East Bellevue Community Council
Summary Minutes of Special Meeting

June 16, 2014
5:00 p.m.

Bellevue City Hall
Bellevue, Washington

PRESENT: Chair Capron, Councilmember Hughes, Councilmember Hummer, Councilmember Kasner, Councilmember Gooding

ABSENT: None

STAFF: Monica Buck, EBCC Attorney
Kyle Stannert, Public Records Manager

1. **CALL TO ORDER**

The meeting was called to order at 5:00 p.m. with Chair Capron presiding.

2. **ROLL CALL**

The Deputy City Clerk called the roll. Councilmember Gooding was not present during roll call, but appeared at 5:09 pm.

3. **FLAG SALUTE**

Chair Capron led the flag salute.

4. **COMMUNICATIONS: WRITTEN AND ORAL**

None.

5. **REPORTS OF CITY COUNCIL, BOARDS AND COMMISSIONS**

None.

6. **APPROVAL OF AGENDA**

None.

7. **DEPARTMENT REPORTS**

None.

8. **PUBLIC HEARINGS**

None.

9. **RESOLUTIONS**

None.

10. **COMMITTEE REPORTS**

None.

11. **UNFINISHED BUSINESS**

None.

12. **NEW BUSINESS**

(a) Training on Open Public Meetings Act and Public Records Act

Matt Segal and Jessica Skelton from Pacifica Law Group conducted the training on Open Public Meetings Act and Public Records Act.

Councilmember Gooding appeared at 5:09 pm.

Councilmember Hummer questioned whether it is just the City Council that EBCC is in an advisory capacity to, or whether it is other government agencies. Ms. Skelton responded that the advisory functions are as specifically set forth and are only in reference to the legislative advisory to City Council.

Councilmember Hughes questioned what a "properly equipped office" means. Ms. Skelton responded that it is up to the City to determine what is appropriate. In the case of the EBCC, the City has the obligation to provide support and a budget, but the City has the discretion to determine the level of support provided.

Councilmember Kasner questioned whether it would be appropriate to attend trainings and whether it would be considered a necessary expense. Mr. Segal responded that councilmembers should keep in mind whether it is a conference or a training that is an advocacy based program and whether it has any nexus to a quasi-judicial matter that may be pending in front of EBCC.

Councilmember Kasner raised a question with regard to what is considered confidential at an open public meeting. Mr. Segal responded that anything talked about at open session, on the record, is not confidential. There are some nuances, for example, with regard to executive session. Anything at executive session remains confidential. No one should disclose information from executive session. Similarly, if you receive confidential advice from EBCC legal counsel, it is considered confidential unless the entire council as a whole decides to release the information.

Councilmember Hughes asked what a quasi-judicial matter is and who determines whether or not something is quasi-judicial.

Councilmember Kasner noted a related clarification that the difference between quasi-judicial issues and the entity involved is that if the entity involved has a quasi-judicial issue, you are barred from discussing that issue. You may or may not be barred from discussing other issues with that same entity.

Mr. Segal stated that yes, if you have a conditional use permit that is coming before you, it is considered quasi-judicial. However, you can still discuss other issues with them, but you need to be very careful. You do not want to create the appearance of impropriety.

Councilmember Kasner stated that he has always drawn the line at whether a meeting is public or private. If there is a public meeting that everyone is invited to, he would choose to go. He stated, on the other hand, he would never make an appointment to talk about something specific with an entity that has a quasi-judicial matter pending in front of EBCC. He noted that even if he did nothing wrong, the appearance of fairness is presumptively not in his favor.

Mr. Segal noted that public meetings have a lot of additional safeguards. He cautioned the EBCC that if there is a pending quasi-judicial matter and a councilmember attends a public meeting with that entity and speaks on that issue, the communication could technically be considered ex parte communication. He agreed, however, that a public meeting carries less concern than arranging a private sit down. Once a matter has had all appeals exhausted, then the EBCC is likely clear. However, Mr. Segal cautioned that the EBCC should also consider whether there will be a follow-up matter. Err on the side of caution. If you attend a public meeting, make sure to disclose that information on the record, in advance of a decision, on any quasi-judicial matter.

Chair Capron noted that his understanding is that if you go to a public meeting as a spectator, you do not engage in public comment and you do not have any communication with anyone, you can just disclose the fact that you were at the public meeting on the record and be done.

Mr. Segal confirmed that is a correct understanding.

Councilmember Kasner stated that the slope is very slippery and he wants to understand what is required as things move forward.

Mr. Segal agreed with the statement, as a general rule, but cautioned Councilmember Kasner to consider whether there will be an issue of appearance of fairness or appearance of impropriety. You have to ask whether you are there to do independent fact-finding other than what was presented to you in a quasi-judicial proceeding. Mr. Segal advises that all information should be disclosed at a hearing where both sides on a quasi-judicial matter have the ability to respond. He noted that the EBCC should consider themselves judges on any particular quasi-judicial proceeding. Judges do not go out and conduct independent fact-finding.

Councilmember Hughes questioned what constitutes a communication.

In response, Mr. Segal noted that it used to be a much simpler answer twenty years ago. In today's day and age a communication includes face to face, email, texting, formal correspondence, mail, etc.

Councilmember Hughes questioned whether the information coming to him as a private citizen on buses, billboards, postcards, letters, etc. is a communication.

Mr. Segal noted that if someone puts something on the side of a bus or issues a general solicitation to residents, it is not an ex parte communication. However, if a councilmember feels that they are being bombarded with these types of communications, he or she can put that on the record and have it noted that the decision made will be based on the record presented to them and not influenced by the mailings or articles or other forms of communication.

Councilmember Kasner questioned how the EBCC is supposed to verify information that has been presented. He asked if it should be assumed that all information presented is correct.

Mr. Segal stated that as the decision maker you have to evaluate things like credibility. You have to make a decision based on the evidence presented.

Councilmember Hummer noted that sometimes information comes to the EBCC by way of public comment.

Councilmember Hughes questioned whether a councilmember's spouse can attend meetings and make comment.

Mr. Segal responded that there could be an appearance of impropriety if a spouse is attending all opposition meetings regarding a quasi-judicial matter or making their opinion on the record.

Councilmember Gooding questioned if eminent domain comes into local decisions.

Mr. Segal stated that eminent domain is constantly a local decision.

Monica Buck noted that the community council does not have condemnation authority.

Councilmember Kasner questioned if the EBCC could stop the City Council from condemning property within the EBCC jurisdiction.

Ms. Skelton responded that eminent domain is a sovereign power and extended to the City through statue.

Chair Capron noted that he owns commercial property in the EBCC jurisdiction. He stated that if a matter came before EBCC that may affect his property he would recuse himself from the decision, speak his opinion as a citizen, then leave the room when the matter was voted on.

Mr. Segal responded that modern recusal is considered leaving the table AND not speaking your peace or participating in the discussion. There is a concern that if you speak, a citizen may put more weight on a statement from a councilmember as opposed to a normal citizen. The Supreme

Court spoke to this issue and found that the decision to recuse should also include stepping out from the discussion entirely.

Chair Capron asked if he would then have to resign in order to speak his mind about the subject.

In response, Mr. Segal noted that it is a closer question as to whether he could appear as a member of the audience. If you are a councilmember and you have a personal interest in a decision, you should recuse.

Councilmember Hughes questioned what an executive session is.

Ms. Skelton responded that executive sessions can include topics such as legal advice or anything that cannot be disclosed.

Monica Buck noted that the EBCC has had two executive sessions in the time she has been counsel for EBCC.

Councilmember Kasner noted that there are no minutes of executive sessions.

Chair Capron called a recess at 6:20 pm.

Chair Capron called the meeting back to order at 6:28 pm.

Ms. Skelton continued with the training.

Councilmember Kasner noted that in the past the EBCC members have copied the Deputy City Clerk on emails so that the record can be kept.

In response, Mr. Segal stated that it is a good practice to copy staff on communications. You can communicate with staff rather than each other, however there are limitations. You cannot use staff as a conduit to conduct a meeting, but by communicating with staff you are lessening the risk. Mr. Segal believes that the current statue needs some amendments because it was written at a time where the different communication types we have today were not available or even considered.

Kyle Stannert, Public Records Manager, gave a presentation on the Public Records Act and records retention policies.

Mr. Stannert reminded the EBCC of the email box ebcc@bellevuewa.gov, which is automatically retained by the city.

Chair Capron questioned how long the retention period is for records.

Mr. Stannert responded that for EBCC it is permanent.

Councilmember Hughes questioned if you are still required to retain information once you are no longer on the council.

In response, Mr. Stannert said yes, there is still a responsibility to still retain those records or turn them over to the city to retain.

13. CONTINUED COMMUNICATIONS

None.

14. EXECUTIVE SESSION

None.

15. APPROVAL OF MINUTES

None.

16. ADJOURNMENT

Chair Capron adjourned the special meeting at 7:10 pm.

Charmaine Arredondo
Deputy City Clerk