

CITY OF BELLEVUE
CITY COUNCIL

Summary Minutes of Study Session

February 19, 2013
6:00 p.m.

Council Conference Room
Bellevue, Washington

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

ABSENT: None.

1. Executive Session

Deputy Mayor Robertson called the meeting to order at 6:01 p.m. and declared recess to Executive Session for approximately five minutes to discuss one matter of potential litigation.

The meeting resumed at 6:11 p.m., with Mayor Lee presiding.

2. Study Session

- (a) Continued Discussion regarding the Draft Light Rail Overlay governing permitting of the East Link Light Rail 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.

Mr. Sarkozy said a public hearing on the Draft Light Rail Overlay Land Use Code Amendment (LUCA) was held on February 11, and a revised version was posted on the City's web site early on February 16. He thanked staff for their hard work on revising the draft within a short timeframe. Adoption of the Overlay is anticipated for February 25.

Mike Brennan, Director of the Development Services Department, noted the Public Hearing version of the Overlay provided in the evening's meeting packet as Attachment A and conformance amendments provided as Attachment B. Attachment C is a summary of public

comments and staff's responses. Additional attachments provide details on the permitting process and landscape screening.

Mr. Brennan noted, for the public, that the Overlay's purpose is to set design standards and permitting procedures for the East Link light rail project. Approval of the alignment is anticipated later this year or next year.

Mr. Brennan said staff is seeking additional Council direction regarding development standards and the Citizen Advisory Committee's (CAC) involvement in permitting.

Kate Berens, Deputy City Attorney, explained that one difference between the Public Hearing draft Overlay and the Leadership Group draft relates to transition areas. This general Land Use Code concept is now provided in the Light Rail Overlay, which defines the light rail facility or system as a district that provides transition to any adjacent residentially zoned property that is also developed as a residential use. The Leadership Group draft reflects definitions and provisions related to the transition district.

Ms. Berens requested Council direction regarding whether the transition area concept should be included in the final Overlay. This anticipates additional conformance amendments to Land Use Code section 20.25B to ensure consistency and clarifications throughout the Overlay indicating where the transition boundary impacts height and setback requirements.

Responding to Councilmember Balducci, Ms. Berens explained that adopting the transition area as described establishes a designation for areas that are not already within some type of overlay district (i.e., residential areas south of the Downtown). The practical implications relate to setbacks versus landscape buffers, for example. In further response, Ms. Berens said the definitions for transition areas apply to districts zoned R-1 through R-30 and developed as residential uses.

Responding to Councilmember Chelminiak, Ms. Berens confirmed that the Land Use Code already contains the concept of transition areas. With regard to the light rail alignment, the current code would apply the concept only to an area at SE Main Street. She confirmed that the proposed Overlay language creates a transition area along any light rail alignment adjacent to residential uses, including in south Bellevue.

Councilmember Stokes questioned the difference between creating landscaping and other standards for light rail facilities adjacent to residential uses, which has been the subject of recent discussions, versus applying the transition area definition along the light rail alignment. Ms. Berens said the transition area concept provides more specific definitions and applicability.

Councilmember Wallace observed that there are three zones: Downtown, Bel-Red corridor, and South Bellevue. The Bel-Red Plan contains provisions in anticipation of light rail. Standards for the Downtown are largely adequate because light rail is in a tunnel. He sees the proposed transition area language as creating a third zone that includes the remainder of the light rail alignment.

Deputy Mayor Robertson spoke in favor of the transition area section proposed for inclusion in the Light Rail Overlay, which she believes is consistent with the current Land Use Code. Discussions about earlier drafts have addressed setbacks and buffers, and the transition area concept will refine the standards.

Councilmember Chelminiak observed that the proposal is not consistent with the Land Use Code but that it significantly expands the transition area application.

Moving on, Ms. Berens addressed the issue of who has the authority to apply for permits and the timing of permit application. In the Public Hearing draft, Sound Transit may apply for permits after beginning the property acquisition process for the specific segment of the alignment. In the Leadership Group draft, Sound Transit may apply for permits upon formal commencement of condemnation for the light rail segment specified in the permit application. Ms. Berens highlighted the process differences between the two approaches.

Ms. Berens requested Council direction regarding the timing of permit application. She said it might be necessary to revise the Overlay further to clarify that permits could potentially be packaged by alignment segment. This would include clarification that the Overlay is not intending that property interests throughout the entire six mile alignment must be in hand before any one permit application is submitted by Sound Transit. It might also be necessary to clarify that the City and Sound Transit could enter into a Development Agreement which could dictate the conditions and requirements for property acquisitions and permit timing.

Councilmember Balducci said the two major goals of the Light Rail Overlay are: 1) To facilitate the development of light rail along the alignment that has been approved by the City Council and the Sound Transit Board, and 2) To provide terms, conditions and protections for areas around the light rail facility. She said she does not understand how the approach to permit timing proposed in the Leadership Group's draft benefits property owners. However, she observed that it will delay the project by at least nine months.

Ms. Berens opined that the draft addresses concerns raised by the public about the potential cloud on their title caused by Sound Transit's activities on private property. She said there are no property interests granted with the issuance of the permit.

In further response to Ms. Balducci, Ms. Berens said that, for public projects, the City does receive applications prior to the public agency obtaining the property interest. In boundary disputes involving private property, any permit application affecting the disputed area is deferred until the dispute is resolved. Ms. Berens confirmed that the proposed approach for light rail uses is a higher standard than the City's current practice for road projects.

Councilmember Chelminiak noted that the alignment is known and the property impacts are anticipated. He said he is curious about the property title issue.

Deputy Mayor Robertson said the City is not prohibited from accepting an earlier permit application. She questioned whether the City must allow early permit applications. Ms. Berens said she is not aware of any legal cases that have addressed this issue. Ms. Robertson said she sees this as a policy rather than legal issue. She said the Council has stated its interest in providing certainty for homeowners. Ms. Robertson observed that the Leadership Group draft language helps to facilitate earlier property acquisitions.

Ms. Robertson said she is not sure the City should be applying for permits if it does not have the right to use properties. She said the use of property includes the right to develop. If the City allows non-owners to impinge on that, the City is facilitating the disruption of a protected property right. Ms. Robertson reiterated her support for facilitating early acquisitions. She opined that the City should not facilitate the erosion of protected constitutional property rights.

Councilmember Wallace said he would use the term prompt acquisition because early acquisition would have already taken place. He concurred with Ms. Robertson regarding the issues of property rights and acquisitions. He said the intent is not to delay Sound Transit but to prioritize this step and to understand Sound Transit's plans.

Councilmember Stokes, noting that he is a member of the Leadership Group, said he does not see substantive differences between the Public Hearing draft and the Leadership Group draft with regard to applying for permits. He questioned the practical difference between the two language in the two drafts.

Ms. Berens said her understanding is that part of the intent behind requiring that the condemnation process be started before applying for a permit is to facilitate prompt acquisition. However, she said City staff does not know whether or how this will affect the Sound Transit Board in taking formal steps to authorize acquisitions. She said that Sound Transit's typical process is to apply for land use entitlement at approximately 50 percent design, and to ask the Sound Transit Board to authorize acquisition at approximately the same time. Sound Transit typically pursues these processes on a parallel track.

Ms. Berens said Sound Transit has been asked to address whether the proposed Leadership Group code provision would result in moving the Sound Transit Board's authorization step sooner in the schedule versus pushing the land use entitlement application out in the process. The issue would be the impacts to the project schedule and costs.

Mr. Stokes observed that the two concepts are not necessarily incompatible. He questioned what happens after the Sound Transit Board takes formal action authorizing the acquisitions.

Ms. Berens said Sound Transit would conduct formal appraisals, which would be sent with letters to property owners to initiate negotiations. This process could take four months to six months, depending on whether acquisitions are voluntary or result in condemnation.

Mr. Brennan noted that another key element in the timeline process that drives both permitting and acquisitions is the level of design development. The final alignment needs to be established

and defined, and the design must progress to a point at which property impacts are known before moving forward with formalizing the acquisition process.

Councilmember Stokes reiterated that it sounds like the two draft code options are essentially the same. His goal is to see certainty and to achieve acquisitions as quickly as possible.

Councilmember Balducci said her understanding is that the staff Public Hearing draft represents the current process. The Leadership Group draft language introduces a barrier to the normal path and delays the project for a minimum of a few months. She agrees with the stated goal of accelerating property acquisition. She is not sure the proposed revision will accomplish that goal and she believes it will cause project delay. She agreed with Councilmember Wallace that the goal should be to find a way to expedite property acquisitions.

Responding to Councilmember Chelminiak, Ms. Berens confirmed that Mr. Stokes is correct when he says that the proposed code revision does not change Sound Transit's acquisition process. The language would identify a step within the City's process for applying for permits and land use entitlement.

Mr. Chelminiak observed that the Council agrees with the intent of having residential properties acquired as soon as possible. However, he is not sure whether the Council is interested in having the other properties acquired earlier. He observed that the intent was not to delay the project, but he would like to hear what the practical application is to delay the project.

Mr. Chelminiak said this is not the City's normal process, and he cautioned about unintended consequences. He said this policy issue was discussed by a subcommittee instead of the full Council, which is now being asked to review the proposed language.

Deputy Mayor Robertson believes this should be the normal process. For permits not involving condemnation authority, a party cannot apply for permits without ownership or permission. The language proposed by the Leadership Group does not prevent Sound Transit from applying for a permit, but it identifies the point at which the agency can apply. She said that acquisition is not controlled by the City or property owners, but is a process controlled by Sound Transit. She agrees that there is no intention to delay the project with this code amendment. However, the intent is to gain certainty for property owners. She observed that the proposal is consistent with the permitting practices of other cities.

Responding to Councilmember Chelminiak about the NE 4th Street project, Ms. Berens confirmed that the proposed permitting approach would result in the loss of grant funds for that project based on the timing of permit application.

Deputy Mayor Robertson noted that any group of Councilmembers not representing a quorum are allowed to work on whatever issues they would like.

Councilmember Wallace said the issues are on the table and there has been a commitment to flexibility. The intent is not to delay Sound Transit but to protect property rights and expedite acquisitions.

Mr. Stokes said he would like staff to identify the practical aspects of the two code options. He does not want to cause further project delay. He noted that the draft language was distributed to Councilmembers on Friday, and the Council has another week to work on finalizing the Light Rail Overlay Land Use Code Amendment (LUCA).

Ms. Berens said staff will bring back information next week on the schedule impacts of the two approaches.

Councilmember Davidson observed that three Councilmembers have negotiated a solution and no one is going to like all elements of the solution. He expressed support for the Leadership Group's draft language and encouraged moving forward without further delay.

Mayor Lee said the process for East Link MOU negotiations was established last year, and he supports the Leadership Group's recommendation. He suggested continuing to move forward. He said this is a difficult policy issue to be addressed by understanding the benefit and implications of the proposed language. The public is requesting exceptional mitigation, and that is what the Council needs to do. He said Sound Transit also has to step in because this is a partnership based on the MOU.

Mayor Lee asked staff to bring back information on the legal question, the costs and benefits of the two approaches, and the issue of project delay.

Moving on, Ms. Berens described proposed changes regarding the Citizen Advisory Committee (CAC) including specifying seven to nine members, limiting eligibility to Bellevue residents, further defining conflicts that would disqualify an individual from the committee, adding specific references to landscaping and linear alignment components within the scope of work, and providing additional weight to specific recommendations.

Councilmember Balducci noted that the concept of CAC involvement is consistent with the recommendations of the Light Rail Best Practices report. However, she is somewhat surprised by the power given to the CAC in proposed Overlay language. She recalled that CACs are typically comprised of stakeholders to represent a number of perspectives and interests. However, CACs do not typically exercise regulatory authority.

Continuing, Ms. Balducci said she is in favor of requiring that the ultimate permit decision by the Director of Development Services must respond to the recommendations of the CAC. She agrees that a reason should be provided for deviations from the CAC's recommendations. However, she opined that it goes too far in dictating that certain provisions will be required unless the Director can prove differently.

Ms. Balducci said she is concerned about creating the ability for the CAC to obstruct the light rail project. She wants to facilitate meaningful citizen input, but she supports the typical process with regard to a Director's decision.

Councilmember Chelminiak said that, as a Councilmember, he does not turn his vote over to anyone. He concurred with Ms. Balducci's concerns. He requested clarification regarding the definition of who may serve on the CAC. He reiterated his previous comments that the committee represent both grassroots and grasstops interests.

Councilmember Wallace said the language regarding CAC membership is meant to include any Bellevue resident regardless of where they live. Mr. Chelminiak requested clarification in the written draft.

Deputy Mayor Robertson acknowledged that this project involves a CAC that is a little different from the typical CAC process. She recalled that Councilmember Wallace originally suggested a design review board which is used by the City of Seattle. She said a design review board is different from a CAC because the board applies the code to the concept of context sensitivity.

Ms. Robertson said that a number of Councilmembers have indicated that they do not want to decide the details about the types of plants to be used in landscaping or the specific design of sound walls. However, she believes that the Council wants to ensure there is robust public involvement and a mechanism for decisions on context sensitivity.

Ms. Robertson stated her understanding that the Council does want this CAC to address issues at a more detailed level than other project CACs. She described this CAC as a hybrid between the traditional CAC and a design review board. She said it is also a compromise in the permit process if a Hearing Examiner is not to be used. She believes that having the Director as the decision making authority is not a very open, transparent and public process.

Councilmember Stokes referred to page 15 of the draft Light Rail Overlay, Section 3(b), and observed that the code language does not put an undue burden on the Director. His understanding is that the CAC language does not take away any of his authority as a Councilmember to make the ultimate decision.

Councilmember Davidson said that CACs have been used by the City for many years and have differed in certain ways including their membership and scopes of work.

Councilmember Balducci expressed concern about some elements of the CAC's scope of work including "guidance to permit decision makers regarding any RLRT system or facility design," and not just mitigation. Referring to page 15, Section 3.b, Ms. Balducci expressed concern because it appears that the Director is limited from departing from CAC recommendations unless it is necessary because the recommendation violates the law or an adopted policy. Ms. Balducci noted that this language is only in the most recent draft.

Councilmember Wallace said that most of the section regarding the CAC's scope of work is staff's original language. He recalled that he proposed the design review board concept which he envisioned to be consistent with the City of Seattle's design review board standards. He said the language referred to by Ms. Balducci was revised to reflect that intent. Mr. Wallace said his original intent was to create a design review board. He would like to give the CAC recommendation more weight.

Councilmember Chelminiak suggested that, if that is the intent, the CAC should be called a design review board, and Council and staff should begin discussing where design review boards should be used within Bellevue. His understanding was that the CAC would be an advisory body, which is his interpretation of what was recommended in the Light Rail Best Practices report.

Councilmember Balducci reiterated that her concerns are about the decision authority of the CAC as well as the breadth of the scope of potential recommendations or advice. She acknowledged Councilmember Wallace's interest in a design review board, which is different than a CAC and its advisory role.

Mayor Lee recalled, from past discussions, a desire by the Council for expert involvement in the review process. However, his understanding was that the CAC would be advisory and not the final authority.

Deputy Mayor Robertson observed that there is some support on the Council for granting more authority to the CAC, while two Councilmembers are not comfortable with that approach. She believes it is important to have robust public engagement and to have the CAC's work mean something.

Councilmember Stokes noted the need to strike a balance. He observed that the Council wants the CAC to assist in developing the best designs possible that are consistent with the Light Rail Best Practices report, while allowing the Director a clear path to take another direction if supported by an explanation. Mr. Stokes said he supports the proposed revision, but he is open to considering alternate language as well.

Councilmember Chelminiak said the City has deliberately avoided design review boards throughout its history. His original understanding was that the Director would consider the recommendations of the CAC but would be free to make his own decision. However, the new language appears to state that the Director cannot deviate from the CAC's recommendations unless something is found to be illegal.

Councilmember Balducci said that is the question she was asking, and she would like any input on whether she is interpreting it correctly. With regard to the composition of the CAC, Ms. Balducci said that some Bellevue business owners live outside of the city, and she does not want to disqualify them from participating on the CAC.

Councilmember Stokes said there needs to be ample opportunity for people across the community to weigh in on the Light Rail Overlay regulations. He said there are a number of ways to accomplish this including focus groups and advisory subcommittees.

Councilmember Chelminiak said he prefers to restrict CAC membership to residents.

Mayor Lee suggested that staff revise the draft Overlay based on the Council's discussion.

Responding to Deputy Mayor Robertson, Mayor Lee confirmed that he is referring to the Leadership Group draft of the Light Rail Overlay as the baseline for continued consideration and discussion.

Ms. Berens moved on to the topic of development standards for dimensional requirements. The public hearing draft and the Leadership Group draft reflect differences with regard to height provisions, setback requirements, and structure separation requirements. The Leadership Group draft requires demonstration that the light rail structure height is the minimum necessary for the effective functioning of a regional light rail facility. Within transition areas, the setback would be required to expand by four feet for every one foot in height over the underlying land use district. Ms. Berens said this provision does not appear to apply to the East Link alignment or alternatives under consideration. However, it could apply to future alternatives or light rail projects.

Ms. Berens requested Council direction on the height requirement.

Deputy Mayor Robertson opined that the height limitation is minor in terms of its impact on the overall alignment.

Ms. Robertson noted that there are residential units around Lake Bellevue that are near the light rail alignment. She would be interested to know whether they are in an area requiring transition regulations. Mr. Brennan said staff's initial look indicates that the transition requirements, as defined in the Leadership Group draft, would have a fairly significant impact on one of the multifamily projects adjacent to the BNSF alignment. Transition buffer requirements would also impact parking areas. Ms. Robertson asked staff to bring back additional information on that next week.

Councilmember Wallace said the question related to Lake Bellevue condominium owners is not whether the Overlay is avoiding protection for them. Rather, the question is whether the Bel-Red Plan standards protect Lake Bellevue homeowners. The Overlay transition standards were proposed for areas without any standards. He requested clarification about whether Bel-Red standards apply to the light rail alignment between I-405 and the Hospital Station.

Ms. Berens said there is a gap in standards for that section, which includes State right-of-way and other types of right-of-way. Staff will bring back more information on that area.

Mr. Chelminiak said he would be interested in knowing what would happen in the Lake Bellevue area if the transition zone was applied.

Councilmember Davidson indicated that he would not be staying for the Regular Session due to illness.

Mayor Lee said the Council would continue this discussion during the Regular Session.

At 7:55 p.m., Mayor Lee declared recess to the Regular Session.

Myrna L. Basich, MMC
City Clerk

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