

CITY OF BELLEVUE
CITY COUNCIL

Summary Minutes of Regular Session

September 4, 2012
8:00 p.m.

Council Chamber
Bellevue, Washington

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

ABSENT: Mayor Lee

1. Call to Order

The meeting was called to order at 8:08 p.m., with Deputy Mayor Robertson presiding.

2. Roll Call, Flag Salute

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

Deputy Mayor Robertson commented that the City Hall flag was at half-staff last Friday in remembrance of Neil Armstrong, who passed away on August 25 at the age of 82. She recalled that he was the first person to walk on the moon, Commander of the Apollo 11 mission, and a true American hero. Ms. Robertson noted that some members of the community likely feel a special connection to Mr. Armstrong and the Apollo missions because The Boeing Company has long been an important part of the nation's space program.

Ms. Robertson shared Mayor Lee's observation that Neil Armstrong represents the American spirit to go beyond the limits. He will be remembered as one of the great explorers of our time.

3. Communications: Written and Oral

- (a) Robert Thorpe, representing the Lorge-Benis Comprehensive Plan Amendment (CPA) application, recalled Deputy Mayor Robertson's question during the earlier Study Session about the differences between the current and past CPA submittals for this site. He said the 2009 proposal reflected six stories, including two levels of parking, and requested Limited Commercial zoning instead of the current request for Community Business. He noted that Newport High School has become a science and math magnet school. The

school is interested in opportunities for office uses at this site next to the high school. He does believe that the new multifamily housing across the street represents a changed circumstance. He noted that Walmart and additional commercial development are coming to the Factoria area as well. Mr. Thorpe said the proposal was changed based on comments from the Planning Commission three years ago. He noted that the current Commission recommends, by a vote of 6-1, initiating the CPA into the work program.

- (b) Chris Benis spoke on behalf of his mother, who owns the Benis property. The core of the existing building was an old farmhouse, which was turned into a real estate office and later into a dentist's office. He would like to see opportunities for redevelopment that will complement other uses and better serve the area. He asked Councilmembers to think about what they would like to see on those properties.
- (c) Sam Bellomio, Stand Up America, noted his ongoing objection to red light cameras. He said they have not decreased accidents, and the money from fines goes to the camera vendor. He said the use of the cameras assumes that citizens are criminals. Mr. Bellomio said his other issue is a 330-page document of a four-year investigation. The City has informed him that there are no records on the specific costs of this investigation, which he finds hard to believe. He suggested that the City increase the audio level on the recordings of the Council meetings.
- (d) Alex Zimmerman, Stand Up America, held up the 330-page investigation he has been asking about. He questioned the cost of what he considers a fake, four-year investigation and who is responsible for the expenditure. He referenced his past and current class action lawsuits against the City. He said they will sue the City again, if necessary. He read from a legal document mentioning bad service, abuse of the system, corruption and mismanagement. He noted the upcoming court date of November 20. He said if he does not receive an answer to his question, he will come every week and sue every week. He noted that his 27 tickets over the years have cost the City more than they have cost him because he brings the Police to court every time.

Councilmember Chelminiak asked about the subject of the investigation. Mr. Zimmerman said he has talked with the City Manager three times about it. Mr. Chelminiak noted that he has not explained to the Council the nature of the investigation. Mr. Zimmerman said the investigation is about money that he stole from the government, \$6,000. He then referenced his class action lawsuit for \$100 million. Mr. Zimmerman said this is pure provocation, pure political and religious prosecution, which has happened for the second time in Bellevue. He has had speeding tickets from Bellevue Police since 1997 or 1998, many times.

Councilmember Chelminiak sought clarification of the subject of the investigation. Mr. Zimmerman responded in the affirmative.

Responding to Councilmember Chelminiak, City Manager Sarkozy said that criminal charges are being reviewed by the King County Prosecutor. Councilmember Chelminiak suggested making the videotape of this testimony available to King County.

- (e) Alam Ali, Director of Public Affairs for the Ahmadiyya Muslim Community (AMC), described his organization and an event planned for September 5 at City Hall. He said that AMC is a fast-growing, international revival movement within Islam. AMC USA was established in 1921 as the first American Muslim organization. The event scheduled for the following day is the Muslims for Life blood drive, which honors the victims of the September 11, 2001 tragedy. The goal is to collect 11,000 units of blood to help save 33,000 lives. He invited Councilmembers to participate in the blood drive.
- (f) Dr. Cole Sherwood introduced himself as the owner of Factoria Dental at 4301 Factoria Boulevard, which is adjacent to the property involved in the Lorge-Benis Comprehensive Plan Amendment (CPA) proposal. He believes there is a lack of understanding about the concept of changed circumstances. He and his lawyer have determined that there are no significantly changed conditions at the site. Dr. Sherwood said the site is well suited for meeting health care needs, including for residents across the street in St. Margaret's Church housing. He explained that there is a shared parking agreement in place for the properties. The CPA proposal would eliminate some of the parking, including handicapped parking, and would interfere with emergency access. It would block the visibility of Factoria Dental, which would negatively impact business. Dr. Sherwood said that redevelopment of the site would destroy the income stream from Factoria Dental that will otherwise support his disabled son following his death.
- (g) Karen Wimberly, President of the Congregation at Holy Cross Lutheran Church in Bellevue, said she was speaking to represent the affordable housing team at the church to provide information about the withdrawal of their CPA application. The proposal requested a change affecting three acres of church property from single-family high (SF-H) to multifamily medium (MF-M) zoning for the purpose of building affordable housing. Planning staff recommended that the proposal go forward into the 2012 work plan. However, the Planning Commission did not agree with that recommendation. Ms. Wimberly said the church decided to retain the potential for resubmitting a proposal in the future. She thanked the Planning Commission for its review, and highlighted comments from the letter sent by the church to the Commission on May 31, 2012.
- (h) Joe Tovar, Inova Planning, spoke on behalf of John and Irene Leggate. He commented on the concept of significant change as applied to CPA proposals. He noted that the population of Bellevue High School has increased by 24 percent since 1996, and traffic has increased significantly as well. He observed that the determination of significant change is a subjective decision. He said the Planning Commission had a robust discussion, and three Commissioners made strong arguments in favor of finding that there has been significant change. He asked the Council to move the Leggate-Balwada CPA application forward to the work program.
- (i) Irene Leggate talked about first moving to Bellevue and how she liked living in a vibrant neighborhood. She noted that there is now a rooming house on her street, and some residents are not taking care of their properties as had been done in the past. Ms. Leggate described increased traffic in the area. She believes that redevelopment of the Leggate-Balwada site would help to revitalize the immediate area.

- (j) Donna Leggate, Irene's daughter, said her parents are strongly invested in the community. Her mother was a school teacher for 37 years. Her father owned a longtime business in Bellevue and has been active in civic organizations. She believes the neighborhood would benefit from the requested rezone and subsequent development, including sidewalks. Ms. Leggate said that high school students walk down the middle of the streets, and she said sidewalks would improve pedestrian safety. She noted that the houses across the street from the Leggate-Balwada sites are not at the same level but are approximately 20 feet higher.
 - (k) John Lorge, applicant for the Lorge-Benis CPA proposal, commented on the withdrawal of their 2009 CPA proposal. That application was withdrawn because they were told there would be a Comprehensive Plan update for Factoria in 2010 or 2011, but that did not occur. Mr. Lorge described traffic improvements around Newport High School in recent years. He believes there is sufficient parking capacity on the site for redevelopment.
4. Reports of Community Council, Boards and Commissions: None.
 5. Report of the City Manager: None.
 6. Council Business and New Initiatives

Councilmember Davidson reported that he attended a Slavic cultural event at Marymoor Park.

Councilmember Balducci raised the issue of Sound Transit's interest in siting a maintenance and operations facility on the Eastside to support the light rail line. The agency has identified potential sites in Bellevue. Ms. Balducci said that she and the City Manager took a midnight tour of Sound Transit's existing maintenance and operations facility, and she encouraged others to do the same.

Councilmember Stokes reported that he received a number of staff briefings on certain topics during the break.

Councilmember Wallace said Councilmember Chelminiak led the charge at the PSRC economic development group, which just completed its Regional Economic Plan. Mr. Wallace said he will be taking over Mr. Chelminiak's position on that committee, and Mr. Chelminiak will take Mr. Wallace's seat on the Eastside Human Services Forum.

Deputy Mayor Robertson reported that she officially welcomed a Romanian Pentecostal Church conference on family in Bellevue, and she helped kick off Bellevue's second multifamily organics recycling project at Eastbridge Condominiums in conjunction with Republic Services.

7. Approval of the Agenda

→ Councilmember Stokes moved to amend the agenda to add Item 8(j). Councilmember Wallace seconded the motion.

→ The motion to amend the agenda carried by a vote of 6-0.

Deputy Mayor Robertson suggested amending the agenda to add the two Study Session items to Agenda Item 12.

Councilmember Davidson observed that a great deal of information was presented tonight on the 2012 Comprehensive Plan Amendment (CPA) proposals. He suggested bringing the items back next week for Council action.

→ Councilmember Davidson moved to add both Study Session items to the agenda, and to complete discussion on the 2012 CPA work program but to defer Council action to next week. Councilmember Stokes seconded the motion.

Dr. Davidson said he is not a fan of threshold review because it is hard to draw a line between what constitutes threshold review versus a full Comprehensive Plan study.

Councilmember Chelminiak concurred with the suggestion for more discussion. He observed that the Council might feel comfortable enough to take action on at least some of the items tonight. He noted that the topic is identified in the agenda for Council action.

Councilmember Robertson said she will support the motion. She observed that the applicants only found out on Friday that the Council would be addressing the CPA work program.

Councilmember Wallace said he would prefer the approach suggested by Mr. Chelminiak, which is to not preclude the option of taking action tonight.

→ The motion failed by a vote of 2-4, with Deputy Mayor Robertson and Councilmember Davidson in favor.

Myrna Basich, City Clerk, indicated that it was not necessary to make another motion to continue the Study Session items to the Regular Session agenda.

Deputy Mayor Robertson confirmed that the two items will be taken up under Agenda Item 12.

8. Consent Calendar

→ Councilmember Chelminiak moved to approve the Consent Calendar, amended to add Agenda Item 8(j). Councilmember Stokes seconded the motion.

→ The motion to approve the Consent Calendar, as amended, carried by a vote of 6-0, and the following items were approved.

- (a) Minutes of July 9, 2012 Extended Study Session
Minutes of July 16, 2012 Study Session
Minutes of July 16, 2012 Regular Session
Minutes of July 23, 2012 Extended Study Session
- (b) Resolution No. 8437 authorizing execution of necessary documents to approve the Change of Control of WaveDivision Holdings, LLC, under the current cable TV franchise, to Oak Hill Capital Partners III, L.P.
- (c) Ordinance No. 6070 authorizing: 1) execution of a grant agreement, to accept up to \$410,000 in reimbursement for the Washington State Department of Commerce 2012 Energy Efficiency Grants for Higher Education and Local Governments; 2) execution of a two-year performance-based energy services agreement with Ameresco-Quantum, in an amount not to exceed \$1,300,757, for energy conservation measures associated with the grant; and, 3) amending the 2011-2012 budget of the Operating Grants, Donations, and Special Reserves Fund to increase appropriations by \$100,000, with the \$310,000 remainder from the grant being appropriated as part of the 2013-2014 biennial budget.
- (d) Ordinance No. 6071 authorizing and providing for acquisition, including through condemnation, of property rights required to construct NE 8th Street pedestrian safety improvements as part of the City's Pedestrian Access Improvement Program (CIP Plan No. PW-W/B-56).
- (e) Resolution No. 8438 authorizing execution of the Hand Receipt (sub grant transfer document) transferring ownership of a Mobile Command Vehicle from the City of Medina to Bellevue.
- (f) Ordinance No. 6072 establishing a "No Parking Anytime" zone on both sides of SE 24th Street from 144th Avenue SE eastward to the end of the cul-de-sac to address spillover parking from Bellevue College.
- (g) Ordinance No. 6073 related to Residential Permit Parking and repealing Ordinance No. 3994 and creating a new Residential Permit Parking Zone 5, restricting parking on the 1000 block of NE 13th and NE 15th Streets and the 1300, 1400 and 1500 blocks of 102nd Avenue NE to "No Parking 8 a.m. to 5 p.m., Except Saturday, Sunday and Holidays, Except by Zone 5 Permit".
- (h) Resolution No. 8439 authorizing execution of an amendment to the design consultant agreement with PB Americas, Inc., increasing the total contract amount from \$1,341,656 to \$1,833,860, to conduct additional design investigations, complete the final design, and prepare the construction contract documents for the NE 4th Street Extension Project from 116th Avenue NE to 120th Avenue NE (CIP Plan No. PW-R-160).

- (i) Resolution No. 8440 authorizing execution of a four-year general services contract with Enco Utility Services, in an amount not to exceed \$80,000, for lockbox processing of utility bill payments.
- (j) Resolution No. 8441 authorizing execution of an amendment to a Professional Services Agreement between the City of Bellevue and Summit Law Group to increase the total contract amount from \$45,000 to \$65,000 for legal services.

Councilmember Balducci referenced Agenda Item 8(c) and suggested creating some type of graphic to track the City's progress toward reducing its greenhouse gas emissions.

9. Public Hearings: None.

10. Land Use: None.

11. Other Ordinances, Resolutions and Motions: None.

12. Unfinished Business

- (a) Continued discussion of 2012 Comprehensive Plan Amendment (CPA) Work Program [Study Session Agenda Item 3(a)]

Deputy Mayor Robertson recused herself and left Council Chambers while the Council addressed the Banner Bank Comprehensive Plan Amendment (CPA) item.

Councilmember Davidson assumed the role of temporary chair.

Responding to Councilmember Davidson, Deputy City Attorney Kate Berens said that CPAs are not considered quasi-judicial items so it is not necessary for Councilmembers to recuse themselves. However, sometimes Councilmembers prefer to remove themselves from consideration of an item if they have a personal connection.

Councilmember Balducci stated her understanding of what she has heard regarding the issue of changed circumstances. The Planning Commission found changed circumstances because there were unanticipated consequences from the initiation of the Bel-Red Plan which rendered certain properties as unable to develop, as evidenced by the decision of an adjoining property owner to rebuild in place after a fire rather than to develop something bigger or more in keeping with the updated Bel-Red Plan zoning goals. Aaron Laing, Planning Commission, confirmed Ms. Balducci's understanding. He read pertinent language from the Code: "...demonstrating evidence of change such as unanticipated consequences of an adopted policy."

Ms. Balducci said she was struggling with this somewhat circular argument and with the finding of changed circumstance for the Banner Bank proposal. She recalled that homes were being knocked down and rebuilt when the economy was good. But does that mean that the zoning should now be changed to stimulate redevelopment in single-family neighborhoods because people are not redeveloping right now due to the economy? She believes not.

In general, Councilmember Balducci said she agrees with the concept of giving deference to the Planning Commission's recommendations. However, she sees this case as a policy consideration and would be concerned that, if approved, it would be difficult to define where to draw the line elsewhere.

Councilmember Chelminiak questioned the intent of zoning at a lower level than the other side of Bel-Red Road. Paul Inghram, Comprehensive Planning Manager, said there was a fair amount of discussion on this issue during the Bel-Red planning process. The intent was to establish a transition area of lower building heights and lower intensity zoning along the south side of Bel-Red Road to buffer the residential areas.

In further response, Mr. Inghram said it is possible to develop limited housing in Office zoning, but it is not very practical to do so. He said the current BR-ORT (Office/Residential Transition) zoning designation increases the allowance for residential development and increases the FAR (floor-area ratio) from .5 to .75, which are marginal increases of intensity and allowance of uses. Mr. Inghram said this makes the zoning more consistent with the parcels across the street and to the east.

Councilmember Chelminiak said he is not swayed by the economic viability argument. He is concerned that a change for the Banner Bank property could be used as the basis for additional rezone requests from neighboring properties, and he does not want to get into spot rezoning.

Councilmember Stokes said he agreed with the comments by both Councilmember Balducci and Councilmember Chelminiak. He observed that the rezone would damage the concept of the Bel-Red Plan, and he would like to give more time to see how the Bel-Red Plan works in terms of encouraging future redevelopment. He believes the Council should maintain the integrity of the Bel-Red Plan, and he does not see changed circumstances.

Councilmember Wallace said he shares the concerns about the concept of significantly changed circumstances. He also is having difficulty with the third criterion, which says that the proposed amendment does not raise policy or land use issues that are more appropriately addressed by an ongoing work program approved by the City Council. Noting the East Beach Volleyball Center as an example, he said there are numerous properties that would never have been redeveloped even if the economic boom had continued.

Mr. Wallace suggested adding this topic to a work program to take a comprehensive look at these properties, and to try to figure out which of them are meeting the goals of revitalization of the Bel-Red area and which ones are not. The Spring District project is definitely meeting the goals. However, the second node is not, and the East Beach Volleyball Center area is not. Mr. Wallace observed that, when 900 acres are rezoned, the plan cannot be expected to be perfect the first time.

Councilmember Davidson said he is not comfortable with not initiating the Banner Bank CPA proposal; he would rather let it go to threshold review.

Councilmember Stokes reiterated that the integrity of the Bel-Red Plan is important. However, he appreciates Councilmember Wallace's comments. Mr. Stokes believes it is within the Council's scope to revisit the plan and to address some of the specific properties. He suggested this include a public process as well.

Councilmember Chelminiak recalled that there was a five-year check-in point established for the Bel-Red Plan. He suggested giving the plan some time before making any changes.

Councilmember Balducci suggested deferring Council action until next week, especially given the close vote by the Planning Commission to initiate threshold review. Waiting would provide the opportunity for the applicant to withdraw the proposal if desired, and to avoid the three-year ban on resubmitting the CPA application. She believes this would be fair to the applicant, who was not able to attend tonight.

Councilmember Davidson noted a Council consensus to proceed as suggested by Ms. Balducci.

Deputy Mayor Robertson returned to Council Chambers at 9:29 p.m. and presided over the remainder of the meeting.

Councilmember Balducci suggested that the Council take action on the other two CPA proposals, noting that the applicants are present and have had the opportunity to comment.

→ Councilmember Stokes moved to initiate the Lorge-Benis/Newport Professional CPA into the annual work program, as recommended by Planning Commission.
Councilmember Balducci seconded the motion.

Councilmember Stokes believes the rezone could benefit the area. Moving into threshold review will allow staff to conduct further analysis and make a recommendation.

Responding to Councilmember Chelminiak, Mr. Inghram confirmed that Holy Cross Lutheran Church withdrew its CPA proposal. He confirmed further that staff recommended initiating the application into the work program, while the Planning Commission did not find sufficient evidence of changed circumstances.

Mr. Inghram said the Holy Cross Lutheran Church was looking at the ability to provide housing, while staff saw the Banner Bank CPA as an unintended consequence of adopted policy, as described earlier by Mr. Laing. Mr. Inghram said churches are increasingly taking a role in affordable housing, which was not anticipated when the site was originally zoned.
Councilmember Chelminiak noted that he wished the church had not withdrawn its proposal.

Councilmember Davidson commented on the Lorge-Benis/Newport Professional CPA proposal. He said it is interesting that the site is essentially surrounded by Newport High School. He believes that the current Professional Office designation is the appropriate zoning.

Councilmember Balducci said she is wrestling with the concept of changed conditions. She will defer to the Planning Commission's recommendation on this one, which was a vote of 6-1 to

initiate the CPA into the 2012 work program.

Councilmember Wallace expressed his support for the motion.

Deputy Mayor Robertson concurred with Ms. Balducci but said that does not presuppose any decision after threshold review on her part.

→ The motion to initiate the Lorge-Benis/Newport Professional CPA into the 2012 work program carried by a vote of 5-1, with Councilmember Chelminiak opposed.

Moving to the Leggate-Balwada CPA, Dr. Davidson said his office is near the site. He said there are no sidewalks up there and kids walk in the middle of the street. He said the area is a single-family neighborhood, and current adopted policy speaks to protecting neighborhoods along the perimeter of the Downtown. He agrees with the recommendation of the Planning Commission and of staff to not initiate the CPA into the 2012 work program.

→ Councilmember Davidson moved to not initiate the Leggate-Balwada CPA proposal into the 2012 work program, and Councilmember Chelminiak seconded the motion.

Councilmember Chelminiak said this is difficult issue. He acknowledged that the applicants are residents who have been committed to this community for a long time. With regard to the testimony that the population of Bellevue High has increased, he noted that enrollment at a number of schools has increased. However, that does not provide the basis for an upzone. Mr. Chelminiak said he will support the motion.

Councilmember Stokes concurred with Mr. Chelminiak's observations on increases in school populations citywide. Mr. Stokes believes it is important to protect single-family neighborhoods, and he will support the motion.

Councilmember Balducci said she appreciates the Leggate family's interest in revitalizing the neighborhood and providing amenities (e.g., sidewalks). But Ms. Balducci believes that the buffer between single-family neighborhoods and commercial areas should be preserved. She said that increased traffic at the high school cannot be used as the basis for an upzone. She will support the motion.

Councilmember Wallace said the testimony was compelling and he would like to be able to allow the family to use the property as they have requested. However, there are significant technical and community issues if the proposal were to go forward. Mr. Wallace observed that, if this change were to be made, it should involve significant public involvement. He concurred with his colleagues that increased traffic does not establish the basis for an upzone.

Councilmember Wallace noted that the factors being cited as changed circumstances, including traffic and noise, would also apply to a light rail station. He does not want to set a dangerous precedent with this CPA proposal.

Deputy Mayor Robertson said she shares this concern about setting a precedent with potentially adverse impacts. She thanked the applicants for their testimony earlier in the evening.

- The motion to not initiate the Leggate-Balwada CPA proposal into the 2012 CPA work program carried by a vote of 6-0.
- At 9:50 p.m., Councilmember Chelminiak moved to extend the meeting to 10:30 p.m., and Councilmember Balducci seconded the motion.
- The motion to extend the meeting carried by a vote of 6-0.

- (b) Proposed Amendment to the Right-of-Way Use Code to address relocation of facilities for City or other projects in the Right-of-Way

City Manager Sarkozy referred the Council to page SS 2-35 of the meeting packet for information on a proposed amendment to City Code regarding the relocation of private utilities facilities for City or other public purposes in the right-of-way.

Transportation Director Dave Berg explained that the Right-of-Way Use Code addresses City-owned ROW, but not ROW owned by Metro, King County, and other agencies. Staff proposes amending the Code to ensure that the relocation of private utilities equipment and facilities is addressed in the same manner for both City-owned and non-City-owned rights-of-way.

Deputy Mayor Robertson noted a consensus to bring back the proposed amendment for Council action on September 17.

- 13. Continued Oral Communications: None.
- 14. New Business: None.
- 15. Executive Session: None.
- 16. Adjournment

At 9:54 p.m., Deputy Mayor Robertson declared the meeting adjourned.

Myrna L. Basich, MMC
City Clerk

/kaw