CITY OF BELLEVUE
CITY COUNCIL

Summary Minutes of Regular Session

November 16, 2009 Council Chamber
8:00 p.m. Bellevue, Washington

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

ABSENT: None.

1. Call to Order

The meeting was called to order at 8:12 p.m., with Mayor Degginger presiding.

2. Roll Call, Flag Salute

Upon roll call, all Councilmembers were present. Councilmember Creighton led the flag salute.

3. Communications: Written and Oral

Mayor Degginger explained that the Council cannot take public comment regarding Agenda Item 10(a), the appeal related to the helistop conditional use permit (CUP) application by Kemper Development Company, because it is a quasi-judicial matter. The limited public hearing on the appeal was closed on November 2, 2009.

(a) Robert Shay, President of Wilburton Community Association, spoke in response to a new proposal for traffic movement in his neighborhood. He described a similar proposal considered 10 to 15 years ago to extend NE 4th Street between 116th and 120th Avenues. He expressed concern about the traffic impacts of this plan, especially how it relates to the T-intersection at 120th Avenue and NE 8th Street. Mr. Shay expressed concern about cut-through traffic and congestion in the vicinity of 124th Avenue NE and NE 5th Street as well.

(b) Tim Hunt, Public Affairs Manager for the Bellevue Chamber of Commerce, encouraged the Council to incorporate the vision line, C9T, C9A and C11A alternatives into the City's scope of the independent traffic analysis work. He said it is important to include new alternatives that have the potential to provide lower project costs and construction impacts, lower impacts to residents and businesses, and better integration with existing roadways while avoiding the potential for an additional tax burden.

(c) Sherman Byrd spoke to Sound Transit's preferred alternative. He feels that the only sensible alignment is along I-90 to the BNSF right-of-way, and then north to NE 8th Street. He suggested an elevated alignment and station at NE 8th Street, with park and ride lots on former auto dealers' properties. Mr. Byrd feels the best way to serve the downtown is the circulator system that has been planned and partially funded in the City's budget.

(d) Betsy Blackstock, Surrey Downs Community Club, noted previously expressed concerns regarding the Bellevue High School project. She reported that a meeting of stakeholders was chaired by Land Use Director Carol Helland, and the group reached a consensus on one plan. Ms. Blackstock encouraged the Council and staff to involve residents in the early stages of planning processes.

4. Reports of Community Council, Boards and Commissions

Roxanne Shepherd, Chair of the 2010 Sculpture Exhibition Committee, requested Council authorization to move forward with implementing plans for the 2010 sculpture exhibition. The exhibition extends along the art walk route between City Hall and Downtown Park, and involves some private property participants. She acknowledged the City's budget constraints and requested Council direction about whether to proceed with planning the 2010 exhibition. Ms. Shepherd expressed the Arts Commission's appreciation for Council's support of arts projects.

Responding to Mayor Degginger, City Manager Steve Sarkozy said staff recommends funding the project as part of the Capital Investment Program (CIP) Plan, as discussed during the earlier Study Session. With the mid-biennium budget scheduled for adoption in December, Mr. Sarkozy said it would be appropriate for the Council to respond to the request tonight.

Responding to Deputy Mayor Balducci, Mr. Sarkozy noted that CIP Project CD-11 provides base funding for this program.

Deputy Mayor Balducci stated that she is ready to support action to direct the Arts Commission to proceed with the exhibition project.

Mr. Sarkozy noted that the expenditure is a very small portion of the base CIP Plan. However, the sculpture exhibition is an important and visible project within the community.

Councilmember Lee said he is comfortable with moving forward with this project, which was previously included in the CIP Plan.

Ms. Shepherd interjected that the funding will help to leverage community partners.

Councilmember Chelminiak expressed support for proceeding with funding the sculpture exhibition.

Deputy Mayor Balducci summarized her understanding that the item was already placed in the budget, and there does not appear to be any proposal to withdraw the funding.

Mayor Degginger noted a Council consensus to proceed.

5. Report of the City Manager

(a) Award to Recognize Police Efforts to Reduce Auto Thefts

City Manager Steve Sarkozy reported that the Police Department recently received an award from the Washington Auto Theft Prevention Authority in recognition of a 40 percent decrease in auto thefts.

Mayor Degginger congratulated the Police Department for its dedication to this priority.

Councilmember Chelminiak commended the Police Department and the King County Prosecutor's Office for their partnership in this effort.

(b) NE 10th Street Project Ribbon Cutting

Mr. Sarkozy announced that the NE 10th Street project will be officially opened following a ribbon cutting ceremony to be held at 10:00 a.m. on November 24. As a related project, the construction of braided ramps to provide access between NE 10th Street, I-405, and SR-520 will begin in late November.

6. Council Business and New Initiatives

Councilmember Lee reported on his attendance at the National League of Cities Conference in San Antonio.

Dr. Davidson also attended the NLC Conference, and represented the Association of Washington Cities (AWC) on the Energy, Environment and Natural Resources Committee.

Deputy Mayor Balducci reported that the Puget Sound Regional Council (PSRC) Transportation Policy Board took action to recommend the Transportation 2040 Regional Plan. She updated the Council on some of the changes. The Regional Staff Committee had asked for a prioritization process during the first two years of the plan to support the strategy for growth in urban centers. The City of Seattle had requested a one-year delay in adopting the plan. However, no Seattle representatives were present at the meeting, and no motions to delay the plan were made.

Ms. Balducci noted that she moved to remove arterial tolling and parking surcharges as sources of funding in the unfunded portion of the plan. She proposed language indicating that if projects in the unfunded portion of the plan are ultimately adopted, funding mechanisms including possible user fees will be determined at that time. Ms. Balducci reported that she seconded, for the purpose of discussion, a motion to first use toll revenues for projects on the specific tolled corridor, but to allow the use of excess revenues on another corridor if approved by a vote of

citizens. That motion failed. The next step for the 2040 Plan is review and action by the PSRC Executive Board.

Councilmember Chelminiak spent a week in Barcelona working with a group that is looking at what makes cities and regions livable and how to attract the knowledge worker. The consortium originated in the greater Seattle area through PSRC and the Trade Development Alliance.

7. Approval of the Agenda

→ Deputy Mayor Balducci moved to approve the agenda, and Councilmember Chelminiak seconded the motion.

→ The motion to approve the agenda carried by a vote of 7-0.

8. Consent Calendar

→ Deputy Mayor Balducci moved to approve the Consent Calendar, with the exception of Item 8(a)(1), and with a comment on Item 8(g). Councilmember Chelminiak seconded the motion.

Deputy Mayor Balducci commented on Agenda Item 8(g) regarding the removal of parking along one side of 140th Way SE. She asked staff to inform homeowners on either side of street about the change. Mr. Sarkozy confirmed that staff will notify the residents.

→ The motion to approve the Consent Calendar carried by a vote of 7-0, and the following items were approved:

(a) Facility Contracts for General Government Buildings

(2) Resolution No. 8002 authorizing execution of a two-year professional services agreement, with the option to renew for an additional two years, with SBS of America, for a total contract amount not to exceed $1,195,040, for custodial services at City Hall for 2010-2011.

(3) Resolution No. 8003 authorizing execution of a two-year professional services agreement, with the option to renew for an additional two years, with Buena Vista Services Inc., for a total contract amount not to exceed $192,219, for custodial services at the Bellevue Service Center for 2010-2011.

(4) Resolution No. 8004 authorizing execution of a two-year professional services agreement, with the option to renew for an additional two years, with Whitman and Associates, for a total contract amount not to exceed $245,575, for carpet cleaning services at City Hall and the Bellevue Service Center for 2010-2011.

(b) Motion to approve payment of claims for the period October 31, 2009 through November 13, 2009 and payroll for the period of October 16, 2009 through October 31, 2009.

(c) Motion to award Bid No. 9334 to Northwest Playground Equipment, Inc., in the amount of $66,815.03, as the lowest responsible bidder for playground installation at Killarney Glen Park.

(d) Resolution No. 8005 authorizing execution of a two-year professional services agreement with Youth Eastside Services (YES), in the amount of $75,000, for youth and family counseling services at Crossroads Community Center.

(e) Resolution No. 8006 authorizing execution of a four-year General Services Contract with Blue-Sky Cleaners, in an annual amount of $30,000, for laundry, dry cleaning and alteration services for the Bellevue Police Department.

(f) Resolution No. 8007 authorizing execution of a five- year lease agreement with Delta Business Park, in the total amount of $78,086.40, for 1,660 square feet in a secured storage facility for impounded vehicle and evidence storage.

(g) Ordinance No. 5916 establishing a "No Parking Anytime" zone on the east side of 140th Way SE beginning at Kamber Road going south for 315 feet until the end of the street right-if-way at the request of the Bellevue Fire Department.

(h) Resolution No. 8008, authorizing execution of a professional services agreement for the Wilburton and Mid Lakes Sewer Capacity Study, with HDR Engineering, Inc. for engineering services, in an amount not to exceed $75,000 (CIP Plan No. S-60).

(i) Ordinance No. 5917, 1) authorizing execution of a grant agreement with the US Department of Energy to accept $1,295,700 in federal Energy Efficiency and Conservation Block Grant funds; 2) amending the 2009-2010 General Capital Investment Program Fund to increase the appropriation by $771,100; 3) amending the 2009-2015 CIP Plan by increasing three project budgets: a) the Greenhouse Gas Community Action Fund (CIP G-78) by $399, 500; b) the Transportation Demand Management Program Fund (CIP PW-R-87) by $61,600; and c) the Renovation and Refurbishment of Parks Facilities (CIP PR-11) by $310,000; 4) creating a project within the Operating Grants, Donations, and Special Reserves Fund; and 5) amending the 2009-2010 Operating Grants, Donations, and Special Reserves Fund to increase the appropriation by $524,600.

Item Postponed:

(a) Facility Contracts for General Government Buildings

(1) Resolution No. 8001 authorizing execution of a two-year professional services agreement, with the option to renew for an additional two years, with G4S Wackenhut, in a total contract amount not to exceed $500,828.88 for security services at City general government buildings for 2010-2011.

Mayor Degginger stated that when the Council is asked to approve a contract that is higher than the low bid, he would like staff to provide a full explanation of the proposed action.

The City Manager said staff will provide additional information and place the item on the next Consent Calendar.

9. Public Hearings

(a) Required public hearing to declare certain utility-owned equipment to be surplus, and directing City staff to dispose of the property in the same manner as other City-owned personal property that has met its usefulness and is no longer needed by the City.

Mr. Sarkozy noted that this is a required public hearing in order to declare certain utility-owned property surplus prior to its disposition.

→ Deputy Mayor Balducci moved to open the public hearing, and Councilmember Davidson seconded the motion.

→ The motion to open the public hearing carried by a vote of 7-0.

No one came forward to testify.

→ Deputy Mayor Balducci moved to close the public hearing, and Councilmember Chelminiak seconded the motion.

→ The motion to close the public hearing carried by a vote of 7-0.

Resolution No. 8009 declaring certain utility personal property and equipment as surplus and directing the purchasing manager to dispose of such property.

→ Deputy Mayor Balducci moved to approve Resolution No. 8009, and Councilmember Creighton seconded the motion.

→ The motion to approve Resolution No. 8009 carried with a vote of 7-0.

10. Land Use

(a) Council consideration of appeal of Hearing Examiner's Decision on Approval of the Conditional Use Permit Application of Kemper Development Company to

update and activate an existing Helistop in Downtown Bellevue. Hearing Examiner's File No. 08-135262-LB.

Mayor Degginger recalled the previous discussion of November 2 regarding the appeal of the Hearing Examiner's decision on the application of Kemper Development Company for a conditional use permit to upgrade and activate an existing helistop.

Kate Berens, Deputy City Attorney, explained that this is a continuation of the Council's discussion of the limited public hearing on Hearing Examiner's File No. and Development Services File No. 08-135262-LB, the application of Kemper Development Company for a conditional use permit for a helistop. Appeals were brought by Su Development Company and Ina Tateuchi et al on the decision of the Hearing Examiner to grant the conditional use permit, with conditions. The respondents to the appeal are the applicant, Kemper Development Company, and the Development Services Department. The limited public hearing portion of this appeal was concluded on November 2. In addition to the oral arguments provided on November 2 and the Hearing Examiner's record, which was provided to the Council previously for review, the parties to the appeal were allowed to submit written materials to the City Clerk by 1:00 p.m. on Wednesday, October 28.

Ms. Berens explained that by Council's direction, the applicant was allowed to submit a five-page written brief responding to arguments made by appellant Su Development that were not related to issues included in Su Development's August 3rd appeal statement. This additional brief was due by the close of business on Monday, November 9. Ms. Berens said the City Attorney's Office has reviewed all of these submittals to be sure that they comply with the Council's rules. Any information not contained in the Hearing Examiner's record has been redacted from the versions provided to the Council.

Ms. Berens recommended that before the Council take up the substance of this appeal, Councilmembers are given an opportunity to once again disclose on the record any ex parte communications they may have had with any of the parties to this appeal, or any others supporting or opposing the application. If any ex parte communications are disclosed, a Councilmember should state the following on the record – the names of the persons with whom the communication occurred, whether the communication was written or oral, and generally the substance of the communication. If written, or a transcript of a voicemail exists, these items should be put in the record. To assist Councilmembers with these disclosures, the City Clerk has previously identified the emails sent to Council at the Council@bellevuewa.gov email address and at individual Councilmembers' City email addresses. These documents have already been provided to the parties for review.

Ms. Berens said Councilmembers will need only to identify any ex parte contacts they may have received via personal email accounts, other written sources, or personal contacts. Following all Councilmembers' disclosures, the parties will be offered an opportunity to rebut the substance of any of these ex parte communications.

Councilmember Chelminiak said there was one new email to the Council regarding the helistop, but he did not read it.

City Clerk Myrna Basich confirmed that everything received by the Council before today has been provided to the parties.

Councilmember Creighton said he had no ex parte communications to disclose.

Deputy Mayor Balducci noted that she disclosed ex parte communications by email and in person prior to the last hearing. She had no additional ex parte communications to disclose.

Councilmember Davidson said he had no ex parte communications to disclose.

Councilmember Bonincontri said she had no additional contacts since the last discussion, other than the email mentioned by Councilmember Chelminiak.

Councilmember Lee said he had no additional information to disclose beyond what he disclosed at the last meeting.

Mayor Degginger said he had no other communications to disclose.

Ms. Berens recalled that during the proceedings on November 2, Council considered and ruled upon three preliminary motions made by the appellants and respondents. The first motion requested that the Su Appeal be dismissed in its entirety on the basis of untimeliness. That motion was denied by the Council. The second motion requested that the supplemental appeal filed by Su Development that was received on October 27 be dismissed on the basis of untimeliness. That motion was granted by the Council. The third motion asked that portions of the Tateuchi appeal be dismissed due to the failure to raise certain issues in that appeal in the proceedings before the Hearing Examiner. This third motion was denied by the Council.

Continuing, Ms. Berens recalled that after a staff report on the procedural history of the application, Council opened the limited public hearing. The parties presented oral argument on the appeal, and the limited public hearing was closed. Council then posed questions and briefly reopened the hearing to address the question of whether the applicant should be allowed additional briefing to respond to arguments made in Su Development's hearing brief and in its oral argument. Council granted applicant Kemper Development Company the opportunity to file a five-page responsive brief within one week of the appeal hearing. Then Council moved to continue the matter until tonight.

As noted earlier, Kemper Development did file such a brief, which has been reviewed by the City Attorney's Office, redacted as appropriate, and copied for the Council and included in your packet for this evening. In communications with the City Attorney's Office, appellant Su Development has requested the opportunity to respond to this additional brief on the basis that as appellant, Su bears the burden of proof, and appellants are traditionally afforded the opportunity for rebuttal.

Ms. Berens said the Council has two options for responding to the request for rebuttal from Su Development. Council can grant the opportunity and open the limited public hearing again for

the sole purpose of taking a limited amount of oral argument in rebuttal. Or Council can deny Su Development's request for additional arguments, and proceed with deliberations.

After the Council has asked any questions it may have, it will have the opportunity to deliberate and render a decision either tonight or at a subsequent meeting. With regard to the decision to be made by Council, 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 decision of the Hearing Examiner was not supported by material and substantial evidence. In all other cases, the appeal shall be denied. The City Council shall accord substantial weight to the decision of the Hearing Examiner.

Ms. Berens explained that evidence is material if there is a reasonable probability that the presence or absence of the evidence would alter the decision by the fact finder. Evidence is substantial when there is a sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness of the decision.

Mayor Degginger suggested addressing Su Development Company's request for an opportunity to respond to Kemper Development Company's supplemental brief.

Ms. Berens recalled that the purpose of the supplemental brief was to allow Kemper Development Company to respond to matters that were raised in the Su Development brief and during oral argument that, from the applicant's perspective, fell outside the scope of the Su Development Company appeal statement filed on August 3.

Deputy Mayor Balducci summarized that the Council received an appeal statement from Mr. Su in August, and it was relatively short but it identified the issues. There was then a later appeal brief that the Council received not very long before the first hearing. The Council heard some testimony that the brief was provided in response to a request from City staff, and that there was a change of attorneys in the case. Then the applicant moved to strike the whole appeal, and the Council agreed to strike just the later appeal memo because it contained things that were beyond the scope potentially of the appeal statement. It did not seem fair that the additional appeal statement could come in so close to the hearing.

Ms. Balducci recalled that the Council agreed to allow the applicant's attorney to submit an additional written response. Ms. Balducci said she was reluctant at this point to reopen for further oral argument. She stated that the issues have been placed before the Council, and her preference is to begin deliberations based on the record before the Hearing Examiner and the briefings received to date.

→ Deputy Mayor Balducci moved to deny the request by Su Development Company for the opportunity to respond to the applicant's supplemental brief. Mayor Degginger seconded the motion.

→ The motion to deny Su Development Company's request for the opportunity to respond to the applicant's supplemental brief carried by a vote of 7-0.

Moving on, Deputy Mayor Balducci stated that the Council is being asked to consider a number of issues that fall under the headings of noise and safety. Regarding safety, Ms. Balducci noted that the City Code states that there shall be a response letter from the FAA with regard to an application of this kind in the record. However, there is not such a letter in the record. Both parties alluded to the fact that the letter exists, but they rightly were not allowed to put that in front of the Council because it is a closed record hearing. Ms. Balducci said it is important, and required by the code, to obtain the FAA letter. She suggested remanding the matter to the Hearing Examiner in order for that letter to be put into the record.

Councilmember Davidson noted page 17 and the conditions recommended by the Hearing Examiner. Condition number five states that prior to activating a helistop the applicant shall provide a copy of the FAA response to FAA Form 7480-1, which confirms that the FAA has no objection to the use of airspace for this facility. Dr. Davidson said this sounds like the FAA letter is acknowledged, and very clearly conditioned, in the record.

Mayor Degginger said code section 20.24.50A 1, A2, states, "All applications to construct a heliport must include the results of the appropriate FAA review. A determination of negative impact on navigable airspace by the FAA will result in denial of the land use or building permit unless the applicant agrees to comply with the recommendations to mitigate such impact. Mitigating measures shall be made conditions of the land use building permit."

Mr. Degginger concurred with Councilmember Davidson that Condition 5 on page 17 says "prior to activation, the applicant shall provide a copy of the FAA response." However, the code section requires the FAA response to be included in the application. Presumably that is to allow the Hearing Examiner the opportunity to consider it and to establish any conditions.

Councilmember Chelminiak opined that the Hearing Examiner erred by sending the matter to the Council prematurely. He suggested that the proper way to proceed is to send the matter back to the Hearing Examiner to address the FAA letter and its implications.

Councilmember Davidson concurred with this approach.

Councilmember Creighton concurred as well.

Responding to Mr. Creighton, Legal Planner Catherine Drews explained that the permit for the Overlake Hospital helipad was similarly conditioned with regard to the requirement to obtain the FAA letter prior to activation of the helistop.

Councilmember Chelminiak noted that the helistop was a permitted use within the Medical Institution District. Carol Saari, Senior Planner, confirmed that the Overlake Hospital helistop was permitted outright. She noted that by requiring the FAA letter before issuing the building permit, the City can add mitigating conditions to the permit.

Councilmember Lee agreed with the need to obtain the FAA statement.

Councilmember Bonincontri concurred with remanding the matter to the Hearing Examiner.

Deputy Mayor Balducci reiterated her suggestion to remand the matter to the Hearing Examiner for review of the FAA response to the applicant's submission, further testimony or information in response to that letter, and possible conditions that might be required.

→ Councilmember Chelminiak moved to remand the matter to the Hearing Examiner to reopen the hearing with regard to the FAA letter, once it is received, for: 1) Review of the FAA response to the applicant's submission, 2) Further testimony and information in response to that letter, and 3) Possible conditions that might be required. Deputy Mayor Balducci seconded the motion.

Responding to Mayor Degginger, Ms. Berens confirmed that the Council may limit the scope of the remand by specifying that the record be reopened for this limited purpose. In order to ensure procedural fairness, Ms. Berens suggested that the hearing allow all parties to comment on the contents of the FAA letter and its compliance with the decision criteria in the code.

Mayor Degginger expressed support for this approach.

Responding to Dr. Davidson, Ms. Berens explained that the Hearing Examiner could modify his existing decision document, including making any appropriate additional findings, conclusions, and/or conditions.

Councilmember Lee expressed support for the motion.

→ The motion to remand the matter to the Hearing Examiner, and to reopen the record only with regard to the FAA letter, carried by a vote of 7-0.

Deputy Mayor Balducci suggested that if any Councilmember has a question about whether the record is sufficient with regard to noise, this would be the time to discuss the issue.

Councilmember Chelminiak observed that the issues related to compliance with the noise ordinance are confusing at best within the record. He noted that the noise ordinance exempts aircraft in flight. However, landing and takeoff operations are somewhat different than being in flight. Mr. Chelminiak referred to Exhibit 22 indicating noise spikes before landing and after takeoff. He said it is unclear as to whether those are related to the operation, or whether they were just anomalies that occurred in downtown that day. Mr. Chelminiak said the other issue relates to where the noise is measured. He expressed an interest in seeing more on the noise issue.

Responding to Ms. Balducci, Mr. Chelminiak reiterated that it is unclear to him as to whether the helistop proposal violates the noise code. One issue is whether or not a flight operation, such as a landing or a taking off, is different than flight over the city. He noted that takeoff and landing are the loudest points of the entire operation. He questioned whether the exemption in the noise code for aircrafts in flight refers to any moment that the helicopter skids are above the landing pad.

Mayor Degginger said that he sees the issue as a legal question or interpretation of the code, as opposed to a factual question. He opined that there is sufficient evidence in the record regarding noise, and that reopening the record with regard to noise will not answer the question about the interpretation of the code with regard to the definition of flight.

Responding to Deputy Mayor Balducci, Mr. Chelminiak said at a minimum he would like more clarification regarding the noise testing that has been done. He would like to see additional noise testing as well

Councilmember Lee noted that Exhibit 22 describes a number of noise measurements related to helicopter operations including approaching from the freeway, powering down, landing, warming up, and taking off.

Mr. Chelminiak said he would be interested in a clarification regarding the noise spikes that are seen before the landing and after the takeoff, and whether those are related to the aircraft. If the Council cannot reopen the issue of whether or not an aircraft making a landing or a takeoff is actually subject to the noise code, he would be interested in a clarification regarding where the measurements were taken, at the property line or elsewhere, in order to determine compliance with the noise code.

Councilmember Creighton commented that the noise issues are confusing to him as well. While he is sympathetic to the issue of the noise spikes at landing and takeoff, he noted that the time exposure is very short. Mr. Creighton expressed interest in an interpretation from legal staff as to what constitutes flight.

Responding to Mayor Degginger, Ms. Berens said the City has not done a legal analysis on that provision of the code, but could do so if requested by the Council as part of its deliberations.

Councilmember Bonincontri said she too was somewhat confused on the noise issue. However, she noted that one of the conditions limits the number of operations allowed per week. If more measurements are taken, she suggested additional readings directly adjacent to the heliport property.

Deputy Mayor Balducci opined that the record is substantial with regard to noise measurements. While she supports a remand for the safety issue, she does not see the need for a remand on the noise issue.

Mayor Degginger concurred with Ms. Balducci's analysis. He noted that the Hearing Examiner provided several findings related to noise, and that measurements were taken at a number of locations.

Councilmember Creighton suggested that the Council attempt to resolve the issue of the definition of flight in order to be able to judge whether or not the noise levels comply with the noise code, and specifically to judge whether certain noise readings are exempt from the code.

Mayor Degginger declared a 15-minute recess to meet in Executive Session to seek legal clarification.

The meeting resumed at 10:00 p.m.

→ Deputy Mayor Balducci moved to extend the meeting until 10:30 p.m., and Councilmember Chelminiak seconded the motion.

→ The motion to extend the meeting carried by a vote of 7-0.

Mayor Degginger summarized that the matter will be remanded to the Hearing Examiner to review the issue of the FAA letter required under the code, and to receive testimony on any issues raised in the FAA letter. At that time the Hearing Examiner may modify his findings, conclusions, and conditions if he feels it is appropriate.

Ms. Berens reminded the public that the matter remains quasi-judicial pending the remand hearing, and Councilmembers cannot engage in ex parte communications.

11. Other Ordinances, Resolutions and Motions

(a) Resolution No. 8010 authorizing execution of a professional services agreement with the Gordian Group to provide consulting services for the development and implementation of a Job Order Contracting (JOC) Program for the City.

Mr. Sarkozy opened discussion regarding the Job Order Contracting Program, which was previously discussed with the Council on June 8 and August 3, 2009.

Rocky Brannan, Purchasing and Contracts Manager, described the proposed professional services agreement with The Gordian Group to provide consulting services for the development and implementation of the Job Order Contracting program. The City issued a request for proposals (RFP) to provide these services, and only one proposal was received. The proposal was evaluated by a group of staff from multiple departments, utilizing the criteria specified in the RFP including cost, experience, functional capabilities, and live presentation.

Mr. Brannan requested Council approval of the contract with The Gordian Group for the implementation of the Job Order Contracting program.

Dave Berg, Deputy Director of Transportation, reminded the Council about the benefits of this type of program in terms of time and cost savings through a more streamlined, standardized approach for completing smaller projects. The City of Seattle uses this approach in its Public Utilities Department.

Responding to Mayor Degginger, Mr. Berg said the City will own the unit price book to be developed by The Gordian Group. Mr. Brannan explained that The Gordian Group utilizes a set of prices which are based on a survey of local contractors and retailers. Mr. Berg added that the

prices will also be compared to the City's own experience as a form of cross checking. Mr. Brannan said the City will have the opportunity to review the prices before it becomes a published price book.

Councilmember Lee acknowledged the efficiency benefits of the program. Responding to Mr. Lee, Mr. Berg explained that staff will continue to follow its normal design-bid-build process for certain projects. This will provide ongoing opportunities to compare the unit price book with the current bidding climate.

Deputy Mayor Balducci requested periodic status reports on the program. While initially somewhat concerned about the five-percent fee, she understands the benefits of the system.

→ Deputy Mayor Balducci moved to approve Resolution No. 8010, and Councilmember Lee seconded the motion.

→ The motion to approve Resolution No. 8010 carried by a vote of 7-0.

12. Unfinished Business

(a) Discussion and Direction regarding the King Conservation District Special Assessment

Joyce Nichols, Policy Advisor, explained that the King County Council was originally scheduled to take action on the King Conservation District special assessment on November 23. However, that schedule was changed and today the King County Council voted 9-0 to approve the special assessment at the status quo level for three years using the same budget distribution formula currently in effect. Ms. Nichols said this reflects roughly what the Bellevue City Council approved in July when the issue was last discussed. At that time, the City Council opposed the changes to the funding formula that were proposed by the King Conservation District.

Ms. Nichols noted the set of guiding principles provided in the meeting packet, which were originally intended to enable the Council to direct staff in providing input on this issue. Although the King County Council has already taken action, Ms. Nichols requested feedback on the principles for discussions going forward.

Councilmember Davidson noted that he serves on the Water Resource Inventory Area (WRIA) 8 (Lake Washington/Lake Sammamish/Cedar River) Salmon Recovery Council, which was involved in early discussions regarding the King Conservation District. Dr. Davidson recalled the history of the regional funding mechanism and Bellevue's opposition to a proposal earlier in the year to change the funding distribution. He expressed support for the outcome of the King County Council's vote.

Councilmember Chelminiak spoke to the important role of conservation districts throughout the state that are governed by elected officials. He explained that the King Conservation District entered into an agreement with King County that supported a fee increase and allowed King County to use approximately half of the funding for salmon recovery. Mr. Chelminiak said

Bellevue's interests are broader than its borders, and there has always been an understanding that there will be a urban subsidy of the rural areas. He stated that conservation districts serve an important purpose and should be supported. Mr. Chelminiak expressed concern that the activities of the WRIA 8 group are relatively unknown and not transparent to the public.

Councilmember Davidson clarified that the WRIA 8 meetings are noticed in advance, open to the public, and well attended.

Noting that the issue of the special assessment has been resolved, Deputy Mayor Balducci suggested there is no immediate reason to adopt a formal set of principles regarding the King Conservation District. She had concerns about proposed changes to the funding distribution earlier in the year, but is satisfied with today's outcome. Ms. Balducci suggested that better communication in the future on this issue would be beneficial.

Responding to Mayor Degginger, Ms. Nichols concurred that there is no immediate need for the Council to adopt a set of principles at this time.

Councilmember Lee stated that the Council needs more information in order to better understand the issues.

13. Continued Oral Communications: None.

14. New Business: None.

15. Executive Session: None.

16. Adjournment

At 10:28 p.m., Mayor Degginger declared the meeting adjourned.

Myrna L. Basich
City Clerk

/kaw