. The Commission agreed to items 17, 18 and 19. The new language for item 20 was agreed on at the retreat.

Commissioner Hilhorst said she understood the intent of the additional sentence in item 20, namely that the Commission needs to look to the staff to provide technical expertise. However, the Commission should not be limited just to the knowledge possessed by the staff. There are experts in various fields and the Commission would do itself a disservice if it did not allow those experts to come to the table as needed. Mr. Cullen agreed. He explained that staff is the primary source of technical expertise but not the only source. Commissioner Hilhorst said she would bring a suggestion for revising the wording to a future meeting.

With regard to item 21, Commissioner Walter zeroed in on the phrase "angry rhetoric damages working relationships" and suggested that there was some history from before her time that is reflected in the statement. She said if she were a new Commissioner reading the language, she would find it worrisome. She proposed rewording the second sentence to read "Everyone understands that open, thoughtful and honest communication is essential for good working relationships."

Mr. Cullen noted that the proposed revisions to items 22, 23, 25 and 27 came from the Commission at the retreat, and that the Commission had agreed to items 24 and 26.

MINUTES TO BE SIGNED
(10:36 p.m.)

January 11, 2017

NEW DRAFT MINUTES TO THE REVIEWED
(10:36 p.m.

January 25, 2017

ADJOURN
(10:36 p.m.)

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

Chair deVadoss adjourned the meeting at 10:36 p.m.

Terry Cullen
Staff to the Planning Commission

4/14/17
Date

John deVadoss
Chair of the Planning Commission

4/14/17
Date