STAFF REPORT NO. 079-17

TO: Mayor and City Council
FROM: Eric Holmes, City Manager
DATE: 7/10/2017

Subject: Amendments to Maximum (Downtown) Building Heights, VMC 20.630.050

Key Points:
- Building Heights in the downtown are regulated by City code, which in several areas allows for taller buildings within a range, provided certain conditions are met such as approval by the Federal Aviation Administration (FAA).
- Pilots using Pearson Airport have expressed concerns with regard to the heights of buildings that have been approved by the FAA to the west of the Pearson runway that, while compliant with current standards, are seen as creating conflicts with local flight conditions.
- The intent of proposed language is to create a safer flight path over downtown by lowering heights in a defined area of concern to pilots, require consultation with Pearson Airport Manager for new buildings in the downtown, and give final decision-making authority over building heights to the City review authority, not FAA.

Objective: Update provisions of VMC 20.630.050, Maximum Building Heights to ensure new buildings in the downtown do not interfere with air navigation to and from the Pearson Airport, particularly within a narrow band located north of the BNSF railroad berm and south and west of City Hall. This action supports Goal 5 (Continue to build high quality historical and cultural experiences for residents and visitors) and Goal 8 (Strengthen commercial, retail and community districts throughout the city) of the City’s Strategic Plan.

Present Situation: VMC 20.630.050 “Maximum Building Heights” describes the maximum building heights allowed in the downtown plan district. A number of city blocks within this district allow for a range of building heights, with the lower height limit in the range allowed outright and taller structures allowed up to the maximum of the range if certain conditions are met. One such condition allows for up to a 100% increase in building height if the structure receives approval by the Federal Aviation Administration (FAA). The proposal would amend the conditions for allowing an increase in building height to clearly state that the Planning Official will be the final decision maker for any such increase in height, upon approval by the FAA and in consultation with the Pearson Airport Manager.

Pearson Airport is the one of the oldest operating airports in the country, and the oldest such airport West of the Mississippi River. Pearson is designated as a general aviation airport and is owned and operated by the City of Vancouver with a long-term lease agreement with the National Park Service to use a portion of park-owned property for its runway. According to the City’s Comprehensive Plan, more than 60% of the airport’s operations are commerce related, and the airport is designated as the primary location for emergency operations, search and rescue and other public services. Under the Growth Management Act, Pearson Field is an essential public facility, and must be protected from incompatible land uses and/or activities that could
impede the safe operation of the airport. Operations of the airport are overseen by the Pearson Airport Manager, with advice from a City Council-appointed Aviation Advisory Committee (AAC).

Recently, the FAA “approved” a proposed 98-foot building directly in line with the west end of the runway in an area where the Aviation Advisory Committee, representing pilots who use the airport, feel the City should limit building height to 60 feet due to other obstructions to the north and south (see Exhibit F), GMA compliance, and livability concerns created by the close proximity of operating aircraft. While this additional height is in compliance with the allowed range of heights and did not penetrate any of the maximum approach, transitional or horizontal surfaces that would cause concern by the FAA, the AAC and Airport Manager expressed concerns about this approval. This led to discussions about allowed heights of nearby properties; primarily in a narrow band extending from I-5 on the north side of the Burlington Northern (BNSF) railroad berm heading west and north to approximately 9th Street (see Exhibit D). The AAC additionally expressed concerns with the code provision that appears to give final decision-making authority for building height to the FAA instead of the local review authority and with no required consultation of the local airport official.

The existing maximum building heights have been in place since 2009 when the Vancouver City Center Vision (VCCV) Plan was adopted and were established in consideration of the Pearson flight path, with built-in flexibility for increased heights if approved by the FAA following an analysis for air safety. However, as development has been approved on the Waterfront site to the south of the BNSF berm, pilots using Pearson have had to limit their flight path to the north of the railroad berm, while remaining south of existing buildings including the Hilton and City Hall. While the FAA is the nationally-recognized authority on air safety, local pilots and FAA officials have acknowledged that the FAA, which remotely conducts its analysis of heights and slopes, may not always be aware of the local conditions that could have a cumulative effect on a pilot’s ability to navigate safely, particularly during take-offs to the west under sub-optimal weather conditions.

The AAC has therefore recommended that the City amend VMC 20.630.050 to give final authority to approve or deny the height of buildings to the local Planning Official and, where a range of building heights is allowed, that the Planning Official consult with the Pearson Field Airport Manager in addition to receiving confirmation from the FAA that no horizontal or transitional surfaces would be penetrated. Lastly, the AAC recommended that the allowed building heights in the primary flight path be made a defined maximum height, as opposed to a possible range, in order to increase certainty for the pilots as well as the property owners.

Public outreach for the proposed code changes has included general notice of workshops and hearings in the local paper, advertised public work sessions with the Aviation Advisory Committee, City Center Redevelopment Authority, Planning Commission and City Council, as well as personal contact with affected property owners by City staff. The Aviation Advisory Committee met on April 11, 2017, and indicated agreement with the proposed changes. A Planning Commission work session was held on March 14, 2017, and a City Council work
session was held on May 15, 2017. A SEPA determination of Non-significance (DNS) was published in the *Columbian* and circulated to interested parties on May 26, 2017 and several public comments were received prior to the Planning Commission hearing (see Exhibit I).

The Planning Commission held a duly-noticed public hearing on June 13, 2017, and, following consideration of public testimony, voted 3-3 on the proposed amendments. Public testimony included representatives of the Aviation Advisory Committee in favor of the proposed changes, and a property owner opposed to the changes. Commissioners who voted against recommending approval of the proposed amendments indicated concerns with the loss of future building area by lowering the building heights on a number of blocks near the railroad berm.

**Advantage(s):**
1. Where a range of building heights is allowed, the proposed language will make it clear that the final decision maker in regard to building height will be the City’s Planning Official
2. A determination of no hazard to air navigation will still be required by the FAA in order to allow taller buildings within the given range of heights; however, the Pearson Airport Manager must also be consulted prior to a final decision on the allowed building height.
3. Changes to Figure 20.630-4 will replace the current range of allowable building heights in the area of most concern to pilots with fixed maximum building heights, which will provide greater certainty regarding how tall new buildings may be within the westerly flight path.
4. Remains in compliance with the Growth Management Act.
5. Retains a safe, viable flight path and assists with community livability.

**Disadvantage(s):** The maximum “potential” building heights and subsequent potential floor area of new buildings will be reduced in an 18-block area north of the railroad berm and south and west of City Hall; however, the proposed maximum building heights will provide greater assurance that a viable flight path will be maintained over the downtown as these blocks redevelop.

**Budget Impact:** None

**Prior Council Review:** Council Workshop held on May 15, 2017

**Action Requested:**
2. On July 17, 2017 subject to second reading and public hearing, approve the ordinance.

Attachments:
A. Draft Ordinance Amending VMC 20.630.050 Maximum Building Heights
B. Applicable Approval Criteria and Staff Analysis of Proposed Changes
C. Planning Commission Minutes of June 13 Public Hearing
D. Area of Primary Concern to Pilots Using Pearson Field
E. Pearson Flight Path without Waterfront Obstructions
F. Pearson Flight Path with Waterfront Obstructions
G. Proposed Changes to Figure 20.630-4 Maximum Building Heights
H. Estimated Reduction in Maximum Potential Building Area
I. Public Comments Received
AN ORDINANCE relating to Vancouver Municipal Code (VMC) Title 20; amending Vancouver Municipal Code Section 20.630.050 related to building heights in the Downtown Plan District; and providing for an effective date.

WHEREAS, the City Council of the City of Vancouver desires that maximum building heights allowed west of Pearson Airport do not interfere with air navigation particularly within a narrow band located north of the BNSF railroad berm and south and west of City Hall; and

WHEREAS, building heights in the downtown are regulated by city code, which in several areas allows for taller buildings within a range, provided certain conditions are met such as approval by the Federal Aviation Administration; and

WHEREAS, pilots using Pearson Airport have expressed concerns with regard to the heights of buildings that have been approved by the Federal Aviation Administration to the west of the Pearson runway that, while compliant with current standards, are seen as creating conflicts with local flight conditions; and

WHEREAS, the City Council of the City of Vancouver desires to create a safer flight path over downtown by lowering heights in a defined area of concern to pilots, require consultation with Pearson Airport Manager for new buildings in the downtown, and give final decision-making authority over building heights to the city review authority; and

WHEREAS, in a duly advertised public hearing on June 12, 2017, the Vancouver Planning Commission voted 3 to 3 on a motion to recommend approval of changes to VMC 20.630.050 described herein; and

WHEREAS, the City Council conducted a duly advertised first reading on July 10, 2017 and public hearing on July 17, 2017; and
WHEREAS, the proposed zoning code text change has been reviewed and determined to be nonsignificant pursuant to the State Environmental Policy Act.

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF VANCOUVER:

Section 1. Findings and Conclusions. The Planning Commission findings and conclusions as set forth in the June 12, 2017 staff report are hereby adopted as the City Council’s findings of fact; and

Section 2. Zoning Code Text Change. VMC 20.630.050 as last amended by Ordinance M-3922 is amended as follows:

Section 20.630.050 Maximum Building Heights.

Maximum building heights. Building heights in the Downtown Plan District vary from 40’ to 300’, as illustrated in Figure 20.630.030-4.

A. Purpose: The maximum building height regulations are intended to facilitate redevelopment opportunities and maximize waterfront development, to meet historic preservation goals (including preservation of architectural character), to protect adjacent residential and commercial neighborhoods (including compatibility in scale and character), and to comply with Federal Aviation Administration Regulations, Part 77; and to ensure safety and livability.

B. Establishment of boundaries. The boundaries of the area within which these regulations apply are illustrated in Figure 20.630.030-4.

C. In areas noted by a superscript 1 in Figure 20.630.4, a maximum building height range is shown within brackets. The low number of the range identifies the maximum building height (inclusive of any roof-top appurtenance) that may be achieved outright. The high number of the range identifies the conditionally allowed maximum building height limit (inclusive of any roof-top appurtenance).

The following conditions apply with an increase in building height above the low number of any given range:

1. Up to 50% increase in building height (inclusive of any roof-top appurtenance), is may be allowed outright, provided such increase in height complies with FAA regulation, Part 77, as certified by the FAA, through issuance of a determination of no hazard to air navigation, and will not affect the safe and efficient use of navigable airspace by the Planning Official through the site plan review process upon making the following findings:
a. Such increase in height complies with FAA regulation, Part 77, as confirmed by the FAA, through issuance of a determination of no hazard to air navigation; and

b. Such increase in height will not affect the safe and efficient use of navigable airspace following consultation with the Pearson Field Airport Manager.

2. Over 50% and up to the high number of a given range, increase in building height (inclusive of any roof-top appurtenance), may be allowed by the Planning Official through the site plan review process upon making the following findings:

a. Such increase in height complies with FAA regulation, Part 77, as certified confirmed by the FAA, through issuance of a determination of no hazard to air navigation and will not affect the safe and efficient use of navigable airspace; and

b. Such increase in height will not affect the safe and efficient use of navigable airspace following consultation with the Pearson Field Airport Manager; and

c. The gross floor area of the building at each floor over 50% above the low number of any given range and up to the high number of a given range shall not exceed 12,000 square feet.

D. In the area noted by superscript 2 in Figure 20.630-4, the following building height and design conditions apply:

1. Buildings fronting Main Street shall comply with the established building line, and shall rise no more than 45 feet with an allowance of an additional 3 feet for a parapet before stepping back 15 feet, beyond which the building may rise to 100 feet (inclusive of any roof-top appurtenance) with an FAA approval determination of no hazard to air navigation and upon consultation with the Pearson Field Airport Manager. An exception may be given for buildings fronting Main Street to rise to 60 feet before stepping back 15 feet, only if, the context of the subject building meets the following: Two buildings 60 feet or taller are located, such that, each front Main Street and are on two different adjacent sides of the subject building. The term Adjacent may include buildings that front Main Street and are located directly across a street from the subject building.

2. Buildings taller than 100 feet (inclusive of any roof-top appurtenance) that have received an FAA determination of no hazard to air navigation and upon consultation with the Pearson Field Airport Manager would be limited to building footprints of 12,000sf square feet or less per floor to ensure sufficient light at street level.

3. All restoration of existing buildings and construction of new buildings shall be consistent with design guidelines and requirements of VMC20.510, Heritage Overlay District.

E. In the area noted by superscript 3 in Figure 20.630-4 refer to Heritage Overlay District Number One, Standards and Requirements VMC20.510.3.a.
F. For additional information, refer to Section 20.150.040, Meaning of Specific Words and Terms and Section 20.560.030, Airport Height Overlay District. Notwithstanding the allowed heights as shown in Figure 20.630-4, no part of the building structure including any roof top appurtenances shall be taller than the adopted airport approach, transitional and horizontal surfaces (refer to 20.570 and Figure 20.570-2). In some cases, the transitional and horizontal surface may be exceeded when explicitly authorized by the FAA.

Section 3. Severability. If any clause, sentence, paragraph, section, or part of this ordinance or the application thereof to any person or circumstances shall be adjudged by any court of competent jurisdiction to be invalid, such order or judgment shall be confined in its operation to the controversy in which it was rendered and shall not affect or invalidate the remainder of any parts thereof to any other person or circumstances and to this end the provisions of each clause, sentence, paragraph, section or part of this law are hereby declared to be severable.

Section 4. Effective Date. This ordinance shall go into effect 30 days after adoption

Section 5. Instruction to City Clerk. The City Clerk shall transmit a copy of the revised development code to the Washington Department of Commerce.

Read First Time:
Ayes: Councilmembers
Nays: Councilmembers
Absent: Council Members

Read Second Time:

PASSED BY THE FOLLOWING VOTE:
Ayes: Councilmembers
Nays: Councilmembers
Absent: Councilmembers
SIGNED this _______ day of __________________, 2017

____________________________________
Timothy D. Leavitt, Mayor

Attest:

____________________________________
R. Lloyd Tyler, City Clerk
By: Carrie Lewellen, Deputy City Clerk

Approved as to form:

____________________________________
E. Bronson Potter, City Attorney
SUMMARY

ORDINANCE NO. M_______

AN ORDINANCE relating to Vancouver Municipal Code (VMC) Title 20; amending Vancouver Municipal Code Section 20.630.050 related to building heights in the Downtown Plan District; and providing for an effective date.

The full text of this ordinance will be mailed upon request. Contact Raelyn McJilton, Records Officer at 487-8711, or via www.cityofvancouver.us (Go to City Government and Public Records).
Footnote 1: Refer to 20.630.050 C
Footnote 2: Refer to 20.630.050 D
Footnote 3: Refer to 20.630.050 E

Area regulated by the Shoreline Management Master Program VMC 20.760
Exhibit B: Applicable Approval Criteria and Staff Analysis of Proposed Changes

The approval process and criteria for zoning text changes are specified in VMC 20.285, as follows:

Section 20.285.090 Zoning Code Text Amendments

A. Approval process for Zoning Code text amendments

1. Initiation. All proposed text amendments to the development or zoning regulations shall be developed, submitted and presented by the City staff, based on direction from the City Council, Planning Commission, or the City Manager or designee.

2. Private party requests. City staff shall submit proposals from private individuals or groups as follows:
   a. Private parties shall submit a written summary of the amendment proposed to City staff, an indication of why it is needed, and the potential land use impacts if approved. No fees shall be assessed.
   b. Staff shall maintain a docket listing of private party requests, and shall provide the listing not less than once per year to the Planning Commission, which shall determine which items shall be further reviewed by staff and submitted as a formal proposal, which shall be deferred to future work programs, and which shall not be considered. Decisions to defer or not consider private requests shall be considered final unless appealed as provided herein.

3. Process. Text amendments submitted by City staff, including those originated from outside party requests if applicable, shall be scheduled for Planning Commission and City Council, subject to procedural criteria of subsections of this chapter, except that staff initiated actions shall not be considered final without council consent. Hearing scheduling shall be determined by City staff based on work program constraints or direction from the City Manager, Planning Commission and/or council. Proposed text amendments to zoning or development regulation amendments which do not include corresponding comprehensive plan changes may be reviewed separately from one another, at any time.

B. Approval criteria for Zoning Code text amendments

Proposed zoning or development regulation text changes shall be considered based on the following:

1. The proposed change is consistent with the comprehensive plan; and

2. The proposed change is necessary to further the public interest based on present needs and conditions.
The proposed zoning text amendments were developed by city staff in consultation with the City Center Redevelopment Authority (CCRA), Pearson Aviation Advisory Committee (AAC), and the FAA. A SEPA Review has been prepared and a Determination of Non-Significance was issued, finding that there would be no significant adverse environmental impacts from the proposed amendments.

The proposed changes to allowed building heights in Figure 20.630-4 would result in a reduction in the potential height of new buildings on properties immediately north of the railroad berm where a range of allowable heights is currently indicated. The reduction in potential allowed heights ranges from 60 feet (approximately 5 stories) at the far east end of the area of concern, to 125 feet (approximately 10-11 stories) south of City Hall and the Hilton, to 75 feet at the east end of the area of concern to 75 feet (approximately 6 stories) at the west end of the area of concern. Although many of the properties in question are already developed and it is not known if the maximum allowed building heights in a given range could be achieved on every affected property, the theoretical maximum “lost opportunity” for potential new building area is estimated at over 3 million square feet, or about a 30% reduction in total area. (See Exhibit H)

It is important to note that where Figure 20.630-4 shows a range of allowed heights, the as-of-right (e.g. guaranteed) building height is the low number of the range and that the proposed changes to heights in this area would increase the guaranteed height of buildings for most of the affected properties, by as much as 5-25 feet. Several properties, all of which are owned by the City of Vancouver, would see a reduction in the as-of-right building heights of 5 feet (lot west of Esther, south of 6th Street), 20 feet (vacant lot south of City Hall), and 25 feet (lots immediately south of the Hilton Conference Center). One-and-a-half blocks east of Columbia Street immediately north of the railroad berm would have a maximum building height limit equal to the current as-of-right minimum height limit. While the proposed changes will reduce the potential maximum building height on a number of properties, the only properties affected by a reduction in the current guaranteed building height are owned by the City of Vancouver.

Three properties in the area where new maximum building heights are proposed (where currently a range of allowed heights exist) have pending development applications, which are either vested to current height regulations or will not be otherwise adversely affected. One of the two projects, a multi-story office tower located east of Columbia Street and immediately north of the railroad berm, would exceed the proposed maximum height limit of 60 feet, but could be built at 95 feet tall (already approved by the FAA) so long as the project vesting does not expire. A second project, located north of Sixth Street and west of the Esther Building off of Esther Street, is proposed to be a 6-7 story apartment building and would not exceed the proposed maximum height limit of 105 feet. A third project, located at the NE corner of Jefferson and W 8th Street would be a 5-6 story apartment project which would similarly not be adversely affected by the proposed maximum height limit of 125 feet.
The proposed changes are consistent with the Vancouver Comprehensive Plan and other applicable laws, specifically the following Comprehensive Plan policies:

CD-9 Compatible uses *Facilitate development that minimizes adverse impacts to adjacent areas, particularly neighborhoods*

PFS-20 Airports *Discourage incompatible uses from locating adjacent to general aviation airports.*

As noted previously in this report, under the Washington State Growth Management Act, Pearson Field is an essential public facility, and must be protected from incompatible land uses and/or activities that could impede the safe operation of the airport. While the proposed maximum height limits (versus the current range) in the flight path of Pearson Airport has the potential to reduce the theoretical maximum density that might be achieved under current regulations, the proposed changes are intended to balance public safety and livability considerations between the airport and future development in that area.
Exhibit C: Planning Commission Minutes from 6/13/17
PLANNING COMMISSION
Meeting Summary/Meeting Minutes

June 13, 2017
6:00 p.m.
Council Chambers, City Hall

Staff Present: Bryan Snodgrass, Chad Eiken, Willy Williamson, Rosemary Armour

REGULAR MEETING

CALL TO ORDER

The regular meeting of the Vancouver Planning Commission was called to order at 6:00 p.m. by Chair Erik Paulsen in City Hall Council Chambers, 415 W 6th Street, Vancouver, Washington.

PLEDGE OF ALLEGIANCE

ROLL CALL

Present: Marjorie Ledell, Steve Schulte, Dimitry Mishchuk, John Lee
Robert Haverkate, Erik Paulsen

Absent: Richard Bailey

APPROVAL OF MINUTES – April 11, 2017

Chair Erik Paulsen called for approval of the minutes. Minutes were approved unanimously.

COMMUNICATIONS FROM PLANNING COMMISSIONERS

Chair Erik Paulsen stated that he had the good fortune of being invited to participate in a recent City to City event that took place with both staff, as well as community stakeholders who journeyed together to the beautiful twin cities of Minneapolis and Saint Paul, Minneapolis. They spent four days with a pretty lengthy and exhaustive curriculum of speakers and subject matter experts on a variety of different topics having to do with how those cities have grown. The location was chosen because it has some similarities to our area with two rival cities separated by a river and not a state line and they have had some challenges not unlike the ones that we have faced and continue to face. It was really a great opportunity to learn from community leaders and be inspired and stimulate some thinking about ways that we might be able to move forward with our city in a different direction and he thought it was really great and he is looking forward to the board playing a vital role in what is to come as a result of the meeting.
COMMUNICATIONS FROM CITIZENS

There were none.

COMMUNICATIONS FROM STAFF

Teresa Brum, Economic Development Division Manager, City, was present to give a staffing update. Teresa stated that after Sandra Towne, Planning Manager, retired in February staff spent several months going through a local and national search to fill the position. Teresa thanked Bryan Snodgrass for his extra work over the past several months filling in for Sandra as Planning Manager. Teresa also thanked Erik Paulsen for participating in the interview panel where they went through several different rounds of interviews and ended up hiring Rebecca Kennedy, who has been with the city for three years and was clearly the top candidate of all that were interviewed. Rebecca has an extensive background in urban planning and has been on the Portland Development Commission and worked in South America. She has management background, planning background and community and economic development background as well and being well rounded and well suited for this position. Teresa then introduced Rebecca to the Planning Commissioners

Rebecca thanked Teresa and Chad Eiken and stated she was really excited about this opportunity. She does not start in her new role until Friday, June 16, 2017 and stated she appreciates the opportunity just to say hi and knows the great reputation the commission has in the community and really looks forward to working with the board going forward. There is a lot of exciting opportunities right now in the city that the board will be involved in. Rebecca stated she will be back next month to talk to the board more about her background and vision and have a dialogue with the board members about their expectations and what they would like to see as well. She thanked the board and stated she looked forward to working with them.

Erik congratulated Rebecca and suggested that at the next earliest convenience, maybe during the workshop, that they set aside a significant portion of time for the board to get to know Rebecca and exchange some ideas.

Bryan Snodgrass, Principal Planner, City, wanted to confirm a schedule change since the last meeting. The Repeal of the Human Service Siting Ordinance has been rescheduled to July 25, 2017; the worksession will begin at 4 p.m. Staff will look for other worksession opportunities for that date if they arise; otherwise, at this point that is the only item on the calendar that evening. The Hearing for the Repeal is scheduled for August 22, 2017, and that is shaping up for a fuller day with a worksession on the Comprehensive Plan and Zone changes.

Erik stated that if there is no opportunity to get together prior to that date to make sure that there is time set aside to visit with Rebecca during that workshop.

UNFINISHED BUSINESS

No unfinished business to be addressed.

NEW BUSINESS

No new business to be addressed.
PUBLIC HEARING

Amendments to Maximum (Downtown) Building Heights, VMC 20.630.050
Chad Eiken, Director, Community and Economic Development, City, Willy Williamson, Pearson Airport Manager, City, summarized the staff report for the above project. Please see “Maximum Building Heights in the Downtown: Proposed Amendments” presentation dated June 13, 2017.

Background
The proposed set of amendments to city code is intended to address a potential area of conflict between the allowed height of buildings and the flight path for Pearson Airport, located to the east of downtown, which has narrowed as development projects have been approved on the Vancouver Waterfront.

VMC 20.630.050 “Maximum Building Heights” describes the maximum building heights allowed in the downtown plan district. A number of city blocks within this district allow for a range of building heights, with the lower height limit in the range allowed outright and taller structures allowed up to the maximum of the range if certain conditions are met. One such condition allows for up to a 100% increase in building height if the structure receives approval by the Federal Aviation Administration (FAA). The proposal would amend the conditions for allowing an increase in building height to clearly state that the Planning Official will be the final decision maker for any such increase in height, upon approval by the FAA and in consultation with the Pearson Airport Manager.

Pearson Airport is the one of the oldest continuously-operating private airports in the country, and perhaps the oldest such airport West of the Mississippi River. Pearson is designated as a general aviation airport and is owned and operated by the City of Vancouver with a long-term agreement with the National Park Service to use a portion of park property for its runway. Pearson Field primarily serves general aviation aircraft that are propeller driven with wingspans of less than 49 feet and weighing less than 12,500 pounds. According to the City’s Comprehensive Plan, over 60% of the airport’s operations are commerce related, and the airport is designated as the primary location for emergency operations, search and rescue and other public services. Under the Growth Management Act, Pearson Field is an essential public facility, and must be protected from incompatible land uses and/or activities that could impede the safe operation of the airport. Operations of the airport are overseen by an appointed board (Pearson Aviation Advisory Committee), and the Pearson Airport Manager.

Recently, the FAA “approved” a proposed 98-foot building directly in line with the west end of the runway in an area that pilots who use the airport feel should limit building height to 60 feet due to other obstructions to the north and south (see Exhibit 3). While this additional height is in compliance with the allowed range of heights and did not penetrate any of the maximum transitional or horizontal surfaces that would cause concern by the FAA, the Pearson Aviation Advisory Committee (PAAC) contacted city staff with their concerns about this approval, which led to discussions about allowed heights of nearby properties, primarily in a narrow band extending from I-5 on the north side of the Burlington Northern (BNSF) railroad berm, heading west and north to approximately 9th Street (see Exhibit 1). The PPAAC additionally expressed concerns with the code provision which appears to give final decision-making authority for building height to the FAA instead of the local review authority and with no required consultation of the local airport official.
The existing maximum building heights have been in place since 2009 when the Vancouver City Center Vision (VCCV) Plan was adopted, and were established in consideration of the Pearson flight path, with built-in flexibility for increased heights if approved by the FAA following an analysis for air safety. However, as development has been approved on the Waterfront site to the south of the BNSF berm, pilots using Pearson have had to limit their flight path to the north of the railroad berm, while remaining south of existing buildings including the Hilton and City Hall. While the FAA is the nationally-recognized authority on air safety, local pilots and FAA officials have acknowledged that the FAA, which conducts their analysis of heights and slopes using computer programs from their offices in another part of the state, may not always be aware of the local conditions which could have a cumulative effect on pilot’s ability to navigate safely, particularly during take-offs to the West under sub-optimal weather conditions.

The PPAAC has therefore requested that the City amend VMC 20.630.050 to give final authority to approve or deny the height of buildings to the local Planning Official and, where a range of building heights is allowed, that the Planning Official consult with the Pearson Field Airport Manager in addition to receiving confirmation from the FAA that no horizontal or transitional surfaces would be penetrated. Lastly, the PAAC requested that the allowed building heights in the primary flight path be made a defined maximum height, as opposed to a possible range, in order to increase certainty to the pilots as well as the property owners.

Summary
Public outreach for the proposed code changes has included general notice of workshops and hearings in the local paper, advertised public work sessions with the Pearson Aviation Advisory Committee, City Center Redevelopment Authority (CCRA), Planning Commission and City Council, as well as personal contact with affected property owners by city staff. The Aviation Advisory Committee met on April 11, 2017 and indicated agreement with the proposed changes. A Planning Commission work session was held on March 14, 2017, and a City Council work session was held on May 15, 2017. The June 13 Planning Commission public hearing was advertised in The Columbian newspaper on June 5, 2017. A SEPA determination of Non-significance (DNS) was published in the Columbian and circulated to interested parties on May 26, 2017, and no public comments have been received to-date.

Staff Findings
The proposed zoning text amendments were developed by city staff in consultation with the CCRA, Pearson Aviation Advisory Committee (PAAC), and the FAA. A SEPA Review has been prepared and a Determination of Non-Significance was issued, finding that there would be no significant adverse environmental impacts from the proposed amendments.

The proposed changes to allowed building heights in Figure 20.630-4 would result in a reduction in the potential height of new buildings on properties immediately north of the railroad berm where a range of allowable heights is currently indicated. The reduction in potential allowed heights ranges from 60 feet (approximately 5 stories) at the far east end of the area of concern, to 125 feet (approximately 10-11 stories) south of City Hall and the Hilton, to 75 feet at the east end of the area of concern to 75 feet (approximately 6 stories) at the west end of the area of concern. Although many of the properties in question are already developed and it is not known if the maximum allowed building heights in a given range could be achieved on every affected property, the theoretical maximum “lost
“opportunity” for potential new building area is estimated at over 5 million square feet. (See Exhibit 4)

It is important to note that where Figure 20.630-4 shows a range of allowed heights, the as-of-right (e.g., guaranteed) building height is the low number of the range and that the proposed changes to heights in this area would increase the guaranteed height of buildings for most of the affected properties, by as much as 5-25 feet. Several properties, all of which are owned by the City of Vancouver, would see a reduction in the as-of-right building heights of 5 feet (lot west of Esther, south of 6th Street), 20 feet (vacant lot south of City Hall), and 25 feet (lots immediately south of the Hilton Conference Center). One-and-a-half blocks east of Columbia Street immediately north of the railroad berm would have a maximum building height limit equal to the current as-of-right minimum height limit. While the proposed changes will reduce the potential maximum building height on a number of properties, the only properties affected by a reduction in the current guaranteed building height are owned by the City of Vancouver.

Three properties in the area where new maximum building heights are proposed (where currently a range of allowed heights exist) have pending development applications, which are either vested to current height regulations or will not be otherwise adversely affected. One of the two projects, a multi-story office tower located east of Columbia Street and immediately north of the railroad berm, would exceed the proposed maximum height limit of 60 feet, but could be built at 95 feet tall (already approved by the FAA) so long as the project vesting does not expire. A second project, located north of Sixth Street and west of the Esther Building off of Esther Street, is proposed to be a 6-7 story apartment building and would not exceed the proposed maximum height limit of 105 feet. A third project, located at the NE corner of Jefferson and W 8th Street would be a 5-6 story apartment project which would similarly not be adversely affected by the proposed maximum height limit of 125 feet.

The proposed changes are consistent with the Vancouver Comprehensive Plan and other applicable laws, specifically the following Comprehensive Plan policies:

**CD-9 Compatible uses** Facilitate development that minimizes adverse impacts to adjacent areas, particularly neighborhoods

**PFS-20 Airports** Discourage incompatible uses from locating adjacent to general aviation airports.

As noted previously in this report, under the Washington State Growth Management Act, Pearson Field is an essential public facility, and must be protected from incompatible land uses and/or activities that could impede the safe operation of the airport. While the proposed maximum height limits (versus the current range) in the flight path of Pearson Airport has the potential to reduce the theoretical maximum density that might be achieved under current regulations, the proposed changes are intended to balance public safety and livability considerations between the airport and future development in that area.

**Recommendation**
Based on the analysis and findings in this report, and subject to public testimony received, staff recommends that the Planning Commission forward a recommendation to the Vancouver City Council to approve the proposed changes to VMC 20.630.050, Maximum Building Heights.
Commissioner Steve Schulte asked regarding the areas that have the single height and whether staff had heard from any of those property owners with regard to concerns about the change.

Chad responded that staff has been contacted by property owners and today received four letters from the public via email. One of those is from the owner of the blocks in question and they are concerned about this change, particularly if for one reason or another their project doesn’t go forward and any new project that is proposed would have to adhere to 60-foot.

Erik asked for a point of clarification regarding the area highlighted on the map if it included the two properties that were outlined in red on one of the maps in the presentation.

Chad responded that was correct; it is north of the berm and just east of Columbia.

Erik asked what heights are those currently approved for that are going to be honored should those developments proceed.

Chad responded that the one to the south has been approved at 95 feet and the northern one is about 100 feet.

Willy stated that he believed it was approved at less than that because they requested less but there has been correspondence that indicates that up to about 100 feet is permissible.

Erik reiterated staff’s earlier comments that the northern property is less of a concern, that it is primarily the triangle shaped property that is of upmost concern to the aviation community.

Willy responded that was correct.

Chad stated that the northern property would stay the same.

Commissioner Steve Schulte asked if pilots departing to the west respected that they are not allowed to fly over the waterfront.

Willy responded that what they typically try to do is fly along the railroad tracks to make sure they do not fly into the Portland air space and it is also a good guide for keeping the major noise located in one area and to be a little bit more neighborly with downtown.

Steve asked if there was a concern with the waterfront properties and the height of those structures that there is going to be more of a canyon that they have to fly through than what is there now.

Willy responded that is the concern. With the waterfront buildings the height is still within the regulated area, so there is not a concern there, but it’s the visual aspect of it and also if you happen to have a problem with an airplane that is not climbing as fast as it should or something like that then they want an area that they can fly through and not have to worry about hitting the buildings, and right now they are anticipating these buildings being right at the maximum they can go. To the north there are taller buildings
and taller terrain so you are getting closed into the south and north and they need an escape route and an area that people can fly.

Erik asked regarding range of uses, specific to aviation, for example; are there flight instructions that take place at this point.

Willy responded yes, they have a relatively large flight school that has just been certified as a Part 141. There are two certifications for flight schools; Part 61, which is where you go on your own and Part 141, which gets paired up with colleges and that type of thing and this flight school is Part 141 Certified Flight School as well as Part 61.

Erik stated it is fair to say that some of these safety concerns that are been talked about are exacerbated for a less experienced pilot.

Willy responded that he doesn’t believe that is a concern. You need a place to go in case the engine fails or runs out of gas; those are the bigger concerns than just student pilots.

Steve stated this was a departure path, but asked what if they arrived from the west and land to the east?

Willy responded yes, and the path is used in both directions and typically you take off and land heading into the wind. Coming into Pearson Field from the west they are flying along the railroad tracks and departing the same way.

Erik asked if on arrival compared to departure, visibility is less of a concern because of the angle.

Willy responded that was correct, that visibility would be less of a concern. The bigger concern is always going to be on the take-off.

Commissioner Bob Haverkate asked if there was no noise abatement requirement on take-off out of Pearson.

Willy responded no, they do not have noise abatement.

Bob asked if they could take off at full throttle and keep that until they reach whatever altitude.

Willy responded that was correct.

**Public Testimony**
Chair Erik Paulsen opened the floor for public testimony.

- Kimberly Darin, 3905 E Evergreen Blvd, Vancouver. Kimberly stated that she has lived in Vancouver for four years and is here as a member of the Aviation Advisory Committee but more as a private citizen. When she moved here four years ago she chose this city because it was growing. It had potential and she has become more and more enamored of it as she has seen it grow and she believes the past four years have shown incredible expansion and she could not be more excited about the waterfront development personally, but she does not believe that it needs to be at the expense of any other development in the city or any other current areas in the city and unless this committee approves and recommends the
approval of the changes to the zoning codes in front of them, she believes there is a possibility that the development will be at the expense of Pearson Airfield.

- Paul Lawson, 5535 E Evergreen Blvd, #7305, Vancouver.

- Becky Rude, 915 Broadway St, Ste 250, Vancouver.

Steve asked if Becky was concerned about the height numbers on the chart or the underlying zoning for the properties.

Becky responded that at this point the height numbers on the chart, as Chad indicated, are currently vested for the heights that were approved. The triangle building is at 92 feet, it was approved to go as high as 98.5, but they opted for a lower building height because of the design. The primary concern is the reactionary manner of saying okay well we have approved all of these things over here, where there actually was a plan in place that determined that these were save zoning regulations and they work, and there is no question that the airport is still safe and safe flight can occur with these approved heights. If there is confusion or lack of clarity in the zoning heights then it is better to look at that and have all the players at the table and look at the whole picture, rather than just targeting so we don’t end up with an ineffective solution.

Steve asked if Becky’s concern is the height and not the city taking over the primary decision making responsibility.

Becky responded that the solution of the fixed heights in a targeted area and the part of the amendment that adds the city’s involvement actually doesn’t do a lot more than is already there and she feels that process is already part of the current approval process.

Erik stated that he wanted to make sure he understood the essence of Becky’s argument; one is timing where Becky would prefer that it follow the normal course of the comprehensive plan amendment.

Becky responded correct.

Erik commented that we have the opportunity to do that once per year, so in essence we are talking about the difference of doing it now versus doing it in the fall.

Becky responded that was correct, as part of that whole process, so it is part of a larger conversation.

Erik stated that at the end of her comment she described the attributes of a normal process and the things that are considered in that process and asked her to elaborate on which of those aspects aren’t being considered by following the process that is currently underway.

Becky responded that to some extent she believes it is the property owners and developers in relying on an existing code and making an investment in the city and trying to rebuild and economically invest and understanding that there is a process whereby annually the zoning regulations and the city code is reviewed and is a very easy process to track. If you are not part of this cycle and you are not in it then a one-off process is harder to catch the attention of all the property owners and understand and that is the biggest piece that the business owners and the property developers in downtown could very well miss, whereas there is a little bit more opportunity in the standardized process by which it normally
happens for all players to have a voice and all of aspects to be considered. This doesn’t seem to actually add anything; this thoughtful process has established these zoning ordinances that actually do provide protection for safe operation of the airport and that is where the larger discussion with all the balances of trying to economically grow and create a gateway into the waterfront where there is a huge investment in terms of developing property that is underdeveloped and has historically been somewhat neglected, and it seems a bit of a shame to create a process that cuts that off when a balanced approach in the normal cycle would actually lead to perhaps a better result; it may lead to the same result but it might take in other aspects and balance those better.

Erik stated that what he heard in Becky’s response was largely still around timing but having to do with the predictability of the timing versus the randomness of the timing, not so much the qualitative nature, although she is still stipulating that there could potentially be a little bit more quality in the process if it follows its normal course.

Becky responded that was correct and believes more voices will have an opportunity to be heard and allow more aspects to be considered, which is what has happened in the past and she doesn’t understand why they would undo zoning regulations and zoning formalization that was designed through a comprehensive process and then undo it through a backend process where there is no imminent danger and there is no harm.

Erik stated that it is largely being assumed here, but just to make sure that they are all clear that Becky does in fact represent the owner of the two properties that were illustrated in red on the map in the presentation.

Becky responded yes.

- Ryan Hurley, Hurley Development, 915 Broadway St, Ste 250, Vancouver. Ryan stated he wanted to add to Becky Rude’s comments. The Planning Commission has, and did do, a good job in a long and arduous process that was public, setting direction and boundaries for the city’s growth and it struck a good balance between all the shareholders at that time for the city and its citizens, which would have included urban density, concurrency, managed long-term growth, mixed-use in the downtown core and other priorities like the airport. He believes in the work that the city done and the outcomes have been obvious.

The investing that has taking place; for which he personally has invested millions of dollars in the city, including revitalizing many buildings, including one in the area of the subject area which was a very drug infested car repair shop and invested $3 million into that building. Along with having about $15 million that is planned between a hotel and an office building in this area, and very close to the waterfront, if not considered the waterfront area, and very visible to I-5 and the identity of the city. This is the gateway to the city so that is why he has put his best foot forward in presenting very good and new thoughtful buildings along this corridor. The proposal is asking to take steps outside of the process and just consider one of those priorities and is creating new rules specifically for that single adjacent use, which can negatively impact the other priorities that exist and that the city hoped to accomplish. The proposal also asks that a city staff person be responsible for either superseding or second guessing the highest authority in aviation, which is the FAA, and their determination in what is a safe height for structures within the air space when they may or may not have the expertise to do so. The staff person would be asking for the airport input to the exclusion of all
other potential stakeholders that painstakingly took place years ago in the decision process.

Overall there is an effective planning strategy in place, a process that has worked regarding the establishment of limits for building height and placement and the opportunity to regularly review the planning approach. As stated previously there is a process for this and there has not been a sufficiently urgent need presented until he presented his building. That building was approved by FAA and it appears from the testimony that the airport is going to shut down and that is just not the case as they are within the safety guidelines of landing and take-off heights and this is as Willy and others have said an extra measure. When there are competing interests and priorities of the city sometimes there is no room for extra measure but we have to go to what was painstakingly processed and figure it out to make all parties and the boundaries work. When he presented his building he actually purposely took the lowest height he could in order to make the projects financially work, which is an office building that is a five over one parking underneath and five floors above. There is economy sizes that make projects not work at lower heights; it is just the simple facts if you do a parking garage you have to go a certain height to make those economies work. The same thing with regards to a very sought after, supported by the same city by the Hilton that exists, our auxiliary hotel which will be a Hyatt and work really well within the current Hilton’s process which doesn’t have enough space to have large parties and so he has been working in close proximity with them about this and they are excited about it.

This really did not become an issue until he presented this and pushed back on it because does there really needs to be an extra measure, meaning an extra increment of lower height just in case there is a problem. He is no pilot and doesn’t have the expertise for sure to go on record, but if a pilot has a problem in this area it’s going to be a problem no matter where it is at. He understands having an extra measure in a perfect world but the reality is we are also trying to develop and grow up a city while maintaining an airport. The two can coexist next to each other; they have for a long time but that is why they established a process and rules. His company bought the property and has followed those rules and put hundreds of thousands of dollars in the planning process, including architecture to make sure that he has followed those rules and now those rules are seemingly trying to get moved and that is a very difficult for him. He believes that there is a lot of other testimony that the board would hear in a longer process regarding the other adjacent property owners.

Erik asked a question for clarification; the way he understands it the buildings that Ryan is describing have been approved and are grandfathered.

Ryan responded that for the hotel he is currently in the process of getting technically complete with the application, which will be submitted in approximately three weeks. The office has been submitted, which is the triangle building.

Erik asked if the triangle building has been submitted and approved and is grandfathered for lack of a better word and would be unaffected by the changes that are made unless Ryan was to change course and go a different route, in which case he would have to submit a new application.
Ryan responded that was correct and there are timeframes within that submittal that he has to meet now in order not to lose that vesting.

Erik stated he was just trying to level set around because he is hearing some folks say things are vested but the jest of what he is hearing from Ryan is even though he is vested he still objects to this process.

Ryan responded that for clarification there are several vesting’s in the process. In the initial vesting that you get when you go through site plan you get a longer vesting and with your approval you get an even longer vesting, so you have to still maintain a pattern of efficiency if submitting the next approval for the next vesting and he has both of them vested in the original site plan and then he is getting technically complete with his plans. One has been submitted, which is the office building, and the other will be submitted in about three weeks.

- Bill Frost, 713 NW 44th St, Vancouver. Bill stated that he is currently the vice-chair of the Aviation Advisory Committee (PAAC) for the city. He worked for the FAA for 30 years in the Bay area in Los Angeles and also in Portland and then retired and has been helping out the city as a volunteer on the committee since then.

There is no place in the United States like what we have here. It doesn’t exist anywhere. To have an airport like Pearson within a city and have the resources and the asset of that is unique. When the issue of building heights came up and the committee realized that the city relied upon the FAA to decide what’s right or wrong or best for the city he was really shocked. He worked for the FAA for 30 years and he knows good and well that is not what you really want to do for your city. They make judgements on a mathematical formula; it is not a decision that takes into account prior decisions or other decisions or potential that you wish to utilize the asset for, so when it became apparent that the decision on building height was between the developer and the FAA they raised issue with that and simply wish the city to make its own decision, not rely on the FAA. Yes the FAA will give guidance on safety height but that isn’t all there is in safety. Pearson Field traffic pattern has developed over many years; it is restricted by PDX traffic, the type of aircraft, the runway length, and all sorts of things that the FAA does not consider when they receive a request for a building height.

He asks that the city come up with a better way communicating what the development is going to do and allow the PAAC a chance to provide the city with input as to what potential outcome that decision would have on the aviation community. The City Council asked for a simpler more clarified map and the reason for the departure corridor with one simple elevation was a response to the City Council requesting the PAAC to provide the developers with a very clear way of viewing the city to decide whether or not they want to invest or grow or whatever it is that they are going to do. What you see presented by staff is a culmination of that and he doesn’t believe it is burdensome on anybody and believes it increases the amount of communication that the city will have before approving a building and it will protect the asset it currently has in Pearson.

Erik stated we are hearing some stipulate that the FAA is the highest authority, the final expert, when it comes to matters such as these. What he heard in Mr. Frost’s testimony and wanted to make sure that he was hearing him correctly; is that from a technical
perspective when it comes to an isolated property it is rather formulaic but that there is context to be considered and that’s where the local lens is valuable and should be giving consideration in terms of the ultimate decision making authority, and asked if that was the jest of Mr. Frost’s perspective.

Mr. Frost responded yes, he would consider them the highest authority because they are federal government and you cannot go above that. To consider them the expert and what is best for the city, absolutely not. They wouldn’t consider a park, a school or airplanes flying directly over Fort Vancouver. Those kinds of issues do not affect the FAA’s decision. They run the math and say yes or no and move on, so it became apparent to the committee that it would be in their best interests to have the city look at those things themselves, rather than simply the FAA saying it is good and the building goes up. That was their goal in presenting this. He believe that one of the City Council members voiced a similar concern in that maybe the governing body of the VMC should include more, but he believes the process for approving development covers all those. This simply is referencing building heights and allowing airport management a seat at the table for the conversation to help the city make a good decision.

Steve asked if the FAA will give the same amount of scrutiny to this numerical analysis whether they are in the decision making seat or the City of Vancouver is?

Mr. Frost responded that the FAA is required to; you cannot build without the FAA looking at what you are doing. It is just part of the process and there is an actual form which goes up to Renton. They take a look at it, they do the math and in theory they should come back and say yes or no, but the FAA doesn’t really do that. They might come back with a yes, maybe, or it is ok if you do it as long as you do something else. It is not a hard clear-cut decision so the FAA is capable of coming back with allowing someone to put their building up, but may ask them to put lights on it; does the city want a building with lights on it, but the FAA would approve that process with the developer for a certain height and put lights on it without the City of Vancouver ever knowing that agreement had been reached. So the committee simply wants to make sure the city makes those decisions understanding the impact before the building goes up. The airplanes move or they go away or they react and then the city has to deal with the reaction, so they would prefer that not to happen.

Steve asked if the FAA includes more than just the numerical analysis but recommendations like putting lights on buildings and things like that.

Mr. Frost responded that there is a series of heights and regulations depending on what part of the flight path you are looking at, or what type of aircraft; there are a lot of variables. So they will come back and say if you want to do this; here is a way you could do it. Again, the city is not involved in that decision right now and he doesn’t believe that is how the city wants the world to turn.

Steve commented that the concern is that if the FAA is taking out of the decision making they may give less attention to the application.

Mr. Frost responded no; the process they follow is just putting their numbers into their computer and they run the data and they come back with an answer. They are required to do that and whoever wants to put a building up is required to go through that process, but currently the VMC is written and interpreted by the city that if the FAA says it is okay, the city has no voice in that decision.
Chair Erik Paulsen closed Public Testimony.

**Questions/Comments from Commission for Staff**

Erik stated that Willy made a point earlier that in conversations with the FAA there was comment made that it is not typical for them to be the final say or the last step in the process and asked if Willy could elaborate a little more and if he has done any analysis on what is typical in other jurisdictions and how we maybe unique in that regard.

Willy responded that his experience with the FAA regarding building heights and obstruction evaluation has predominantly been here. The other airport that he managed did not have many problems because it was all residential around it and nothing tall. In conversations with the FAA dating back to 2008 he was told that they plug the information into the computer and come out with an analysis of whether or not a building or a crane or whatever penetrates this imaginary surface, and then it is left up to the local jurisdictions to determine whether or not they are going to allow that building to be built. There are cases where local jurisdictions have exceeded those levels, which the FAA calls a determination of a hazard air navigation, which is just a determination to determine whether according to their mathematics this particular structure is going to be a hazard to navigation or not a hazard to navigation and if it’s kind of on the margin then there’s lighting that has to be put in place or there are other things here and there.

Erik stated he understands the process pretty well and rephrased his question; one of the changes that are being proposed is that after the FAA determination is made that there is a final review by the city and he thought he heard Willy comment earlier that in conversations with the FAA that is what they are more accustomed to. They are less accustomed to or it is less common for them to be considered the last stop in the process and what he is asking if there is any additional context that Willy could provide that. In other words that was the jurisdiction piece, and maybe he doesn’t have the context, but is curious if there was any analysis done about that.

Willy responded that he hasn’t really done any analysis but one of the things that you want to look at from his perspective is what the actual use is going to be in a particular area. For instance you do not want airplanes flying 100 feet over the top of a school because it doesn’t work well with the education process, so maybe his recommendation would be is there something else they can put on that piece of land. There’s a manual written by the State of Washington, which is not a regulation but a recommendation for land use near airports, which he would look at for different types of development.

Erik stated that in summary, Willy is in favor of having that final say in the approval process and in his view that’s customary and typical in jurisdictions.

Willy responded yes; the land use to the west of the airport has been a concern since 2008 when he first talked to Gramor and thought there were still paths out and around the waterfront development. After reading the municipal code he was under the impression that the FAA would make their determinations and the final decision for development was still going to be the city. He unfortunately did not recognize that everybody considered the FAA the ultimate authority in that decision.

Erik stated he wanted to cover one other area. In the public testimony there was a general theme that there had been a catalyst to make the board consider this and that they are doing a one-off process as a result, and there was an argument made that they already
have a process in place and that these issues were considered previously and incorporated with many of the factors that are being discussed, and presumably taken into consideration, so therefore the ranges that had been previously established were within some sort of an acceptable margin etc. We are making the assumption that there was some validity to the prior process, but baring an alternative to that, Erik is going to stipulate that and the heart of his question is how would Willy respond in term of what’s changed and why have we put this before the Planning Commission and eventually the City Council. Has there been a catalyst, and he believes it has been alluded to in the presentation, that was made and he wanted to give staff a chance to respond to that.

Chad responded that the FAA’s determination that a 95-foot tall building in fairly close proximity to the end of the runway in an area where the pilots probably weren’t anticipating that tall a building, even though the code clearly says that could be a possibility; was the catalyst for this proposal. After talking with the FAA it became clear that they don’t really understand the local conditions and don’t always take those into consideration. They have been down here and they have a better understanding now of what the obstacles and constraints are. At the end of the day they are looking at their computer model and it if meets the glide slopes and the transitional slopes they will issue a determination that it is safe for air navigation.

Erik commented that the city set a range and there was the upper-end of the range and presumably if that was a problematic height, that would have had a reaction and we would not have set the range that way, because why would you set a range if you wouldn’t ever consider building up to that point. He understands context, so we are not assuming that every single building in that entire region is going to be at that height and that is probably part of the answer. He is puzzled how that range would have been set in the beginning and why it didn’t set off an alarm bell the way it did when low and behold we have something that is approved at that level and now that it is sort of real rather than imaginary it is problematic.

Chad responded there was consultation with the Pearson Airport Manager at the time, which was before Willy arrived, and on Willy’s first day he was shown the height limits that had already been adopted by City Council. They did have the Pearson Airport Manager working with planning staff on that range of heights who was very knowledgeable and maybe gave more deference to the economic development goals that we were trying to achieve in downtown. Chad doesn’t know what sort of consultation occurred with the PAAC at the time or if the membership was different but there was an extensive process to look at the safety and establish that range of heights. The footnote that deferred to the FAA was really the out if you will for making sure that whatever heights are proposed or vetted by the FAA and they were looked to as the expert.

Erik stated that we were in a sense over reliant on the prudence of the FAA, with the benefit of hindsight, that wasn’t necessarily the best decision.

Chad responded he believes so given the local conditions.

Willy stated that his predecessor was very good and believes the difference is that he was not an aviation person per se and knows that he did discuss issues with the PAAC, he did talk to the pilots down there and also with the FAA. So everything he did he did it to the best of his abilities. Where he believes there is a difference is as you go through time everybody looks at things and continues to evaluate it in a more and more critical situation and you learn more. What we knew then and what we know now 10 years later is
different and the way that we have looked at the air space is different, especially now that we have the waterfront development and starting in 2008 we have been immersed in this idea of these taller buildings and are looking for additional information.

Erik stated at the end of the day the majority of the arguments all circle back to this idea of context and making sure that we are looking at things in context and not in isolation.

Willy responded that was a fair statement and stated that while Mr. Hurley’s building happens to be the catalyst for going forward and getting a lot of pilots jumping up and down and exercising an additional level of concern, and this was a situation where this was the line that they have this right in the middle of the flight path and what are they are going to do about it all this other stuff. In his opinion Mr. Hurley’s building is grandfathered in and he doesn’t know where the rest of the planning process goes but what he is looking at is downstream of that and what is going to happen, especially if we end up with something getting approved for 200 feet; that becomes a real critical issue 150 feet down the road.

Steve referring to the map in the presentation asked if the numbers in white are on the low end of that two number scale. The one at 95 feet is in the area of 100 to 200 and one at 60 feet is in the 100 – 200 area, so there is a pretty dramatic restriction on those properties and he has to ask the question why shouldn’t, not the decision making aspect of this change, but the number aspect, the height aspect, go through a normal comprehensive plan type process.

Chad responded that what Mr. Hurley’s counsel was trying to articulate was not necessarily the annual comprehensive plan process but perhaps the update of the City Center Vision plan, which is now ten years old with a 20-year plan. There are plans to update that in the next couple of years. This wouldn’t trigger a comprehensive plan amendment; however, Vancouver City Center Vision plan does cover a broader area than what is being affected by this particular amendment, and Ms. Rude’s point, if you wanted to take a broader look at the overall densities in downtown with what are we trying to balance with the airport, that would be an appropriate time as well. Staff felt that given the safety related nature of this concern that we really shouldn’t wait for two years to go through that more extensive process.

Steve asked that even though the FAA would be providing the city with their determination of no hazard air navigation, the city still has some safety concerns.

Chad responded potentially, given the proximity to other buildings and the cumulative effect of the FAA granting approval for taller buildings on other sites.

Steve asked Chad if he had had that discussion with the FAA on the concern that they are not diligent in what they are doing.

Chad responded that staff has had them down here and have talked to them pretty directly, but by law, they have to stick with the results of their computer modelling.

Willy stated that is what they are required to do. In discussions with the FAA, the people who are actually doing these determinations are not allowed to deviate outside of their definition, their job is strictly to identify whether something penetrates a regulated air space at a certain level.
Steve stated that he has worked with a lot of federal regulators in his time and most of the time they are overly conservative.

Chad responded that they stay within the bounds of what they are required to review, which consists of three different “planes:” a horizontal surface, a transition slope and an approach slope.

Willy stated that it would be three dimensions, length, width and height but if you read part 77 regulation, it is very clearly defined and doesn’t have any grey area in it for them to deviate or to make a judgement call. It is either this high or it’s not this high and is pretty cut and dry.

Chad stated that the FAA would say that the city could always approve a taller building if they wanted to. Any jurisdiction could do that because their position is that they are not approving the building itself, they are just saying whether the proposed building is safe under their standards.

Commissioner Bob Haverkate asked if the proposed building was not safe according to the FAA guidelines, then they could tell you that you would have to change the building or they could tell you not to fly into that airport.

Willy responded that if the building exceeded the part 77 regulation, they would make a determination of a hazard to navigation and it would be expected that the local jurisdiction would decide whether or not they were going to allow that and accept responsibility or whether they were going to approve a building at a lower height.

Bob asked if the building was determined to be a hazard to navigation the local area could decide to keep it that way anyway and live with the hazard.

Willy responded that they could.

Bob asked if they could legally, the FAA wouldn’t be able to tell the airport they are stopping aircraft operations.

Willy responded no and that is part of the problem is they cannot do that, they can only make a determination of a hazard or no hazard, or put lights on the building etc.

Chad stated that could affect future funding to Pearson that maybe comes through the federal government. There are other ways they can apply pressure.

Commissioner Marjorie Ledell asked if Pearson is busier than it was 10 years ago and will it be 10 years hence.

Willy responded that is a really tough one because we are about where we were 10 years ago and you have to keep in mind that in 2008 there was an economic problem and aviation trails the economy by about two years. 2010 was a really bad year and we have been climbing steadily since then. We are limited in size and how many aircrafts we can actually base there. We will see a little bit of growth in operations maybe but it is pretty much going to stay reasonably constant mainly because of the number of aircraft that we can put on the amount of dirt we have.
Commissioner John Lee stated that there was a presentation made that once FAA approves we can go up to 100 percent, so they can go from 100 feet to 200 feet and the city has no say so.

Chad responded that is the way it is written in the code.

John stated that in the conversation with Bob it was made to sound like we can override and build something even taller; that scenario simply does not exist as of right now because we have no say so.

Chad responded it is just simply the way it is worded in the code it says that if the FAA issues that determination they get the extra height.

John stated that the city has no say to build something taller or shorter.

Chad responded not according to the current language and that is one reason staff wanted to bring that decision making authority back to the local level.

John commented that he wanted to clarify because he thought he heard two different competing sentences.

**Commissioner Deliberations**
Motion by Commissioner Ledell, seconded by Commissioner Haverkate, to forward a recommendation to Vancouver City Council to approve the proposed changes to VMC 20.630.050 Maximum Building Heights.

**Discussion on the Motion**
Marjorie stated that evaluating all the testimony heard in her mind is an intersection of safety and economic development and in that case she leans towards safety.

Bob stated that he agrees with Marjorie’s assessment and stated he has been a pilot for 43 years and he certainly loves the Pearson Airport. On the other hand he has been involved with the waterfront project pretty much from its inception and he really loves the project. This motion seems to be as good a compromise between the two as is currently possible.

Steve stated that he is very comfortable with the decision making role change going over to the city and believes it makes a lot of sense. He is still concerned about the areas and the reduction and allowable building heights and lack of a full process for that and exactly what those zoning property owners would think about this. He has no idea how restricting this might be on them. He has made up his mind on the motion that has been made but his concerns are the numbers on the chart presented and they are pretty dramatic reductions for those property owners.

Erik asked staff for clarification; in particular the two triangular properties labeled 95 and 110, ownership of those two parcels is the City of Vancouver.

Chad responded that the 95 is the City of Vancouver, as is the 80, and 110 is owned by The Columbian. In the staff report, but not included in the presentation, the only properties that will see a decrease below the current as of right building height would be city owned. Hurley’s properties ae staying the same as of right height and the properties to the north and west get a little bump in that as of right height from where it is now.
Erik stated that essentially, to Commissioner Schulte’s concern, the greatest reduction if you will in buildable height is on city owned land.

Chad responded that was correct and staff went into this with eyes open.

John commented that he shares the same thought that Steve had and is okay with the decision making and leaving the range there since now the city has a voice; why can’t we leave the range and have the final say be the city. We can always go back and say we are not going to let you do 200 but you can do 110.

Chad stated that would be an option, and in fact that was one of the earlier proposals that was discussed. We heard from the CCRA, which is the City Center Redevelopment Authority, who recommended that staff give as much predictability to the property owners as well as the pilots and a fixed height limit is the way to do that and then everybody knows what they are dealing with.

Dimitry stated he has the similar opinion as Steve in regard to the height limits, especially if we are going to be looking at the VCCV in the next couple of years. From what it sounds like there is no imminent danger right now from what we have on the height limits with the range and he would like to see all the stakeholders determine the future of our city. Again, he is somewhat okay with the decision making, but not comfortable with the height restrictions.

Erik commented that he thought he saw somewhere in the staff report, but not covered in the presentation, a slide that spoke to the aggregate reduction in buildable square-footage and asked Chad if he would mind spending a little bit of time talking about that because it is relevant to some of the concerns that he is hearing from the other commissioners.

Chad responded that in the analysis part of the staff report he did put in a table and tried to capture basically the maximum opportunity lost from this decrease in height. If every block were to be built out to the property lines and go up to the full maximum height, and comparing that to what is proposed here it is substantial but he just realized that the analysis is a little flawed. Just on the raw numbers he came up with 5 million square feet of lost opportunity for maximum building area. It is a little bit flawed because when you get above the 50 percent increase in building height the footprint of the building has to shrink to 12,000 square feet which he forgot to take that into consideration, so that number will come down quite a bit.

Erik asked if Chad if he had to guess by what degree that would be reduced, what would his best guess be?

That was the maximum scenario, most developments aren’t going to build 100 percent to the property line and he would probably take that down by at least 50 percent and he indicated he will correct that figure for Council.

Erik suggested one other recommendation as far as that table and for him; personally it would have been helpful to see those represented in terms of percentage reductions as well.

Erik stated that he struggles with this a little because in the staff report it is very clear that our guidance says that we are to make a determination on present needs and conditions, but we have also been reminded on an annual basis that we are the sole body in the city
whose looking out for the long-term and when he looks at this issue through that lens he has to ask questions about the seemingly increasing incompatible desire for density and also a viable operating airport. He is not in a position to render a judgement on that question, but he believes that over the longer term we are likely to see increasing friction between those two increasingly competing uses. This is not the issue that is before us and certainly it is more of a longer term consideration but when he hears that we are given up “5 million square feet of potential buildable area” in the area immediately adjacent to one of the more attractive developments to ever be constructed in this city; an area where presumably we would want to have a great degree of density where there will be interest in the development community in creating density, that then further exacerbates this growing conflict between density downtown and a viable operating concern at Pearson Air Park. The way that it is framed in the staff report is present needs and conditions, and that is the lens that he has to view this through in making a decision and through that lens what has been proposed by staff makes sense, but he has already made his comments on the record so they are captured for posterity as far as the larger question. That is not a question for this body to consider in a vacuum but he does hope that as time goes on that question is raised and given proper consideration with all the stakeholders so that we can reconcile this and find a way to meet the needs of the community in the best way possible.

Chad, after conferring with the assistant city attorney, stated that this be forwarded to Council with the split vote.

Roll Call Vote:

Marjorie Ledell Yes
Steve Schulte No
Dimitry Mishchuk No
John Lee No
Robert Haverkate Yes
Erik Paulsen Yes

Motion split.

There being no additional business, the meeting adjourned at 7:40 p.m.

Approved: __________________________ ________
Erik Paulsen, Chair

To request other formats, please contact: Community and Economic Development| 360-487-7813 | TTY: 360-487-8602 | rosemary.armour@cityofvancouver.us
Exhibit D: Building Heights - Area of Most Concern to Pearson Pilots
Exhibit E: Pearson Flight Path without Obstructions
Exhibit F: Pearson Flight Path with Obstructions
Exhibit G: Proposed Changes to Figure 20.630-4 Maximum Building Heights
Exhibit H: Estimated “Maximum Potential” Building Area Reduction due to Proposed Height Limits

<table>
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<tr>
<th>Site Area #*</th>
<th>Total Site Area (square feet)</th>
<th>Potential Max. Bldg Area (sf)</th>
<th>Potential Bldg Height (in feet)&quot;Lost&quot;</th>
<th>Equivalent no. of stories</th>
<th>Maximum Potential Reduction in Building Area (square ft)**</th>
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<td></td>
<td>3,054,164</td>
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</table>

*Numbers correspond to areas show on map below

**Accounts for the reduced allowed building footprint above 150% of base building height (12,000 s.f.)

Map of Properties Subject to Proposed New Maximum Height Limits
Exhibit I: Public Comments Received as of 6/21/17
Dear Chad,

The City of Vancouver is experiencing unprecedented changes in the downtown area; bringing welcome growth to housing and the local economy. As the city considers changes to their zoning codes stemming from this expansion, the Aviation Advisory Committee (AAC) wishes to provide its support to those adjustments that would fortify the continued success and sustainability of Pearson Field. Specifically we encourage the adoption of the following changes that protect flight paths from possible detrimental effects of new development:

- Eliminate the ranges of heights allowed for buildings and adopt an absolute maximum for parcels of greatest concern to the city (North of the BNSF tracks, South of City Hall)

- Include the Airport Manager as a consultant on any proposed development which may result in an increase in downtown building heights

Additionally, while we encourage the planning commission to keep the requirement that the FAA confirm any increase in building heights comply with FAA regulation Part 77—we believe the City of Vancouver should have final authority over the allowed height of new developments. This authority in decision making will ensure that crucial decisions are made locally, by those with the greatest interest and who understand them best.

Pearson Field is a vital resource to the city- not only to local pilots and aviation enthusiasts but also to the families who benefit from activities on the field, such as open cockpit day, and the many children who utilize the Pearson Field Education Center. It is our hope that as the city continues to grow, the airport will support and join in that expansion.

With Best Regards,

Kimberly Darin

Finance Chair

Aviation Advisory Committee
Citizen Communication on Amendments to Maximum Building Heights
Becky Rude, General Counsel
Hurley Development
becky@hurleydev.com/360.723.0352

These comments pertain to proposed amendments to the Vancouver Municipal Code Section 20.630.050 regarding a change to maximum building heights and come with a recommendation to defer adoption in the form presented here, as an isolated and partial change to the Code, and instead evaluate the overall zoning for Downtown building heights and the Airport impact within the regular cycle of comprehensive review.

One of the stated impetuses for these amendments is to infuse certainty into the Code for proposed developments, yet changing the standards in a reactionary manner by targeting one segment of a zoning district actually inserts uncertainty into the planning process for everyone. There is a great need for continued thoughtful planning and for a multidimensional evaluation of the entire Downtown space that doesn’t segregate underdeveloped land in a random and inequitable way and thereby add confusion and disparity of treatment into the Code.

The relevant Code is clear and has been implemented successfully for a number of developments. It was created with forethought and study by smart and invested individuals on the Planning Commission, the City Council, and at Pearson Field Airport. In particular, Pearson Field has considered the City’s land use provisions and zoning ordinances affecting the Airport extensively. It did so explicitly in its 2005 Business Plan and its 2013 Master Plan where the Airport affirms the City’s efforts to limit building heights in order to protect Pearson’s flight path. Specifically, the 2013 Pearson Field Airport Master Plan includes the following statements:

[The Vancouver Municipal Code defines the Airport District as an overlay zone that “has been established in order to protect the health, welfare, safety, and quality of life of the general public, property owners, and aircraft operators; and to protect the long-term viability of Pearson Field as an essential public facility.”]

The Airport District consists of surfaces modeled after FAR [Federal Aviation Regulation] Part 77 surfaces, and includes approach, transitional, horizontal, and conical surfaces. Zoning regulations prohibit land owners from placing structures that will penetrate these surfaces. . . The City of Vancouver has maximum building height zones in the downtown area to protect the Airport and adjacent neighborhoods from tall buildings [emphasis added] that do not meet FAR Part 77 standards, or comply with existing building scale and character.\(^1\)

\(^1\) Excerpt from Pearson Field Airport Master Plan, June 2013, Section 4.3.1 City of Vancouver Zoning (page 1-20), available at: http://www.cityofvancouver.us/sites/default/files/fileattachments/city_manager039s_office/page/983/masterplanfinaldraft2013.pdf.
The discussion of the proposed amendments at the recent City Council workshop indicated a need to involve expert review in setting building height approval, yet expert review is already very evident in the process. The City's own planners are directly involved, as is Airport management, and the Federal Aviation Administration (FAA) plays its role as the expert on pilot safety. As a Federal agency, the FAA cannot control what the City does, but the FAA can make federal funding of the Airport and its FBO (Fixed-Base Operator) status contingent on the City not exceeding the FAA's height restriction ruling.

The planned commercial developments (an office building and hotel auxiliary to the Convention Center) to which the concerns about the zoning height restrictions are attributed are well within the allowable height of the existing Code. These projects were also subjected to public scrutiny on the local and federal level before being given approval. Submission was made to the FAA for a Determination of No Hazard to Air Navigation, as required by the City's current Code. That request for FAA approval generally has 30-day public notice and comment period, but an exception exists when "structures that . . . don't affect the minimum instrument departure climb gradient [based on a specified ratio], do not require circularization if they have no other effects on aeronautical operations." Our development projects affected by the proposed amendments meet that FAA criteria – of no interference with minimum departure climb and no other effects on aviation. The FAA letter consenting to and approving their safety further states, "therefore the FAA approvals were not circularized. However, the fact that the study was not circularized for public comment does not abrogate the public's right to petition this determination." So, before proposing amendments in an attempt to stop development that is otherwise favored, the Airport and any public citizen had the opportunity to petition the FAA and appeal its determination that these buildings do not pose any hazard to pilots flying out of Pearson Field.

I grew up in a family of private pilots and spent much of my early years playing on the airport tarmac or flying over the Pacific Northwest in a Cessna 172, so I value the airport and respect the pilots who rely on and enjoy the facility. That is why I encourage the Planning Commission to follow the processes already in place that help the City create sound policy. The Code was intentionally created to be reasonable and it accomplishes exactly what the proposed amendments purport to achieve. The current zoning standards are clearly stated, work quite well in other parts of the City for development – including the Downtown Waterfront – and effectively balance concerns of Airport function and pilot safety with incentives to economically and aesthetically revitalize the heart of the City. There is no gain in rushing to approve a one-off amendment. Any change in zoning would be best achieved through established processes that respect all aspects of planning issues addressed by the Code and affecting the goals of the City, the safety and function of Pearson Field, and the community and economic vitality of property owners and developers.

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June 13, 2017

To: Mayor Leavitt and City Council,

As pilots using Pearson Field on a regular basis, we are vitally interested in all aspects of conditions affecting safe flight operations and especially safety for citizens surrounding the airport. We have reviewed the changes to City zoning codes regarding the building heights in the flight path and concur with the recommended changes to the critical area north of BNSF tracks and south and west of City Hall. We feel it is mandatory to comply with FAA Part 77 requirements and also to confer with the Pearson Field Airport Manager on any and all issues relative to the flight path of the airport.

We request that you approve the zoning height maximums as recommended by Pearson Field Aviation Advisory Committee.
FYI

From: Bill Nicolai [mailto:bill.nicolai1@gmail.com]
Sent: Saturday, June 10, 2017 7:50 AM
To: City Mayor General Delivery
Cc: James Haldeman; Williamson, Willy
Subject: Building heights to assure safety

Dear Mayor Leavitt and City Council,

As longtime city residents we support the changes to City zoning codes to assure uniform standards for building heights in the flight path of Pearson Field. As pilots we know the importance of assuring that the critical area north of the BNSF tracks and south of City Hall remains free for obstacles that protrude into the normal flight path of landing and departing aircraft. This is important for our safety and to assure the safety of those on the ground and occupying buildings in the affected area. Please approve the zoning height maximums as recommended by the experts on the Pearson Field Aviation Advisory Committee.

Thank you,

Bill and Jane Nicolai

2516 SE 113th Ct.
Vancouver WA, 98664
360.281.0540