

CITY OF BELLEVUE
CITY COUNCIL

Summary Minutes of Regular Session

February 6, 2012
8:00 p.m.

Council Chamber
Bellevue, Washington

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

ABSENT: None.

1. Call to Order

The meeting was called to order at 8:14 p.m., with Mayor Lee presiding. He apologized for the late start, noting that the Council had been in an Executive Session.

2. Roll Call, Flag Salute

Upon roll call, all Councilmembers except Mr. Wallace were present. Councilmember Chelminiak led the flag salute.

[Councilmember Wallace arrived following the flag salute.]

(a) Special Recognition

Mayor Lee said he would like to take the opportunity to recognize Andrew K.P. Yang, who has served as the Director of the Taipei Economic and Cultural Office in Seattle since 2009. Mayor Lee read a commendation expressing appreciation for his service, and noting the Sister City relationship between Bellevue and Hualien, Taiwan. Mr. Yang is moving to accept a new assignment in Taipei, Taiwan.

Mr. Yang thanked the Bellevue City Council for its longstanding friendship. He reported that a large cell phone manufacturer from Taiwan recently established its headquarters in Bellevue. He said he is honored to accept this recognition, which he said represents all citizens of Bellevue and Taiwan.

Mayor Lee said that Director General Daniel T. C. Liao, who served in the Taipei Economic and Cultural Office in Seattle since 2008, has moved to accept his new assignment in Houston.

(b) President's Volunteer Service Awards

Shelly Shellabarger, Volunteer Program Coordinator, reported on the City's volunteer program. In 2011, more than 5,800 citizens volunteered in 48 City programs across 10 departments. They served more than 125,000 hours, with an estimated value of nearly \$3 million.

Ms. Shellabarger said the City is recognizing 79 individuals with the President's Volunteer Service Award. She noted that the recipients of Silver and Bronze Awards will be honored at a private reception.

Ms. Shellabarger introduced Nancy Kartes, Manager of the Bellevue Botanical Garden, and the five Gold Award recipients who volunteer at the Garden: Nancy Daar, Ruth Edwards, Dallas Graham, Sharon Graham, and Jan Lyon. Nearly 800 volunteers provide 20,000 hours of service annually at the Botanical Garden.

Ms. Shellabarger announced that Sharon Graham also earned the *President's Call to Service Award*, which is the highest level of recognition. To qualify, a volunteer must have served more than 4,000 hours over his or her lifetime. Ms. Graham has served 5,342 hours over the past five years and eight months since she joined the Garden. She served as Chair of the Garden d'Lights event in 2008.

3. Communications: Written and Oral

- (a) Representatives of the Bellevue Youth Theatre (Abby Carter, President of the Theatre's Teen Advisory Board; Lauren Walters, Vice President of the Teen Advisory Board; and Greg Davidson) reported on the Theatre's recent fundraiser. Ms. Carter thanked Deputy Mayor Robertson and Councilmember Wallace for attending the show. The youth presented posters, signed by the cast, to Mayor Lee and Councilmember Davidson to thank them for performing in *Singin' in the Rain*. Greg thanked the Council for its continued support of the Bellevue Youth Theatre Foundation.

Mayor Lee said he enjoyed working with the youth, and he praised their talent, dedication, and patience. He noted that they are not only doing something for themselves, but for the community as well. Dr. Davidson thanked them for not bringing a tape of his and Mr. Lee's performance of dancing and singing.

- (b) Sharon Linton, Tourism Marketing Manager for Visit Bellevue Washington, presented copies of the new visitors guide to the Council. She reported that 75,000 copies of the guide have been printed and distributed to hotels, Bellevue Square, The Bravern, City Hall, SeaTac airport, and the Washington State Convention Center. She encouraged citizens to utilize the web site as well. Ms. Linton thanked the 32 advertisers who participated in this inaugural issue of the guide, and she thanked City staff and others throughout the community who contributed to the content.

Mayor Lee thanked the group for their efforts to foster and support tourism and economic development.

- (c) Aaron Schwarz expressed concerns about Walmart stores coming to Bellevue including low wages and adverse impacts on local businesses. He provided written copies of his presentation.
- (d) Bruce Nurse, Vice President for Kemper Development Company, commented on the Downtown Transportation Plan Update. He encouraged transportation principles that respond to customer demand, provide a system that works for everyone, separate cars from pedestrians, and integrate the system for maximum efficiency. He observed that these are consistent with the principles adopted by the Council during the earlier Study Session. Mr. Nurse submitted his comments in writing, which he has shared with the Transportation Commission as well. He noted five additional items to consider including pedestrian tunnels, underground bus and vehicle facilities, and more sky bridges.
- (e) Alton McDonald, President of the New Century Justice Network, spoke about Sky Metalwala's mother and questioned why she has not been arrested. He said she has lied to Police, including that her car ran out of gas, and she abandoned her child in her car. He cited state law pertaining to child abandonment (RCW 9A.42.060). He questioned whether she would be arrested if she were of a different ethnicity. He insisted that she should be arrested for abandoning her child, lying to Police, and interfering with the investigation.

Mayor Lee indicated that the City Manager and Police Chief are working on this investigation.

Deputy City Manager Brad Miyake said the Police Department would contact Mr. McDonald.

4. Reports of Community Council, Boards and Commissions

- (a) Bellevue Network on Aging

Diana Thompson spoke on behalf of the Bellevue Network on Aging, noting that she is the Chair of the Network's Advocacy Subcommittee. She reported on recent census data indicating that 19 percent of Bellevue residents are at least age 60, and 21 percent of Bellevue residents are age 45 to 59. She described a legislative forum held in November 2011 in partnership with the Kirkland Senior Council. The forum was attended by approximately 50 individuals including Mayor Lee and other elected officials, and the Bellevue Network on Aging presented its legislative agenda at this event. Ms. Thompson said the group will attend Senior Lobbying Day on February 23.

Ms. Thompson expressed concern about the reduction or elimination of funding for a number of organizations and programs serving senior citizens including Senior Services of King County, which provides a wide range of services to the elderly including meals, information and assistance, minor home repair, caregiver support, case management, and volunteer transportation. She said that Elder and Adult Day Services, located in Bellevue, is threatened

with the complete loss of State funding.

Ms. Thompson listed additional programs that are losing funding including dental care and the State Medicaid subsidy for medical interpreting services. She expressed concern that reductions in State funding will remove the safety net. If certain services and programs are eliminated, there is concern that many senior citizens currently being able to stay in their own homes will be forced to be moved into nursing homes. Ms. Thompson said it is ironic that Washington state has been recognized as a national leader in home care services for seniors, and a recent AARP report indicates that Washington's long-term care system is the second best in the nation.

Mr. Thompson thanked the Council for its support of the Bellevue Network on Aging and for its generosity to human services agencies.

Councilmember Balducci requested a copy of the information presented. Ms. Thompson said she will email it to the City Clerk for distribution to the Council.

5. Report of the City Manager: None.

6. Council Business and New Initiatives

Councilmember Balducci commented on a recent graffiti incident involving hateful and disturbing language. She knows that the Police Department is investigating and would like an update when appropriate. She believes that is important for the community to hear from its elected leaders that this activity is unacceptable, and that the City's resources will be directed toward finding those responsible and ensuring public safety.

Councilmember Stokes concurred with Ms. Balducci's comments.

Councilmember Wallace reported that he visited Highland Middle School, where he learned more about the Jubilee Reach program. He toured Othello Station on the light rail line in Seattle. He suggested that the Council tour the project as an example of transit-oriented development that might be appropriate in the Bel-Red corridor.

Councilmember Chelminiak attended meetings of the Economic Development District and the Eastside Human Services Forum. He and Councilmember Stokes attended a meeting of the Eastside Pathways group. Mr. Chelminiak noted that the program goes beyond education and human services to encompass career preparation and economic development.

Councilmember Davidson attended a meeting of the Advisory Group for the Emergency Medical Services levy, which will be up for renewal in 2013. Dr. Davidson reported that he was elected to serve as Vice President of the Regional Water Quality Committee.

Deputy Mayor Robertson noted that the Council held a productive retreat over the weekend. Ms. Robertson said she attended the Bellevue Youth Theatre event, a Chinese New Year celebration, and the Bellevue Downtown Association Gala which was attended by all Councilmembers. At

this event, the BDA presented its *Deal of the Year* award to the City and Sound Transit for an agreement adopted last November on the East Link light rail project. Ms. Robertson noted that Visit Bellevue Washington also received a placemaking award at the BDA Gala.

Ms. Robertson noted that she attended the State of the County address earlier in the day, which was held in Bellevue City Hall.

Ms. Robertson asked staff to forward Mr. Nurse's comments on the Downtown Transportation Plan Update, presented during Oral Communications, to the appropriate Transportation staff.

Mayor Lee wished everyone a Happy Chinese New Year. He reported that King County Executive Dow Constantine presented the State of the County address earlier in the day in the Bellevue Council Chambers.

7. Approval of the Agenda

→ Deputy Mayor Robertson moved to approve the agenda, and Councilmember Davidson seconded the motion.

→ The motion to approve the agenda carried by a vote of 7-0.

8. Consent Calendar

→ Deputy Mayor Robertson moved to approve the Consent Calendar, and Councilmember Chelminiak seconded the motion.

→ The motion to approve the Consent Calendar carried by a vote of 7-0, and the following items were approved:

- (a) Minutes of January 9, 2012 Extended Study Session
Minutes of January 17, 2012 Study Session
Minutes of January 17, 2012 Regular Session
Minutes of January 23, 2012 Extended Study Session

- (b) Resolution No. 8361 authorizing execution of a two-year contract with Guardian Security, with an option to renew for an additional two years, in an amount not to exceed \$158,335, for scheduled security system hardware maintenance, testing and annual software upgrades of the electronic security access systems at City Hall, Bellevue Service Center and the Utilities Eastgate Yard storage site.

- (c) Motion to award Bid No. 11316 to Bellevue Kawasaki, in the amount of \$52,704.00, as the lowest responsible and responsive bidder, to provide two Police Kawasaki Concours 14P Motorcycles for Police Department use.

- (d) Ordinance No. 6042 providing for the issuance and sale of limited tax general obligation (LTGO) refunding bonds of the City in the aggregate principal amount not to exceed \$112,000,000, to provide funds for the purpose of refunding certain LTGO bonds of the City, paying issuance costs of the bonds, and delegating the authority to approve the sale of the bonds and the final bond terms to a Designated Representative.
- (e) Resolution No. 8362 authorizing execution of a funding agreement with King County and approximately 45 other Puget Sound entities, in an amount not to exceed \$70,000, for the purpose of purchasing regional mapping services and products.
- (f) Ordinance No. 6043 repealing Ordinance No. 5179, which established Residential Permit Parking Zone 12 in the Dogwood Neighborhood, restricting parking to "No Parking 7 a.m. to 7 p.m. Daily, Except by Zone 12 Permit" on both sides of the 1800 blocks of 114th Avenue NE and 115th Avenue NE, 11400 and 11500 blocks of NE 18th Street, 11400 and 11500 blocks of NE 20th Street, 11400 and 11500 blocks of NE 21st Street.
- (g) Resolution No. 8363 authorizing execution of a Memorandum of Understanding for the I-405 Southbound Braided Ramp Conceptual Design, with the Washington State Department of Transportation, for the advancement of conceptual designs for the I-405 Southbound braided ramps and ramp connection to NE 10th Street, which ramp connection is the final phase of the NE 10th Street Extension Project (CIP Plan No. PW-R-149).
- (h) Motion to award Bid No. 11289, NE 8th Street - 116th Avenue NE to 120th Avenue NE, and 116th Avenue NE - NE 4th Street to NE 8th Street Lighting Upgrades as part of the Major Maintenance Program, to NPM Construction Co., in the amount of \$92,160.00, as the lowest responsible and responsive bidder (CIP Plan No. PW-M-19).
- (i) Resolution No. 8364 ratifying the Emergency Declaration of the City Manager to construct emergency public works to address a landslide and water main break at the 500 block of West Lake Sammamish Parkway SE.

9. Public Hearings: None.

10. Land Use

- (a) Consideration of motion to Intervene in the Appeal of Hearing Examiner Decision Denying Application of Shih Family Limited Partnership (Kimberlee Park III) for Approval of a Planned Unit Development and Preliminary Conservation Subdivision, in the Newport Hills Subarea. Shih, as applicant, has appealed the denial of the PUD application. Kimberlee Park Community Club and individual

residents Chiu, Traverso, and Wolborsky seek to intervene in the appeal before the Council.

Mayor Lee opened discussion regarding the consideration of a Motion to Intervene in the appeal of the Shih Family Limited Partnership with regard to a proposed planned unit development (PUD) known as Kimberlee Park III.

Deputy City Manager Brad Miyake referred the Council to page 10-1 of the meeting packet and explained that this is a quasi-judicial matter in which the Council will be asked to make a decision on whether to uphold or overturn the decision of the Hearing Examiner. Certain residents who participated in the proceedings before the Hearing Examiner are seeking to intervene in this appeal. The decision has been appealed by the applicant, Shih Family Limited Partnership (Kimberlee Park III).

Mr. Miyake said the appeal hearing is scheduled for March 19, 2012. A decision is requested from the Council tonight on whether to allow the Motion to Intervene, in order to provide guidance to the parties about who will be allowed to participate in the appeal hearing.

Deputy Mayor Robertson acknowledged that the City Attorney currently had laryngitis, and said she would keep her questions brief.

Responding to Deputy Mayor Robertson, City Attorney Lori Riordan confirmed that the City Code has no specific procedure to intervene in an administrative appeal. In further response to Ms. Robertson, Ms. Riordan said that the individuals seeking a Motion to Intervene did not file an appeal following the Hearing Examiner's decision. Ms. Riordan confirmed that the Land Use Code directs the Council to accord substantial weight to the decision of the Hearing Examiner.

Ms. Robertson said her review did not find any specific legal authority to address allowing a Motion to Intervene in an administrative appeal at this level. Ms. Riordan concurred with this understanding, which she said is reflected in the parties' briefs. The parties indicated they were unable to identify any controlling case law on this matter.

Ms. Robertson questioned whether, at this level of review for administrative appeals, failure to follow procedures set forth by the administrative agency can be a reason for voiding a decision of the administrative agency. Ms. Riordan responded in the affirmative.

Responding to Councilmember Balducci, Ms. Riordan confirmed that this is a unique situation with no apparent precedent. Ms. Balducci stated her understanding that the parties were happy with the original ruling. Ms. Riordan concurred with this understanding of the situation. In further response, Ms. Riordan said that making an error in procedure can be a basis for overturning a decision.

Ms. Balducci stated that the Council has had ongoing concerns about serving in a quasi-judicial role on land use matters. She recalled that the system was originally adopted to provide an alternative before appealing to Superior Court. However, this procedure might no longer be the

most appropriate or efficient method. Ms. Balducci suggested a review of the Council's quasi-judicial role and of the current issue regarding a Motion to Intervene.

Mr. Miyake said staff will add that to a future meeting agenda.

Responding to Councilmember Chelminiak, Ms. Riordan agreed that the City Code does not prohibit intervention in this type of situation. The Council Rules regarding the quasi-judicial process were adopted in 1989, and they may be changed by the City Council.

Deputy Mayor Robertson referenced the Land Use Code, which is specific about who can participate in this type of matter. Ms. Riordan concurred.

Ms. Robertson said she has concluded that it is not proper for the Council to allow the Motion to Intervene, which would be costly and time consuming as well. She stated that those presenting the Motion to Intervene could have filed an appeal in order to be able to participate in the appeal process under the City's Land Use Code. Ms. Robertson said the City's Planning and Community Development Director is not going to participate in the appeal. The appeal involves hearing from the applicant, and weighing that against the Hearing Examiner's decision.

Ms. Robertson said that no precedent has been cited to allow intervention in administrative appeals in Washington State, nor is that established within the City Code. The Land Use Petition Act specifically wants administrative agencies to follow procedures. Ms. Robertson said the motion to intervene is inconsistent with the City's existing written procedures.

→ Deputy Mayor Robertson moved to deny the Motion to Intervene, and Councilmember Wallace seconded the motion.

Dr. Davidson suggested that this situation was not contemplated when the City's rules were written. He said that the individuals seeking to intervene have participated in the hearing process. Dr. Davidson does not want a decision by the Council tonight to set precedent. He believes the Council should come back in a policy mode when it does not have a quasi-judicial matter before the body. He will not support the motion.

Councilmember Balducci said she will also vote against the motion. She noted the risk of a procedural error and the potential overturning of a City decision. The broader issue is the resolution of disputes within a system of democracy, and ensuring sufficient opportunity for individuals to participate and to be heard. She would rather err on the side of hearing from more people than less people.

Ms. Balducci agreed that it is likely that this situation was never contemplated. She supports addressing the broader policy issue at a future date.

Councilmember Chelminiak said that, if the citizens are allowed to intervene, they are taking a risk that it could be used against them, if they were successful and the matter becomes a LUPA appeal. Mr. Chelminiak said he will err on the side of participation and vote against the motion

on the floor.

Councilmember Stokes agreed with erring on the side of inclusion. He acknowledged that great deference is to be given to the decision of the Hearing Examiner. However, he supports allowing greater public participation.

Dr. Davidson noted that the Council is the ultimate decision-maker, and agreeing to hear more input does not obligate the Council's future action in any way.

Councilmember Wallace expressed support for Ms. Robertson's motion, noting that he sees no legal foundation for the Motion to Intervene. He appreciates the comments about allowing public participation. However, he is not in favor of setting a precedent with this matter. He believes it would be more appropriate to discuss a policy change as a separate issue.

Mayor Lee said he understands that there is no precedent for this type of request. He is looking at it based on procedure and not on the merits of any party's position. He expressed concern that allowing the Motion to Intervene will set a precedent. Since there are currently no rules to govern an attempt to intervene in an administrative appeal, he will not support the ~~motion~~ intervention.¹

Councilmember Stokes noted that the four lawyers on the Council are split in their interpretations of this issue.

Deputy Mayor Robertson agreed that the Council always wants to hear from everyone in an open record hearing. However, this matter is a closed record appeal which is subject to different rules as articulated in the Land Use Code.

- The motion to deny the Motion to Intervene failed by a vote of 3-4, with Mayor Lee, Deputy Mayor Robertson, and Councilmember Wallace in favor.
- Councilmember Chelminiak moved to grant the Motion to Intervene, and to permit the Kimberlee Park Community Club and Chiu, Traverso, and Wolborsky to participate in briefing and argument on the appeal hearing currently scheduled for March 19, 2012. Ms. Balducci seconded the motion.

Councilmember Balducci reiterated Deputy Mayor Robertson's point that this is not a public hearing matter.

Councilmember Chelminiak recalled that these individuals are parties to the existing record. He agrees with Councilmembers who have said that they do not want this matter to set precedent for the Council. He reiterated his ongoing concern about the Council's quasi-judicial role.

Responding to Councilmember Davidson, Ms. Riordan said the matter is a closed record appeal, and the evidence already heard by the Hearing Examiner is the evidence to be considered by the

¹ Minutes approved on February 21, 2012, as corrected.

Council. The parties will be allowed to make arguments to the Council on their positions.

→ The motion carried by a vote of 4-3, with Mayor Lee, Deputy Mayor Robertson, and Councilmember Wallace opposed.

11. Other Ordinances, Resolutions and Motions: None.

12. Unfinished Business: None.

13. Continued Oral Communications: None.

14. New Business: None.

15. Executive Session: None.

16. Adjournment

At 9:43 p.m., Mayor Lee declared the meeting adjourned.

Myrna L. Basich, MMC
City Clerk

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