

CITY OF BELLEVUE
CITY COUNCIL

Summary Minutes of Regular Session

July 6, 2010
8:00 p.m.

Council Chamber
Bellevue, Washington

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

ABSENT: None.

1. Call to Order

The meeting was called to order at 8:00 p.m., with Mayor Davidson presiding.

2. Roll Call, Flag Salute

Upon roll call, all Councilmembers were present. Councilmember Degginger led the flag salute.

(a) Introduction of Local and Visiting Exchange Students from Kladno and Liepaja

Mayor Davidson welcomed representatives from the Bellevue Sister Cities Association.

Gregg Schrader, BSCA Board Member, introduced the 2010 student exchange participants. Marketa Hrabetova from Kladno, Czech Republic, is staying with Rachael Laxton and her family. Arturs Cukurs from Liepaja, Latvia, is hosted by Jebraan Gowani and his family.

Marketa thanked the Bellevue and Kladno Sister Cities Associations for letting her be a part of this amazing exchange program. She looks forward to hosting Rachael in the Czech Republic.

Rachael, a senior at Newport High School, said she looks forward to visiting Kladno and appreciates the opportunity to participate in the exchange program.

Jebraan, a senior at The Overlake School, said it has been fun getting to know Arturs, and he cannot wait to get to Latvia.

Arturs thanked the Bellevue City Council and Bellevue Sister Cities Association for this exchange opportunity

3. Communications: Written and Oral

Mayor Davidson invited the President of the Bellevue Downtown Association to report on recent community events.

- (a) Leslie Lloyd reported on the 4th of July celebration at Downtown Park, which was a success despite the rain. She thanked Parks Department staff for their hard work associated with the event. Ms. Lloyd thanked the City for its support of the third annual Bellevue Jazz Festival, which was moved this year to occur a week after the Memorial Day weekend. The festival featured national and local talent, and all shows were held at the Theatre at Meydenbauer Center. Paid attendance increased by 10 percent this year, and 36 free concerts were held as well in 16 local venues. Attendance at the free concerts was up 80 percent from last year. Thirteen from area schools were featured including Bellevue High School, Newport High School, and Tyee Middle School. The festival's featured Rising Stars, which was two ensembles, performed on opening night. The festival employed more than 100 musicians, an increase of 52 percent over last year. Ms. Lloyd described positive feedback from local restaurants about their increased business related to hosting festival performances. She thanked the City and all festival co-sponsors for their support of the event. Ms. Lloyd presented a framed poster signed by the festival's musicians to the Council.

Councilmember Degginger praised the Bellevue Jazz Festival, noting that it expands to new venues and gets better every year.

Mayor Davidson explained that the Council is unable to take public comment on Agenda Item 10(a), appeal of the Helistop conditional use permit (CUP) application, as this is a quasi-judicial matter for the Council. He opened the floor for oral communications on any other topic.

- (b) Jan Benson thanked Council and staff for the rapid response to her previous testimony regarding construction noise violations at Lake Hills Shopping Center.
- (c) Howard Katz, who serves on the Bellevue Network on Aging and Bellevue Senior Advisory Board, noted that he is a member of the Board of Directors for Lake Bellevue Village. He expressed concern about hospital station alternative D for Sound Transit East Link light rail, which is at the entrance of Lake Bellevue residences. Residents on Lake Bellevue had not been informed that this station location is under consideration. Mr. Katz requested better communication with the community. He questioned the wisdom of placing light rail in the flood zone surrounding Lake Bellevue.
- (d) Betsy Blackstock, representing the Surrey Downs Community Club and Surrey Downs East Link Committee, thanked the Council for its discussion about light rail noise impacts during the earlier Study Session. Ms. Blackstock said she and other residents attended a Sound Transit community meeting in Tukwila, in which a number of neighbors shared their frustration with the ongoing wheel squeal issue. She reported that early tests showed reduced noise levels with slower train speeds, and she is disappointed that Sound Transit has not considered this no-cost solution. She cautioned about the potential for similar

noise impacts in Bellevue. Ms. Blackstock said she and others also attended a Sound Transit neighborhood meeting on Beacon Hill in which a number of residents expressed frustration about light rail noise impacts, especially the bells. The bell are rung continuously through 29 intersections, and the loudest bell level is used 24 hours a day. Ms. Blackstock encouraged the Council to continue to insist on noise mitigation in its work with Sound Transit.

- (e) Renay Bennett observed that part of the East Link light rail system is in Seattle, yet Sound Transit is using funds from the East Subarea. She is confused about how it is that the East Subarea is expected to pay for Seattle Subarea. The federal record of decision from Sound Transit states that the agency will eliminate all noise, which Ms. Bennett noted has not happened. It also says that there will be no residual effects such as backyard noise, and this has proven to not be true. Ms. Bennett expressed concern about Sound Transit's compliance with noise regulations, and thanked the Council for its thoughtful and persistent questions about noise impacts.
 - (f) Joe Rosmann, representing the Surrey Downs Community Club and East Link Committee, thanked the Council for its selection of the B7 route to bring light rail into Bellevue. Residents are concerned, however, that Sound Transit continues to ignore the City's preferred alignment and local noise code. He asked the Council to continue to advocate for the B7 alignment and the protection of neighborhoods, and to request that Sound Transit drop its consideration of 112th Avenue SE for light rail. Mr. Rosmann submitted his comments in writing.
 - (g) Bill Thurston, President of the Bellevue Club, expressed concerns regarding the negative impacts of any light rail alignment on 112th Avenue SE. He said that light rail would destroy the character of the club property by removing mature trees, tennis courts, pool areas, and fountains, and by adding sound walls within 12 feet of the building and the edge of the club's pool.
 - (h) Gary Ritner, Brookshire Condominiums, spoke on behalf of 170 families that will be negatively impacted by the B7 alignment. He favors a light rail alignment along the west side of 112th Avenue SE in order to minimize impacts to the Bellevue Club property, which he feels is an important community asset.
4. Reports of Community Council, Boards and Commissions: None.
5. Report of the City Manager
- (a) Management Brief Responding to Communication regarding Lake Hills Library and Shopping Center Construction Noise

City Manager Steve Sarkozy introduced staff to present a management brief in response to construction noise issues at the Lake Hills Shopping Center.

Mike Brennan, Development Services Director, provided a brief report on noise complaints related to construction noise at Lake Hills Shopping Center.

Chief Pillo described the Police Department's response to noise complaints nine times in May and June. Warnings were issued in seven of the cases. Chief Pillo said that Code Compliance staff were not notified about the complaints, but will be in the future. Involving Code Compliance staff has been effective in this type of situation in the past.

Ms. Brennan said that every noise complaint received by the Police will be forwarded to Code Compliance to assist staff in monitoring for repeat offenses. He has spoken with Cosmos Development Company as well about working with their contractors to ensure that city codes are followed.

Responding to Deputy Mayor Lee, Chief Pillo explained that officers have the discretion to provide a warning the first time and, if compliance does not occur, to work with Code Compliance and/or to stop work on the site.

Deputy Mayor Lee stated that this might be something to look at in terms of when fines should be applied.

Councilmember Balducci said she appreciates the response and the coordination between Police and Code Compliance.

6. Council Business and New Initiatives

Councilmember Balducci attended the Strawberry Festival, the opening of the Bellwether sculpture and art exhibit, and the 4th of July celebration at Downtown Park. She reiterated her suggestion to send a letter of thanks to the sculpture exhibit private sponsors. Ms. Balducci said she and Deputy Mayor Lee attended the Transportation Commission's retreat.

Councilmember Wallace attended the 4th of July celebration and the Newport Hills community picnic. He commented on his ongoing concern regarding light rail noise impacts, and noted the difference between what Sound Transit is saying about the noise issues in Tukwila versus what Betsy Blackstock and other residents have reported based on their involvement in meetings with Tukwila residents.

Councilmember Degginger attended meetings related to the Transit Task Force and its subcommittee. The group is starting to look at scenarios for improving efficiency and streamlining services.

Councilmember Chelminiak attended the 4th of July celebration. He thanked the Bellevue Downtown Association and sponsors for their support of the event.

Councilmember Robertson attended the 4th of July celebration, the Newport Hills picnic, and, as Grand Marshal, the Somerset 4th of July parade. She thanked the Police and Fire Departments for providing patrol cars and fire trucks at these events for children to learn about.

Deputy Mayor Lee said he traveled to New York to attend the 100-year anniversary celebration of his college fraternity. Mr. Lee reported that Jeff Marcel is the new President and CEO of EnterpriseSeattle.

Mayor Davidson attended the Association of Washington Cities (AWC) Conference in Vancouver.

7. Approval of the Agenda

Deputy Mayor Lee requested that Agenda Items 8(b) and 8(g) be pulled from the Consent Calendar for separate discussion.

→ Deputy Mayor Lee moved to approve the agenda, as amended. Councilmember Robertson seconded the motion.

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

8. Consent Calendar

Councilmember Robertson noted the typographical error on Agenda Item 8(a) of the Consent Calendar. The correct minutes submitted for approval are June 7 and June 14.

→ Councilmember Robertson moved to approve the Consent Calendar, pulling Items 8(b) and 8(g) for discussion and correcting Agenda Item 8(a). Deputy Mayor Lee seconded the motion.

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

- (a) Minutes of May 24, 2010 Extended Study Session
Minutes of ~~July~~ June 7, 2010 Study Session
Minutes of ~~July~~ June 7, 2010 Regular Session
Minutes of ~~July~~ June 14, 2010 Extended Study Session

- (c) Resolution No. 8114 authorizing execution of two job order contracts with Saybr Contractors, Inc., for General Horizontal Construction (public works projects) and General Vertical Construction (building renovation), for an initial term of two years with an option to extend for an additional year, with each contract having a minimum value of \$50,000 and a maximum value of \$3,000,000 for the initial term; and each contract having a value of \$2,500,000 upon the exercise of an option to extend the contract.

- (d) Motion to authorize the execution of a purchase order up to four years with Kroesen's Inc., in the annual amount of \$125,000, to provide uniforms for Fire Department personnel.

- (e) Resolution No. 8115 authorizing execution of a 2010-2012 successor labor agreement by and between the City and the Public, Professional and Office Clerical Employees and Drivers Teamsters Local Union #763, representing Development Services Department employees.
- (f) Resolution No. 8116 authorizing execution of a 2010-2012 successor labor agreement by and between the City and the Public, Professional and Office Clerical Employees and Drivers Teamsters Local Union #763, representing Utilities, Parks, and Civic Services employees.
- (h) Resolution No. 8118 authorizing execution of a Consultant Agreement with HNTB Corporation, in an amount not to exceed \$875,000, for conceptual design for the NE 6th Street Extension, I-405 to 120th Avenue NE, as part of the Mobility and Infrastructure Initiative (CIP Plan No. PW-R-162).
- (i) Ordinance No. 5953 authorizing: 1) Amendment of the 2009-2015 Capital Investment Program (CIP) Plan by modifying the project title, description, and budget of the CIP Project currently entitled 120th Avenue NE Improvements (Segment 2) - NE 8th to NE 12th Street (CIP Plan No. PW-R-164), to reflect the new project title and description and a new project budget of \$3,220,000; and, 2) Transfer a total of \$3,030,000 in Mobility and Infrastructure Initiative funding from CIP Plan No. G-80 to the fund CIP Plan No. PW-R-164.
- (j) Resolution No. 8119 authorizing execution of agreements relinquishing a traffic signal easement and two sidewalk and utility easements, which are no longer needed by the City and are identified by King County recording numbers 8011050184, 8802051285 and 8802051286.

Items for Discussion:

- (b) General Services Contracts between the City and various arboricultural contractors for two-year contracts with an option to renew for an additional two years.

Resolution No. 8111 authorizing execution of a General Services Contract with Davey Tree Expert, in an amount not to exceed \$328,500, for on-call Tree Trimming Services.

Resolution No. 8112 authorizing execution of a General Services Contract with F.A. Bartlett Tree Expert, in an amount not to exceed \$328,500, for on-call Tree Trimming Services.

Resolution No. 8113 authorizing execution of a General Services Contract with Trelstad Tree, in an amount not to exceed \$328,500, for on-call Tree Trimming Services.

- (g) Resolution No. 8117 authorizing execution of a Public Works Contract with Western Wood Structures, Inc., in an amount not to exceed \$78,700, for the manufacture, delivery and installation of two wooden pedestrian bridges on the Lewis Creek Trail in Lakemont Park.

Deputy Mayor Lee said that he pulled Items 8(b) and 8(g) in light of current budget constraints and the ongoing need to scrutinize expenditures. With regard to the Lewis Creek Trail project, Mr. Lee said the Council has heard from citizens who support deferring Neighborhood Enhancement Program (NEP) projects until the economy improves.

Councilmember Degginger stated that while he is sensitive to the budget process, the on-call tree trimming services are needed for unanticipated events such as windstorms. He noted that he would have liked to see more information from staff on the contracts.

Councilmember Balducci clarified that these are on-call services, and the City will not pay unless they need the services. She noted that routine maintenance can also prevent trees from interfering with power lines.

- Councilmember Balducci moved to approve Resolution Nos. 8111, 8112, and 8113, presented as Agenda Item 8(b). Councilmember Degginger seconded motion.

Mayor Davidson expressed support for the motion.

Deputy Mayor Lee concurred, and noted last year's expenditure of \$350,000 for tree trimming services.

- The motion to approve Resolution Nos. 8111, 8112, and 8113 carried by a vote of 7-0.
- Councilmember Chelminiak moved to approve Item 8(g), Resolution No. 8117, and Councilmember Degginger seconded motion.

Councilmember Wallace said he appreciates Mr. Lee's comments on the budget issue. He questioned whether the Lewis Creek Trail project could be deferred.

City Manager Sarkozy explained that the project addresses safety issues related to crossing the two small streams. Secondly, the Neighborhood Enhancement Program (NEP) has been an asset to the community for many years and this is one of the last projects of the current cycle. If the program is to be modified under the new budget, staff recommends completing the project in the spirit of fairness and neighborhood equity.

Councilmember Chelminiak expressed his support for parks and neighborhoods, and said that the trail is not usable without the bridges. Noting that residents identified the project as a priority, he feels this would be money well spent.

Councilmember Degginger said he will support the motion. As a policy issue, he noted that there will be a few more Consent Calendars before the Council adopts a new budget. It would not be fair to withhold funding on one Neighborhood Enhancement Program project due to the economy, while potentially approving additional NEP projects in the next budget.

→ The motion to approve Resolution No. 8117 carried by a vote of 7-0.

9. Public Hearings: None.

10. Land Use

- (a) Continued Council consideration of appeal of the Hearing Examiner's July 20, 2009, Decision regarding the application of Kemper Development Company for a Conditional Use Permit (CUP) to update and activate an existing Helistop in Downtown Bellevue. Hearing Examiner File No. 08-35262-LB.

This is a Process I application in which the Hearing Examiner's recommendation is may be appealed to the City Council.

Council conducted and closed the limited public hearing on November 2 and 16, 2009, and remanded the matter to the Hearing Examiner. The Hearing Examiner held remand hearings on January 21 and February 4, 2010, and now recommends that the Council remand this matter back to the Development Services Department for additional work.

Mayor Davidson opened discussion in the continuation of the Council's consideration of the appeals of the Hearing Examiner's decisions on the application of Kemper Development Company for a conditional use permit (CUP) to activate a helistop in Downtown Bellevue.

City Attorney Lori Riordan described the quasi-judicial process, as well as the rules and procedures, for the Council's consideration of this matter. Opportunities for general public testimony and arguments from the parties to the appeals were provided on two occasions in 2009. In quasi-judicial matters, Councilmembers act as judges and cannot have ex parte communications with the public about the application and appeal.

Ms. Riordan said appeals were brought by Su Development and Ina Tateuchi et al on the decision of the Hearing Examiner to grant the conditional use permit (CUP) with conditions. The respondents to the appeal are Kemper Development Company and the Director of the Development Services Department. The limited public hearing was held on November 2, 2009, and further Council discussion was held on November 16. The Council remanded the matter back to the Hearing Examiner to reopen the record to examine additional documentation. The Hearing Examiner held a remand hearing on January 21 and February 4, 2010. Materials regarding the remand hearing, as well as any additional documents submitted by the parties to the appeal before the June 30 deadline, have been reviewed by the City Attorney's Office before distribution to the Council. Any information not contained in the Hearing Examiner's remand record has been redacted.

Responding to Ms. Riordan, Mayor Davidson asked Councilmembers to report any ex parte communications. Ms. Riordan recalled that the Council previously disclosed ex parte communications in November 2009, and those earlier disclosures do not need to be repeated.

Councilmember Chelminiak said he has no ex parte communications to report.

Councilmember Robertson said she has not had any ex parte communications. She noted that she ~~was involved~~ had contacts during her Council campaign ~~in presentations regarding the project, which were attended by~~ with Mr. Su and representatives of Kemper Development Company, and participated in a campaign forum on helicopters. However, she has had no communications since her swearing in as a Councilmember. *[Approved as amended during the September 7, 2010, Regular Session.]*

Deputy Mayor Lee said he has no ex parte communications to report.

Councilmember Balducci said she had no additional exparte communications to declare.

Councilmember Wallace said he has not had any ex parte communications on the helistop CUP application or appeals.

Councilmember Degginger stated that he has had no other contacts beyond those previously disclosed.

Mayor Davidson said that he has had no ex parte communications.

Ms. Riordan explained that the appeal matter was remanded to the Hearing Examiner with the following scope for review: 1) Focus on the safety issue, 2) Reopen the record for the limited purpose of admitting the FAA response into the record, as required by the Land Use Code, 3) Review the FAA response using an open process, allowing the parties to comment on the response and any consequences of the letter, 4) Determine whether additional findings, conclusions or conditions are appropriate, and 5) Return the matter to the Council for a final decision.

Following the remand hearing held January 21 and February 4, 2010, the Hearing Examiner recommended on May 4 that the City Council remand the matter to the Development Services Department, and to direct staff to contact the FAA for additional information and documents. Following this recommendation, Kemper Development, Su Development, and the Development Services Department requested that the Council remand the matter to the Hearing Examiner again to take additional evidence. Appellant Tateuchi opposes remand to the Hearing Examiner and favors remanding the matter to City staff.

Ms. Riordan explained that the Council may but is not required to take argument from the parties as to the request before the Council. The Development Services Department and Su Development have both submitted briefings on their positions on the scope of any remand. If the Council is inclined to take further argument, Ms. Riordan suggested limiting arguments to three

minutes per party. If the Council chooses to remand the matter to the Hearing Examiner, Council might want to consider granting authority to the Hearing Examiner to remand issues to staff if he concludes that it is necessary to require staff to gather additional evidence in order to reach a fully informed recommendation for the Council.

Mayor Davidson noted requests from three of the four parties to this appeal to remand the item to the Hearing Examiner to take additional evidence, and the request from one appellant to remand to City staff. He questioned whether any parties wished to offer arguments regarding the proposed remand scope. Mayor Davidson further questioned whether the Council wished to hear additional arguments, or if the briefs submitted by the parties are sufficient for reaching a decision.

Councilmember Degginger said it would be helpful to hear from the parties regarding their preferences about where to direct the remand and what the scope of the remand should be.

Mayor Davidson opened the floor to comments from the parties.

Steven Recor, attorney for Ms. Tateuchi and other Bellevue residents, stated that his disagreement about remanding to the Hearing Examiner was based on the Hearing Examiner not having the authority to remand issues back to City staff. He can support remand to the Hearing Examiner as long as he is granted the authority needed to fully gather pertinent information. He did not have specific suggestions as to the remand scope.

Bob Johns, representing Su Development, acknowledged agreement to remand the matter to the Hearing Examiner. He observed that the Hearing Examiner did not feel he had the authority to remand the matter to City staff, and he encouraged the Council to grant this authority to the Hearing Examiner. Mr. Johns said the remand scope should be limited to review of the FAA determination.

Keith Dearborn, representing Kemper Development Company, expressed support for remanding the matter to the Hearing Examiner. Kemper Development Company took a deposition of the FAA employee who did the review, because staff did not have written information provided by the FAA. The deposition provides a great deal of information that the Hearing Examiner requested. Mr. Dearborn said the remand scope should focus on the Code. He referred Council to page 32 of the Findings in the Hearing Examiner's report, and explained that the Code provision related to FAA review requires that the appropriate review be completed. The Examiner's findings states that an appropriate review should take place. Mr. Dearborn spoke to the difference between "an appropriate review" and "the appropriate review." He questioned whether the City looks behind the recommendation of the FAA.

Councilmember Chelminiak would like to remand the matter to the Hearing Examiner, with the authority for the Examiner to remand issues to staff if needed. He is interested in a transparent process. He noted conflicting information, including multiple approach paths for the helistop. He referenced Exhibits 9-R through 12-R. He questioned whether Mr. Hardie's deposition would clarify this information, and suggested that the deposition be made part of the Hearing Examiner's record as part of the remand.

Mr. Chelminiak prefers to remand to the Hearing Examiner because it would be a public process. He is interested in the May 12 and June 28 applications, or forms 7480-1, and the conflicting information regarding the headings. The forms had different descriptions of what the FAA should consider as "other considerations." The May 12 form identifies two schools and two churches and nearby residential areas. The June 28 form identifies one school and Downtown Bellevue as "other considerations." Mr. Chelminiak would like the Hearing Examiner to be able to tell the Council what the FAA did consider, and why it is relevant. In the actual FAA letter of no objection, it states in part that the FAA considered the effects of existing or proposed man-made objects and natural objects "on file with the FAA." Mr. Chelminiak asked for the information about these objects. He questioned whether the parties, or their attorneys, could be present when the FAA inspects the site, if the Hearing Examiner feels that an inspection is appropriate.

Councilmember Degginger agreed that it makes sense to remand the matter to the Hearing Examiner. He does not have a problem with granting the Hearing Examiner the authority to ask staff for additional evidence related to the remaining issue of the FAA review. Mr. Degginger suggested reopening the record for the limited purpose of evidence regarding the FAA review, or something to that effect. Obviously the deposition testimony would be relevant to the FAA's review, and there might be documents that have been admitted into the record that are relevant. He feels the scope should be narrowed rather than broadened, and requested the City Attorney's help with regard to the scope of the remand.

City Attorney Lori Riordan noted the suggested draft motion which she distributed this evening. It is an attempt to capture the issues raised by the parties in their briefings, as well as issues raised by Councilmember Chelminiak. She noted that the transcripts of the remand hearing reflect a great deal of frustration from the Hearing Examiner and the parties in that the Council's direction was not as clear as they had hoped. Ms. Riordan noted that the Hearing Examiner was present, and suggested that it might be beneficial to read the draft motion and ask the Hearing Examiner if it provides adequate direction.

Ms. Riordan read the proposed motion to: Remand the matter back to the Hearing Examiner to take new evidence in the form of the deposition transcript of Roy Hardie of the Federal Aviation Administration (FAA). In taking this evidence, the Hearing Examiner should determine whether the issues he has raised in the findings and conclusions of his final corrected and clarified report and recommendation dated May 4 have been adequately addressed by the testimony given by Mr. Hardie. Should the Hearing Examiner conclude that the deposition does adequately address the issues he has raised in his findings and conclusions, the Hearing Examiner shall provide the Council with the revised and final report of findings and conclusions and recommendation regarding this CUP application. Should the Hearing Examiner conclude that the deposition does not adequately address the issues that he has raised, the Hearing Examiner is authorized to further open the record, and to require the parties to produce any additional evidence or reports or testimony that the Examiner deems relevant to his determination of the answers to the issues he has raised. In particular, the Examiner is authorized to remand this matter to DSD staff to facilitate the production of any new evidence he deems relevant, including to produce a new staff

report if DSD determines that any amendment to the original staff report is necessary. The Hearing Examiner is also authorized to require the parties to produce evidence or testimony clarifying the following issues. The May 12 and June 28 applications contain conflicting information. Please define the approach path with proper magnetic compass headings. The May 12 and June 28 forms have different descriptions of other considerations. The May 12 form identifies two schools and two churches and nearby residential areas, while the June 28 form identifies one school and Downtown Bellevue as other considerations. What did the FAA consider? The letter of no objection states as part of the consideration “and the effects that existing or proposed man-made objects on file with the FAA and natural objects.” What existing and proposed man-made objects were on file with the FAA? And did the FAA use its on-site inspection to determine if there were existing or proposed man-made objects under construction not on file? Did the FAA look at construction projects in the area including Lincoln Square, the Hyatt addition, and the new Avalon Bay Apartments at NE 10th Street and Bellevue Way? Any proceedings conducted by the Hearing Examiner, including hearings and/or site visits to the proposed heliport location shall be conducted in an open process to ensure procedural fairness and to permit the parties to attend, and to allow them to comment on the evidence and examine any witnesses who give testimony.

→ Councilmember Chelminiak moved the motion as drafted by the City Attorney, and Councilmember Degginger seconded the motion.

Responding to Mayor Davidson, Hearing Examiner Chris Mathews confirmed that the scope of the remand provides adequate direction to resolve the issues. Mr. Mathews indicated his interest in hearing what legal counsel for the parties interpret from the remand language.

Bob Johns said he is satisfied with the wording of the remand motion.

Steven Recor concurred that he is satisfied with the proposed motion.

Keith Dearborn noted his objection to the procedure. He opined that reading the resolution aloud should be avoided if possible. He described his experience in other cities, in which the resolution/remand is given to the parties in advance with an opportunity to provide comment. The City Attorney monitors that process and then advises the City Council of the comments. He cautioned that tonight’s process will create an unintended consequence or problem. However, he does not object to the remand scope as proposed by the City Attorney. He suggested that the Council consider a different procedure.

Mayor Davidson acknowledged Mr. Dearborn’s comments, noting that they will be considered for future proceedings.

Mr. Mathews asked if he could hear from City staff, due to the possibility that he might need to remand issues to them. Legal Planner Catherine Drews said she has no objection to the remand motion.

Councilmember Balducci concurred with Mr. Dearborn’s line of thinking. She said it is important to be cautious in terms of ensuring that the next step of the process will work to

resolve the matter. She wants clear Council direction to facilitate an ultimate decision, and is open to deferring action on the motion to next week.

Deputy Mayor Lee concurred with Councilmember Balducci's suggestion to postpone consideration of the remand scope until next week.

- Councilmember Degginger moved to extend the meeting by 15 minutes, and Councilmember Balducci seconded the motion.
- The motion to extend the meeting carried by a vote of 7-0.

Councilmember Degginger inquired about the implications of postponing a vote to next week.

Ms. Riordan said that next week's meeting is a four-hour Extended Study Session so it would be a little out of the ordinary, but Council may place the motion on the agenda if it would like to do so. The Council would also need to consider if it wanted to take any further argument from the parties.

Councilmember Chelminiak said he is sympathetic to Mr. Dearborn's suggestion, and he faulted the City and Council for not addressing this particular procedure in its rules. He suggested that the Council should take a serious look at its rules and procedures for future proceedings. He has no objection to postponing the matter to next week.

Mr. Riordan opined that, given the concerns, it would be wise to defer action on the motion until next week.

Mayor Davidson noted that this is a complex matter, and he apologized for any confusion around the City's procedures.

Councilmember Robertson said she would like to hear from the City Attorney regarding the process for next week. If the Council will not be taking argument, will the parties have a chance to look at the draft motion? And will they be allowed to provide a written response, which would go into the Council's meeting packet?

Ms. Riordan explained that, under Council rules, submissions for Monday's meeting must be received by the City Clerk no later than 1:00 p.m. tomorrow. She suggested that the Council might consider relaxing that rule this time to give the parties an extra 24 hours for submissions. Another option is to take up the matter in two weeks at the next Regular Session.

- Councilmember Degginger moved to postpone consideration of the remand scope until next Monday, and to give the parties until noon this Thursday to submit comments or suggested changes on the proposed remand language, in redline form. The Council will not take additional testimony or oral argument. Councilmember Chelminiak seconded the motion.

Councilmember Wallace questioned whether the parties will have the opportunity to provide

their rationale for any comments or suggestions they might have with regard to the scope of the remand.

Mayor Davidson expressed concern that arguments not be made before the Council, but before the Hearing Examiner.

Councilmember Balducci observed that if the scope of the remand is not resolved here, it will not be resolved there and it will come back to the Council again.

Mr. Dearborn suggested that the parties be allowed to respond to the motion using redline format. And where there may be a suggested change, reviewers of the document can enter a comment within the track changes function. The City Attorney could then collect the redline versions and summarize them for the Council.

Mr. Recor stated that the Hearing Examiner is an experienced lawyer who understands the law and the City Code. Mr. Recor feels that the Hearing Examiner should determine the scope of the remand.

Mayor Davidson stated that he does not agree that the Hearing Examiner should be the one to determine the scope of the remand, but that it is the Council's role to define the remand.

→ The motion to postpone consideration of the scope of the remand until next week carried by a vote of 7-0.

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 10:12 p.m., Mayor Davidson declared the meeting adjourned.

Myrna L. Basich, MMC
City Clerk

/kaw