

CITY OF BELLEVUE
CITY COUNCIL

Summary Minutes of Study Session

September 15, 2014
6:00 p.m.

Council Conference Room
Bellevue, Washington

PRESENT: Mayor Balducci, Deputy Mayor Wallace and Councilmembers Chelminiak¹, Lee, Robertson, Robinson, and Stokes

ABSENT: None.

1. Executive Session

The meeting was called to order at 6:05 p.m. by Mayor Balducci. She noted that the Executive Session item was moved to the end of the Regular Session agenda.

2. Study Session

- (a) Required Training on Open Public Meetings Act and Public Records Act Responsibilities

Deputy City Manager Kate Berens introduced Jessica Skelton and Matt Segal, Pacifica Law Group, to present a training session for the Council on the Open Public Meetings Act and Public Records Act responsibilities. Ms. Berens noted that the training is required under regulations that went into effect on July 1, 2014. The Attorney General has recommended that all affected officials have the training in 2014 to set the baseline for compliance with the new legislation. All City officials (e.g., East Bellevue Community Council, Boards and Commissions) will attend training through the fall.

Mr. Segal introduced the presentation. Ms. Skelton said the purpose of the training is to discuss the Open Public Meetings Act (RCW Chapter 42.30), Public Records Act (RCW 42.56), and associated regulations. She noted that RCW 35A.13 states that the powers of the City Council are subject to state law.

The basic provisions of the OPMA are: 1) all meetings must be open to the public, except authorized executive sessions, 2) a meeting requires public notice of the meeting, an agenda, published meeting materials, and minutes, and 3) meetings where City business is received, discussed and/or acted upon must include a quorum of members.

¹ Councilmember Chelminiak arrived at 7:43 p.m.

Responding to the Mayor, Ms. Skelton said the definition of “action” is very broad. Action is defined as the transaction of official business including but not limited to receipt of public testimony, deliberations, discussions, considerations, reviews, evaluations, and final actions [RCW 42.30.020(3)]. No legal action may be taken by a council, board, commission, committee or task force except in a public meeting [RCW 42.30.060].

Mr. Segal said that, if a Councilmember leaves the meeting and there is no longer a quorum, the meeting should take a recess until the person returns to the dais. Ms. Skelton said the Council may take action to adjourn without a quorum present.

Ms. Skelton said a new 2014 amendment to the Open Public Meetings Act requires that agendas are posted online, which the Bellevue City Council has been doing for a number of years. For a regular meeting, this requirement does not invalidate subsequent modifications to an agenda or otherwise legal action taken at a meeting for which the agenda was posted. However, for a special meeting, only action that appears on the posted agenda may be taken.

For a regular meeting, any Councilmember may move to amend the proposed agenda by adding any item or by proposing any other change. However, no legislative item shall be voted on that was not on the Council agenda approved by the Council.

Ms. Skelton said there are circumstances in which serial conversations, including emails, between individuals may be treated as a meeting. This issue was addressed in the Wood v. Battle Ground School District case in 2001.

Mr. Segal said the use or passive receipt of email or other social media communication does not automatically constitute a meeting. The Citizens Alliance for Property Rights Legal Fund v. San Juan County decision in 2014 determined that simply meeting does not violate the OPMA. In that case, emails involved a quorum of Board Members. However, it was determined that one member had not participated in the email conversation. The members must intend to meet to transact official business or otherwise take action outside of a public meeting in which a quorum is present.

Councilmember Robinson asked whether the situation in which an issue is coming before the Council and people start discussing it in advance to begin creating a consensus is considered a serial meeting. Ms. Skelton said it could be considered a serial meeting if it involves a quorum of the Council.

Mr. Segal said there are ways to effectively build consensus without running afoul of the law. For example, Councilmembers may communicate with staff or with Councilmembers representing less than a quorum. Councilmembers may talk to individuals without relating what other Councilmembers have said. However, the key issue is to ensure that a quorum of Councilmembers are not collectively deliberating a decision.

Responding to Councilmember Lee, Mr. Segal said a quorum of Councilmembers may attend the same social gathering. However, they may not discuss Council agenda items.

Responding to Councilmember Robinson, Ms. Skelton recommended one-on-one conversations and avoiding bringing others into the discussion.

Ms. Skelton said the use of social media implicates the OPMA. Members should be cautious about the prospect of creating a serial meeting through the use of technology; for example, three Councilmembers discussing official business in a room and then one of those members texting a fourth and reporting back. Violations of the OPMA may result in civil penalties against individuals and/or fees and penalties assessed against the City.

Responding to Mayor Balducci, Ms. Skelton said the penalty for individual Councilmembers is \$100 per incident.

Ms. Segal described the implications of the Public Records Act which is codified as RCW 42.56. West v. Thurston County determined in 2012 that the Act is a “strongly worded mandate for broad disclosure of public records.” The Act requires the disclosure of all public records unless they fall within a specific exemption, and courts narrowly construe the exemptions. Effective July 1, 2014, the Open Government Training Act requires many public officials to receive training in the Public Records Act.

Mr. Segal said a record under the PRA is any “writing” containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics [RCW 42.56.010(3)]. A requester is entitled to all non-exempt records and may request that electronic records be produced in electronic format.

Mr. Segal said that emails involving both official and personal email addresses are generally not considered public records if they are purely personal. However, if they relate to the conduct of government business, they are likely to be considered as public records subject to disclosure even if on a personal device (e.g., personal computer, iPad, phone).

A Washington State Court of Appeals decision on September, 9, 2014 in the case of Nissen v. Pierce County determined that text messages of the Pierce County prosecutor sent on a personal device, as well as call logs, may be considered public records if they relate to the conduct of government. Mr. Segal anticipates that this case will go to the Washington Supreme Court. Other electronic records on home or personal computers also may be public records according to the decision in Hangartner v. City of Seattle in 2004. The King County Superior Court ordered the production of electronic records contained in the personal home computers of Seattle Monorail Project staff in response to a public records request.

Mr. Segal said a requestor may also obtain metadata, which is electronically stored information associated with electronic files such as email or Microsoft Word and Excel documents. In O’Neill v. City of Shoreline in 2010, the Washington Supreme Court held that metadata can be a

public record that must be disclosed, if specifically requested. The court held that the City of Shoreline could search a Deputy Mayor's home computer in the effort to recover the requested metadata.

Mr. Segal recommended that Councilmembers segregate public and personal records including emails and electronic documents. Councilmembers should comply with retention time periods in saving and deleting records and should be prepared to produce public records in response to a records request. The use of social media also implicates the PRA, including text messages, online communications, blog postings, Facebook posts and Twitter tweets. Electronic public records and all web content must be retained in accordance with the applicable retention schedules (WAC 434-662-030 and WAC 434-662-140). Public entities must employ security procedures to prevent additions, modifications or deletions of records by an unauthorized party (WAC 434-662-060).

Ms. Segal said that violations of the PRA require the payment of reasonable costs and attorney fees, but penalties are no longer mandatory.

Mayor Balducci questioned whether text or email messages with no substantive content fall within the PRA; for example, communications for scheduling a meeting or to indicate that you are running late to a meeting. Mr. Segal said there is a category of records that generally do not have retention value. However, he suggested that the Council consult the City's records management staff for advice.

Mayor Balducci thanked the consultants for the presentation.

(b) Status Report on the Major Comprehensive Plan Update project

Deputy City Manager Berens recalled that staff provided a management brief in June about the major Comprehensive Plan Update process. At that time, the Council requested a more detailed update. A second study session discussion is tentatively set for October 20, and staff is available to provide individual briefings for Councilmembers as well.

Dan Stroh, Planning Director, said the Council initiated this update process in October 2012 and provided project principles, objectives, a community engagement plan, and work plan for the Planning Commission and staff. The Comprehensive Plan is the major policy foundation for much of the City's work. Mr. Stroh highlighted project objectives to fully capture the community's vision; provide a strong policy foundation for City decisions and actions related to infrastructure, neighborhoods, land use, environment, and economic development; and to be consistent with state law, regional plans and court decisions.

The existing Comprehensive Plan was last updated in 2004, and the State requires an update of the plan by the June 2015 deadline. The planning horizon of the update is 2035. A key objective of the update is to make the plan more accessible and usable so that it remains an effective tool. The plan update responds to changes over time including regional and city growth, light rail, diversity, technology, infrastructure demands, other local plans, and emerging issues.

Paul Inghram, Comprehensive Planning Manager, described the extensive community engagement effort involving the East Bellevue Vision workshop, Spring Forward Expo, neighborhood group meetings, Community Visioning process, Bellevue Youth Council, Downtown Park and Pedestrian Corridor, as well as meetings with schools, libraries and business owners. The project web site welcomes ideas and suggestions. The City's Boards and Commissions and the East Bellevue Community Council have participated in discussions as well. Mr. Inghram said review of the Comprehensive Plan continues, and a new round of outreach is planned.

Mr. Inghram highlighted draft changes to the Comprehensive Plan by Element as they appear in the plan. The Citizen Engagement Element reflects actively engaging with the public and enhancing the focus on community diversity.

Mayor Balducci noted the provision for staff training in cultural competence and suggested that training be offered for City Councilmembers as well.

Councilmember Lee said the challenge is to determine specific activities for engaging the diverse community. He would like to see the City, five years from now, not needing to talk about this issue because it would be naturally incorporated into the City's processes and work.

Deputy Mayor Wallace questioned how outreach related to the Comprehensive Plan can be productive and meaningful. He asked how participants in the process are made to feel like the input was received and used in making decisions.

Mr. Inghram said input received during this process has been documented and staff communicates with the public to acknowledge that the feedback was received and heard.

Mr. Inghram said the update to the Land Use Element incorporates the latest growth targets, directs growth largely to the Downtown and other mixed-use centers, supports the siting of new schools, and maintains a critical supply of light industrial zoning in the Richards Valley area. There is ongoing discussion regarding other small isolated industrial parcels throughout the community.

Councilmember Robertson thanked the Planning Commission and the other Boards and Commissions for all of their work on this review to date. She thanked staff for the level of community outreach at this point. She noted that the update adds an Urban Design Element to the Comprehensive Plan, and she questioned whether the plan should have a Neighborhood Element.

Mr. Inghram said staff has considered adding a sub-section to the Land Use Element to address Subarea Plans.

Ms. Robertson said she wants Comprehensive Plan policies to continue to be supportive of the diversity of housing types in Bellevue. She also wants to be sure that any new policies do not

dilute the City's policy of avoiding infill development in low-density, single-family neighborhoods. Ms. Robertson recalled that one reason for updating the Bel-Red, Wilburton, I-90, and Downtown Plans was to preserve the stability of single-family neighborhoods and the lower density multifamily neighborhoods. She noted the issue of increased density in some neighborhoods that was not intended or anticipated.

Councilmember Robertson said she is pleased to see the addition of policies on schools. She noted the importance of retaining light industrial districts which accommodate uses beyond typical light industry including dance studios, gymnastics studios, etc.

Councilmember Robinson concurred with Ms. Robertson's comments on preserving single-family neighborhoods.

Responding to Ms. Robinson, Mr. Inghram said several policies in the update are aimed at revitalizing Newport Hills' businesses. Ms. Robinson questioned whether the City has any tools for addressing the area's needs.

Mr. Stroh said the City continues to be concerned about Newport Hills. He recalled previous work with the property owner to explore a feasible redevelopment plan for the site involving mixed uses. He said a potential tool for stimulating redevelopment is the multifamily tax exemption, which is used to promote housing in specific areas.

Councilmember Robinson said it is one thing to have a goal. However, she would like to include policy language that would give the City some tools to influence positive change.

Mayor Balducci questioned whether there is anything that other jurisdictions do that Bellevue cannot do at this point without amending its Comprehensive Plan. If so, she would support moving forward in that direction and considering action-oriented amendments.

Councilmember Stokes said he likes the concept of looking at neighborhoods in a more cohesive way. He noted that neighborhood-specific issues often surface when there is a problem to address. He questioned how to address emerging issues and changes affecting neighborhoods in a comprehensive way. Mr. Inghram concurred that it is preferable to plan proactively.

Mayor Balducci said she appreciates and would like to build on Councilmember Robertson's suggestion about adding a Neighborhood Element. Ms. Balducci said she and other Councilmembers have been interested in updating the Subarea Plans for a number of years. She suggested considering stronger language regarding the vision for each Subarea, as well as a sub-section addressing neighborhood issues citywide. She would be interested in exploring the addition of a Neighborhood element.

Ms. Balducci said Bellevue's strategy of developing urban/commercial centers while maintaining nice single-family neighborhoods has been successful in providing a high quality of life with relatively low tax rates. However, she is open to considering alternate housing forms

and types in single-family neighborhoods. Mayor Balducci said policy development should involve residents representing their neighborhoods.

Councilmember Lee concurred with the Mayor's comments. He noted the need for student housing and suggested that this be addressed more fully.

Mr. Inghram said staff was not aware of the student housing issues when the Comprehensive Plan Update process was initiated. He said these issues have been largely addressed through the Land Use Code, and he noted that housing needs are not limited to students. Bellevue College is working toward providing student housing on campus. The City is proposing certain amendments to housing policies to encourage development either on campus or by creating the flexibility to allow the private market to build multifamily housing in the Eastgate corridor, while protecting single family areas.

Mr. Inghram noted existing and recommended policies to address housing affordability. The Planning Commission and Human Services Commission have each raised relevant issues to be considered. One potential unintended barrier is that student housing and homeless shelters are currently not allowed in a number of areas including the Bel-Red corridor.

Councilmember Robinson questioned whether the Planning Commission incorporated the input of ARCH (A Regional Coalition for Housing) and the Countywide Planning Policies in creating the policy recommendations. She observed there is a large disconnect between what those agencies recommend and the Comprehensive Plan policies.

Mr. Inghram said ARCH made several presentations to the Planning Commission, and the Countywide Planning Policies were reviewed as well.

Ms. Robinson expressed concern that the views of the greater community are not represented by the recommended housing policies. She observed that, if provisions for affordable housing are not made in ways that make sense to the City, it will happen in ways that do not make sense to the community. She would like the Council to determine the best locations and opportunities for affordable housing, and to incorporate input from the community, ARCH and other organizations in making those decisions.

Councilmember Stokes said this discussion illustrates the difficulty of reviewing such a lengthy and comprehensive document. He would like more information on the Housing Element, including the input received to date and whether recommendations have been fully developed. Mr. Stokes said that housing is perhaps the most challenging issue for the City and the region as the population ages and community demographics change.

[Councilmember Chelminiak arrived at 7:43 p.m.]

Mayor Balducci suggested that, tonight and during the October 20 discussion, the Council should highlight key policy changes, priorities, and/or critical missing elements before work on the Comprehensive Plan Update becomes finalized.

Councilmember Stokes said there is so much to review and discuss during limited meeting time. He would like to see some comprehensive way for Councilmembers to provide their comments and input without that feedback being based on available meeting time. He believes the Boards and Commissions would like to hear Councilmembers' perspectives. Mr. Stokes said tonight's approach appears to be somewhat random and that a more focused discussion process would be helpful.

Mayor Balducci observed that the presentation was intended to highlight key policy amendments, which likely were based on issues thought to be of the most importance to the Council. She agreed that the topic requires more time than allotted for tonight's meeting.

Responding to Deputy Mayor Wallace, Mr. Inghram confirmed that the goal of the update is to amend the existing Comprehensive Plan. Mr. Wallace said the Council packet summarizes issues around the Comprehensive Plan but does not include the plan. He believes it will be easier to talk about if the discussion could focus on current policies versus recommended amendments.

With regard to the Housing Element, Mr. Wallace said the Comprehensive Plan states that the City's affordable housing policies should direct efforts to create housing opportunities for all economic segments of the population through regulatory and incentive approaches. Once the Comprehensive Plan is adopted, Mr. Wallace suggested having a discussion about specific ways to achieve that objective and implement the policy.

Councilmember Robertson said she was on the Planning Commission during the last 10-year Comprehensive Plan update. She recalled at least nine Commission meetings at that time on the Housing Element, which is a complicated topic. While the Comprehensive Plan is the blueprint for the City, implementation of the plan will be guided by future discussions and decisions on specific topics. She would like to consider greater housing variety; for example, cottage housing in transition zones. She concurs with the interest in further discussion of affordable housing incentives.

Mayor Balducci said affordable housing refers to the ability of those who work in the community to live within Bellevue, and there are different levels of affordability. She believes this is one of the defining challenges the City needs to embrace and guide for its future.

Moving to the Utilities Element, Mr. Inghram noted the issue of transmission lines and the Energize Eastside project. Past policy amendments addressed the siting of sensitive facilities. However, potential new policies could support working with the State and other jurisdictions to amend tariffs in a manner that allows for more robust mitigation related to transmission lines and other infrastructure. A related and equally complex issue is the undergrounding of electrical distribution lines.

Also part of the Utilities Element, Mr. Inghram said telecommunications policies are focused on providing high-speed internet access, competition among providers, and new forms of technology.

Mayor Balducci suggested resuming this discussion during the Regular Session under Unfinished Business.

At 8:00 p.m., Mayor Balducci declared recess to Regular Session.

Myrna L. Basich, MMC
City Clerk

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