

CITY OF BELLEVUE  
CITY COUNCIL

Summary Minutes of Study Session

July 15, 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 10 minutes to discuss one item of potential litigation.

The meeting resumed at 6:16 p.m., with Mayor Lee presiding.

2. Study Session

- (a) Strategy for moving the Shoreline Master Program (SMP) Update forward to the Department of Ecology for review and final approval

Acting City Manager Brad Miyake introduced staff's update on the Shoreline Master Program (SMP) review and approval.

Mike Brennan, Development Services Director, said staff is seeking Council direction regarding the next step for the Shoreline Master Program Update.

Carol Helland, Land Use Director, recalled that a public hearing on the initial SMP draft was held on May 25, 2011. The Planning Commission approved its final draft on January 16, 2013 and transmitted its recommendations to the Council on May 28, 2013.

Ms. Helland said the principles identified by the Council to guide the Planning Commission's work included consideration of Bellevue-appropriate regulations, neighborhood character, and a balance between regulations and property rights. Ms. Helland said the Commission's process was inclusive of many stakeholders.

Ms. Helland said additional work is needed before submitting the program document to the Washington State Department of Ecology (DOE). These include Critical Areas Ordinance

conformance amendments, general Land Use Code conformance amendments, Light Rail Overlay use requirements, a cumulative impact analysis, and the SMP Update checklist for submittal.

Mr. Brennan described three alternatives for moving forward:

1. Meet with DOE to clarify the preliminary comments provided in the DOE's May 14 letter
2. Negotiate with DOE to resolve the issues identified as non-compliant.
3. Complete the work needed for formal adoption by the Council and submit to DOE.

Responding to Councilmember Stokes, Mr. Brennan estimated that staff could move forward with work under the first alternative over the next one to two months. Staff would anticipate providing an update on those discussions in late September or early October. He explained that the City would need to complete the cumulative impact analysis, with the assistance of the consultant, before engaging in discussions with the State.

Ms. Helland said that, with alternative 1, the City would be likely to receive feedback from the State Department of Ecology in September or October. The cumulative impact analysis needs to be well developed because that is the most persuasive piece about how the code, regulations, policies, programs, and acquisition strategies for properties and parks balance and achieve the objectives of the State's guidelines. That would be consultant work for a couple of months, and funding is available. Ms. Helland said the City would need to have the anticipated code amendments thoroughly summarized, although not necessarily drafted, before entering into negotiations with DOE. Therefore, negotiations (Alternative 2) would probably not begin until October/November.

Ms. Helland said choosing alternative 3 requires going back to the Planning Commission and finishing all of the code amendments (i.e., policy, general Land Use Code, and Critical Areas Ordinance conformance amendments). The Planning Commission would begin that work in September and it would extend over several months, most likely into early 2014. The cumulative impact analysis would then be completed for the full package by the consultant.

Deputy Mayor Robertson observed that, under all alternatives, the City would need to complete the conformance amendments, cumulative impact analysis, and DOE checklist before Council approval and submittal to the DOE. Responding to Ms. Robertson, Ms. Helland estimated that all work would be completed by the end of 2014 under alternative 2. Staff would conduct early negotiations and might be able to shorten that time. However, staff anticipates there will be iterative changes leading to final approval. Ms. Helland said the question is whether the City does extensive code drafting initially and again upon the conclusion of negotiations, or whether code drafting occurs once. She reminded the Council that the last 10 percent of code drafting is time-consuming.

Responding to Ms. Robertson, Mr. Brennan said that if formal adoption and submittal to the DOE does not achieve DOE approval, there will be a process for responding to issues for further refinement. He noted this is the typical process with the DOE.

Councilmember Stokes said he sees these as a continuum. If the City submits the plan to the DOE now, without additional work, the DOE will give a formal response and will likely have a number of concerns. He observed that it would be more effective to obtain additional feedback from DOE while also doing some of this other work at the same time. He suggested working collaboratively with the State, as the City did with Sound Transit on light rail. Mr. Stokes suggested a combination of the three alternatives.

Councilmember Chelminiak referred to the May 14, 2013 letter of response from the DOE, which highlights a number of issues of concern and non-compliance. He questioned how much of DOE's input might be negotiable.

Ms. Helland estimated that approximately one-third would be relatively routine or require only providing clarification or additional information. However, there are topics of key importance to the DOE that might take somewhat significant time to address.

Mr. Chelminiak concurred with Mr. Stokes' suggestion about a hybrid approach including education and negotiation. He said negotiation implies making a deal, and he is not ready to give staff that direction without Council weighing in on what should be in the deal. He suggested wording it as constructive engagement with the DOE which clarifies the City's program as forwarded by the Planning Commission and resolves as many issues as possible fairly soon. Mr. Chelminiak said he was hoping for a mid-September to early October timeframe.

Mr. Chelminiak said he would like to see a risk assessment presented to the City Council that identifies and evaluates the more difficult issues from both a scientific and a legal standpoint. He would prefer to have that presentation and discussion in September.

Councilmember Davidson observed that the response from the DOE is so broad, and he would like to request more information on their more specific issues and concerns about Bellevue's draft SMP plan. Then the Council could discuss those issues with staff and develop a strategy.

Deputy Mayor Robertson said a Shoreline Master Program is meant to include the shoreline master plan, programmatic activities by the City, cumulative impact analysis, and the required DOE checklist. There is a prescribed process to package the documents and submit them to the DOE. She observed that, regardless of the degree to which the package protects the environment, the DOE will have extensive comments and requested changes. In her review of the DOE comments, she opined that approximately six are substantive comments. She said the majority are superficial comments, and the DOE specifically states that it does not want those to sidetrack the City's process. She said the DOE cannot truly give meaningful comments until they have the package. The cumulative impacts analysis is a key component of the package that includes all of the City's programmatic measures that protect the environment. However, they are not specifically listed in the DOE's criteria.

Ms. Robertson said the City's process to produce a draft plan has been going on for four years. She would like to wrap up the SMP before the Planning Commission loses Commissioner Ferris next May. She believes the City needs to move forward now with drafting the conformance

amendments. Ms. Robertson said she is concerned about closed door negotiations with the DOE before the full package is compiled. The City's work to date has been an open, public process.

Deputy Mayor Robertson said the time to negotiate will be when the City completes the formal process with the DOE. At that time, the full package will be available for review and evaluation. She would like to hire a consultant with expertise in taking a Shoreline Master Program through the DOE's process. She reiterated the importance of wrapping up this work with the current Planning Commission and taking advantage of that history and institutional knowledge.

She concurred with Mr. Stokes' suggestion about moving forward with a combination of the alternatives. She acknowledged that it will take nine to 10 months to prepare the entire package. During that time, she would like staff and an expert consultant working with the DOE to educate them about the City's plan. She said the DOE cannot effectively review the plan without the cumulative impacts analysis. She suggested moving forward with Alternatives 1 and 3. She is comfortable with the draft plan which was approved by a 7-0 vote of the Planning Commission. She believes the SMP is fair, protective of the environment, and appropriately Bellevue-specific. She acknowledged that the DOE will have additional requests and issues after the full package is submitted.

Councilmember Balducci said she is hearing, and agrees, that more information is better and that the process does not need to be strictly linear. She has never seen such a lengthy response as the DOE's letter to the City. She finds it troubling if there are many items based solely on a lack of understanding. She said it appears that communication between the DOE and the City ended at some point after 2011. She thinks communication is critical, especially with an issue involving multiple stakeholders who care greatly about the outcome. She observed that the City could have avoided some of the documented issues had communication continued. She concurred with Ms. Robertson's concerns about losing continuity in the process developing the SMP draft plan. She recalled that a reset was supported by a majority of the Council, which extended the overall process.

Ms. Balducci observed that the DOE letter indicates a disconnect between that agency's expectations and the City's draft plan. She said it is important to engage with the DOE now but that negotiations cannot move forward without more specific feedback on their concerns. She recalled the general principles underlying this work: 1) What is the City trying to accomplish?, 2) How is the City going to do that?, and 3) How will the City balance legitimate interests in preserving the environment and honoring property rights?

Ms. Balducci noted a past comment from a Planning Commissioner who questioned why shoreline property owners are being held to shoulder the full burden of stormwater runoff and water quality issues. She said the City needs to find a middle ground between that perspective and regulatory requirements. Ms. Balducci observed that the City and the DOE are relatively far apart in their opinions of the draft SMP. She is confident that a solution can be reached, however.

Councilmember Wallace said he supports alternative 3. However, he expressed frustration over the timing. He requested a more detailed response from staff about why the SMP work has gone on for so long. He noted that State law required completion and submittal by December 1, 2011;

and the amendment is due on December 1, 2019. At this pace, Mr. Wallace observed that the City will not be able to meet the amendment deadline. He suggested finding a way, including with an outside consultant, to submit the package to the DOE by the end of the year.

Councilmember Wallace said State law dictates that the City submit the plan and the DOE works with the City to finalize the package within 180 days. He observed that the SMP will potentially not be finalized with the DOE until mid-2015. He said the light rail project is slated to start construction in 2015, and he questioned how Sound Transit will be able to rely on the regulations of the SMP given that timing. Mr. Wallace stated his understanding that the City will be reviewing Sound Transit's permit application early next year.

Mr. Wallace observed that the Planning Commission's work has been a long and elaborate process with extensive public input and a unanimously approved plan. If there are elements that need to be revised, he suggested following State law by moving forward and continuing to submit formally to the DOE to resolve issues. He would like to see better information regarding a quicker completion of the process.

Councilmember Stokes reiterated his position that a combination approach to the alternatives will move things forward quicker. He noted that alternative 3 is ultimately the most important step. He respects the Planning Commission's unanimous support of the draft SMP. However, he noted that the Council needs to have as much information as possible, as soon as possible. He suggested moving forward with discussion with the DOE while also engaging the Planning Commission and working out a schedule for finalizing the package.

Deputy Mayor Robertson said that several Councilmembers have expressed an interest in more complete information. She believes the best way to do this is to start completing the package. She said the cumulative impact analysis is a key component. She agrees with Councilmember Chelminiak about getting a consultant on board either before or after submitting the plan to the DOE. She believes the City needs to do an analysis under the recent Supreme Court Koontz case to ensure the City's plan does not run afoul of that new law.

Mayor Lee said that, while the DOE will review the plan, this is the City of Bellevue's Shoreline Master Program and everything is debatable. He believes the City needs to finalize it as soon as possible. Mayor Lee said the Planning Commission has been very effective in its work. He thinks it is time to submit the plan to the DOE to enable the agency to react and respond. He agrees that collaboration is important and that any missing information should be forwarded to the DOE. He supports hiring a consultant with the technical expertise to help compile the package and to work with staff and the DOE. He would like staff to start putting the package together.

Mr. Chelminiak said he cannot support moving forward with alternative 3, which indicates that the Council approves of the current draft plan. He said the City's plan requires approval by the DOE, which is the regulatory agency. He said the Council has not had an opportunity to discuss any of the substantive issues. Mr. Chelminiak said he needs the risk assessment before he can adequately discuss the plan. The Planning Commission could resume its consideration of the plan in September or October.

→ Councilmember Stokes moved that the City Manager engage the Planning Commission to complete the required conformance amendments and to expend the consultant resources necessary to finalize remaining elements of the Shoreline Master Program Update package, for formal review by the City Council and submittal to the State Department of Ecology for review and approval. This includes staff conducting a preliminary review with the DOE in response to their May 14, 2013 letter to the City, and a discussion with the DOE regarding the contents and recommendations, and potentially narrowing the range of issues identified by the agency to be resolved through a more structured process.

Deputy Mayor Robertson seconded the motion.

Mr. Stokes said he has full confidence that staff and the DOE can begin to work through issues of concern. He encouraged moving forward expeditiously. He observed that there is general agreement that the City has spent sufficient time on this and there is too much at stake to not have a plan in place as soon as possible. He supports that the Council needs to review the plan while the Planning Commission completes additional work.

Ms. Robertson noted her expectation that the outcome of discussions with the DOE would be transmitted to the Planning Commission and the City Council. She said the entire package will go before the Council and can be amended at that time.

Responding to Ms. Robertson, Ms. Helland said the final SMP has always been completed by ordinance for Bellevue. However, some cities adopt their plan through a resolution.

Ms. Robertson spoke in favor of the motion and encouraged moving forward to work collaboratively with the DOE. At that point, she wants to have a consultant to advise the City on the final package and to assist through the formal DOE approval process. She believes this is the most expeditious and open, transparent way to complete this work.

Councilmember Davidson expressed support for the motion. He believes the SMP needs to be consistent with the Critical Areas Ordinance, which involved a great deal of the Council's and staff's time to develop.

Councilmember Balducci stated her understanding of the motion. Staff would engage with the DOE to share information and obtain feedback. At same time, the Planning Commission would start working on aspects of the full package. She expressed concern that the Commission's work will need to be duplicated later.

Mr. Brennan said there will undoubtedly be some rework involved in the parallel process stated in the motion. Staff would attempt to minimize that, and the approach of checking in with the Council and ensuring transparency will be very important in that regard.

Councilmember Balducci said the Council would like frequent updates as this moves along. She said that she personally is comfortable with receiving information in an informal manner, without staff taking extra time to provide overly formatted documents or presentations.

Ms. Balducci noted that, while staff and the Planning Commission have spent a great deal of time developing the SMP, the Council has not had extensive discussions. She does not want to rush the process at this point at the expense of the Council having adequate time for a full review. She indicated she would support the motion.

Councilmember Chelminiak said he will not support the motion. The Council's job is to review the policies and the Commission's recommendation, and that has not occurred. In the DOE's response letter, there are 39 areas in which the City is compliant (e.g., agriculture, archeology) and 101 areas in which the DOE believes the City is not compliant (e.g., critical fresh water habitat, public access to the shoreline, piers and docks, residential development).

Mr. Chelminiak believes the Council needs to take a serious look at this document before sending it to the Planning Commission for additional work. He is concerned that the result will be a great deal of duplicative work. He would like staff to come back in September/October with a presentation of the risk assessment, after discussions with the DOE and before sending the SMP back to the Planning Commission. He does not want to be in a hurry based on the rationale that the work has taken several years.

Councilmember Stokes said the Council has been provided with a great deal of information, including the May response letter from the DOE. He said all of the items will be addressed, and he encouraged support of the motion.

Deputy Mayor Robertson said she is in favor of getting a consultant on board. However, she observed that the DOE analysis is based on such an incomplete package, and the response includes six substantive comments. She believes the DOE cannot give the City a meaningful analysis and feedback based on what has been submitted so far. That is just a small part of the entire package. She would like staff and the Planning Commission to complete the package for the Council's review.

Councilmember Balducci asked that a Study Session item be scheduled in early/mid-September for an update and current risk assessment. If legal counsel advises that the City has serious and significant issues to be addressed, the Council will want to know that information.

Responding to Mayor Lee, Mr. Miyake said staff will work toward that objective.

Councilmember Wallace expressed support for the motion, the request for a risk assessment, and the Council's thorough review, and encouraged moving forward to complete this work concurrently. He would like a schedule and date of completion for the remaining work. He would like an assessment of the legal risk, particularly with regard to the Koontz decision.

→ The motion carried by a vote of 6-1, with Councilmember Chelminiak opposed.

(b) Regulation of Medical Cannabis Gardens and Recreational Marijuana-Related Uses

Mr. Miyake introduced discussion regarding permanent zoning regulations of medical cannabis gardens as well as potential zoning requirements with regard to recreational marijuana retail outlets. Staff is seeking Council direction about whether to bring forward an interim zoning regulation for recreational marijuana uses.

City Attorney Lori Riordan recalled that the Council sent interim regulations to the Planning Commission earlier this year. The Commission questioned the interplay between medical cannabis regulations and the recent legalization of recreational marijuana use. There is a widespread interest statewide about whether medical cannabis gardens will be rendered irrelevant or obsolete once retail sales begin in 2014.

Since the Planning Commission discussion in late May, the State Liquor Control Board issued two sets of draft regulations on recreational marijuana: a preliminary draft in May/June and a second draft on July 3. The Board has not addressed medical cannabis collective gardens in those rules. Ms. Riordan noted that draft regulations for recreational marijuana use are very different from regulations for medical cannabis collective gardens.

Ms. Riordan said that Liquor Control Board staff has confirmed that they believe the state legislature will need to take action on medical cannabis in order to address the discrepancies between the two statutory schemes (i.e., taxes, legal amount, and quality control). Medical marijuana is currently not taxed, and its regulations allow possession of larger quantities. Extensive quality control regulations are anticipated for recreational marijuana, including tracking from seed to sales. Until the legislature acts on medical cannabis, Liquor Control Board staff anticipates that medical cannabis collective gardens will continue to operate.

Ms. Riordan said the Planning Commission will hold a public hearing on July 24 regarding the proposed final regulations for medical cannabis collective gardens and potential zoning designations for recreational marijuana production and sales. The Liquor Control Board received more than 1,000 public comments on its initial recreational marijuana draft rules and issued a second draft on July 3. The Board issued its SEPA (State Environmental Policy Act) document as well with a public comment period extending to July 31. The Board plans to hold public hearings in early August statewide and to adopt the recreational marijuana regulations in mid-August. The rules will go into effect 30 days later (mid-September), at which time the Board intends to open up the application process for producer, processor and retail licenses.

In discussions with Board staff, they have indicated they will have in-depth discussions with operators about the scope of the licenses and tell them they must comply with local laws. However, the State will not enforce whether they actually comply with local laws. Ms. Riordan said the Board urges cities to adopt its own regulations if they want to maintain local control and to designate zoning. Ms. Riordan said retail licenses will be distributed proportionately based on the populations of cities.

Ms. Riordan advised providing confirmation from the Council to the Planning Commission to move forward with finalizing the medical cannabis regulations. Staff proposes presenting potential zoning maps during the July 24 public hearing for both medical cannabis and recreational uses for consideration and public comment. She suggested that the Council consider adopting interim regulations for recreational marijuana uses.

Ms. Riordan said staff proposes presenting draft zoning designations for Council discussion during the September 3 Study Session. If directed by the Council, staff will bring interim regulations forward on September 9 for action. If interim regulations are adopted, a hearing will be held within 60 days and the Council will be asked to provide direction to the Planning Commission to consider permanent zoning.

Ms. Riordan said the State Liquor Control Board indicated it has not received a response from the U.S. Department of Justice regarding recreational marijuana use.

Deputy Mayor Robertson said it is important to move forward with zoning in anticipation of businesses that will be applying for recreational marijuana-related licenses in mid-September. She is aware that individuals are currently seeking facilities for growing and processing marijuana.

Ms. Robertson said she supports staff's recommendation regarding medical cannabis collective gardens, which is to direct the Planning Commission to consider permanent zoning. She suggested adding streamlining and cleaning up the conflicts in regulations for the two different types of marijuana usage to next year's Legislative Agenda.

Ms. Robertson said she is concerned about pushing out other light industrial uses. She would like to discuss that further in September as the Council considers creating interim regulations for recreational marijuana production and processing.

Councilmember Davidson questioned whether, if zoning is put in place for medical collective gardens, the City can require that individuals have proper credentials for writing and filling prescriptions for drugs.

Ms. Riordan said State law for medical cannabis contemplates that patients or their designated providers operate the collective gardens. Patients must have a card authorized by a medical provider and issued by the State to receive medical marijuana, although it is not called a prescription. Ms. Riordan said that requiring certain credentials would not typically be part of a zoning regulation.

Councilmember Chelminiak said the law states that recreational retail sales cannot be within 1,000 feet of schools, playgrounds, recreation centers, child care centers, public transit centers, libraries, and arcades. He questioned whether State licenses will create some sort of property right for individuals who obtain licenses and whether the City could be required to accommodate all license holders.

Ms. Riordan said the State will not issue a license without an actual physical location for them to inspect. Ms. Riordan said Liquor Control Board staff explained to her that they will be looking at projected use, but they cannot predict how many people will apply for licenses and meet the State's criteria for a license, including securing a suitable facility.

In further response to Councilmember Chelminiak, Ms. Riordan said the State will not deny a license if the intended business location is not compliant with local zoning because the State does not want to become involved in the enforcement of local law. The State's position is that it is enough for them to state on the license that it does not guarantee an individual can actually operate a business.

Responding to Councilmember Balducci, Ms. Riordan said it is not unheard of for the City to change zoning which creates non-conforming uses for existing businesses. Those non-conforming uses typically are vested in the previous zoning. However, business license applications are not vested. Ms. Balducci said she supports moving forward as quickly as possible.

Mayor Lee concurs with moving forward as quickly as possible.

Councilmember Wallace said he supports moving forward, and he thanked staff for their work. He suggested that staff review other areas for potential Code updates that might be related to this issue including the consideration of an odor control ordinance. He noted that he voted against legalization.

Ms. Riordan said staff intends to conduct that type of Code review.

Councilmember Davidson questioned whether the Code can require that a qualified individual must write a prescription to obtain medical marijuana.

Catherine Drews, Legal Planner, said the State cannabis act requires that the medical professional who approves a medical marijuana card is a qualified healthcare professional (e.g., M.D, N.D, and nurse practitioner).

At 8:01 p.m., Mayor Lee declared recess to the Regular Session.

Myrna L. Basich, MMC  
City Clerk

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