

CITY OF BELLEVUE
CITY COUNCIL

Summary Minutes of Study Session

February 4, 2013
6:00 p.m.

Council Conference Room
Bellevue, Washington

PRESENT: Mayor Lee and Councilmembers Chelminiak, Davidson and Wallace

ABSENT: Deputy Mayor Robertson and Councilmembers Balducci and Stokes

1. Executive Session

An announcement was made by the City Clerk that the Council was awaiting a quorum to begin the meeting.

At 6:30 p.m., Mayor Lee announced that he was waiting for a quorum in order to begin the meeting. There was no Executive Session.

The meeting was called to order at 6:35 p.m., with Mayor Lee presiding. He announced that three Councilmembers were sick with the flu.

2. Study Session

- (a) Continued Discussion regarding the Draft Light Rail Overlay governing the East Link Project

City Manager Steve Sarkozy introduced continued discussion regarding the draft Light Rail Overlay that will govern permitting for the East Link light rail project. He recalled that the Memorandum of Understanding (MOU) with Sound Transit calls for the City to work on streamlining the permitting process and enhancing predictability, for the agencies and the community, to the extent possible.

Mike Brennan, Director of the Development Services Department, reviewed the Land Use Code amendment schedule. Tonight is confirmation of the Light Rail Overlay approach in preparation for releasing a draft for comment during the public hearing on February 11. The SEPA threshold determination is anticipated within the next couple of weeks, and final Council action on the Light Rail Overlay Land Use Code amendment is scheduled to occur on February 19 or February

25. Staff is seeking confirmation of the draft Light Rail Overlay Code for presentation during the February 11 public hearing.

Mr. Brennan reviewed the topic blocks included in the series of discussions about the Light Rail Overlay: 1) General sections and definitions; 2) Required light rail permits; 3) Citizen Advisory Committee (CAC) involvement in permitting; 4) Development standards; 5) Design guidelines; 6) Administrative modification process; and 7) Treatment of nonconformities.

Councilmember Davidson requested a decision tree to be presented for the public hearing. Mr. Brennan said he hopes tonight's presentation captures the decision tree. Mr. Sarkozy recalled that the Council talked about two related items at its recent retreat - alignment issues and the Light Rail Overlay Code decision matrix. Dr. Davidson said he is concerned about the alignment and how it fits within the Critical Areas Ordinance.

Mayor Lee said the purpose tonight is to talk about the Light Rail Overlay.

Dr. Davidson said he would like the public hearing to address the Overlay as well as the alignment's critical areas issues.

Councilmember Chelminiak said he is open to hearing public comments on the alignment and critical areas. He observed that the alignment options under consideration involve critical areas along the Mercer Slough and potentially the steep slope on the west side of Bellevue Way.

Councilmember Wallace said he would like staff to walk through the process and explain how the Critical Areas Ordinance and Shoreline Master Program regulations will be applied to light rail. Mr. Brennan indicated that the presentation would provide an overview of the permitting process.

Mr. Wallace opined that discussions keep skipping over the purpose section. He observed that many Code provisions are included in the Light Rail Overlay. However, he would be interested to know why some are not. He referred to the first page of the Overlay document [Page SS 2-5 of meeting packet] and questioned the phrase "applicable City codes." He requested clarification about how the Noise Code and other codes will be applied.

Carol Helland, Land Use Division Director, said the entire Comprehensive Plan does not need to be restated and that all of the general policies will apply to the entire alignment.

Kate Berens, Deputy City Attorney, addressed the issue of who may apply for permits. She said staff added conditions to the Overlay that must be met before applications can be made by a Regional Transit Authority. An RTA must have a property interest, consent of the owner, or Board authorization to acquire the property.

Responding to Mayor Lee, Ms. Berens said there have been a number of projects in which permits have been applied for even though property acquisitions have not been completed (e.g., NE 4th Street extension, 120th Avenue NE improvements).

Responding to Councilmember Davidson, Ms. Berens said that issuing a permit does not grant the right to enter a property if it has not yet been acquired.

Responding to Mayor Lee, Ms. Berens said a property owner has the right to file a claim against Sound Transit if the owner felt that the permit devalued his or her property or caused any other negative impact. The City would not be involved in that action, however.

Mr. Sarkozy acknowledged the Council's concerns about residents whose properties are affected by the light rail alignment. He said that property acquisitions cannot be addressed until Sound Transit selects its final alignment. The City has requested that Sound Transit make property acquisition issues a top priority as soon as possible.

Councilmember Wallace suggested a specific definition for the term "affected property."

Mr. Wallace observed that Sound Transit Board authorization to acquire a property or properties does not assure that a settlement will be negotiated or reached with the property owners. As an alternate condition, he suggested the issuance of an immediate use and possession notice for the affected property in a condemnation. Once Sound Transit files for condemnation and submits the immediate use and possession notice, the agency is obligated to carry through with that negotiation. At the same time, the permit application does not get hung up in the negotiation over the ultimate value of the property. Mr. Wallace proposed this approach as a fair compromise.

Ms. Berens said that point in the process is 12 to 18 months into the future. Board authorization to acquire is the first formal step to initiate negotiations with property owners. She said federal agencies like to see an attempt at negotiation before a condemnation lawsuit is filed.

Mr. Wallace said the laws on condemnation provide the opportunity to expedite the process. The ultimate goal is to provide relief to the people who are affected by the acquisitions. If a development agreement provision, for example, provides the same assurance after going through the Light Rail Overlay process, he would be open to that discussion. At this point, he does not see any better standard out there to ensure that private property situations are handled appropriately.

Councilmember Chelminiak observed that staff is trying to reach the right balance. For this project, every parcel has been identified in the EIS. He believes that any potentially affected property owners are aware of the potential of acquisition. The key is to make sure that if a permit application is allowed to be submitted before the acquisition of property, it is important to ensure that property values are not diminished by that permit application. Mr. Chelminiak said residents need certainty and reality rather than more waiting.

Mayor Lee said he would like to provide as much certainty as possible and to expedite property acquisitions when the project reaches the appropriate timeframe.

Ms. Berens introduced the topic of the Operations and Maintenance Satellite Facility (OMSF). She recalled discussion on January 28 and noted that the Land Use Code has been revised to reflect Council direction from that date. The OMSF has been defined and specifically excluded from inclusion in the Light Rail Overlay. Staff added a definition of Light Rail Best Practices, and a definition of Regional Transit Authority will be added before the public hearing on February 11.

Councilmember Wallace expressed support for the determination that we do not know enough about the OMSF at this point and it will therefore be treated as a conditional use and sent through the Hearing Examiner process. He wondered whether this would also be the appropriate avenue for addressing Critical Areas and Shorelines compliance.

Ms. Berens described the two permitting path options. If there is agreement on the alignment (recognized via ordinance, resolution, or development agreement), light rail is handled as a permitted use, subject to design and mitigation permits. If there is not agreement on the alignment, the light rail facility is treated as a conditional use and is subject to the required permits. Shoreline issues would be addressed through the Shoreline Substantial Development Permit process. The typical Critical Areas permitting process is not a conditional use permit but is folded into the review of the underlying permit. Ms. Berens said all of these requirements are being applied through the Light Rail Overlay.

Responding to Councilmember Davidson, Ms. Berens confirmed that the shorelines permit is separate and cannot be streamlined into the Overlay.

Dr. Davidson noted his ongoing concerns about the South Bellevue Park and Ride/Station. He believes there are substantial impacts to wetlands and that it should go through the conditional use permit process.

Ms. Berens said the Park and Ride structure is not within the jurisdiction of shorelines. Ms. Helland said a small corner of the detention pond falls within shoreline jurisdiction. Ms. Berens said wetland impacts will be reviewed regardless of the overall process.

Responding to Mr. Wallace, Ms. Berens said if there is agreement on the alignment, Process II is followed to address the design and mitigation permits. The decision is made by the Director and an appeal would go to the Hearing Examiner. If there is not agreement on the alignment, the Director makes a recommendation and a public hearing is held before the Hearing Examiner, who makes the decision. That decision can be appealed to the City Council.

Responding to Mr. Wallace, Ms. Berens said the shorelines permit process involves the State Department of Ecology. She said staff will bring back more information on that for the public hearing.

Ms. Helland clarified that the processes of a development agreement or conditional use permit address the issue of land use, while the design and mitigation permit phase addresses design and impacts.

Responding to Councilmember Wallace, Ms. Helland confirmed that the light rail project environmental impact statement (EIS) discloses the impacts. However, state law does not require mitigation to zero impact.

Noting the absence of certain information at this point, Mr. Wallace said he is struggling with how to make decisions now that will prove to be the right decisions 12 months from now.

Mr. Sarkozy questioned whether it would help to have a consolidated process map for all of the permits and alternatives. He said staff could provide that if requested.

Councilmember Davidson believes that the South Bellevue Park and Ride/Station would have lesser environmental impacts on the west side of the road, across the street from the current Park and Ride.

Councilmember Chelminiak said the current Park and Ride is not in wetlands but that it sits on top of 25 feet of dirt that was removed to construct I-90. A station across Bellevue Way does not line up with Sound Transit's preferred alignment. Mr. Chelminiak noted that the Development Agreement process involves the City Council, which best represents and is accountable to citizens. Conversely, the conditional use permit process leaves the decision to a contracted employee (i.e., Hearing Examiner).

Moving on, Ms. Berens said the next set of slides deals with how other applicable City Codes are incorporated by reference. Councilmember Wallace requested a list of the codes that will be applicable to the Light Rail Overlay.

Ms. Berens reminded the Council that the design review process is not currently required in all land use districts affected by the light rail project. She highlighted changes related to design and mitigation review that have been made in response to previous Council feedback.

Ms. Helland recalled Council direction regarding the Citizen Advisory Committee and described the phases of the CAC's involvement throughout the engineering and design process.

Ms. Helland described changes to the Overlay in response to the Council's input on CAC involvement. A new code section 20.25M.035 includes the purpose of the CAC, formation timing and desired member experience, scope of CAC work, involvement process for CAC, anticipated CAC work product, policy and regulatory guidance for the CAC's work, and meeting operations for the CAC.

Ms. Helland reviewed previous Council direction on development standards including height limitations, setbacks, landscape development, critical areas, fencing, mechanical equipment, parking and circulation. The height limit determination will be based on the chosen approval process (Development Agreement versus CUP approach). Without a development agreement, the height limits of the underlying land use district will apply.

Ms. Helland referred to dimensional requirements information beginning on page SS 2-18 of the meeting packet. She explained that traction power substations and track alignment are not considered a structure that requires setback. However, the project will incorporate screening and landscaping.

Ms. Helland described the types of landscape development for right-of-way buffers and residential development which include street frontage, residential use buffer, and residential development screening. All of these features have been identified for review by the CAC with regard to context sensitivity. Ms. Helland described changes to the Light Rail Overlay [Section 20.25M.040.C] responding to Council feedback regarding landscaping and screening.

Ms. Helland addressed the treatment of critical areas [Section 20.25M.040.I; page 2-23 of the meeting packet] and described changes in response to previous Council feedback. She explained that when a development agreement, ordinance or resolution is in place, the Regional Transit Authority is not required to demonstrate that no technically feasible alternative with less impacts exists. If there is not a development agreement or legislation, the RTA is required to demonstrate that there is no technically feasible alternative with less impacts.

Ms. Helland highlighted additional changes to development standards to incorporate the concept of context sensitivity for landscaping, fencing, and mechanical equipment and to add impact mitigation requirements related to parking and circulation standards.

Ms. Helland recalled that the Council provided direction on design guidelines during the recent Council Retreat. She went over changes to the draft Light Rail Overlay with regard to design guidelines [20.25M.050] and the Citizen Advisory Committee.

Ms. Berens described the administrative modification process to be applied if necessary to make light rail more practicable or to accommodate a Council decision related to cost savings or the alignment. She commented on proposed language acknowledging that any nonconforming site condition resulting from property acquisition for a public project is a legal nonconformity.

Ms. Berens requested Council confirmation of the content of the draft Light Rail Overlay Code amendment and Council direction to complete preparations for the public hearing.

Councilmember Wallace said he would like to get to a level of detail that will indicate which properties will be taken, based on the Overlay setbacks and other provisions, and how the remaining properties will be screened.

Mr. Wallace said he believes good progress has been made. He questioned the process going forward to final adoption. Ms. Berens suggested that Councilmembers submit any specific language changes for compilation by staff.

Mr. Chelminiak concurred that good work has been done by staff and the Council to move this effort forward. He requested redlined and non-redlined versions of the next version of the draft Light Rail Overlay.

- (b) Update on Puget Sound Regional Council (PSRC) Growing Transit Communities Partnership

Mayor Lee indicated that this item would be carried over to the Regular Session under Item 5, City Manager's Report.

3. Discussion

- (a) Consideration of the application of Bellevue School District 405 for a Conditional Use Permit to demolish the present one-story Sammamish High School and to build a new three-story high school facility on the same site. The new academic building will be wrapped around the existing 18,000 square foot Performing Arts Center, which will remain. The site is located at 100 140th Avenue SE and is in the jurisdiction of the East Bellevue Community Council. File No. 12-117732 LB.

Mr. Sarkozy opened discussion regarding the consideration of an application by the Bellevue School District to demolish and rebuild Sammamish High School.

Noting that this is a quasi-judicial matter, Councilmember Chelminiak disclosed that his wife works for the Bellevue School District at Interlake High School. She is not involved in facilities planning. However, he wanted to state this on the record under the appearance of fairness doctrine.

Ms. Helland provided a brief summary of the proposed project. The last time the City had a project of this type was when the Performing Arts Center was constructed at Sammamish High School. That structure will be retained, but the rest of school will be demolished and the new school will be built around the Center.

Staff will be requesting Council action on February 19. Ms. Helland noted that this is a closed record appeal.

At 7:53 p.m., Mayor Lee declared recess to the Regular Session.

Myrna L. Basich, MMC
City Clerk

/kaw