CITY OF BELLEVUE
CITY COUNCIL

Summary Minutes of Regular Session

March 5, 2007 Council Chamber
8:00 p.m. Bellevue, Washington

PRESENT: Mayor Degginger, Deputy Mayor Chelminiak, and Councilmembers Balducci, Davidson, Lee, and Marshall

ABSENT: Councilmember Noble

1. Call to Order

The meeting was called to order at 8:05 p.m., with Mayor Degginger presiding.

2. Roll Call, Flag Salute

Upon roll call by the Deputy City Clerk, all Councilmembers except Mr. Noble were present. Deputy Mayor Chelminiak led the flag salute.

3. Communications: Written and Oral

Mayor Degginger announced the two public hearings to be held during the meeting. He asked that those wishing to comment on the Meydenbauer Bay area moratorium wait until Agenda Item 9(b) to speak. The limited public hearing on the appeal related to the Enclave at Fox Glen [Item 9(a)] is a quasi-judicial proceeding and the Council is not able to take comments from the public on the appeal.

City Attorney Lori Riordan explained that quasi-judicial matters are those pending before the City Council in which the Council makes a decision regarding the rights of specific interested parties under the City's regulations. In these situations, Councilmembers must act as judges and maintain fairness and impartiality. If members of the public wish to write, email, or leave a voicemail message about this or any other quasi-judicial matter, communications should be directed to Myrna Basich, City Clerk, by 1:00 p.m. on the Wednesday before the Council meeting in which the matter will be considered. Under the Council's rules, Councilmembers cannot discuss pending applications or appeals directly with a member of the public.

Mayor Degginger opened the floor to oral communications on topics other than the two public hearings. No one came forward to speak.

4. Reports of Community Councils, Boards and Commissions: None.

5. Report of the City Manager

(a) Clear Cutting in Bridle Trails State Park

City Manager Steve Sarkozy asked staff to report on a concern by Bridle Trails residents regarding clear cutting around high-capacity power lines.

Parks and Community Services Director Patrick Foran noted a draft letter in Council's desk packet from Mayor Degginger to Mayor Nickels (Seattle) regarding the possible clear cutting of trees by Seattle City Light along the transmission line through Bridle Trails State Park. The City was informed of the plan by the Bridle Trails Park Foundation. The draft letter to Mayor Nickels asks him to keep the Bellevue City Council updated and to work collaboratively with Bellevue citizens to develop a vegetation management plan.

Responding to Mayor Degginger, Councilmembers indicated a consensus to send a letter. Mr. Degginger asked them to submit any comments or suggested revisions this week.

6. Council Business

Councilmember Marshall participated in Sound Transit presentations at public meetings regarding the transportation package to be presented to voters this fall.

Councilmember Lee attended a Spiritridge Community Association meeting with Deputy Mayor Chelminiak. Mr. Lee attended a number of functions including the Chinese New Year celebration.

Dr. Davidson attended meetings of the Cascade Water Alliance, Bellevue's Environmental Services Commission, and the Shared Strategy for Salmon Recovery group.

Councilmember Balducci traveled to Olympia to testify before the Senate and House Transportation Committees on regional governance bills under development. This responds to a report completed at the request of the Governor, which concludes that transportation planning is split between too many different agencies and projects are not being completed quickly enough. There are concerns about what a new regional entity might look like and how it might affect the transit and road transportation package planned for November. A substitute Senate bill delays the establishment of a new regional entity until 2009.

Ms. Balducci attended, along with several Councilmembers, the Bellevue Downtown Association's annual celebration and Bellevue Youth Link's annual gumbo night. She noted that interior improvements to Meydenbauer Convention Center have been completed.

Deputy Mayor Chelminiak attended Bellevue Youth Link's gumbo night as well as meetings of the Prosperity Partnership's Tax Advisory Committee, the Bel-Red Steering Committee, and the Spiritridge Community Association. He said he is impressed with the level of interest by

Bellevue residents in their neighborhoods and local planning.

Mayor Degginger attended several events celebrating the Chinese New Year. He attended an event in which Fireman's Fund Insurance Company presented a $26,000 check to Bellevue Fire Department to be used for equipment and supplies.

Mayor Degginger attended a Cascade Water Alliance meeting and traveled to Olympia with the City Manager to meet with state representatives about transportation funding, particularly funding for replacement of the SR 520 bridge.

7. Approval of the Agenda

➲ Deputy Mayor Chelminiak moved to approve the agenda, and Ms. Balducci seconded the motion.

➲ The motion to approve the agenda carried by a vote of 6-0.

8. Consent Calendar

Councilmember Lee requested pulling Agenda Item 8(c) for comment.

Councilmember Balducci noted her memo in the desk packet with a clarification to one of her comments during the February 5 Study Session. She requested Council approval of the proposed amendment.

➲ Deputy Mayor Chelminiak moved to approve the Consent Calendar, amended to revise the minutes of the February 5 Study Session and to remove Item (c) for comment. Mr. Lee seconded the motion.

➲ The motion to approve the Consent Calendar, as amended, carried by a vote of 6-0, with Mr. Noble absent, and the following items were approved:

(a) Minutes of February 5, 2007 Study Session [Amended]
Minutes of February 5, 2007 Regular Session

(b) Resolution No. 7511 authorizing execution of all documents necessary to enter into a lease with King County to use a portion of the Surrey Downs property for the King County District Court Bellevue Division. *[Postponed from February 20th Consent Calendar.]*

(d) Resolution No. 7518 adopting the 2007 Federal Legislative Agenda.

(e) Motion to approve payment of claims for the period February 17 through March 2, 2007 and payroll for the period February 1 through February 15, 2007.

(f) Resolution No. 7519 authorizing execution of a four-year contract with Ellis

Construction Incorporated, in an amount not to exceed $160,000, to provide project management services for CIP-related fire facility maintenance and improvements.

(g) Resolution No. 7520 authorizing execution of a one-year professional services agreement with Partners Consulting Services, in an amount not to exceed $150,000, for ongoing consulting, implementation, and programming services for the Finance and Human Resources System Replacement. (CIP Plan No. G-59)

(h) Motion to award Bid No. 0713 to complete site work for the Robinswood Park Soccer Fields project located at 2430 148th Avenue SE to Premier Field Development, in the amount of $1,332,539.60, as the lowest responsible bidder.

(i) Resolution No. 7522 authorizing execution of a professional services agreement with Measurement Research Corporation for the 2007 Pavement Distress Survey in the amount of $73,324.20. (CIP Plan No. PW-M-1)

(j) Resolution No. 7523 authorizing execution of a professional services agreement with Herrara Environmental Consultants, Inc., for the SE 30th/Sunset Creek Flood Control project in the amount of $290,000 for engineering services. (CIP Plan No. D-94)

(k) Resolution No. 7524 authorizing execution of an Interlocal Agreement with King County for the initial Infiltration/Inflow Reduction project.

Item for Council Discussion:

(c) Ordinance No. 5723 revising the Employment Agreement with the City Manager and establishing the City Manager's 2007 Compensation Program.

Councilmember Lee commended Mr. Sarkozy's performance as City Manager and expressed support for the revised Employment Agreement and 2007 Compensation Program.

➲ Councilmember Lee moved to adopt Ordinance No. 5723, and Deputy Mayor Chelminiak seconded the motion.

Mayor Degginger said the Council unanimously agreed that the City Manager's performance has been excellent.

➲ The motion to adopt Ordinance No. 5723 carried by a vote of 6-0, with Mr. Noble absent.

9. Public Hearings

(a) Limited Public Hearing on appeal of the Hearing Examiner's decision that the Planned Unit Development and Preliminary Plat applications of Dennis Johnson, Freemantle Development Group (Enclave at Fox Glen), for a 25-lot residential

subdivision accessed via an easement from 156th Avenue NE, should be approved with conditions. (File No. 05-103350-LK)
(This is a Process I application under the City's Land Use Code. Under Process I, the Hearing Examiner is the final decision maker for the City unless the decision is appealed to the City Council. At the conclusion of the public hearing, Council may discuss and make decision or may defer decision to a later meeting.)

City Attorney Lori Riordan reviewed the rules of the limited public appeal hearing on the Hearing Examiner's decision regarding File No. 05-103350-LK relating to the applications for a PUD (planned unit development) and preliminary plat for a 25-lot residential subdivision accessed via an easement from 156th Avenue NE. The Innisfree Apartment Owners Association submitted an appeal of the Hearing Examiner's decision to approve the PUD and preliminary plat with conditions.

This limited public appeal hearing is confined to the issues decided by the Hearing Examiner after taking testimony during the hearing held on September 21 and continued to October 19 and October 26. Respondents to the appeal are the applicant and the Planning and Community Development Director. The appellants bear the burden of proof. The Council may grant the appeal or grant the appeal with modifications if the appellants have carried the burden of proof and the City Council finds that the Hearing Examiner's decision is not supported by material and substantial evidence. The Council shall accord substantial weight to the decision of the Hearing Examiner.

Land Use Director Carol Helland provided the staff report on the Planned Unit Development and Preliminary Plat applications of Dennis Johnson, Freemantle Development Group (Enclave at Fox Glen), for a 25-lot residential subdivision at 1025 156th Avenue NE. The required approvals for the project that were reviewed by the Hearing Examiner are: 1) Design review (Process II Administrative Decision, 2) SEPA/Environmental Review (Process II Administrative Decision), 3) Preliminary Plat (Process I Hearing Examiner Decision), and 4) Planned Unit Development (Process I Hearing Examiner Decision). The first two items were decided by the Hearing Examiner and are not before the Council this evening. The topics of appeal for Council's consideration are the third and fourth items.

Ms. Helland referenced page 2 of the Hearing Examiner Report summarizing the project review and public meetings that occurred on this project. The review was conducted over two and a half years, and the project evolved somewhat significantly over the course of that review. The site is located in a Multifamily-Low zoned area, which allows up to 10 dwelling units per acre. Properties to the west are designated Single Family-Medium, which allows up to 3.5 dwelling units per acre. The site to the north is zoned Multifamily-Low, R-10.

Ms. Helland reviewed a copy of the site layout and proposed building elevations that were approved, as well as that access easement entering the site at the northeast corner of the property. The primary issue contained within the appeal is the pre-existing vehicular access to the subject property, which is shared with access to three condominium developments. No public comment was received from the condominium associations except for the Innisfree Apartment Owners Association, the appellants in this matter. A portion of the access easement contains a fire lane,

garages associated with Innisfree are located on the south side of the easement. Ms. Helland reviewed utility connections and the alignment of a planned pedestrian trail.

- Deputy Mayor Chelminiak moved to open the Limited Public Hearing, and Mr. Lee seconded the motion.

- The motion to open the Limited Public Hearing carried by a vote of 6-0, with Mr. Noble absent.

Ms. Riordan explained that each side is allowed 15 minutes to present oral arguments. The appellants may wish to reserve a portion of their time for rebuttal.

Responding to Deputy Mayor Chelminiak, Ms. Helland confirmed that lined parking was added, with permit submittal or approval, along the northern property line for the Innisfree complex. A fire standard requires that 20 feet of access remain for emergency vehicle access. In further response, Mr. Helland some of lot added provided parking and some was designated as a fire lane.

Linda Youngs, attorney for the appellants, asked to reserve three minutes of her 15 minutes for rebuttal. Ms. Youngs presented oral arguments in favor of the appeal. She asked Council to analyze the project with the understanding that there are two possible access points to the project site. One is along the easement identified by staff. The other is Tax Lot 35 which was purchased by Dennis Johnson to provide access to his project.

Ms. Youngs asked the Council to select which access easement it considers to be the most efficient, safe, and well designed. The appellants have determined that access through Tax Lot 35 is the best option. The Enclave at Fox Glen is proposed for a 2.45-acre site in the middle of the superblock between 148th and 156th Avenues. The site has been developed with two single-family residences since the 1960s and has used the access easement for approximately 40 years. The project does not front a public street and has an easement that is 950 feet long and functionally less than 30 feet wide in many places.

The Innisfree condominiums were constructed in 1972, and a 30-foot easement was retained for single-family lots. However, 17 two-car garages were built to the edge of the easement shown in the presentation. A car backing out of a garage requires approximately 10 feet in the travel lane before the driver can see if another car is coming. The garages are on a six-percent grade and have platforms. According to the Hearing Examiner, eastbound cars will have to pull over and stop if a car is coming toward them. Guest parking and perimeter landscaping are installed along the north side of the easement, which further narrows the access.

With 25 additional residences proposed to use this driveway, the question is which access is the best. The developer knew a better easement should be found, which is why he purchased Tax Lot 35. He initially proposed access through Lot 35 but after opposition from neighbors, staff determined that access was prohibited.

Ms. Youngs said a new road on Lot 35 would better serve the development and neighbors than

access through the Innisfree lot. She said staff explained that the prohibition is based on policies stating that access for multifamily units should not be through single-family neighborhoods. Ms. Youngs said these policies are not prohibitive but provide guidance, and they stem from an era when multifamily residents were considered less desirable than single-family residents. The 25-unit single-family project on multifamily zoned property essentially is rezoned under the PUD application. These 25 single-family units should exit through the single-family neighborhood.

Ms. Youngs expressed concern that the Hearing Examiner ruled that he could not consider the alternate access because it was not part of the project as presented. However, the applicant modified his project to the existing access drive because City staff told him that access via Tax Lot 35 was prohibited.

Ms. Youngs showed a video originally submitted as an exhibit to the Hearing Examiner, which shows the narrow drive, sidewalks, and delivery truck access. Ms. Youngs said the Hearing Examiner determined that the parking platforms and narrow roadway had a calming effect on traffic. She feels the driveway is substandard and cannot be brought up to Bellevue road or driveway standards.

Ms. Youngs said while the Hearing Examiner's findings about the easement support a determination that the access is feasible, he could just as easily support a finding that the access was not feasible with the location of the garages along the narrow driveway. She commented that staff changed its position on the easement/access throughout the process.

Ms. Basich noted that the appellants have two minutes remaining for rebuttal.

Ms. Helland was the first speaker in response to the appellant's arguments. She noted that the City Attorney provided the standard of review in this case. The Land Use Code provides the criteria for the City Council to decide on appeals, and the appellant carries the burden of proof. The Council is required to give substantial weight to the Hearing Examiner's decision.

The appellants must show that the Hearing Examiner's decision is not supported by material and substantial evidence. Ample evidence supports the Hearing Examiner's decision to approve the PUD as proposed. A principled and predictable approach was taken to evaluate the PUD compliance. One issue raised by Ms. Youngs is access to multifamily property from single-family areas. Ms. Helland said the relevant land use and transportation provisions concerning this issue describe the hierarchy used in evaluating access to multifamily sites. If access to a multifamily development is possible or available, the preference is to provide access through a multifamily site and not through single-family sites.

Language in the Code does not distinguish between the type of development, but is based on the district. The land use district line between multifamily and single-family runs on the west side of the property boundary, so access is favored and more appropriate given it is possible and available to 156th Avenue NE. This information was provided to the applicant and encouraged them to modify their proposal accordingly. Continuing, Ms. Helland explained that appropriate provisions were made for vehicular access according to the PUD and plat criteria. Transportation standards provide a hierarchy for allowing preexisting access easements to be used when found

to be safe and accessible. The Hearing Examiner determined that the access is passable and available.

With regard to the plat PUD being a rezone, Ms. Helland said density on the site is designated as 10.2, which is consistent with the R-10.2 (10.2 units per acre) zoning permitted on the site with a bonus for affordable housing. Staff supports the decision of the Hearing Examiner and finds it to be in compliance with the Code.

Bob Johns, attorney for Dennis Johnson (Freemantle Development Group), continued oral arguments in response to the appellant's position. He described the appeal as simple and straightforward. Two adopted City Code requirements indicate that access in a multifamily zone, if available and possible, is preferable to access through a single-family zone. When the applicant originally submitted his proposal, he preferred the idea of access through the single-family zone, in part because it is a shorter distance to the public street system. However, following an initial public meeting, there was substantial opposition from the single-family neighborhood. Further research by staff and the applicant indicated that the City's adopted codes reflect a preference for access through a multifamily zone, if available.

The appellants' appeal is requesting a change in policy to remove the preference for access through a multifamily development, at least in some circumstances. If access were to be changed to the west, it would be connected to an extensive cul-de-sac system consisting of a 151st Place NE and NE 11th Street, which ultimately lead to 148th Avenue NE. From a marketing point-of-view, the developer would prefer to use access through the single-family neighborhood. However, when staff explained the policy and the basis for the policy, the developer acknowledged it made sense and that they could adhere to it.

Mr. Johns said the appellants' argument is that the 30-foot easement is substandard and should not be used for access. They contend the easement is not feasible or practical, which is based on the fact that they have added a row of parking, without a permit or approval from the City. The appellants' feel this entitles them to block access to the Enclave at Fox Glen and force access to the single-family neighborhood. Mr. Johns opined it is not good City policy to allow property owners to add non-permitted parking to an access easement in order to accomplish this type of result.

The Hearing Examiner highlighted that City Code requires 20 feet for access without parking or other impediments on either side. With the parking added by Innisfree, the access is not 20 feet wide. The Hearing Examiner noted that a landscaping strip along the parking area could be removed to slide the parking over a few feet in order to provide 20 feet of access to be compliant with City standards. It would also provide access to Mr. Johnson's project.

Mr. Johns summarized that the appellants are asking the City to change policy and to shift preferred access to a multifamily project through a single-family area. Their argument that the access is narrow is based on the appellants' addition of parking without a permit. Mr. Johns feels the Hearing Examiner did a good job in reaching his decision. He asked the City Council to affirm the Examiner's decision.

Councilmember Balducci questioned whether the project is considered multifamily or single-family. Ms. Helland said the Code does not distinguish between a project but instead refers to the district. The site for the Enclave at Fox Glen is in a multifamily district adjacent to a single-family district. District requirements control the placement of access. For the purposes of evaluating the project as a PUD, single-wall units are considered single-family developments. However, the other Code provisions regarding district requirements supersede this guideline.

In further response to Ms. Balducci, Ms. Helland confirmed that the Fire Department's requirements will be met as a condition from the Hearing Examiner requiring 20 feet of access. This will require removal of the north parking or reducing the landscaping and moving the parking farther north.

Responding to Councilmember Marshall, Ms. Helland confirmed that staff engaged in discussion with the applicant regarding access via 151st Place NE. Staff's role is to respond to applications as presented for review. The original proposal described in the Hearing Examiner's report showed access using 151st and 156th. The Code disfavored the use of 151st. The applicant was advised of this and subsequently changed his proposal.

Mrs. Marshall questioned the reason that a 24-foot width is required for internal roads while a 20-foot easement is required for pass-through drives. Ms. Helland said Transportation Department regulations were discussed in testimony during the hearing [Transcript 3, Page 64, in the Transcripts volume of the Hearing materials]. Internal roads are considered to be new development and must meet current standards. The preexisting access easement is considered an infill condition under the Transportation Code, which allows deviations from typical standards for driveways and private roads based on the engineer's finding that the easement is adequate and safe.

Mrs. Marshall referred to page 23 of the Hearing Examiner's findings stating that maintenance responsibility for the private road shall be a shared responsibility of the lot owners within the development. She noted the use of the word road in this sentence and the use of easement in other sections. She questioned the different requirements for the two access points. Ms. Helland explained that the property underlying the easement is not owned by the developer. The requirement is for adequate access to an arterial. Due to the infill nature of the development, the access was determined to be adequate and the 20-foot width was considered appropriate and safe.

Mayor Degginger suggested allowing Ms. Youngs to present her rebuttal before taking more Council questions.

Ms. Youngs said the staff report states that access through Tax Lot 35 is prohibited. She noted that on page 83 of Transcript 2 of the Hearing Examiner's report, Ms. Youngs questioned whether access to 151st was prohibited, and staff confirmed that it was. Ms. Youngs said the applicant has acknowledged a preference for using 156th Avenue for access, but staff indicated it was prohibited. She feels there are inconsistencies in the Hearing Examiner's report regarding the easement and driveway. However, she characterized the overall project as innovative.

Ms. Youngs is concerned that the developer could not include access via 156th Avenue in his proposal because staff said it was prohibited. She feels the project reflects a rezone, which means the property becomes a single-family PUD and is no longer multifamily.

Mayor Degginger questioned whether Ms. Youngs would consider that City policies support routing traffic through Innisfree if the proposed development were an apartment complex with the same number of units. She noted BCC 14.60.150M indicates that traffic should go through zones of like character. However, Section M states that the requirements of this section may be modified by the PCD Director if the modification is reasonable and necessary for development of the property and will not create a hazardous condition for motorists or pedestrians. Ms. Youngs said staff prohibited access and did not review this provision of the code. She feels access through Innisfree will make the Fox Glen development less attractive to potential buyers.

Responding to Deputy Mayor Chelminiak, Ms. Riordan said the legality of parking in an easement depends on its specific terms. Under the City Code, the parking along the north side of the road is not approved. With the access easement as the dominant estate, the holder of the dominant estate (the applicant) is entitled to have that easement cleared for ingress and egress, which is its purpose.

In further response to Mr. Chelminiak, Ms. Riordan acknowledged there is case law indicating that PUDs represent rezones. A review of the case law, however, reveals that the PUDs involved in the cases permitted greater density than the actual zoning would otherwise have allowed. Mr. Johnson's proposal for 10 units, as conditioned by the Hearing Examiner, is consistent with the underlying zoning.

Ms. Helland responded to additional questions of clarification.

Responding to Dr. Davidson, Ms. Riordan said one of the Hearing Examiner's conditions is that the non-permitted parking be removed and that a 20-foot easement be provided. The two parties could, however, choose to increase the size of the easement.

Responding to Mayor Degginger, Ms. Helland said the 20-foot easement condition is required to be met by the applicant before the issuance of any plat engineering or clear and grade permits. The 20-foot easement must be maintained on the Innisfree property as well.

Responding to Mr. Lee, Ms. Helland said a summary of the public meeting on April 18, 2005 is in the Hearing Examiner's report. Approximately 75 residents attended.

Responding to Mr. Lee, Ms. Youngs opined that a provision of the Code allows modification if it is reasonable and necessary for development of the property. She feels it is necessary to route the access through the single-family neighborhood to provide a high quality development. She said the City cannot enforce traffic laws or write citations on private property.

Responding to Ms. Balducci, Ms. Riordan said the applicant could decide to submit a proposal specifying the single-family access point and go through the normal permit process, with the opportunity to appeal to the Hearing Examiner and the City Council if denied.

➲ Deputy Mayor Chelminiak moved to close the limited public hearing, and Ms. Balducci seconded the motion.

➲ The motion to close the limited public hearing carried by a vote of 6-0, with Mr. Noble absent.

➲ Councilmember Balducci moved to deny the appeal, and Deputy Mayor Chelminiak seconded the motion.

Ms. Balducci explained that the purpose of a quasi-judicial hearing is for the Council to hear all sides of an issue and make a decision in a fair and consistent manner. The Council's role is not to design the project but to apply the rules in place to the project proposal and make a determination. The City's rules state that a PUD and preliminary plat application is to be granted if adequate access and street connections are provided. The Hearing Examiner's decision found that there is adequate access. Ms. Balducci noted that the Council must place substantial weight on the Hearing Examiner's decision.

Deputy Mayor Chelminiak, responding to citizens' concerns about whether an adequate fire lane will be provided, said the Bellevue Fire Department has determined that the fire lane is adequate.

➲ The motion to deny the appeal carried by a vote of 6-0, with Mr. Noble absent.

(b) Public Hearing on Ordinance No. 5724 extending the Meydenbauer Bay Area Moratorium

Proposed Ordinance No. 5724 imposing a moratorium on the acceptance of applications for the review and/or issuance of Permits for any new development, addition, or alteration within the Moratorium Area, as such terms are defined in this ordinance; repealing Ordinance No. 5714; and establishing an immediate effective date.

Mayor Degginger explained that, following the public hearing, the Council may take action tonight or on March 12th to determine whether to extend the moratorium on development in the Meydenbauer Bay area or to allow it to expire on March 23.

Planning Director Dan Stroh and Senior Planner Mike Bergstrom provided the staff report on proposed Ordinance No. 5724 extending the Meydenbauer Bay Area Moratorium on land use and construction permits for an additional six months. The City wants to preserve the opportunity to provide a connection from downtown and Downtown Park to Meydenbauer Park on the waterfront.

Mr. Bergstrom provided an update on the City's planning process. A request for proposals (RFP) from consultants to assist in the planning process was issued on February 16, and a pre-submittal conference was held on February 26. Proposals are due March 13. Staff anticipates returning to Council on March 19 to request the appointment of a Steering Committee. The

consultant is to be selected by March 22. A negotiated contract will be submitted for Council approval in April.

Mr. Bergstrom explained that the proposed six-month moratorium adds an exemption to continue the ability to accept and process shoreline permits administered under the Shoreline Management Act. A current case that has been argued before the State Supreme Court addresses whether moratoria can affect development activity along shorelines, although a decision has not been reached.

Council's options following the public hearing are to: 1) Adopt proposed Ordinance No. 5724 extending the Meydenbauer Bay area moratorium, 2) Direct modifications to Ordinance No. 5724 and direct staff to return with a revised ordinance on March 12, 3) To not adopt or modify Ordinance No. 5724, or 4) Provide alternate direction to staff.

- Deputy Mayor Chelminiak moved to extend the meeting to 10:30 p.m., and Mrs. Marshall seconded the motion.

- The motion to extend the meeting to 10:30 p.m. carried by a vote of 6-0, with Mr. Noble absent.

- Deputy Mayor Chelminiak moved to open the public hearing, and Dr. Davidson seconded the motion.

- The motion to open the public hearing carried by a vote of 6-0.

The following citizens came forward to comment on proposed Ordinance No. 5724:

1) Aaron Laing identified himself as legal counsel for the owner of the property at 9906 Lake Washington Boulevard (Parcel A identified in the attachment to the Ordinance). He asked the Council to reject Ordinance No. 5724 or to modify it to remove his client's property. He expressed concern that the City will want to demolish some buildings in the area in order to achieve views and a pedestrian corridor. Mr. Laing said the Ordinance is unconstitutional due to a prohibition on passing legislation aimed at individuals. He cited state and federal case law indicating that a regulation that interferes with or devalues an individual's property rights cannot be passed.

2) Chuck Madwell, legal counsel for ORIX Imperial, LLC, said his client owns a building formerly known as Imperial Apartments, which is identified as Parcel H in the attachment to the Ordinance. ORIX purchased the property last October, converted it to condominiums, submitted three permit applications to renovate the property, and was in the process of making those renovations when the moratorium went into effect. ORIX representatives met with City staff, who indicated that the three permits are vested. However, City staff could not assure ORIX that a shoreline permit required for a portion of the renovations would be vested. Mr. Madwell said it is unfair and illegal for the City to take this position. ORIX has been open and honest about its plans to convert the property to condominium, met with City staff on several occasions before purchasing the

property, and discussed potential public-private partnerships for development. At each meeting, City staff assured ORIX there was no reason it could not proceed with its conversion.

ORIX purchased the property with this understanding and obtained permits for the renovation. Mr. Madwell said the moratorium should not apply to this property because the project is vested under state law. Additionally, he feels the City lacks the authority to impose a moratorium on shoreline permits. Mr. Madwell said if the proposed Ordinance exempts shoreline permits, this would allow the project to be completed. However, he is unsure about the specific meaning of this provision in the Ordinance.

3) Bob Wicklein, Seneca Real Estate, spoke on behalf of the owners of Parcel J. He encouraged the City to expedite its planning process so the owners can proceed with their redevelopment plans. He asked that any changes made in development standards or the Zoning Code as a result of the City's plans not reduce the value of Parcel J or decrease its rights to develop it in the future. Mr. Wicklein asked Council to remove Parcel J from the moratorium area.

4) Victor Lozada, a real estate agent, spoke in opposition to the moratorium. He feels it primarily affects residents in more affordable homes. Many of the properties included in the moratorium area are rental homes. Currently in the area between I-90 and SR 520, west of I-405, there are only nine homes with two bedrooms available for under $500,000. Mr. Lozada feels some of the buildings can be redeveloped into condominiums priced below $500,000.

5) Art Wilson, Real Partners, said he and his partner acquired the property identified as Parcel E three to four months ago, with the intention of converting the 11 units to condos. Mr. Wilson and his partner are paying a mortgage of $18,000 monthly to maintain the property until it is converted. Extension of the moratorium by six months will be devastating to the company.

➲ Deputy Mayor Chelminiak moved to close the public hearing, and Ms. Balducci seconded the motion.

➲ The motion to close the public hearing carried by a vote of 6-0, with Mr. Noble absent.

➲ Deputy Mayor Chelminiak moved to adopt Ordinance No. 5724, and Councilmember Marshall seconded the motion.

Councilmember Marshall acknowledged there are negative impacts to both property owners and the City related to this issue of extending the moratorium. She will support the motion but is concerned about the adverse economic impact to property owners and wants staff to expedite the City's process.

Councilmember Lee said he is generally opposed to moratoriums because of their economic impacts. He concurs with Mrs. Marshall's direction that the process be expedited to minimize

adverse impacts.

Councilmember Davidson said he too does not like moratoriums and their negative consequences for property owners and their rights. However, he feels it is important for the City to meet its vision, which he hopes will ultimately benefit all property owners.

Deputy Mayor Chelminiak concurred with directing staff to expedite the process, including the appointment of a Steering Committee. He initially voted against the moratorium. Mr. Chelminiak said the extended moratorium is not a land grab by the City. It is an effort to maintain the status quo while the City goes through its planning process. He will support the motion although he has strong concerns, as he expressed in the previous discussion regarding the emergency moratorium ordinance.

Councilmember Balducci said there has not been any discussion about taking any of the properties. The City is looking for a way, however, to develop design guidelines that are compatible with the uses and the connection to the waterfront. She feels the City's plans will ultimately increase the value of the projects in the area. Ms. Balducci is concerned about property owners paying significant mortgages and agrees that City staff should work as quickly as possible.

➲ The motion to adopt Ordinance No. 5724 carried by a vote of 6-0, with Mr. Noble absent.

10. Land Use: None.

11. Other Ordinances, Resolutions and Motions

(a) Motion to: 1) Amend the 2007-2013 Capital Investment Program (CIP) Plan by adjusting the projects budgets for the NE 24th Street (Northup Way to 130th Avenue NE) project (CIP Plan No. PW-W/B-69); and the SE 16th Street Improvements (145th Place SE to 148th Avenue SE) project (CIP Plan No. PW-R-118); and 2) Approve an increase to the construction contract with Pacific Road and Bridge Company (Bid No. 0612) by $539,623.09 for the NE 24th Street (Northup Way to 130th Avenue NE) project (CIP Plan No. PW-W/B-69).

Rick Logwood, Project Manager Supervisor, provided the staff report on the motion to amend the 2007-2013 Capital Investment Program (CIP) Plan to adjust the project budgets for the NE 24th Street project and SE 16th Street improvements, and to approve an increase to the construction contract with Pacific Road and Bridge Company for the NE 24th Street project.

Staff responded briefly to questions of clarification.

➲ Councilmember Marshall moved to: 1) Amend the 2007-2013 Capital Investment Program (CIP) Plan by adjusting the projects budgets for the NE 24th Street (Northup Way to 130th Avenue NE) project (CIP Plan No. PW-W/B-69); and the SE 16th Street Improvements (145th Place SE to 148th Avenue SE) project (CIP Plan No. PW-R-118); and 2) Approve an increase to the construction contract with Pacific Road and Bridge

Company (Bid No. 0612) by $539,623.09 for the NE 24th Street (Northup Way to 130th Avenue NE) project (CIP Plan No. PW-W/B-69). Mr. Chelminiak seconded the motion.

➲ The motion carried by a vote of 6-0, with Mr. Noble absent.

12. Unfinished Business

13. Continued Oral Communications: None.

14. New Business: None.

15. Executive Session: None.

16. Adjournment

At 10:12 p.m., Mayor Degginger declared the meeting adjourned.

Myrna L. Basich
City Clerk

kaw