

CITY OF BELLEVUE
CITY COUNCIL

Summary Minutes of Study Session

September 17, 2012
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 6:00 p.m., and declared recess to Executive Session for approximately 30 minutes to discuss one item of potential litigation.

The meeting resumed at approximately 6:32 p.m., with Mayor Lee presiding.

2. Study Session

(a) Land Use Code Amendment Relating to East Link Code Conflicts and Gaps

City Manager Steve Sarkozy opened discussion regarding the development of the Land Use Code Amendment (LUCA) necessary to address the permitting processes and criteria applicable to light rail facilities. He noted that the City Code, when originally adopted, did not anticipate light rail infrastructure.

Mike Brennan, Director of Development Services, said this is the second in a series of discussions about proposed Land Use Code Amendments to address light rail. The previous discussion was held on July 16.

Kate Berens, Deputy City Attorney, explained that the Land Use Code work responds to the City's commitment in the Memorandum of Understanding (MOU) with Sound Transit to clearly define a permitting path for the East Link light rail project. The MOU anticipates that the City will process the Code amendments by the end of the year, in advance of the updated cost estimate for the East Link project in early 2014. At that time, depending on the outcome of the cost savings effort and the updated cost estimate, the City could decide to continue as a financial partner with Sound Transit for East Link or to not continue as a partner providing financial

support for the project. Staff has built flexibility into the proposed LUCA overlay district to accommodate whether the City and Sound Transit are in agreement or not in agreement on the alignment.

Ms. Berens said there are advantages to defining a permitting path for East Link, which is to address gaps in which the Code does not provide clear guidance or where requirements do not make sense. The light rail project passes through many land use districts, and some do not accommodate light rail very well. The intent is to create design standards specific to light rail and to establish development standards consistent with the Land Use Code and the Light Rail Best Practices report.

Carol Helland, Land Use Director, explained that the East Link alignment passes through more than 20 land use districts including zoning districts, design districts, and environmental overlays. Almost half of the East Link project is in the right-of-way, where land use provisions typically do not apply.

Ms. Helland said the creation of a Light Rail Overlay District will provide development standards, design criteria, and mitigation specific to light rail. It will consolidate requirements into one section of the Land Use Code and reduce complexity in the Code administration process.

Ms. Helland said staff recommends that the Council consider the overlay approach. She noted that the proposed overlay does not address light rail maintenance base facilities. Mr. Helland said the Code cannot preclude Essential Public Facilities, which are defined in state law. The two alternative permit paths for consideration are the development agreement approach and the conditional use permit process. At this point, the Essential Public Facilities requirements would be handled as a conditional use. However, there are a number of gaps in the Code in terms of addressing light rail.

Ms. Helland said staff wants to provide the opportunity for the Council to adopt a development agreement related to the light rail project. This approach was used for the Spring District in the Bel-Red corridor, and the potential for a development agreement is referenced in the East Link MOU. Mr. Helland said staff is not requesting a decision tonight.

Responding to Councilmember Wallace, Ms. Helland said the development agreement process is regulated under the Local Project Review Act in state law (RCW 36.70B). It stipulates that the Council must hold a hearing and take public testimony before adopting a legislative agreement between the City and the applicant regarding permit processing going forward. This approach provides the flexibility for the City to propose a solution that will meet Code requirements and provide certainty for the City.

In further response, Ms. Helland said that under a conditional use permit process, an application would be compared against the Code standards. The process involves the same goal of achieving the desired outcome. However, Code application to a project is potentially more difficult than

being able to identify a solution agreeable to the City and the applicant. If a development agreement is not in place, the CUP process would apply.

Responding to Councilmember Wallace, Ms. Helland affirmed staff's understanding that the Council wants to retain control of light rail land use approval. The CUP process involves the Hearing Examiner for a pre-decision hearing and a decision by the Hearing Examiner, which can be appealed to the City Council. Another option is to have the Council involved in the decision from the outset.

Councilmember Davidson recalled that the conditional use permit process for the South Bellevue Park and Ride lot was extensive and complicated. He expressed concern about the ability to establish an overlay district within a few months. He noted that the establishment of the Downtown overlay and the Critical Areas overlay took a number of years, and the Shorelines overlay has been under review for the past couple of years.

Ms. Berens acknowledged that the East Link MOU lays out an aggressive timeline for this activity. She recalled that the Council discussed the nature of the timeline at the time the MOU was signed.

Dr. Davidson recalled that he has talked about how the City can break the MOU and whether it can sue under it. He believes it is urgent to get the public involved in these decisions, and he is frustrated with the whole process.

Deputy Mayor Robertson questioned whether citizens have the right to challenge a development agreement or a conditional use permit. Ms. Helland said the conditional use permit falls under Process I, which involves an administrative recommendation and a pre-decision hearing before the Hearing Examiner writes a decision. If appealed, the matter is forwarded to the City Council.

Ms. Helland noted the Council's interest in retaining decision authority and stated that staff recommends against the CUP process for light rail facilities. The rezone process ensures that the City Council retains control. In the case of a rezone, a hearing would be held before the Hearing Examiner. However, the Hearing Examiner makes a recommendation, which goes to the Council for final decision.

In further response, Ms. Helland said the CUP could be appealed to Superior Court under the Land Use Petition Act (LUPA).

Ms. Berens said there are differences of opinion about whether LUPA covers the appeal of a development agreement. Staff can conduct a legal analysis and provide a response on that issue for the Council. The development agreement would involve administrative permitting as drawings are processed, and those could be appealed administratively to the Hearing Examiner.

Deputy Mayor Robertson said it is important that the Council and the public have a good understanding of the two permit paths. Ms. Helland said staff will provide comparison information.

Responding to Mayor Lee, Ms. Berens said the provisions of the development agreement should be generally consistent with the Land Use Code, and they can be as specific as a conditional use permit if desired. The development agreement is a negotiated document between the City and the applicant.

Mr. Brennan reviewed the next steps in the process. The draft amendments will be presented during the October 8 Extended Study Session, and a public hearing is scheduled for October 22. The amendments will be refined during November, and final Council action is anticipated for December.

Mr. Brennan noted that the initiation of the Land Use Code Amendment was published in the previous week's permit bulletin. Public comments can be submitted on this proposal until the Council makes its final decision on the amendment. Mr. Brennan said there will be drop-in meetings as information about the cost savings work becomes available beginning in October.

Councilmember Davidson questioned whether the City's Boards and Commissions would be involved in the decision process. Mr. Brennan said that the Council was clear, during earlier conversations about the MOU, that it wants to retain responsibility for the LUCA work associated with that agreement. He said the proposed process is structured to be consistent with that earlier Council direction.

Councilmember Wallace expressed concern about dates referenced in the weekly permit bulletin and that no draft Code amendments have been distributed to the Council. Ms. Helland apologized for the confusion caused by the dates and clarified that the Council will take comments from the public until the night that it makes its final decision. Ms. Helland said the only information released to date is the MOU, documentation of the collaborative design process, and packet materials from the July 16 Council meeting and for tonight's meeting.

Councilmember Wallace observed that the public is highly suspicious of both Bellevue and Sound Transit. He questioned the purpose of requesting early public comment by September 27. Ms. Helland said the State Environmental Policy Act (SEPA) requires the City to seek public comment early in a project. However, public input will be taken until Council action.

Ms. Helland said she has been appointed to the SEPA Advisory Commission, which is working to streamline state law and noticing requirements. She will correct the notice in the next permit bulletin publication to clarify that the public can comment until the Council takes final action.

In further response to Mr. Wallace, Ms. Helland said the SEPA review and the Council's legislative action could be appealed to the State Growth Management Hearings Board.

Deputy Mayor Robertson stated her understanding that, under the Growth Management Act, a Land Use Code action can be appealed to the Growth Management Hearings Board. However, she questioned whether the SEPA appeal period will end before the Council takes final action.

Ms. Helland said that SEPA review is attached to Council actions, and there is no separate administrative appeal to the Hearing Examiner. The City has combined SEPA with legislative actions, which are then forwarded to the Growth Management Hearings Board. Ms. Robertson suggested re-noticing the Land Use Code Amendment within this context. She observed that the public is confused and concerned about the process.

Councilmember Davidson said he does not understand how the City is discussing the Land Use Code Overlay and SEPA review when the light rail alignment has not been finalized.

Ms. Helland said that overlay districts are floating districts defined by certain characteristics. She said the Council will ultimately decide the alignment to which the overlay will apply.

Dr. Davidson questioned whether that means that the City does not need to know the environmental impacts of the various options.

Ms. Berens explained that the SEPA review and the Land Use Code Amendment represent a policy-level review, which tends to look at broader issues than the project level. The SEPA review relates to changing the baseline Code versus looking at project-level impacts. The light rail project has had its own environmental review, and specific permits will require additional environmental review.

Dr. Davidson questioned whether there will be a supplemental EIS (Environmental Impact Statement). Ms. Berens said that Sound Transit is looking at that issue now and will undertake some level of environmental review on the cost saving alternatives. They are considering an EIS addendum process to supplement the environmental record.

Dr. Davidson stated his understanding that there was a supplemental review for North Link. Ms. Berens confirmed that additional review was completed; however, she was not sure of the formal title for that activity.

Councilmember Chelminiak observed that the goal is to advance the interests of the overall community as the light rail project is built. The Land Use Code Amendment provides the opportunity for certainty for the City and its citizens. He said the Land Use Code does not currently address citizens' input into design standards for light rail stations. The development agreement and changes to the Land Use Code have the potential for including residents in the design of facilities. Mr. Chelminiak believes the community will most likely be better served through a development agreement than through the CUP process.

Councilmember Stokes concurred with Mr. Chelminiak's summation. He thanked staff for their work and expressed confidence in the City's ability to establish the overlay district within the timeframe needed. Mr. Stokes said he supports moving forward as proposed by staff.

Deputy Mayor Robertson said there are three tasks for the light rail project between now and the end of the year. The Land Use Code update is one of them. Another is the collaborative design process which is soliciting public input over the next couple of months leading to a decision

early next year. The most recent issue to arise is the light rail maintenance and operations facility. Ms. Robertson said there are going to be many light rail meetings and she hopes to get through the work in a very effective way.

Deputy Mayor Robertson said the issue tonight is the overriding approach to the required Land Use Code update. The question is whether the Council is comfortable with an overlay district with two pathways, either a conditional use permit or a development agreement. Ms. Robertson said she is comfortable with the overlay approach. She has heard staff say that this will not loosen the City's standards or allow anything that is inconsistent with the current Land Use Code. The light rail goes through 20 land use districts and they all have different requirements. Some have no requirements that would apply to light rail. We want to make sure that we have the right requirements in place consistent with the Light Rail Best Practices report and Bellevue's high standards.

Ms. Robertson believes that an overlay district provides the opportunity for better defined development standards, mitigation, design standards, and involving the community in station area planning. She observed that these are all positive things. However, she believes there is confusion related to the permit bulletin notice and to the overall lack of specific information available for review.

Ms. Robertson said that she asked, a couple of months ago, for a matrix showing the 20 land use districts and whether they have provisions addressing this type of project. She reiterated the importance of adequate and transparent information. She said the City can place standards on Essential Public Facilities.

Deputy Mayor Robertson requested a Council consensus to give direction to staff to draft principles and a letter to Sound Transit on the maintenance and operations facility. She observed that it is inconsistent with the spirit of the MOU and the collaborative design process to add this maintenance facility into the plan at this point.

Councilmember Balducci commented on the extensive process and time involved with a project of this magnitude. She is in favor of moving forward with the Land Use Code Amendment. She believes it is important to have a consolidated set of LUC provisions governing light rail facilities. She likes the flexibility of providing different permit paths, and she agrees with the importance of a transparent process.

Ms. Balducci believes it is important to start creating a list of mitigation that the City will be requiring. She added her support to the Deputy Mayor's suggestion to draft a letter and set of principles regarding the proposed light rail maintenance and operations facility. Ms. Balducci recalled that the facility was mentioned a few years ago within the context of Bel-Red area planning. However, the issue disappeared before resurfacing recently.

Ms. Balducci said the potential sites for the maintenance facility were presented to the Sound Transit Capital Committee, and she is disappointed in the proposed Bellevue locations. She noted that two of the sites are in the middle of targeted transit-oriented development (TOD)

nodes. She suggested that the Council take a strong position on the criteria that should be used for siting a facility in Bellevue.

Mr. Stokes concurred with establishing principles related to the maintenance facility. However, he observed that more details are needed.

Councilmember Wallace said he agrees with the general approach recommended by staff. He concurs with Dr. Davidson; however, that he is not going to be rushed into a decision without adequate information due to an artificial timeline referenced in a non-binding agreement. Mr. Wallace said the MOU anticipated that the Council would have more information on the preferred cost saving measures at this point in the process. He observed that the maintenance facility is part of the MOU alignment and was referenced in the draft environmental impact statement (DEIS).

Councilmember Chelminiak said he is in general agreement with the Land Use Code overlay approach. With regard to the light rail maintenance base, he said a notice of the potential locations will be mailed soon. The stated reason for the need of the maintenance base is the number of North Link trains, which is twice the number of trains for Central Link and East Link. Mr. Chelminiak suggested, as one principle, that the maintenance base should be located in the north end.

Mayor Lee wrapped up the discussion, stating that the Council and City staff have been working with Sound Transit in a spirit of cooperation and collaboration. He noted the ongoing need to be vigilant in looking out for the interests of the Bellevue public. He observed that the MOU deadline is secondary to this main objective.

Councilmember Davidson asked staff to follow up on his questions about the Land Use Code overlay and supplemental environmental review.

(b) Downtown Livability Initiative – Scope, Guiding Principles, & Plan

Mr. Sarkozy recalled that the Council gave direction to staff on July 23 to proceed with the Downtown Livability Initiative. At that time, the Council reallocated \$350,000 in City resources to cover a base scope of work. Council requested that staff return in September for additional direction on the scope of work.

Dan Stroh, Planning Director, said that staff is seeking Council direction about which items to include in the Downtown Livability work program.

Responding to Councilmember Davidson, Mr. Stroh said the Council approved spending \$350,000 from the Capital Investment Program (CIP) to move forward with the work program. If the Council provides direction on items that would increase costs, staff will prepare a budget proposal for the additional items. Dr. Davidson said he would prefer to make budget decisions within the context of the overall budget.

Emil King, Strategic Planning Manager, said the Downtown Livability Initiative applies to the 410-acre Downtown Subarea and its six zoning districts.

Mr. King described the elements to be addressed as part of the base scope of work: 1) Amenity incentive system, 2) Building form and height, 3) Design guidelines, 4) Pedestrian corridor, 5) Light rail interface, 6) Downtown parking, and 7) Integrate recommendations emerging from the ongoing Downtown Transportation Plan Update.

Mr. King briefly reviewed the budget for the base scope of work, which includes \$50,000 for a half-time limited term employee in the Development Services Department.

Mr. Stroh noted the potential additions to the scope of work suggested in the presentation.

Deputy Mayor Robertson expressed support for the potential additions to the scope of work except for the Planned Action EIS (Environmental Impact Statement). She would like more information on that item, however, perhaps as part of the budget process.

Ms. Robertson suggested that the Downtown Livability Initiative include preparing for a future, separate update to the Wilburton commercial area. In gathering data and conducting an analysis of the Downtown, she would like staff to do the same for the Wilburton area. However, the Wilburton work would not progress to a land use/design district update until a later date. She observed that the two areas are closely related. She is comfortable with the overall approach proposed by staff.

Councilmember Stokes said he is pleased to see Old Bellevue included in the Design Guidelines component. He concurred that the Wilburton area is tied to the Downtown and should be looked at within that context.

Councilmember Balducci concurred with Councilmember Davidson's observation that it is difficult to determine which items should be included outside of the broader context of the overall budget. Responding to Ms. Balducci, Mr. Stroh confirmed that the City updated the Wilburton Plan in 2007. Since that time, additional opportunities have surfaced for the area.

Councilmember Balducci suggested that, if additional work related to the Wilburton area is proposed, she would like staff to provide the 2007 work and to address whether it is consistent with or inadequate to consider new opportunities. With regard to the list of potential scope additions, Ms. Balducci expressed support for all of the low-medium effort/zero consultant cost items.

Councilmember Chelminiak suggested that the Downtown Livability Plan should be moved forward. If items are to be added, he agrees with Dr. Davidson that that becomes a budget issue.

Mr. Chelminiak suggested that the OLB (Office/Limited Business) item related to the area between 112th Avenue and I-405 should be presented as a budget proposal. He would be interested in seeing how that could move forward with a review of the Wilburton area.

Mr. Chelminiak would like to get the Downtown Livability Initiative going and to consider the additions as part of the budget process.

At 8:03 p.m., Mayor Lee declared recess to the Regular Session.

Myrna L. Basich, MMC
City Clerk

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