

CITY OF BELLEVUE
CITY COUNCIL

Summary Minutes of Extended Study Session

October 8, 2012
6:00 p.m.

Council Conference Room 1E-113
Bellevue, Washington

PRESENT: Mayor Lee, Deputy Mayor Robertson, and Councilmembers Chelminiak, Davidson, Stokes, and Wallace

ABSENT: Councilmember Balducci

1. Executive Session

Deputy Mayor Robertson called the meeting to order at 6:01 p.m. and declared recess to Executive Session for approximately 20 minutes to discuss two items of potential litigation.

The meeting resumed at 6:25 p.m., with Mayor Lee presiding.

2. Oral Communications

- (a) Doug Hoople, Chairman of the King County Veterans Levy Oversight Board, noted the program description and 2011 Levy Annual Report distributed to the Council. He described services provided by the program including career assessment and coaching, mental health treatment and counseling, family counseling, mobile medical services, and capital investments in housing for veterans. Mr. Hoople said that he spoke to the Human Services Commission last week. He encouraged the Council and the public to support renewal of the levy.
- (b) Sam Bellomio, Stand Up America, said he has been coming to speak to the Council about red light cameras for many weeks, but has not heard anything back from anyone. He objects to the cameras and to the revenue that is distributed to the vendor and King County. Mr. Bellomio asked the Council to engage in a dialogue with him about red light cameras. He said there has been no reduction in accidents.
- (c) Alex Zimmerman, Stand Up America, said he has been requesting the cost of a Police investigation for weeks now. He said he received a similar response in 1998 with his class action lawsuit. He has been talking to the Council since May, and no one has provided the cost of the investigation. He asked the Mayor to look into this matter.

- (d) Lincoln Vander Veen, Bellevue Chamber of Commerce, noted the Chamber's letter to the Council and commented on the East Link light rail project. The Chamber supports Cost Saving Option 1a, shifting Bellevue Way to the west in front of the Winters House and adding a southbound HOV lane, the latter of which is the Chamber's top priority. The Chamber believes the lane will help mitigate traffic during and after light rail construction. The Chamber supports Option 3c relocating the Downtown Station to NE 6th Street and believes it is important to retain the capacity of downtown surface streets. The NE 6th Street station mitigates construction impacts and provides connectivity between buses and light rail. With regard to the light rail trench under SE 4th Street, the Chamber believes that this option is more visually appealing and beneficial to traffic flow than other options.
- (e) Renay Bennett, speaking on behalf of Building a Better Bellevue, referred to the proposed Transit Overlay District Land Use Code Amendment, which she said is a very complicated document that came out on Friday afternoon. She observed that the document allows Sound Transit to apply for permits for property that it does not own, and that it exempts Sound Transit from the existing essential public facilities permit process and siting criteria. She commented on additional concerns including landscaping requirements and environmental protections. Ms. Bennett submitted a letter addressing these and additional concerns with the proposed Overlay District.
- (f) Debra Grant, representing Hopelink, thanked the Council for its financial support of human services within the community. She encouraged the Council to support the Human Services Commission's recommendations to be presented this evening.
- (g) Jeff Bradt, Executive Director of Elder and Adult Day Services, thanked the Human Services Commission, City Council, City staff, and Bellevue residents for their support of human services organizations. He noted that most of the agency's clients have problems that cannot be fixed (i.e., health issues, disabilities), but they appreciate the services and assistance they receive.
- (h) Bill Popp, an Enatai resident, expressed concern that the East Link cost saving measures will increase visual, noise and environmental impacts. He said that Seattle's light rail line runs primarily in tunnels. He noted that the NE 6th Street station option has the potential for saving \$23 million to \$39 million. He suggested consideration of a center-loading platform and better direct access to the Transit Center. Mr. Popp said he is waiting on input from the City's Transportation Department staff on their modeling.

Mayor Lee suggested that Mr. Popp provide his comments in writing to the Council.

Councilmember Chelminiak recalled Mr. Popp's past comments that adding a general purpose lane on Bellevue Way would be better than adding the proposed HOV lane. He asked Mr. Popp to provide his reasoning on that point.

- (i) Joe Rosmann noted the complex document distributed to the Council and the public on Friday regarding the proposed Transit Overlay District Land Use Code Amendment. He is concerned that citizens and the Council are being asked to make decisions too quickly. He encouraged the Council to use the expertise of the Planning Commission and Transportation Commission in reviewing these issues. He recalled that the City previously entered into a temporary use permit process for the light rail station staging area in the Downtown. That permit was developed through extensive collaboration between property owners, City staff, and Sound Transit. Mr. Rosmann observed that the Overlay process does not provide the same opportunity for the involvement of property owners, homeowners and communities.

3. Study Session

(a) Council Business and New Initiatives

Mayor Lee wished a Happy Birthday to Deputy Mayor Robertson and Councilmember Wallace.

Councilmember Davidson said he was a little disappointed that the City Manager was not present, especially given some of the topics on the evening's agenda.

Dr. Davidson said that former Mayor Nan Campbell suggested going back to read exactly what was approved by the voters for Sound Transit Phase 2. He reviewed the East Link Memorandum of Understanding (MOU) over the weekend, and he believes that some of the language is open to interpretation. He is disappointed that the MOU does not provide the flexibility he had hoped to see for the City.

Deputy City Manager Brad Miyake said staff will provide information on the voter-approved Sound Transit Phase 2 package.

Councilmember Chelminiak reported that former Mayor Grant Degginger was appointed to the Washington State Public Disclosure Commission.

Councilmember Wallace asked for an update on red light cameras. He recalled that the last Council discussion on the use of cameras resulted in direction to staff to not expand their use after the current contract expires in 2014. He has been told that staff has responded to Mr. Bellomio and Mr. Zimmerman, and he would like more information on that. With regard to their request for the cost of the Police investigation, Mr. Wallace noted that the City does not track every expenditure for each specific incident or case.

Mayor Lee said it would be good to be able to resolve these requests publicly.

Councilmember Chelminiak recalled that it was late April or early May of 2011 when the red light camera issue last came before the Council. He noted that he and the Deputy Mayor have requested information on the revenues generated by the program.

(b) Presentation of Preliminary Budget Document

Deputy City Manager Brad Miyake said the Preliminary Budget document has been distributed to the Council tonight. However, the official kickoff of budget discussions is scheduled for next week, and the City Manager will be present. Budget adoption is anticipated on December 3. The Preliminary Budget document has been posted to the City's web site for public access.

(c) Human Services Commission's Recommendations for 2013-2014 Human Services Fund and 2013 Community Development Block Grant (CDBG) Funding

Mr. Miyake opened discussion regarding the Human Services Commission's funding recommendations.

Terry Smith, Assistant Director of Parks and Community Services, welcomed the Human Services Commission members in the audience.

Joseph Adriano, Human Services Grant Coordinator, began the presentation. He described how federal grant funding has been declining since 2003, while requests for funding to the Human Services Commission have increased. Mr. Adriano said the Commission appreciates the Council's funding formula of Base + Inflation Adjustment + Population Increase. The formula adds \$99,593 to the Fund for 2013-2014, and the recent annexation provides an additional \$129,000.

Mr. Adriano highlighted key findings of the Needs Update, which was presented to the Council in February 2012. The number of homeless students in the Bellevue School District more than doubled from the 2007-2008 school year to the 2011-2012 school year. Additional key issues are the lack of affordable housing, unemployment, increasing demand for free or reduced school lunches and food stamps, and increasing demands related to the disabled of all ages and for the elderly.

Emily Leslie, Human Services Manager, noted the web link to the 2011-2012 Human Services Needs Update (www.bellevuewa.gov/humanservices_needs_update.htm). She highlighted Attachment B [Page 3-35 of the meeting packet], which lists the 2013 Community Development Block Grant (CDBG) final recommendations. Attachment C is the CDBG Allocation Contingency Plan, and Attachment D lists the criteria used by the Human Services Commission to review all of the applications.

Ms. Leslie explained that the Commission used the 2011-2012 Needs Update in its review of the funding applications. The Commission completed its funding recommendations at the end of July, to coincide with the time at which the Budget Results Teams were completing their Round 2 rankings. The budget proposal for human services contracts with nonprofit agencies was ranked #1 in the outcome area of Innovative, Vibrant and Caring Community.

John Bruels, Chair of the Human Services Commission, said the Commission reaffirmed the City's policy of supporting a full spectrum of community needs, which are summarized in the

City's Comprehensive Plan. The Commission's primary focus areas for 2013-2014 are prevention and intervention programs serving residents most affected by the continuing impact of the economic recession.

Mr. Bruels said that currently funded programs that have been meeting their contract goals and are providing critical services have been recommended for continued funding. The Commission is recommending award levels above inflation increases for 35 ongoing programs which fall into the following categories: 1) Programs to help the homeless or those at risk of becoming homeless and/or those who are experiencing difficulties related to the recession, including those in domestic violence situations, 2) Programs to strengthen and support families including case management and health services, and 3) Employment-related services.

The Human Services Commission recommends funding for three programs not previously funded: 1) Congregations for the Homeless Drop-in Center for homeless men, 2) Imagine Housing (formerly St. Andrews Housing Group) Francis Village apartment project in Kirkland, and 3) Sound Mental Health's Safe and Sound Visitation Center.

Mr. Bruels thanked the Council for recognizing the need to respond to the impacts of the economic recession, build the human services infrastructure, and preserve the community safety net.

Mayor Lee thanked Commission members for their work and asked those present in the audience to introduce themselves (Stefanie Beighle, Jan Stout, and Michael Yantis).

Councilmember Wallace said he just completed his first year as Council liaison to the Human Services Commission. He noted the extensive reading and review by the Commission. He commended the Human Services Needs Update and said that it is available on the City's web site. Mr. Wallace expressed appreciation for past Councilmembers, Commissioners, and City staff for the ongoing work in this area.

Responding to Councilmember Davidson, Ms. Leslie said the King County Veterans and Human Services Levy funds were distributed through a competitive process. There is both a Veterans Oversight Committee and a Human Services Oversight Committee to develop procurement plans for defined strategies.

Dr. Davidson requested information on how much Bellevue citizens are contributing to the Veterans and Human Services Levy funding.

Councilmember Stokes thanked Commission members for their work and expressed support for the funding formula and for the specific recommendations in response to the most critical needs within the community. He commented on the positive collective impact of funding a number of organizations.

Deputy Mayor Robertson thanked the Human Services Commission for their commitment of time and energy in reviewing the applications and formulating the recommendations. She

questioned how much the City spends on human services as a percentage of its overall budget. She hopes the Council will continue to prioritize this funding over time. She recalled that, despite significant budget constraints, the Council added recession impact funding during the last budget cycle because it recognized the need and demand for services. She encouraged contributing to organizations with lower overhead costs and the highest impact in term of direct services and assistance to individuals.

Referring to Councilmember Chelminiak, Mr. Adriano said the Commission felt that the amount requested by Food Lifeline was relatively small for a large organization, and that it would not have the same impact as it would for another program. Mr. Bruels said the Commission determined that the request from St. Vincent de Paul provided somewhat duplicative services as other organizations that were being funded.

Councilmember Chelminiak expressed strong support for the King County Veterans Levy. He thanked the Human Services Commission for their hard work.

Mayor Lee asked staff to comment on the most critical and/or emerging needs.

Mr. Smith noted the increasing homeless population and the need for shelters. Mr. Leslie said the bulk of the funding goes to food, housing, education (including child care to allow individuals to pursue education), job skills, and steps toward leading an independent life.

Mr. Smith referred to Councilmember Stokes' earlier comment about collective impact and noted the collaborative efforts of the Eastside Pathways program.

Mr. Bruels commented on the importance of preserving human services infrastructure despite funding constraints. Otherwise there is the risk that certain organizations and/or services will cease to exist.

Mayor Lee asked about demographic changes. Mr. Smith said the Commission and City staff work closely with other City staff who track demographic data and with the Bellevue School District and their programs. One notable change is the increasing elder population. Mayor Lee expressed support for Eastside Pathways.

(d) Management Brief providing Update on Regulation of Medical Marijuana Collective Gardens

Mr. Miyake introduced discussion regarding proposed regulations related to medical marijuana collective gardens.

Carol Helland, Land Use Director, referred to page 3-41 of meeting packet for a management brief on the regulation of medical marijuana collective gardens. She recalled that the Council adopted interim zoning control on May 7 with Ordinance No. 6058, which expires on November 7. With Initiative 502 that would decriminalize marijuana coming up in the fall election, staff

recommends extending Ordinance No. 6058 until the outcome of that ballot measure. The City of Kent recently received a summary judgment on relevant litigation as well.

Catherine Drews, Legal Planner, explained that the City of Kent passed an ordinance in June prohibiting collective gardens. In response, the Cannabis Coalition Action group and separate individuals sued the city, alleging that the ban was unlawful and violated their constitutional rights as medical marijuana patients. The Court approved the City of Kent's zoning authority and right to ban collective gardens and dismissed the plaintiffs' actions. Ms. Drews said a public hearing is tentatively scheduled for October 22, if the Council chooses to extend the interim zoning ordinance for an additional six months.

Deputy Mayor Robertson noted that the Kent decision was in Superior Court and, while instructive, is not binding. Responding to Ms. Robertson, Ms. Helland said staff will keep the Council abreast of relevant litigation.

Dr. Davidson said he has been reading with interest the newspapers about medical marijuana dispensaries. He believes that marijuana should be regulated like other drugs, and he is opposed to legalizing marijuana until more is known.

Deputy Mayor Robertson reported that she attended a training session on marijuana law, and she brought back a binder of related information for the Council office.

At 7:53 p.m., Mayor Lee declared a short break.

The meeting resumed at 8:05 p.m.

- (e) Review Draft Land Use Code Amendment Language to Create a Light Rail Overlay to Govern Permitting for the East Link Light Rail Project

Mr. Miyake said the objective of tonight's agenda item is to continue staff's presentation of information on the proposed Land Use Code Amendment to create a Light Rail Overlay. He asked that staff be able to get through the full presentation before responding to questions. There is a logical sequence to the presentation that may answer questions before it is concluded.

Mayor Lee confirmed that it would be a good idea to let staff go through presentation first.

Councilmember Davidson recalled that he previously commented that he had not received responses to his questions. He wanted to go on the record stating that he has received those answers, except for one issue regarding a potential supplemental environmental impact statement (EIS).

Mike Brennan, Director of the Development Services Department (DSD), said that staff's responses to questions posed on September 17 are provided in the meeting packet beginning on page 3-45. The discussion that evening was about the framework for creating an Overlay District. The purpose of this evening's presentation is to talk about the draft Land Use Code

Amendment content. In addition to questions from September 17, the meeting packet also includes a matrix that addresses the gaps in current regulations that do not clearly address light rail. Mr. Brennan said staff was not seeking Council direction at that time. A Public Hearing on the Light Rail Overlay is scheduled for October 22.

Kate Berens, Deputy City Attorney, recalled that the City conducted the Light Rail Best Practices Committee process as a first step in this work. The committee included citizens and members of the Planning Commission, and City Councilmembers were liaisons to that committee.

The East Link Memorandum of Understanding (MOU) was established with Sound Transit to initiate the collaborative design process. The plan for this work was presented to the Council in January to guide the work that has been occurring since that time. Previous Council study sessions on July 16 and September 17 introduced concepts leading to the development of the Overlay District. She recapped public outreach to date including the publication of formal meeting notices and public hearing notices. Notice of the October 22 public hearing was published on October 4, and three drop-in sessions have been held in October to discuss the cost savings ideas that are being studied by the collaborative design group. Information regarding the proposed Overlay District has been published on the City's main East Link web page.

Ms. Berens recalled that the Land Use Code Amendment responds to the City's commitment to the East Link light rail project under the MOU. The light rail project is an essential public facility (EPF) which the City cannot prohibit or impose conditions that would make it impractical or not feasible to implement the light rail facility.

Ms. Berens clarified that the draft Land Use Code Amendment (LUCA) is not a rezone of any properties in the City.

Dr. Davidson stated that the overlays for the Central Business District and the Critical Areas Ordinance essentially rezoned the use of certain properties. He observed that if regulations control the use of property, he considers that a rezone. He would like to understand the distinction.

Mayor Lee noted the agreement to hold questions until the end of the presentation.

Continuing, Mr. Berens said the proposed Overlay District does not approve the East Link project and does not include the large maintenance facility in the Overlake area. The City's standards are not relaxed under the overlay, and no technical codes (e.g., Building Code) are amended.

Ms. Berens described the potential TOD areas. She acknowledged concern within the community about the potential for transit-oriented development (TOD) related to the light rail project. The Council has stated that TOD would not be appropriate around the South Bellevue Park and Ride or in the residentially zoned portions associated with the East Main Station. She reassured the Council that there is nothing about the overlay process that changes that discussion.

Ms. Helland explained that development of the proposed Land Use Code Overlay involved a review of the Comprehensive Plan and the Light Rail Best Practices Report. Staff toured existing light rail facilities in other jurisdictions and examined the land use districts along Bellevue's alignment. The East Link facility passes through more than 20 land use districts with different levels of required review. Nearly half of the East Link project is in right-of-way where land use provisions typically do not apply.

Ms. Helland said the City's design review process is not currently required in all land use districts. She walked through a map of the light rail alignment to illustrate the difference between a number of segments. The Bel-Red corridor does provide design review standards. There are currently conditional use requirements along the entire alignment.

Ms. Helland referred the Council to page 3-79 of the meeting packet for Attachment B, Matrix of Land Use Code Provisions Applicable to Light Rail. She said staff went through every section of the Land Use Code to identify applicable provisions as they exist today and how they would apply under the current traditional conditional use permit (CUP) requirements. Major components of the Land Use Code Overlay address definitions, required permits, development standards, design guidelines, and administrative modification.

Ms. Berens described the two paths under the Overlay District approach, which is dependent on whether there is agreement between the City and Sound Transit on the light rail alignment. If there is agreement, the facility is a permitted use and the permit path is potentially the establishment of a development agreement and subsequent design and mitigation permits. If there is not agreement on the alignment, the project would go through the conditional use permit (CUP) process and the same subsequent design and mitigation permits.

Ms. Berens described the Development Agreement process which includes public notice of a State Environmental Policy Act (SEPA) review and a public hearing before the City Council. The Council would adopt the development agreement through a legislative action, and there is no option for an administrative appeal. However, approval of the development agreement could be appealed to Superior Court.

Ms. Berens described the two types of Conditional Use Permit (CUP) processes which involve notice of the application, a public meeting, and a public hearing before the Hearing Examiner. CUP Process I permits are decided by the Hearing Examiner and can be appealed to the City Council, and if desired, to Superior Court. With CUP III permits, the City Council makes the final decision and appeals are available through Superior Court.

Ms. Berens described the main features of a Process II design and mitigation permit. This involves notice of the application and an optional public meeting. There is no requirement for a public hearing and the Director of the Development Services Department is the decision maker. This administrative decision can be appealed to the Hearing Examiner and ultimately to Superior Court.

Ms. Helland referred the Council to pages 3-54 through 3-58 of the meeting packet for detailed code language on the two permit paths.

Ms. Helland described the difference between standards and guidelines. Development standards are rigid or quantitative requirements (i.e., dimensional requirements) and must be met in the absence of modification approval [See page 3-58 of packet]. The draft Overlay Land Use Code Amendment includes dimensional requirements, landscape development standards, and provisions for impact mitigation (e.g., fencing, light and glare, parking, waste collection, and critical areas).

Ms. Helland referred to page 3-61 of meeting packet for design guidelines. Guidelines are more flexible or qualitative. Each guideline could generate numerous solutions, and the City wants to encourage varied and imaginative designs. The draft Land Use Code Amendment includes guidance for station area planning and other light rail structures (e.g., traction power substations, ventilation structures, walls and barriers).

Mr. Brennan said the next step is a public hearing before the Council on October 22. Future Council Study Sessions will continue discussion and refinement of the amendments, and final action is anticipated in December. He referred the Council and the public to the City's web site - <http://www.bellevuewa.gov/light-rail-overlay.htm> - for more information on the light rail overlay.

Councilmember Davidson asked what happens when one Overlay District overlaps another Overlay District. Ms. Helland said that situation currently exists; for example, the Bel-Red Overlay overlaps the Critical Areas Overlay. Generally the most strict regulations apply.

Dr. Davidson questioned whether there was a biological assessment regarding fish. Ms. Berens said staff will check with Sound Transit. That would have been part of the agency's federal environmental review process.

Councilmember Wallace suggested that information that would be helpful to the public are a plan, schedule, and budget. He said it is difficult to think through the code amendment without first understanding the plan (i.e., alignment). For example, for the homes on 112th Avenue, the issue of whether the light rail line will be elevated or below street level is critical. Regarding schedule, Mr. Wallace said the City and the public need a better understanding of Sound Transit's schedule and how that coordinates with the City's schedule. This will help put the whole Land Use Code amendment into context.

With regard to the budget, Mr. Wallace noted the discussion about saving \$60 million, and the issue of whether that is to be saved in the Downtown or in neighborhoods. What kind of cost pressure are the City and Sound Transit under? How much money are the code provisions under the overlay process saving Sound Transit? Mr. Wallace noted Sound Transit's 30 percent contingencies and observed that project costs will be lower if permitting certainty is provided through the overlay, and potentially, a development agreement.

With regard to mitigation, Mr. Wallace believes the City needs to conduct its own study addressing noise, traffic, visual and other impacts. When the MOU was adopted, the Council also passed an ordinance directing the City Manager to do a couple of things. One was to develop a work plan about how to handle property takings along 112th Avenue, and that has not moved forward as far as he knows. The other item was for the City to do a better job of auditing Sound Transit's numbers. He believes that some work has been underway in this regard.

Mr. Wallace said that a graphic design/representation of the light rail line is essential in order for the Council and the public to accurately assess the project. He would like all project information, from all agencies, to be available on one web page on the City's web site. He believes there is a need to clarify the City's role and others' roles. He noted that staff has toured other segments of Sound Transit's light rail system. He suggested that photos and videos of existing light rail facilities and equipment would be helpful to the Council and the public.

Councilmember Stokes concurred and commented that Mr. Wallace's suggestions and requests highlight the need to consolidate all information and to make it easier to access for the public and the Council. He commented on his recent trip to Denver where he was able to observe light rail, heavy rail, and other facilities. Mr. Stokes noted the need to know what issues and Land Use Code amendments can be addressed now, and what the City can do to tie everything together.

Deputy Mayor Robertson said she took hundreds of photos of light rail systems that she visited. However, she agrees with the need for graphic representations of how light rail will look in Bellevue. She concurred with the suggestion for a comprehensive online library of all East Link information, including information on the proposed Land Use Code Amendment Overlay District. She suggested that it would be helpful to have links to the Land Use Code references within the electronic version of the overlay document and/or an appendix with the referenced Land Use Code sections.

Ms. Robertson said it is important to think about how to get through this process. Usually the Council stays at a higher level of review, and the Planning Commission does a more in-depth analysis of code amendments and their implications. In this case, the Council is in the role of conducting the in-depth study.

Ms. Robertson noted that the Council has a number of priorities to address before the end of the year, including the proposed East Link operations and maintenance facility, the East Link MOU cost savings analysis and decisions, and the City's Biennial Budget.

Ms. Robertson said she appreciates the general structure of the Overlay Land Use Code amendment. She would like to have a more detailed format including criteria and clear standards and conditions for approval. She noted that the decision criteria does not list the Light Rail Best Practices work with regard to consistency in the Land Use Code. The overlay does not list Noise Code compliance, avoidance alternatives, or construction impacts, to name a few items. She would like to see a more clear format.

Ms. Robertson said the goal is to create certainty for Sound Transit, which will keep project costs down and make things run more smoothly. However, she believes it is important that citizens have certainty as well.

Ms. Robertson recalled the history of the project including the Light Rail Best Practices Report and the Planning Commission's review and development of Land Use Code and Comprehensive Plan changes. She believes that part of that work was the Essential Public Facilities section. She said it would be good to be reminded of what was adopted then, including a great deal of Comprehensive Plan work. She would like to have this information in an appendix for use by the public and the Council.

Deputy Mayor Robertson said the City must comply with the state Growth Management Act as it adopts Land Use Code amendments, and it must also send draft regulations to the Department of Commerce with a 60-day lookback period. She noted that the current schedule is very aggressive and questioned whether the City has done this. Ms. Helland said yes, the City sent them the materials for the overlay packet the previous week.

Ms. Robertson said the City needs to be sure that whatever it adopts is consistent with the Comprehensive Plan. She questioned whether staff has conducted the analysis of Comprehensive Plan consistency.

Ms. Helland said staff has conducted the analysis on an ongoing basis. The analysis will be captured in a formal staff report that will come in the Council's next packet of materials in support of the public hearing on October 22. Ms. Helland said the Overlay Land Use Code amendment is intended to be consistent with the Comprehensive Plan and the Land Use Code.

Ms. Robertson said she would like more specificity on definitions. She observed that the amendment is not meant to include the operations and maintenance facility. However, the language says "including but not limited to." If the maintenance facility is not to be included, she believes the language should clearly exclude a maintenance facility.

Ms. Robertson said she is uncomfortable with the phrase referring to the general location of the system. She said the general location of the Downtown segment will be the same whether there is a tunnel or surface alignment, but they are very different things. She is also unsure of the meaning of immediate vicinity.

Ms. Helland said that language was lifted out of the existing criteria for a conditional use permit. In addition, staff embedded the decision criteria from the design review approval process to fix the gap and to apply the criteria for the entire length of the alignment. She referred to page 3-57 for the decision criteria the Council was hoping to see which requires consistency with the Comprehensive Plan, the Light Rail Overlay District, and best practices.

Ms. Robertson said she is still concerned about the term immediate vicinity because this project is not like other projects. She would like to explore that more. If individuals can hear the train, they are essentially in the immediate vicinity. Another concern is allowing for permit application

when the light rail transit facility does not have ownership or control of all the underlying property. She asked about this in the Mayor's Meeting, and the answer is they have condemnation authority, which the City has been doing with utilities, and she believes this is fair. However, a light rail train is not the same as a utility because a sliver property take for a light rail train potentially renders a home or business non-conforming. That does not happen with an underground utility because it is an easement. Also, light rail is a longer-term facility.

Ms. Robertson questioned what happens if Sound Transit applies for a permit for properties it does not own, and some of those homeowners want to apply for a permit to remodel their houses. Will they be allowed to if there is a permit pending for Sound Transit?

Ms. Robertson noted that, under CUP Process I or Process III, the Council's role would be quasi-judicial. She said the Council has talked about moving away from its quasi-judicial role to the extent legally possible. If the CUP process is followed and Council is not involved, she questioned whether the cases would go to Superior Court.

Ms. Helland said that Process I matters currently reach the Council only on appeal. Process III matters follow the same process used for rezones, and they become quasi-judicial at the point an application is received. In this case, the Hearing Examiner conducts a pre-decision hearing and the matter automatically goes to the Council.

Ms. Robertson reiterated her question about how the process would be affected if the Council eliminates its quasi-judicial role. Ms. Helland said the Council is required to address Process III matters which are rezones. Process I focuses on changes that the Council would want to make that could potentially remove Council as the appeal body after the Hearing Examiner makes a decision.

Ms. Robertson turned to development standards. She would like more specificity. With regard to setbacks, if they are narrowed it reduces the buffer and green space around this major facility. She would like to see a lot of green space along this facility. She wants to be sure that height limits are consistent and mitigated. Ms. Helland said the height limit issue applies to the South Bellevue Park and Ride and potentially the Hospital Station. Staff identified code conflicts based on the project description in the MOU that reflects height limits exceeding the underlying zoning at the South Bellevue Park and Ride.

Ms. Robertson observed that the design guidelines contain a lot of "shoulds," and she would like to see more "shalls." She believes it is important to have more specific design guidelines along the entire route. She sees this as one of the more compelling reasons to do the overlay.

Ms. Robertson said a citizen advisory committee was recommended in the Light Rail Best Practices Report. She believes this is a good time to initiate that committee. She would like citizens to be engaged in designing the light rail stations. She described an example of citizen involvement in designing a station in the Portland area.

Mr. Brennan confirmed that station area planning and design is an opportunity for citizen engagement and influence over the end product.

Ms. Robertson referenced a statement about critical areas “requiring no technically feasible alternative showing.” She is concerned that this runs contrary to what has been done citywide.

Ms. Helland explained that the language would be removed if the Council has agreed to an alignment. It would be awkward to have the Council agree on the alignment and to then have staff in charge of the technical feasibility alternative make a different decision. The language provides deference in the code to the Council’s decision. Ms. Robertson said that, in the application process of gathering information for the development agreement, she does not want to lose the ability to consider that.

Ms. Robertson wants to ensure that environmental regulations are not loosened up compared to how other projects are treated. She wants to discourage sliver takings that would turn properties into non-conforming uses.

Ms. Robertson said there is recurring language in the overlay document about sharing street right-of-way. She observed that most of the light rail alignment does not share street right-of-way. She does not want to cede control of the ROW to a greater extent than what the City has already allowed in the MOU.

Ms. Robertson requested a digital copy of the binder so she can make her comments and suggestions into the document itself for her own purposes and for sharing with staff.

Councilmember Chelminiak questioned whether the overlay would apply to other areas as well. Ms. Helland said yes, the overlay would potentially be applicable to Sound Transit Phase 3. Mr. Chelminiak observed that perhaps the Land Use Code amendment cannot be too specific if it is to be applied to other situations.

Mr. Chelminiak said he agrees wholeheartedly with Deputy Mayor Robertson’s suggestion about citizen involvement in station design and station area planning.

Mr. Chelminiak acknowledged Councilmember Davidson’s concern that while this is not technically a rezone, the overlay affects the use of certain property. With regard to the earlier statement in the presentation that the City’s standards will not be relaxed, Mr. Chelminiak observed that, under the preferred alignment, there are standards that need to be relaxed related to the South Bellevue Park and Ride and Light Rail Station.

Ms. Helland confirmed this understanding. Staff is asking the Council whether it wants to decide that now or later, because as an essential public facility, the City cannot prohibit it through its codes and regulations. The same will apply to the Hospital Station, and design standards would be applicable to the NE 6th Street Downtown Station option.

Mr. Chelminiak concurred with Ms. Robertson's concern about the Sound Transit maintenance facility. His understanding is that it will serve at least half of the trains that go to North Link. For a train to be at the end of the North Link Station at 5:00 a.m., it will need to leave the maintenance base on the Eastside at approximately 4:00 a.m. Mr. Chelminiak said this translates to a number of trains running through Bellevue between 4:00 a.m. and 5:00 a.m. He said the City needs to take a look at that and to consider the noise impacts. The maintenance base operates from 1:00 a.m. to 5:00 a.m. Mr. Chelminiak said it is time to raise this issue.

Mr. Chelminiak observed that the Council and the City are now at their strongest. He cautioned against going back to the pattern of a couple of years ago of sometimes appearing unreasonable in terms of making demands. He believes the City should be able to effectuate what it wants out of this. He said it is important to provide certainty for all parties including citizens.

Councilmember Davidson observed that the maintenance facility is included in the definition and questioned why the discussion is implying that it is not included. Ms. Helland said that staff wanted to capture the need for a small cleaning facility. However, that language is not meant to approve a large maintenance base.

Dr. Davidson referred to the Critical Areas section of the Overlay Land Use Code Amendment [Page 3-60 of meeting packet] and read: "A regional transit authority is not required to demonstrate that no technically feasible alignment or location alternative with less impact exists for any RLRT Facility..." However, his understanding is that the only way to change an essential public facility is if it has lesser environmental impact. He continued the sentence: "...provided that the location of the RLRT System and its Facilities has been generally approved by the Bellevue City Council..." He questioned the meaning of "generally approved." Dr. Davidson said he continues to believe that a proper job of assessing environmental impacts has not been completed. He questioned the implications of this code language with regard to environmental regulations.

Dr. Davidson recalled that he, Deputy Mayor Robertson, and Councilmember Balducci were on the Light Rail Best Practices Committee and visited a number of light rail systems together.

Mayor Lee said there have been good comments by the Council. He understands the approach of the Overlay District amendment to identify gaps in existing Land Use Code regulations that need to be addressed. However, there continue to be questions. He said the Council is here to ask questions and to make decisions in the best interest of the public.

Mayor Lee said the community concerns he sees are: What is the City doing with this overlay? Is it eliminating the City's authority on items that exist today? Is the overlay of benefit to the City separate from the light rail project? He believes these are questions the public asks. He questioned how the concept of essential public facility was developed. He questioned whether the overlay is doing something of benefit to the City that is separate from the light rail agenda. If the concept of essential public facility is reasonable and beneficial to the community, then something should be done to protect South Bellevue and to fill the gaps to provide certainty for

Sound Transit and for citizens. Mayor Lee said it is important to think about the long-term implications of policies adopted now.

Mayor Lee questioned why there is design review in the Bel-Red corridor but not in South Bellevue. Referring to Mr. Chelminiak's earlier observation that standards will need to be relaxed at the South Bellevue Station, Mr. Lee said it is important that the Council and the public understand these types of implications now instead of later.

Councilmember Stokes said the City has an obligation to keep the MOU process and light rail project going forward. He agreed that it is important to provide certainty for the public and for Sound Transit. He cautioned against losing sight of the goal and against micromanaging and lawyering every detail too much. He commended staff for their work.

Mayor Lee concurred with the need to maintain a balance in the discussions going forward and to keep the bigger picture in mind.

Councilmember Davidson observed that, since this is not going to the Planning Commission, the Council should act like the Planning Commission. Dr. Davidson said the Council also has the budget to review. He does not believe the overlay can be adopted within the short timeframe. He noted that the MOU states that if there is not sufficient time to complete the process by no later than December 31, 2012, a change cannot be made unless otherwise agreed to by both parties. He suggested that a realistic timeline be put in place and that the process target early next year for resolution of the discussion.

Mayor Lee said that was a good suggestion, and the Council should talk about how to do that.

Councilmember Wallace suggested that City staff talk to Sound Transit staff about the schedule and about the depth of the questions from the Council. He agrees with Dr. Davidson about not rushing the process.

Noting Sound Transit 3 and the potential maintenance facility, Mr. Wallace said he is trying to envision how something this sensitive can be made to apply to potentially anywhere in the city and anything that Sound Transit can convince a judge is an essential public facility. He believes the focus should be on the specific Bellevue alignment, whether that means moving from the code changes to a development agreement that only applies to this East Link alignment instead of trying to foresee all of the possible implications related to future projects.

Mr. Wallace raised concern that the City cannot prohibit an Essential Public Facility and that code changes will have to either be adopted now or later. However, the law states that an essential public facility is obligated to avoid and/or mitigate impacts.

Ms. Helland said the EPF provisions were put in place in response to the state legislature dictating, through the Growth Management Act, that every jurisdiction must have an EPF safety net. Bellevue adopted its EPF amendment in 2005. Ms. Helland said she was not implying that the City will have to do whatever Sound Transit wants. However, the agency could submit a

conditional use permit, and would have to show there is no technically feasible alternative under the Critical Areas code. It would be a time-consuming process with uncertainty for all stakeholders and would likely not produce the best result.

Responding to Mr. Wallace, Ms. Helland explained that if the City and Sound Transit are in a cooperative agreement, staff would not second guess the alignment decision. Ms. Helland said that any alignment will be required to comply with environmental regulations at the time that the project goes to the City for permit approval.

Mr. Wallace noted the struggle in trying to move the project along and trying to get sufficient information. From his perspective, the Council has been consistently forced to move forward without adequate information. And now the Council is being asked to change the Land Use Code to address uses that have not previously been envisioned. Mr. Wallace said he must have better information before moving forward.

Mayor Lee observed that the risk in considering the Overlay District code amendment is that it could be interpreted as the Council generally approving the project.

Ms. Helland referred the Council to the list of all applicable Land Use Code provisions on page 3-52 of the meeting packet.

Councilmember Stokes reiterated the need to move forward with the MOU process. He said the City has been working hard on this and he believes the deadline can be met.

Mr. Chelminiak concurred with Councilmember Stokes. He noted that Lake Bellevue residents are interested in being involved in station design.

At 10:00 p.m., Mayor Lee declared the meeting adjourned.

Myrna L. Basich, MMC
City Clerk

kaw