

CITY OF BELLEVUE
CITY COUNCIL

Summary Minutes of Extended Study Session

November 14, 2011
6:00 p.m.

Council Conference Room 1E-113
Bellevue, Washington

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

ABSENT: None.

1. Executive Session

Deputy Mayor Lee called the meeting to order at 6:02 p.m., and declared recess to Executive Session for approximately 45 minutes to discuss two items of potential litigation.

At approximately 7:00 p.m., City Clerk Myrna Basich announced the extension of the Executive Session until 7:30 p.m.

The meeting resumed at 8:03 p.m., with Mayor Davidson presiding.

2. Communications: Written and Oral

- (a) Barbara Morgan expressed concern about possible negative impacts associated with construction of the East Link light rail project. She noted an article in *The Seattle Times* about an economic impact study, which was characterized as biased and uninformed by Sound Transit staff quoted in the article. She said she would like to have accurate information about construction and economic impacts, and noted that this is the only study that she has found. She is interested in the impacts on local businesses during and after construction.
- (b) Bill Hirt spoke in opposition to Sound Transit and the East Link light rail project, and submitted his comments in writing.
- (c) Terry Lukens, Vice President of Move Bellevue Forward and former Mayor, spoke in favor of the East Link Memorandum of Understanding (MOU), which provides a tunnel through the downtown instead of an at-grade alignment. He noted that a majority of Bellevue voters supported light rail, and he encouraged the Council to leave a positive legacy for the community.

- (d) Iris Tocher, a former Councilmember, said it is time to approve the East Link MOU and move forward. She recalled that, 30 years ago, when the Council and staff designed the central business district (CBD), the plan envisioned light rail to reduce traffic congestion. A majority of Bellevue voters supported the Sound Transit Phase 2 package and, more recently, defeated Initiative 1125. She noted that two incumbent Councilmembers were reelected by a significant majority as well.
- (e) Loyd Jacobs urged the Council to sign the MOU. He observed that the failure of I-1125 is a vote in support of East Link light rail. Mr. Jacobs commended the Council and staff for developing the MOU agreement with Sound Transit.

3. Study Session

- (a) Council Business and New Initiatives

[No reports or initiatives were provided.]

- (b) Proposal to Amend the Issaquah School District Impact Fee Schedule

City Manager Steve Sarkozy opened discussion regarding the amended Issaquah School District impact fee schedule.

Catherine Drews, Legal Planner, explained that the City of Bellevue collects and passes through impact fees for the Issaquah School District, which serves a number of Bellevue residents in five schools in southeast Bellevue. She provided an overview of the proposed amendment to the Issaquah School District's impact fee schedule, which reflects a decrease in the single family 2012 impact fee from \$3,808 to \$3,568. The amendment maintains the multifamily impact fee of \$0.

Responding to Mayor Davidson, Steve Crawford, Director of Capital Projects for the Issaquah School District, said that the majority of capital funding comes from local levies and bonds. Impact fees have decreased with the slowdown in construction but remain an important funding component.

Responding to Councilmember Degginger, Mr. Crawford said that impact fees contribute to all construction projects that increase student capacity. Mr. Degginger commended the recent project at Issaquah High School.

→ Councilmember Degginger moved to direct staff to prepare a final ordinance updating the Issaquah School District impact fee schedule to collect the modified fees beginning January 2012. Councilmember Robertson seconded the motion.

Councilmember Wallace said he appreciates the annual updates to the Council on impact fees and the clear methodology used by the Issaquah School District.

→ The motion carried by a vote of 7-0.

(c) East Link: Consideration of MOU and Transit Way Agreement

City Manager Sarkozy introduced discussion regarding the East Link light rail project Memorandum of Understanding (MOU) and Transit Way Agreement. He briefly reviewed the history of the project and the City's efforts in support of alignment modifications and the Downtown Tunnel. He noted that Sound Transit has indicated a preference for an at-grade alignment through the Downtown.

City Manager Sarkozy said staff is seeking Council approval of the MOU and Transit Way Agreement. The MOU commits \$100 million of in-kind services and the purchase of properties needed by Sound Transit, plus a contingent contribution of up to \$60 million if needed to complete the Downtown Tunnel. The City continues to work with Sound Transit to identify opportunities for project cost savings.

Mr. Sarkozy said that the updated draft agreements would be posted on the City's web site that night or by the next morning. He noted they are largely unchanged from the previous Friday.

Kate Berens, Deputy City Attorney, reviewed last-minute revisions to the agreements, 4(f) letter, and resolution, all of which were provided to the Council in a desk packet binder. She briefly summarized the changes designed to ensure continued analysis to identify opportunities for realizing project cost savings. The MOU provides for an upfront contribution valued at \$100 million toward the East Link project, which is detailed in Exhibit D.

The City contingency contribution of up to \$60 million is addressed in Section 4.2 of the MOU. This section is structured to calculate the City contingency and to allow an opportunity for the City to realize a reduction of the \$60 million at a couple of key project milestones. The first is at the 60-percent updated cost estimate, which will be roughly in the early to mid-2014 timeframe, at the conclusion of the parties collaborative design process described in the MOU.

The intent of the collaborative design process is to recognize cost savings, and stronger language has been added to the documents to explicitly state that one of the intents of the process is to identify savings of at least \$60 million. If savings are realized, the City's contribution can be permanently reduced at that time. The agreement states that the City's dollars will be spent on the tunnel, portal to portal. The MOU is structured to specify that other financial resources will be exhausted before the City contingency would be used.

Ms. Berens said the MOU is structured to indicate that the total amount of the City contingency will be reconciled at project closeout. If savings are realized through construction management of the project, there is the opportunity that the savings will be applied to project costs before City contingency dollars are spent.

Other key provisions of the MOU relate to the collaborative design process and the City's permitting authority. This involves the two agencies jointly exploring ways to save money, and discussing how compliance with the City Code will occur through the design process. The idea is

that early identification of the City's expectations, particularly with respect to design and mitigation issues, will help to manage costs. The permitting process is outlined in the MOU.

Ms. Berens explained that the first step of the process is a Code amendment that will allow for the light rail use as either a conditional use permit or through a consolidated permitting process with a development agreement. This will clarify and streamline the process for light rail to obtain the land use permits that are necessary. A development agreement would specify the permitting process, the decision maker, and appeal process. It would also articulate development standards that the City expects the project to meet. It is anticipated that the development standards would be developed in part through the collaborative design process, and informed by the City's station area planning efforts and existing light rail best practices information developed by the City.

The final step in the permitting process will be the land use permit. Approvals that would be issued consistent with that consolidated permitting process would be articulated at approximately the 60-percent design phase. The MOU states that the City is not waiving any of its SEPA (State Environmental Policy Act) or permitting authority through the MOU, or predetermining compliance of the project with any Code or development standards.

Ms. Berens explained that the Transit Way Agreement is a companion document to the MOU which grants Sound Transit the ability to use the City's rights-of-way where its project's alignment intersects with these rights-of-way, and that those rights are tied to the preferred alignment. It is not an unfettered right to use any City right-of-way, but the rights-of-way consistent with the project that the parties envision.

Ms. Berens said the 4(f) letter is included in the desk packet and has been previously discussed. It represents an update to the City's previous comments on 4(f) issues. There have been discussions with Sound Transit since the City's last comment on the topic in August, primarily focused on concerns about mitigation for parks impacts caused by the project. Agreement has been reached at the staff level about the mitigation concept for the Mercer Slough, which the City believes is an improved concept above and beyond what was identified in Sound Transit's FEIS (Final Environmental Impact Statement). The letter to the Federal Transit Administration will make this clear and enter the concept into the record.

Ms. Berens noted that proposed Resolution No. 8322 includes some of the history of the project and how the parties have reached an agreement. It also provides direction to the City Manager to authorize the MOU and Transit Way Agreement, and to take some additional steps to implement the concepts in those agreements. She said the resolution also includes language to address the Council's concerns about the design of 112th Avenue SE and the potential for partial property takings resulting from the Sound Transit project. If there are any partial acquisitions, the resolution directs the City staff to explore whether there are public uses for the remainder of those parcels, and to allow the City the option to acquire these remainder parcels.

Ms. Berens advised that a separate motion would be appropriate for the 4(f) letter, which is not specifically addressed in the resolution. Staff suggests that the Council make the record clear as to the documents that are considered the baseline documents, and to take separate motions on revisions offered to those documents this evening, and finally to act on the resolution.

Responding to Councilmember Robertson, Ms. Berens confirmed that she is referring to the November 14 review draft that the Council received late this afternoon, before the meeting.

→ Councilmember Balducci moved to approve the umbrella MOU marked as November 14 Review Draft, and Councilmember Wallace seconded the motion.

Councilmember Wallace said there has been a great deal of discussion about the calculation of costs and the concept of achieving cost savings. He pointed out items that are difficult to accept including the absence of the professional services and unallocated contingencies in the estimate going forward. This cuts out a portion of the City's ability to achieve cost savings in the future. The issue with the professional services component relates to final design costs, which total \$180 million. The agreement currently leaves this blank, noting that Sound Transit will re-price this component when the contract is issued. Since this is unknown at this time, Mr. Wallace suggested that if the final cost is a significant reduction from the current estimate, he believes the City is entitled to that savings. An agreement has not been reached to this effect, and the current agreement splits any cost savings equally between the two agencies. He does not believe this is fair, but he acknowledged that compromise includes accepting provisions that either party does not like.

With regard to the unallocated contingency, which is approximately 10 percent of the budget, Mr. Wallace's said that if cost savings are identified, the City should receive the 10 percent credit. Sound Transit has not been willing to agree to this, and prefers to keep the unallocated contingency the same with a 50-50 split. He believes that this disadvantage will have to be accepted by the City at this point.

Responding to Councilmember Degginger, Mayor Davidson confirmed that the motion approves the umbrella MOU.

Councilmember Balducci noted her understanding that the MOU can be approved, and the Council can then propose amendments.

Mayor Davidson suggested deferring discussion of amendments until the Council addresses the resolution.

→ The motion carried by a vote of 7-0.

Councilmember Chelminiak stated that the resolution is the document that will authorize the execution of the MOU and the Transit Way Agreement, address the 112th Avenue properties, and instruct the City Manager to work on reducing project costs through the collaborative design process.

Deputy Mayor Lee said he would like to propose some amendments, and Mayor Davidson suggested waiting for a motion on the resolution.

Ms. Berens clarified that the motion just approved establishes the document identified as the MOU for purposes of the resolution. It will not be approved until the Council votes on the resolution.

- Councilmember Robertson moved to confirm the Transit Way Agreement as presented in the desk packet. Councilmember Balducci seconded the motion.
- The motion carried by a vote of 7-0.

Deputy Mayor Lee noted the disruption of downtown businesses by the project, and suggested that an independent study indicates that this disruption is significant. He believes it is important to study and document the economic impacts, both positive and negative, through a cost-benefit analysis. He would like staff to include a requirement for this study in the MOU.

- As an amendment to the MOU, Deputy Mayor Lee moved that if the project costs exceeds the benefits, the City can use this as an opportunity to require that Sound Transit look at other alternatives.

City Manager Sarkozy suggested that the amendment be instead applied to the resolution.

Councilmember Robertson said she agrees with the need to look at the economic impact of construction activity, and to develop a plan for avoiding these impacts. She noted that these impacts will be addressed through the collaborate design and permitting processes as the project evolves.

Councilmember Chelminiak concurred, noting that any route through the downtown will have construction impacts. He believes these are items the City will hold as extremely important during the permitting process.

Councilmember Wallace said he respects and agrees with Deputy Mayor Lee, but he believes the Council should wait as suggested by the City Manager.

Deputy Mayor Lee said he wants to be sure that the MOU does not tie Bellevue's hands or foreclose other options.

Ms. Berens reiterated that there is an "off ramp" opportunity at the time of the 60-percent cost estimate for the City or Sound Transit.

Councilmember Balducci clarified that the Sound Transit Board has been in the process of narrowing the alignment options. The planning process started with 18 different alignments, and some alignments have been ruled out at this point including some through the downtown. The two preferred alignments for the downtown are an at-grade option (C9A) and the tunnel option (C9T). Alignment options to the west have been eliminated from consideration, but some of the east downtown alignments have not. The likelihood is that, if the tunnel fails, there will be a surface alignment through the downtown.

Deputy Mayor Lee withdrew his motion, noting that he would like the City Manager to respond to his concerns about an economic impact study. Mayor Davidson concurred.

→ Councilmember Balducci moved to approve the desk packet version of Resolution No. 8322, and Councilmember Robertson seconded the motion.

Councilmember Degginger observed that this has been a long process for what he views as an opportunity rather than a problem, despite the challenges. He said this community is comprised of people who have always looked to the future, and are innovative problem solvers. Transportation has been a top priority for the community for a long time, and the notion that Bellevue would not be a part of a regional system would be a long-term tragedy for the community's future. The City has heard from a large segment of the population about the importance of being connected to the region. The challenge has been how to bring light rail through Bellevue in a way that works best for businesses and neighborhoods, and contributes to economic development.

Mr. Degginger recalled the previous work on the Bel-Red Plan, and the vote in 2008 to bring light rail to the Eastside, which was supported by 58 percent of voters. The Council has worked over the past two years to develop key principles to guide the planning and negotiations processes. The goals of these efforts are transparency and the ability to review the costs and budgets, and to be involved in a collaborative process. Mr. Degginger said Councilmember Wallace has worked hard in this regard, and will continue to do so. Bellevue is working with Sound Transit in a way that no other community has, which includes working for the Downtown Tunnel due to its significance for the vitality of the local economy and transportation mobility.

Councilmember Degginger believes this is the best long-term solution for Bellevue. He said the Council wanted to make sure that the City's investment is leveraged in a way to meet multiple needs related to the tunnel, real estate, parks and other community aspects. This involved identifying ways to reduce the City's cash contribution and to ensure that contributions are leveraged to benefit the light rail system and the City's overall needs. The Council also wanted to make sure that Sound Transit made a contribution to the tunnel, and that the City's contingency contribution will be the last money spent on the project. The City will continue to work to resolve issues related to the 112th Avenue alignment and property takings. He believes that negotiations with Sound Transit have achieved the City's key goals. He thanked staff for their hard work through a difficult process, and expressed support for the resolution.

Mayor Davidson said he appreciates everyone's hard work on what was an eight-sided negotiation involving seven Councilmembers and Sound Transit. There have been five iterations of the agreement since the public hearing the previous week, which has not been an easy process. He said he appreciates the public's involvement throughout this process, and he thanked staff for their hard work. Mayor Degginger said there are issues ahead to address through the permitting process, including environmental issues.

Councilmember Chelminiak said this is a legacy decision, and it is rare that a policy body has the opportunity to make a decision of this magnitude. He thanked the Mayor for leading the Council through the process, and he thanked the negotiating team for their excellent work. He expressed

appreciation for Councilmember Wallace's analysis of the costs and budget, and for Councilmember Robertson's hard work and strong negotiations with Sound Transit.

Councilmember Chelminiak said he will miss Councilmember Degginger, and he thanked him for advocating for the interests of the community and increasing the understanding of issues. He thanked Deputy Mayor Lee for asking tough questions and focusing on economic development. He thanked Councilmember Balducci for her work with both the Council and the Sound Transit Board.

Mr. Chelminiak observed that the project integrates economic development goals, transportation demands, and land use priorities, particularly the latter as represented in the Bel-Red Plan. He noted that the cities of Redmond, Kirkland and Mercer Island, as well as The Boeing Company, Microsoft, Overlake Hospital and Medical Center, Puget Sound Energy and other employers have supported the City's efforts for light rail. He noted the important past support for a Downtown Tunnel by former Mayors Mosher, Creighton, Marshall; Mayor Davidson and Deputy Mayor Lee; and Councilmembers Balducci, Bonincontri, Chelminiak, Degginger, Noble, Robertson, and Wallace. Other supporters of the project include former Mayor Lukens, and former Councilmembers Tocher, Blacker, and others. He reiterated that the Council and staff are motivated to bring project costs down. Councilmember Chelminiak supports the resolution.

Councilmember Robertson said she has long been an advocate for grade separation and for the Downtown Tunnel, going back to when she co-chaired the Light Rail Best Practices Committee. She noted that accidents with the Central Link line in Seattle have reinforced for her the importance of grade separation. Grade separation also increases light rail travel times and avoids contributing to vehicle traffic delays. She believes that changes to the B2M alignment are important. These changes eliminate three intersections involving train and crossing bells from the alignment design, and optimize train travel times.

Ms. Robertson said the Council will continue to advocate for no partial residential property takings. While the MOU agreement is not perfect, it supports a Downtown Tunnel, cost sharing, and a collaborative process with Sound Transit. The City will work to reduce overall project costs by \$60 million in order to eliminate the potential \$60 million City contingency contribution.

Ms. Robertson acknowledged that the City's initial contribution severely impacts the Capital Improvement Program (CIP) Plan. Her strong preference for addressing the budget next year will be to send a funding package to the voters next November. The impact would be approximately \$100 per household annually. Councilmember Robertson supports the MOU, which provides grade separation and a better alignment for the South Bellevue neighborhoods, and protects road capacity and downtown businesses.

Councilmember Wallace stated that property owners along 112th Avenue will have full takings, and there will be no sliver takings. He recalled that, when this process began, the Council was interested in achieving the best solution for the road network, neighborhoods, and businesses. He said the City has fought for a grade-separated alignment, and will share in the costs of a Downtown Tunnel. He has looked at Sound Transit's numbers, and he noted there are limitations

on its sales tax authority. Bellevue is sharing in the cost of the tunnel because Sound Transit does not have sufficient revenue.

Mr. Wallace believes the City has pushed its interests as hard as it possibly can. While the agreement is not ideal, he believes it is the best cooperative agreement that can be achieved with Sound Transit. He noted that residents of Enatai and Surrey Downs are unduly impacted by the light rail project, and he apologized that there is not a better solution available. He insisted on exceptional mitigation, particularly through Segment B, to address noise and visual impacts to the greatest extent possible.

With regard to the City's contribution, Mr. Wallace said he set out in this process to reduce costs as much as possible. The majority of the \$100 million contribution involves allowing Sound Transit to use existing City properties and acquiring three properties, two of which the City had already planned to acquire.

Mr. Wallace said the light rail project will be a priority for a number of years, and the City will need to devise a plan that also maintains Bellevue's low property tax rate. He said that the \$60 million City contingency is not realistically within the City's realm of affordability. He tried to eliminate this from the MOU, which was not successful. However, he was able to get a commitment from both Sound Transit and the City to do their best to eliminate \$60 million in costs. Councilmember Wallace spoke in favor of supporting the resolution and continuing to work with Sound Transit.

Deputy Mayor Lee recalled that the Council has been considering this issue for a number of years, and it has been divisive for the community. He noted the importance of neighborhoods, economic development, and downtown vitality. He was saddened by the divisiveness related to light rail, and observed that there has been misinformation and politicizing of the issue. He is concerned that citizens began questioning Councilmembers' integrity and character throughout the discussions.

Mr. Lee concurred with Mr. Chelminiak's comment about the importance of light rail in support of economic development. Mr. Lee is pleased with the collaborative process established in the MOU. He thanked his fellow Councilmembers for their hard work during the negotiations. He stated that all Councilmembers support light rail and are interested in protecting neighborhoods and lowering project costs. Mr. Lee expressed support for the Downtown Tunnel. He believes there needs to be a cost-benefit analysis to ensure that it makes sense. Mr. Lee noted the challenges in the City's relationship with Sound Transit. Despite his concerns about costs and the mitigation of impacts, Deputy Mayor Lee said he will reluctantly support the resolution.

Councilmember Balducci said she hopes the community has been reassured by this process that Bellevue has a hardworking Council. She thanked Councilmembers Degginger, Robertson and Wallace for their participation in negotiations with Sound Transit and for achieving an agreement that represents the City's interests. She thanked Councilmember Chelminiak for his vision and attention to details throughout the planning process. Ms. Balducci thanked staff, including Bernard van de Kamp and Kate Berens, for their hard work and effective collaboration

with the Council and Sound Transit. She commended the City Manager for doing more than his part, particularly nearing the end of the negotiations.

Ms. Balducci commended the Sound Transit Board and staff for working with the City. She recalled that when the Sound Transit Phase 2 package was approved by voters in 2008, there was no identification of a downtown tunnel as part of the project. She thanked Sound Transit for its willingness to work with the City. She recalled that the first ballot measure included money for a tunnel, but it was not approved by the voters. The current package, which did not reference a tunnel, was ultimately approved. Ms. Balducci believes that the light rail project will make the City proud, and she supports the resolution.

- The motion to approve Resolution No. 8322 carried by a vote of 7-0.
- Councilmember Chelminiak moved to direct the City Manager to send the updated letter to the Federal Transit Administration (FTA) transmitting the City's comment on the 4(f) impacts of the East Link project, substantially in the form of the letter included in the Council's desk packet; and that the authorization for signature be made after the MOU has been executed by both parties. Councilmember Wallace seconded the motion.

Mayor Davidson said this has been difficult for him due to his concerns about environmental impacts. He observed that it is ironic that the City is currently engaged in master planning for shoreline regulations, which involves taking away private property rights along shorelines, yet government agencies are contemplating expanding the South Bellevue Park and Ride on the Mercer Slough Park. He acknowledged, however, that those are separate issues. He will support the motion.

Councilmember Balducci questioned the timing of the federal Record of Decision (ROD), the signing of the MOU, and the consideration of 4(f) issues. Ms. Berens said there has been discussion on the Sound Transit Board that the 4(f) letter be addressed at the time the Council takes up the MOU. She had not been told that Sound Transit could not sign the MOU before the ROD is issued. Councilmember Balducci asked staff to check on this timing issue.

Councilmember Chelminiak observed that the intent was to make sure that the Sound Transit CEO would be able to sign the MOU, and that the City Manager would be authorized to send the 4(f) letter.

City Manager Sarkozy said staff will verify the procedure before executing any of the agreements.

Councilmember Wallace said the original 4(f) letter addressed a number of topics, including Surrey Downs Park, the Winters House, and Mercer Slough Park. With those issues resolved, he questioned the purpose of sending an updated letter.

Ms. Berens recalled concerns expressed in August about the lack of specificity with respect to the three parks, and about the impacts of light rail on the recreational uses of the parks and the historical nature of the Winters House. The City discussed the lack of specificity with Sound

Transit, as well as concerns about the mitigation plan in the FEIS, and was able to come to an agreement about how the issues will be addressed. The most detailed plan relates to the Mercer Slough, and there is also agreement about the mitigation targets for Surrey Downs Park and how the Winters House will be handled to preserve its historical integrity.

Responding to Mr. Wallace, Ms. Berens confirmed that the letter addresses issues for purposes related to the FTA. However, there will still be environmental work associated with the City's permitting process.

→ The motion to send the updated 4(f) comment letter carried by a vote of 7-0.

At 9:59 p.m., Mayor Davidson declared the meeting adjourned.

Myrna L. Basich, MMC
City Clerk

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