

CITY OF BELLEVUE  
CITY COUNCIL

Summary Minutes of Extended Study Session

April 25, 2011  
6:00 p.m.

Council Conference Room 1E-113  
Bellevue, Washington

PRESENT: Mayor Davidson, Deputy Mayor Lee, and Councilmembers Balducci, Chelminiak, Degginger, and Wallace<sup>1</sup>

ABSENT: Councilmember Robertson

1. Executive Session

The meeting was called to order at 6:08 p.m., with Mayor Davidson presiding.

2. Communications: Written and Oral

- (a) Becky Lewis said she is disappointed with the Council's decision to extend the conflict of interest investigation to all Councilmembers, instead of just looking into Councilmember Wallace's activities related to GNP Railway.
- (b) Doug Hoople encouraged support for renewing the King County veterans and human services levy. Since the money was first collected in 2006, the King County veterans program has been able to provide additional support services. The levy included support for those in the National Guard Reserves and veterans' families for the first time. Counseling services have been greatly expanded, and outreach has been extended to a program office in Renton as well as 30 additional sites that receive scheduled support visits. Continuing the levy will provide funding for important programs and help to bridge the gap left by reductions in human services funding at all levels of government. Mr. Hoople said the current levy has added more than 137 permanent housing opportunities for homeless veterans. Andrew's Glen in the Factoria neighborhood will provide 30 housing units for veterans.

Councilmember Chelminiak thanked Mr. Hoople for his service on the City's Human Services Commission.

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<sup>1</sup> Councilmember Wallace arrived at 6:14 p.m.

- (c) Will Knedlik, representing the I-90 Users Coalition, thanked the Council for its decision to move forward with the review of potential conflicts of interest. He congratulated the City on the positive responses to its survey of residents, including 85 percent who indicated that they feel they are getting their money's worth for their tax dollars. Mr. Knedlik expressed concern that Sound Transit has not obtained the legal right to use the I-90 bridge for light rail, and is causing the City to spend hundreds of thousands of dollars on light rail planning. He urged the City to stop working on light rail until Sound Transit secures the right to use the I-90 bridge.

3. Study Session

(a) Council Business and New Initiatives

Deputy Mayor Lee inquired about the City's efforts in conducting an economic feasibility study for the light rail downtown tunnel.

Mayor Davidson suggested this be addressed under the City Manager's report at a future meeting.

Responding to Councilmember Degginger, Mayor Davidson responded that he was approached by an individual who completed a similar report for Seattle. Dr. Davidson believes this is something the Council should consider.

Councilmember Degginger expressed concern with vendors approaching the Mayor and Council, instead of working through staff and the City's RFP (Request for proposals) process. He suggested that any study of the downtown tunnel should look at the economic benefits after light rail construction as well as the economic impacts during construction.

Deputy Mayor Lee recalled that the Council previously agreed about the need for a study. He urged moving forward to discuss the item.

Councilmember Chelminiak said he is interested in an economic impact study of light rail. He noted that the Puget Sound Regional Council studied light rail in 2005/2006. If the Council moves forward with a study, he suggested it would be helpful to review with the City Manager any proposals that have been submitted to the City, as well as studies that have been completed to date. Mr. Chelminiak is interested in the economic impacts during construction, and the extent to which construction causes the permanent relocation of businesses.

Councilmember Balducci said it would be helpful to have a summary of the light rail studies and consultant work on the staff's work plan, as well as the funding sources and expenditures to date. She supports asking the City Manager to come back to discuss the full scope of the work plan.

Councilmember Wallace recalled that Deputy Mayor Lee proposed the economic impact study in December or January, and a majority of Councilmembers expressed an interest in moving forward with it. He would like the study to compare the economic impact of an at-grade light rail

option versus the tunnel option, and to look at both construction and operational economic impacts. He would like a similar analysis to compare the economic impacts related to Segment B options as well. He supports following an RFP process, and would like to move forward with the study.

Deputy Mayor Lee noted that he has requested the City's light rail work plan since the budget was approved.

Mayor Davidson confirmed Council direction to the City Manager to bring this issue back for discussion.

Councilmember Wallace requested a briefing on the issues raised by Mr. Knedlik during Oral Communications regarding the use of I-90 for light rail.

(b) 2011 Performance Measures Survey Preliminary Results

City Manager Steve Sarkozy opened discussion regarding the 2011 Performance Measures Survey.

Rich Siegel, Performance and Outreach Coordinator, presented the findings of the 2011 citizen survey. He reviewed key highlights, including that 95 percent responded that Bellevue is a good to excellent place to live. Similarly, 85 percent said they feel they are getting their money's worth for their tax dollar, and 84 percent believe that Bellevue is headed in the right direction. The survey utilized an address-based sample and gathered information via telephone and the Internet.

Responding to Deputy Mayor Lee, Mr. Siegel said the survey did not encounter any problems associated with language barriers. He noted that it would be expensive to conduct surveys in multiple languages, and while the information gathered would be useful, it would not yield statistically valid data.

Mr. Siegel reviewed additional findings regarding residents' perspectives about the community and the City government.

Deputy Mayor Lee commented that perhaps perceptions of life in Bellevue are more positive than last year due to lower expectations based on the slowed economy. Bellevue has done better than many jurisdictions in managing significant budget constraints.

Mr. Siegel compared the perceptions of life in Bellevue to survey findings for the Northwest region and the United States, noting that Bellevue's scores reflect a higher level of satisfaction.

In terms of City services, 90 percent of those polled said that the quality of services exceeds or greatly exceeds their expectations. Of those responding to the survey, 39 percent had direct contact with City employees (30 percent by email, 37 percent by phone, and 33 percent in person).

Mayor Davidson said he believes that Bellevue receives high ratings because it strives for excellence in its service delivery.

City Manager Steve Sarkozy noted that the strengths of the City's services are the result of staff's partnership with, and direction from, the City Council.

Deputy Mayor Lee agreed that the City's achievements represent a team effort. He noted that residents have high expectations and appreciate what City is trying to accomplish.

Mr. Lee questioned the finding on page 3-7 of the meeting packet which indicates that 64 percent of residents say their neighborhood has a good to strong sense of community. Mr. Siegel said this number has been consistent for a number of years. He noted that ratings for this criteria tend to be more positive in single-family areas than in multifamily developments.

Mayor Davidson reminded the Council about the author who participated in the recent neighborhood forum to discuss his book about creating a sense of community.

Councilmember Wallace said it would be helpful to compare the data to cities with similar demographics. He said it would also be helpful to consider whether there are additional questions that could help guide the Council's decisions. He recalled a survey before the park levy was brought forward to explore residents' likelihood to support a property tax increase. Mr. Wallace noted that the survey's lower ratings, although still high, are in the areas of planning and transportation. He said perhaps this suggests that the City and Council should be focusing more on those areas.

Mr. Siegel said he tries to compare data to other cities. However, cities use different surveys and rating scales, and they conduct their surveys on different schedules. The City could conduct specialized surveys on key topics of interest as directed by the Council. However, these would need to be included in the budget.

(c) Regional Issues

(1) Update on Puget Sound Regional Council's Prioritization of the  
Transportation 2040 Long-Range Regional Plan

Diane Carlson, Director of Intergovernmental Relations, introduced an update on the Puget Sound Regional Council's (PSRC) Transportation 2040 working group.

Robin Mayhew, representing the Puget Sound Regional Council, provided a presentation on the Transportation 2040 plan, which was adopted in May 2010. She reviewed the policy areas addressed in the plan which include focusing growth in regionally designated urban centers, reducing greenhouse gases, reducing vehicle miles traveled, addressing congestion and mobility, and promoting economic activity.

Ms. Mayhew reviewed the schedule for the Transportation 2040 Prioritization Working Group, which was convened in January 2011 as an advisory subcommittee of the Transportation Policy Board.

Ms. Mayhew described the preliminary screening process for prioritizing and rating Transportation 2040 projects. She reviewed the structured decision-making process for analyzing goals, values, measures, and alternatives.

Ms. Mayhew reviewed the next steps. The Regional Staff Committee meets on April 27 and May 19 for discussions about goal clarification, values, and measures. The May 19 meeting will also include a preview of the priority weighting exercise. The Prioritization Working Group will meet on May 20 to discuss goal clarification and the preliminary process for ranking projects and programs.

Councilmember Balducci thanked staff for the update, and commented on the complexity of the process to prioritize Transportation 2040 projects.

Mayor Davidson noted that Councilmember Balducci is the Chair of the PSRC Transportation Policy Board.

Councilmember Wallace questioned how costs and benefits are assigned to specific projects. Ms. Mayhew explained that the five key values (Mobility, Community Character, Prosperous Economy, Social Responsibility and Equity, and Sustainable Environment) are considered to be equal. The working group will discuss values before it assigns costs and benefits. She noted that certain projects are a priority, even though the cost is relatively high, because they align with identified values (e.g., special needs transportation services). In further response, Ms. Mayhew said the current process is primarily about identifying values, objectives, and priorities. Detailed analysis of costs and other issues will occur later in the Transportation 2040 plan.

Councilmember Balducci said the plan is essentially a tool for quantifying the benefits of projects, but it does not recommend specific allocations or expenditures.

Charlie Howard, Director of Transportation Planning, PSRC, explained that the proposed process is focused on understanding the full benefit of projects as well as the costs.

Ms. Carlson noted that Bellevue has a list of projects included in the prioritization process.

Kim Becklund, Transportation Policy Advisor, said it is important to be able to connect future transportation investments with the Vision 2040 land use plan. PSRC provides, through its federal funding, a small portion of overall transportation investments. The Transportation 2040 plan is intended to represent the broader overall picture.

Councilmember Balducci said she believes that Bellevue projects will perform favorably in the prioritization process based on the regional plan's values and its focus on urban centers.

Responding to Deputy Mayor Lee, Ms. Mayhew briefly described the weighting process to be used to rank projects, which will involve a national expert to facilitate the discussion. Before that happens, the working group is attempting to consolidate policies and goals into five regional values, and to eventually identify measures and alternatives for achieving the goals.

Mr. Lee noted that his top two values are mobility and a prosperous economy. He commented that this process sounds similar to what Councilmember Degginger has shared about the Regional Transit Task Force.

(2) Renewal of King County Veterans and Human Services Property Tax Levy

Ms. Carlson spoke to the renewal of the King County veterans and human services property tax levy, which was originally approved in 2005. The Regional Policy Committee has recommended renewal of the levy. Ms. Carlson said it appears to be generally supported by the King County Council as well.

Emily Leslie, Human Services Manager, explained that the levy programs in East King County and Bellevue focused on homelessness and strengthening families at risk. She noted specific organizations that have benefited from the levy including the Landlord Liaison Project, Healthy Start, and the Cultural Navigator Program that operates out of the Crossroads Mini City Hall.

Councilmember Degginger questioned whether there are any performance measures to quantify specific outcomes (e.g., housing units) related to levy funding. Ms. Leslie referred Mr. Degginger to the levy's annual report, which covers a number of performance and outcome measures for services that were provided.

Councilmember Chelminiak expressed an interest in options under consideration by the King County Council. For example, will the levy include an inflation factor? Does the City Council want to provide comments to the King County Council regarding the levy and/or the use of levy funds?

Ms. Carlson said the King County Council is likely to support an inflation factor. She opined that it would be appropriate and useful for the City Council to provide input regarding the use of levy funds, if it wishes to do so.

Responding to Deputy Mayor Lee, Doug Hoople of the Human Services Commission said the largest veterans population is in South King County, and the next largest population is in Seattle. Certain veterans services, including counseling, are provided on the Eastside (e.g., Youth Eastside Services).

Ms. Leslie noted that the annual report provides information about who was served and where they live.

Responding to Councilmember Balducci, Ms. Leslie said there is a general consensus within the County that the programs are working effectively, although some changes might occur.

Councilmember Balducci expressed support for a future discussion by the City Council about whether to take a position and/or provide input on the proposed levy renewal.

Mr. Hoople noted that the levy is proposed for the August ballot.

- (3) Update on Development of King County Metro Transit Strategic Plan for Public Transportation (2011-2021)

[Postponed.]

- (4) Legislative Update

Mike Doubleday reported on House Bill 1382 regarding I-405 express toll lanes, which authorizes express toll lanes from NE 6<sup>th</sup> Street in Bellevue north to I-5. The Washington State Department of Transportation must develop a finance plan by January 2012. After two years of operation, the program will be terminated if performance measures have not been met.

Councilmember Wallace said the City of Seattle completed a study on the impact of tolling the Alaskan Way viaduct tunnel, and the report is available online. Mr. Wallace said he would be interested to hear the Transportation Department's perspective on the study, which indicates that drivers tend to divert to local streets to avoid tolls.

Councilmember Chelminiak recalled something that was said five to six years ago in a tolling study. It indicated that when individual projects are tolled, the desired revenue cannot be achieved. One project referred to at that time was the Alaskan Way viaduct replacement structure. The study showed the diversion of traffic to I-5. This is what led some to start thinking about a regional approach to tolling everything.

Responding to Mr. Wallace, Ms. Becklund said the legislation includes provisions regarding the monitoring of impacts, including drivers taking alternate routes.

Councilmember Balducci noted that the project is adding capacity, and tolling the new capacity plus a portion of the existing capacity, which is a different and new concept compared to the toll lanes on Highway 167.

Councilmember Degginger said the project adds new pavement at a time in which construction costs are favorable. He feels the legislation is a good outcome.

Mr. Doubleday reviewed HB 1478 providing city fiscal relief related to schedules applicable to shoreline management plan updates, storm water permits, electric and biofuel fleet requirements, and the usage of impact fees. He described SB 5073 regarding medical marijuana and regulations

regarding dispensaries. The legislation retains the authority for local government to restrict the siting of dispensaries within their jurisdictions.

Responding to Mayor Davidson, Mr. Doubleday said that states that have adopted similar laws have not encountered interference or involvement from the federal government. Governor Gregoire has stated that she will protect State employees from federal prosecution, which could affect the provisions of the bill regarding the role of State departments in licensing dispensaries. The bill has passed the legislature, but has not yet been signed by the Governor.

Responding to Ms. Balducci, Mr. Doubleday said the deadline is May 1, 2011, to register a dispensary with the State and local governments until the new legislation and regulations take effect on January 1, 2013.

Mr. Doubleday highlighted additional legislation regarding transit funding, the King County Flood Control District, the Cascade Water Alliance, SR 520 Corridor Study, and the State operating budget.

Staff responded to brief questions of clarification.

At 8:13 p.m., Mayor Davidson recessed the meeting to move to the Council Chamber for a quasi-judicial matter.

- (d) Continuation of the appeals before the City Council [after remand to Examiner] of the Hearing Examiner's July 20, 2009, Decision concerning the Conditional Use Permit application of Kemper Development Company to prepare and activate a private-use Helistop located on top of the Bank of America Building at 10500 NE 8th Street. (Hearing Examiner File No. 08-35262-LB.)

Mayor Davidson introduced the agenda item continuing the appeal of the decisions of the Hearing Examiner on the application of Kemper Development Company for a conditional use permit to upgrade and activate an existing helistop. This is a continuation of the discussion on the July 26 agenda.

Kate Berens, Deputy City Attorney, described the quasi-judicial process, noting that this is a continuation of the Council's discussion on Hearing Examiner's File # 08-135262 LB, the application of Kemper Development Company for a conditional use permit for a helistop. Appeals were brought by Su Development, Ina Tateuchi, et al on the decision of the Hearing Examiner to grant the conditional use permit with conditions. The respondents to the appeal are the applicant, Kemper Development Company, and the Director of the Development Services Department.

Because the matter is considered quasi-judicial under state law, it does not follow Council's normal process, but instead is addressed under rules similar to those of a court. The opportunity for general public testimony came before the Hearing Examiner at hearings held on June 10 and

11, 2009. A limited public hearing to take arguments from the parties to the appeal was held and closed on November 2, 2009.

Ms. Berens explained that quasi-judicial proceedings are matters pending before the City Council in which the Council makes a decision regarding the rights of specific interested parties under the City's regulations. In those situations, the Council must act as judges and maintain fairness and impartiality. Under Council rules, City Councilmembers are not able to discuss the pending application or appeals with anyone if members of the public contact them directly.

Ms. Berens recalled that the limited public hearing portion of this appeal was concluded on November 2, 2009, and further Council discussion was held on November 16, 2009. At that time, the Council remanded the matter to the Hearing Examiner to reopen his record to examine additional documentation, specifically the required letter from the FAA and any consequences to the conditional use permit (CUP) decision resulting from the content of that letter. The Hearing Examiner held a remand hearing on January 21 and February 4, 2010, and entered the FAA letter into the record along with additional testimony and evidence. The Hearing Examiner's recommendation to the Council was issued on May 4, 2010. Following that recommendation, several parties requested that the Council again remand the matter to the Examiner to take additional evidence.

On July 6, 2010, Council considered the requests for a second remand and the scope of that remand. Consideration of the scope of the second remand was postponed to the July 12 Extended Study Session, and subsequently further postponed to July 26, 2010. At that meeting, the scope for the second remand was approved unanimously by the Council.

The Hearing Examiner's second remand hearing was held on August 25, 2010, and additional information was requested from the FAA. The record before the Examiner was officially closed on November 9, 2010. The Hearing Examiner's final report was issued on December 17, 2010.

Ms. Berens said this matter is now returning to the Council for a decision on the appeal and the application for a conditional use permit. The Hearing Examiner's report, transcripts of proceedings, minutes of related Council meetings, and exhibits were provided to Council on April 11 for review. In addition to these materials, the parties to the appeal were allowed to submit written materials to the City Clerk by 1:00 p.m. on Wednesday, April 20. The City Attorney's Office has reviewed all of the briefs that were timely submitted, to be sure they comply with the Council's rules, and any information not contained in the Hearing Examiner's remand record has been redacted.

Before proceeding, Ms. Berens recommended that the Mayor give Councilmembers an opportunity to once again disclose, on the record, any ex parte communications they may have had with any of the parties to this appeal, or anyone else supporting or opposing the application. If any ex parte communications are disclosed, a Councilmember should state the following on the record: the names of the persons with whom the communication occurred; whether the communication was written or oral; and the substance of that communication. If written, or if a transcript of a phone message exists, these items should be put into the record.

Ms. Berens recalled that, at previous meetings, Councilmembers disclosed ex parte communications. These are in the record and do not need to be repeated. To assist Councilmembers with the disclosure of any communications received since July 26, 2010, the City Clerk's staff searched the City's email system for communications sent to the City Council's general email address, as well as individual City Councilmembers' email addresses. Three email communications from citizens were identified as of Friday, April 22, together with one inquiry from Councilmember Chelminiak asking whether a response had been sent to one of those emails communications. Those emails were provided to counsel for the parties on Friday. Subsequently, the City Council has received one additional email that was also provided to the parties this afternoon.

Ms. Berens noted that Councilmembers need only to identify any ex parte communications they received via personal email accounts, other written sources, or personal contacts since July 26, 2010. If there are any such disclosures to be made tonight, the parties will then be offered an opportunity to rebut the substance of any of those ex parte communications.

Mayor Davidson invited Councilmembers to disclose any ex parte communications.

Councilmember Balducci said she received no other communications than those that went to the general City Council email address and are included in the meeting's desk packet.

Councilmember Wallace said he had no ex parte communications other than those already referenced.

Councilmember Degginger said he had no additional ex parte communications to disclose.

Councilmember Chelminiak said he had no ex parte communications directly on this matter to disclose. He noted that the email he referred to staff related to helicopter traffic in the Eastgate area. However, he said it was good for staff to err on the side of caution in disclosing that email.

As a general issue, Mr. Chelminiak explained that when he worked in Snohomish County, the ethics code directed Councilmembers to disclose whether they received campaign contributions in any of their campaigns from parties of record in a matter. He said he received campaign contributions in the past from Kemper Development and from Su Development. Mr. Chelminiak suggested the Council consider such disclosures going forward.

Councilmember Lee said he had no ex parte communications to disclose.

Mayor Davidson said he had no ex parte communications to disclose.

Mayor Davidson asked whether any of the parties to the appeal wished to rebut the substance of any of the communications that have been disclosed. No one came forward to comment.

Responding to Councilmember Chelminiak, Mayor Davidson confirmed that Councilmember Robertson was absent due to illness. Dr. Davidson said the Council will be asked to provide direction to staff tonight. However, formal legislative action will be scheduled for a future meeting when the entire Council is present.

Carol Hamlin, Senior Land Use Planner, explained that the Kemper Development Helistop proposal affects property located at 800 Bellevue Way NE. The application is to install a permanent private use helistop which will be 47 feet by 53 feet on the roof of the existing Bank of America Building. It will be in the same location as the existing helistop that was constructed in 1988 but was never activated as a permanent helistop. The proposal includes lighting, a second exit stairway, a safety net, and a weather station. There will be no fueling at the helistop. There will be a maximum of five operations per week, with four operations allowed Monday through Friday, 9:00 a.m. to 6:00 p.m., and one operation allowed on Saturday, 10:00 a.m. to 5:00 p.m. Flights are not allowed on Sundays, legal holidays, or evenings. The flight path will be limited to freeways and NE 8<sup>th</sup> Street.

Ms. Hamlin said the existing helistop, which was constructed in 1988, has had temporary use permits issued for a temporary helistop landings. She described the general flight path within the context of existing development.

Ms. Hamlin explained that City departments reviewed the proposal for consistency with City Codes and standards. The Fire Department provided an extensive review of the proposal including, in April 2009, a practice drill for a fire event as well as a practice drill for evacuating a person. Both were fully executed without difficulty.

Ms. Berens continued to summarize the process to date, recalling that during the July 26, 2010, meeting, the Council approved the scope of the second remand before the Hearing Examiner for the limited purpose of accepting new evidence, including the deposition transcript of Roy Hardie of the Federal Aviation Administration, regarding the issues raised in specific findings listed in the Hearing Examiner's recommendation dated May 4, as well as three additional issues. The full scope of the second remand was provided as Attachment 1 to the memo in your packet for tonight's meeting. While the two remand proceedings focused in large part on issues surrounding FAA procedures and their impacts, if any, on the City's permitting process, the full scope of the appeal remains to be resolved by the Council.

After the Council has asked any questions it may have tonight, Councilmembers will have the opportunity to deliberate and render a decision, either tonight or at a subsequent meeting. With regard to the decision to be made by the Council, the appellants bear the burden of proving that the Hearing Examiner's decision to grant the permit with conditions is not supported by material and substantial evidence. The Council may grant the appeal, or grant the appeal with modifications, if the appellants have carried that burden of proof and the City Council finds that the decision of the Hearing Examiner was not supported by material and substantial evidence. In all other cases, the appeal shall be denied. The City Council shall accord substantial weight to the decision of the Hearing Examiner.

Ms. Berens explained that, in the context of this appeal, evidence is material if there is a reasonable probability that the presence or absence of that evidence would have altered the decision by the Hearing Examiner. Evidence is substantial when there is a sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness of the decision.

Responding to Councilmember Balducci, Ms. Berens confirmed that the Council did not resolve any of the issues raised in the original appeal statement by the appellants, Su Development and Ina Tateuchi et al. The Council may go back to those original appeal statements to resolve the issues and make a final decision on the appeal and permit.

Mayor Davidson opened the floor to Council discussion and the formulation of a decision on the appeal and the underlying application for a conditional use permit.

Councilmember Chelminiak noted he had a question on the flight path. Ms. Berens referred him to the decision on the second remand [Hearing Examiner's report for Hearing Date 8/25/2010]. Ms. Berens said that the modified conditions of approval address the flight path, and state that the helicopter ingress and egress shall be restricted to flying over freeways and the NE 8<sup>th</sup> Street corridor. She noted language allowing pilots to make decisions about potential obstructions and weather conditions to safely land and depart from the helistop pad, without flying over any residentially zoned properties.

Responding to Mr. Chelminiak, Ms. Berens noted findings by the Hearing Examiner regarding the 270-degree arc of the flight path.

Catherine Drews, Legal Planner, referenced page 125 of the Hearing Examiner's report from the August 25, 2010 hearing. She explained that the FAA flight inspector commented that, from the helistop, he could see a 270-degree arc within which a helicopter could have a safe flight. Responding to Councilmember Chelminiak, Ms. Drews said if the helicopter had to stray off NE 8<sup>th</sup> Street, it would be considered a deviation from the proscribed flight path.

Councilmember Degginger noted a reporting requirement under Condition No. 4. He questioned what would happen if the flights deviated from the flight path 80 percent of the time. Would that be a violation of the conditional use permit?

Ms. Berens said enforcement of that particular issue is not directly addressed in the Hearing Examiner's Record. Generally speaking, violations of CUP requirements are most often initiated by complaints, which are investigated and can potentially be referred to the Hearing Examiner, who may issue fines. The City Code provides enforcement authority. The Code related to conditional use permits and helicopters allows for a review of conditions to determine whether they are appropriate or need to be modified.

Responding to Councilmember Balducci, Ms. Berens confirmed that questions about the City's approach to the City Code, and existing Code, and how it would apply to the CUP are appropriate. Ms. Balducci questioned how the CUP would be enforced if the helistop operation generates more noise than anticipated. Ms. Berens responded that the situation would be

enforced in the same manner as any other Code violation. A notice of violation would be issued, and potentially noise measurements would be taken. If there were routine violations such that it caused the PCD Director to reconsider the conditional use permit, there would be the ability under the City's CUP code and the specific provisions regarding helicopters to reconsider the conditions and potentially revoke the permit.

Ms. Balducci noted that one of the arguments in the briefs is that a portion of the Noise Code standards addresses how noise affecting new residential development cannot exceed a certain level of decibels (i.e., 45 dba, or 40 maximum in sleeping areas). Would it be possible for the helistop use, should it be approved, to then later be brought forward as a basis to deny further residential permits within that area? Would we be making further residential development in that area incompatible?

Ms. Berens said the Code requires that new residential structures not be approved for construction if the exterior noise level exceeds 65 dba unless there are certain sound attenuation measures that are incorporated into the design to reduce the interior noise levels. She said she does not have the technical expertise to determine the feasibility of attenuating the noise in residential interiors to the levels that the Code requires. The Hearing Examiner found that the demonstrated noise levels are consistent with the City Code.

Councilmember Balducci questioned whether one of the impacts of approving the application would be that nearby new development would be required to include sound proofing that it might not be required to include today. Ms. Berens said that the record was not specific about whether the helistop would generate noise levels that would trigger the requirement to attenuate noise, or whether background noise levels in the downtown trigger the requirement.

Councilmember Wallace questioned whether a finding in the Hearing Examiner's report stated that an exemption on flight noise applied in this case. One of the memos argued, or at least implied, that the exemption would apply to planes flying over but not necessarily to helicopters landing.

Ms. Berens said that Finding No. 44 in the Hearing Examiner's original decision stated that sounds originating from aircrafts in flight were exempt from the noise control chapter of the City Code. In further response, Ms. Berens said the Hearing Examiner did not specifically refer to noise generated by helicopters taking off and landing.

Mr. Wallace clarified his two questions: 1) Was it concluded that the exemption applies to the helistop? and, 2) Was there discussion about the applicability of subsection C.3, which addresses short duration noises? Was there discussion about whether one of those applied to change the decibel levels?

Ms. Berens suggested that the Council would have to look at the combination of findings, conclusions, and conditions imposed by the Hearing Examiner in its deliberations to determine whether the conclusions are supported. The Examiner concluded that, as conditioned, the helistop is consistent with the criteria for approval of conditional use permits, which includes

consistency with applicable Codes. The Council would need to look at the findings and the rest of the record to see if that conclusion is supported by substantial evidence in the record.

Councilmember Chelminiak offered his interpretation that the Hearing Examiner decided that the Noise Code applied as soon as the helicopter touched the landing pad surface and remained on the pad. Mr. Chelminiak observed that the Hearing Examiner determined that the Noise Code does not apply to the landing approach or to takeoff. He said he believes there are some provisions in the rules of operation for relatively quick shutdowns and startups.

Responding to Councilmember Wallace, Ms. Berens explained that a specific finding relating to that provision of the Noise Code has been drawn to her attention. It allows additional decibel levels for limited periods of time. Finding No. 50 in the Hearing Examiner's original decision stated that the noise control chapter is applicable when the helicopter has landed and is still running, which will occur during the cool down and warm up periods. Noise readings ranged from 32 dba to 72 dba, and the loudest outdoor reading was 72 dba which occurred on the balcony of Lincoln Tower. This reading lasted for less than 10 seconds and therefore meets the requirements of the noise control chapter, which allows a maximum 75 dba for 1.5 minutes.

Responding to Deputy Mayor Lee, Ms. Berens said she would have to review the findings to determine whether they address the noise levels of the helicopter in flight. He questioned whether the noise in flight would be greater or less than the noise at landing.

Ms. Berens responded that Finding No. 47 indicates that the helicopter flight time, once it turned west from I-405 onto NE 8<sup>th</sup> Street, was less than one minute. Six noise meters were in place to take exterior noise measurements during the two test flights. Findings No. 48 and 49 provide more detail about some of the measurements from the noise testing, including measurements while the helicopter was in flight.

Mr. Lee opined that the noise in flight is probably lesser than the noise of the helicopter on the helistop. Ms. Berens said the Hearing Examiner's findings indicate that there were noise measurements between 46 dba and 85 dba while the helicopter was in flight.

Councilmember Wallace said he would like to understand more about the implications for future use if additional buildings are built in or near the flight path. He noted that the Beacon Building at NE 8<sup>th</sup> Street and 106<sup>th</sup> Avenue NE is a high rise building on the top of the hill, which has been submitted for design review. Could that have an impact on the helistop operation and CUP?

Ms. Berens said there is a specific condition imposed by the Hearing Examiner in his revised report that deals with future development and potential obstructions. Condition No. 11 on page 53 of that second revised decision states that if potential obstructions of the flight path resulting from the construction of new high rise buildings or other actions require that the applicant rescind operations immediately, the applicant will be allowed to prepare a modification plan for an obstruction-free approach. This plan must meet all City Code requirements and federal requirements. The proposed modifications would be submitted to the FAA for a no objection

letter, which would be forwarded to the City of Bellevue with a request to revise the permit, if appropriate. The determination on this request is dependent on the outcome of the review.

Mr. Wallace questioned whether there are FAA rules that apply to enable that determination.

Ms. Berens said there is a discussion in the Record about how the FAA tracks obstructions and the construction of new obstructions. However, it is unclear whether the FAA proactively identifies new obstructions.

Following up on his earlier questions, Councilmember Chelminiak questioned whether a deviation from the flight path would be considered a violation of the CUP.

Ms. Berens said she is not sure how the PCD Department would interpret that situation in the future. In general, the Council has the authority under BCC 20.24.50 for the City to impose a periodic review requirement of heliport conditional use approvals in order to consider imposing additional conditions to mitigate adverse impacts from new aircraft technology. The Council may consider whether there is something it would want to add to clarify this question of deviation from the flight path, based on what is already in the Hearing Examiner's report.

Noting that he is uncertain about other Councilmembers' perspective on this point, Mr. Chelminiak said he would like staff to prepare clarifying language. However, he believes it is important that pilots are allowed to make decisions based on safety should certain conditions warrant a deviation from the usual flight path. Mr. Chelminiak suggested that perhaps the parties could be given the opportunity to draft proposed language, as well as City staff.

Councilmember Degginger thanked all of the parties for their excellent presentations and written submissions. He reviewed that the matter returns to the Council after a second remand to the Hearing Examiner, and the appeal process has gone on for 18 months. He noted that quasi-judicial proceedings are difficult for a City Council, which is otherwise a policy making body.

Mr. Degginger said the Land Use Code sets forth specific criteria for the Hearing Examiner to follow in reviewing a conditional use, and for the Council to use in deciding whether the appellants can prevail. He noted the importance of applying these standards to the Council's determination. Under City Code, the Hearing Examiner was required to approve a conditional use application if all five of the decision criteria were met. The two that have been the most discussed by the parties are criteria D, whether the conditional use will or will not be materially detrimental to the uses or property, and criteria E, whether the conditional use complies with the applicable requirements of the Land Use Code. There are important issues for people who live nearby in Lincoln Tower, and this has been a source of great concern to the Council in this process.

Continuing, Mr. Degginger said the Council is required to accord the Hearing Examiner's decision substantial weight. The City Attorney explained that the appellant must prove that the Hearing Examiner's decision is not supported by material and substantial evidence. The Council is faced with the information that exists in the Record. The building as described in the staff

report was designed and constructed with the potential helistop use in mind, and the Code provides the opportunity to obtain a conditional use permit for a helistop.

Mr. Degginger noted that a helistop is an unusual use in a dense multi-use area and therefore careful scrutiny of the application is appropriate. The issues raised by the appellants are legitimate and have been given a great deal of attention by the Hearing Examiner and the Council. In the first remand, concerns were addressed about whether there had been a necessary FAA review and approval of the site. The second remand allowed additional discovery in the form of Mr. Hardie's deposition, and a transcript was provided as part of the Record. Mr. Degginger noted that discovery demonstrates that the FAA approved the location and the conditions stated by the Hearing Examiner, and the FAA did not require modifications within the scope of this jurisdiction.

Councilmember Degginger stated that, having reviewed the record, including the extensive findings of fact contained in the first and second set of findings and conditions provided by the Hearing Examiner, it is his opinion that the appellants have not met their burden of proof and that the appeal must be denied. The modified conditions for approval further address the noise and safety issues that were raised by the appellants. Mr. Degginger said his greatest concern has been whether the helicopters will, as a practical matter, be able to follow the flight path set in Condition No. 2 on a regular basis.

Mr. Degginger said he believes that the reporting requirements in Condition No. 4 are important. If it turns out that deviations from the flight path are the rule rather than the exception, it might be necessary to amend the conditions. Mr. Degginger suggested it would be helpful, as Councilmember Chelminiak mentioned, if a condition could be added providing an additional review requirement with regard to the flight path.

Mr. Degginger said that noise remains a concern. However, the limitations placed on the number of flights and the hours of operation appear to mitigate most, if not all, of those impacts. He believes that the reporting requirements are significant, and that it is fair to hold the applicant responsible for strictly adhering to the CUP conditions imposed by the Hearing Examiner.

→ Councilmember Degginger moved to deny the appeal, to add a condition regarding the enforcement of deviations from the flight path, and to direct staff to prepare a Resolution to this effect for future Council action.

Deputy Mayor Lee thanked the parties for their due diligence in this matter, and said that his main concerns are safety and noise. With regard to safety and the flight path, he noted that the issue has been reviewed by the FAA. He believes that a pilot must have the discretion to deviate from the usual flight path if warranted by wind/weather or other conditions. He concurs with the suggestion to add a condition regarding how the City would address deviations from the flight path, however.

Mr. Lee said the noise associated with the helistop, and an urban environment in general, is unavoidable. He feels comfortable that noise measurements have been taken, and he believes that the noise of the helicopter in the air will be less than on the helistop.

Mr. Lee believes that, with the testimony that has been given and the analysis that has occurred, the benefit of the helistop has been supported. He believes there is a small cost associated with the benefit of having this as an important economic necessity for Bellevue's status as an urban center. He is in favor of being able to conduct periodic reviews of the helistop's operation, including deviations from the flight path, and being able to take appropriate measures, whatever those might be.

Deputy Mayor Lee expressed support for the motion to deny the appeal.

Acknowledging the City Clerk, Mayor Davidson noted that there had not been a second to the motion.

→ Mayor Davidson seconded the motion.

Responding to Mayor Davidson, Councilmember Degginger clarified that his motion is to deny the appeals, and to request that staff develop an additional condition, or add to Condition No. 4, regarding the appropriate way to incorporate an additional review requirement. He suggested that the language provide a feedback mechanism for evaluating the information the City receives from the reporting requirement.

Councilmember Chelminiak said this application has demonstrated that the City Code does not adequately address helistops and helicopter operations. He observed that if one is concerned about safety, the safest thing you can do with a helicopter is to not land it on a tall building in a downtown area. However, this use is allowed under the provisions for a conditional use permit. He agrees with Councilmember Degginger's suggested amendment to the conditions, but wants to see the final language before approving the final legislation.

Referring to the issue raised by Councilmember Wallace, Mr. Chelminiak read from page 82 of the Exhibits to the Hearing Examiner's Report. The FAA person writes: "I would say we don't have every single building in the Bellevue skyline in the system. What we do have are all the previous proposals that have been filed that were required to notify us of their proposed construction." Mr. Chelminiak observed that: 1) Not everyone knows to file and therefore there are buildings out there that are not on file, and 2) Only those that triggered the notification criteria would be required to file. He expressed concern about whether the FAA is adequately tracking all building proposals.

Councilmember Chelminiak suggested that this case demonstrates a great reason for the City Council to get out of the business of conducting quasi-judicial reviews. He noted that he raised this issue during the Council Retreat, and he would like to see it fully discussed.

Mr. Chelminiak noted that some decibel readings occurring while the helicopter is landing reach above 80 dba. However, these high noise levels are not restricted because the aircraft is airborne, even though it is on its approach. Mr. Chelminiak would like the Council and staff to review this Noise Code requirement.

Councilmember Chelminiak said he will support the motion. However, he wants the Council to be able to review and approve the requested amendment language.

Councilmember Balducci concurred with Councilmember Chelminiak's comments about the Council's involvement in the quasi-judicial process. As she understands it, the original intent of the process was to save appellants time and money by offering an alternative to going to court. She observed that this process did not save the appellants time or money in this case, however. Ms. Balducci said she is not sure that the quasi-judicial process has been an effective one in previous land use matters as well. She opined that Councilmembers are not set up to do this type of extensive parsing of stacks and stacks of evidence, and to then assess it and make a decision. Ms. Balducci expressed support for discussing whether the process makes sense any longer.

Noting that she previously proposed the following action, Councilmember Balducci said that once this matter is concluded, she will bring forward a motion for a moratorium on further helipad development until the Council can review the City Code. She said she agrees with the statement in appellant Su's brief that the City has not comprehensively evaluated or updated its regulations pertaining to review criteria and performance standards for helistops and heliports for many years. She concurred with Mr. Su's statements that the City has not engaged in a comprehensive consideration of the potential for conflict between the helistops, heliports and the mix of commercial and residential uses that are now the focus of Bellevue's vision for its downtown. Regulations that have been adopted are largely outdated and inconsistent with the Comprehensive Plan's visions and policies, and demonstrate internal conflict and ambiguities.

Ms. Balducci said that her primary concern is that the world has changed, and downtown Bellevue has changed significantly since the regulations were adopted. She noted the need to consider policies that balance the objectives regarding future downtown development, including the desired mix of residential and commercial uses.

Ms. Balducci referred to past comments by the Mayor about the problems inherent in having lawyers on the City Council. She commended Councilmember Degginger's valuable contribution tonight in clearly laying out the overall quasi-judicial process of this matter, and in articulating the framework and context within which the Council must make its final decision.

Councilmember Balducci observed that the quasi-judicial process requires the Council to base its decision on current regulations and facts. The Council cannot ignore current rules and make a decision that it believes makes more sense. The Council is required to give significant deference to the Hearing Examiner's findings, and the Hearing Examiner did a very detailed and thorough job at the urging of the Council. Given the rules governing quasi-judicial proceedings, Ms. Balducci said there is no other option than to deny the appeal and approve the application. However, she does not necessarily believe that this is the right or best course of action.

Deputy Mayor Lee said he can look at things with a simplistic and common sense point of view versus a legal point of view. He observed that there seems to be a question about the noise measurements, and about the acceptable dba levels for the helicopter in flight versus landed on the helistop. He said individuals have quoted different dba levels, and he would like to know the specific numbers.

Mr. Lee noted his frustration with the quasi-judicial process, and observed that perhaps the Council is not equipped to serve as experts in this regard.

Councilmember Degginger concurred with Ms. Balducci's statements about the need for a full review of the City's regulations of helistops.

Councilmember Wallace requested clarification regarding his understanding of the proceedings and the motion. The opening instructions state that the appellants bear the burden of proving that the Hearing Examiner's decision to grant the permit with conditions is not supported by material and substantial evidence. The instructions further state that the Council may grant the appeal or grant the appeal with modifications, if the appellants have carried the burden of proof and the City Council finds that the decision of the hearing examiner is not supported by material and substantial evidence. Mr. Wallace questioned whether there is an option to deny the appeal and to also amend the conditions.

Ms. Berens responded that the Council does have the ability to amend the conditions. She explained that when a conditional use permit is appealed to the City Council, the Council effectively makes the final decision on the permit. This includes the ability to modify conditions as part of that process.

In further response to Councilmember Wallace, Ms. Berens said tonight's motion, if approved, directs staff to bring forward legislation that will deny the appeal and grant the permit. The legislation will provide the language requested in the motion to amend the conditions of the CUP.

→ The motion to deny the appeal, to add a condition regarding the enforcement of deviations from the flight path, and to direct staff to prepare a Resolution to this effect for future Council action, carried by a vote of 6-0.

At 9:44 p.m., Mayor Davidson declared the meeting adjourned.

Myrna L. Basich, MMC  
City Clerk

kaw