

February 3, 2016

RE: EAST BELLEVUE COMMUNITY COUNCIL REQUEST FOR COVERAGE OF  
LEGAL EXPENSES

Dear Mayor Stokes and Members of the City Council,

Chapter 35.14 RCW authorizes the creation of community municipal corporations, such as the East Bellevue Community Council (EBCC), when unincorporated areas are annexed to cities and towns. The EBCC was established in 1969 when the Lake Hills area was annexed by the City of Bellevue. Formation of a community municipal corporation was a necessary condition for that annexation to occur, and the EBCC continues to serve its constituents over land use issues. The city has a statutory obligation to pay for “the necessary expenses” of its community councils. RCW 35.14.030. “Necessary expenses” can include legal expenses. *Sammamish Community Municipal Corp. v. City of Bellevue*, 107 Wn. App. 686 (2001).

The EBCC’s chief power is to approve or disapprove specific land use actions of the city within its service area. At issue are two permits sought by Puget Sound Energy (PSE) in conjunction with an electrical transmission project, which were disapproved by the EBCC: a shoreline conditional use permit (SCUP) and a conditional use permit (CUP). PSE appealed the EBCC’s disapprovals to the King County Superior Court. The City Council approved funding for the EBCC’s legal expenses for the superior court appeal.

Last fall, Judge William Downing of King County Superior Court ruled that the EBCC has no statutory authority to approve or disapprove SCUPs in its service area. This was at odds with the experience of the EBCC and the City, which has forwarded SCUPs to the EBCC for approval or disapproval for almost half a century in accordance with Chapter 35.14 RCW. Judge Downing then quashed the EBCC’s stay of this decision and ordered the City to transmit the SCUP to the Department of Ecology, which approved the SCUP on November 25. The City Council approved \$15,000 in necessary legal expenses for the EBCC to appeal the trial court’s order finding a lack of jurisdiction to Division I of the Court of Appeals.

Because the EBCC was unable to persuade Judge Downing to stay his decision regarding jurisdiction over the SCUP, the EBCC filed a petition for review of the Ecology decision approving the SCUP with the Shorelines Hearings Board. The filing of the petition imposed an automatic stay. Had the EBCC not filed the petition, the Ecology

decision would have become final, rendering EBCC's appeal of Judge Downing's jurisdictional decision a pointless exercise.

The Shorelines Hearings Board (SHB) has set a hearing on the EBCC's Petition for March 14-16. This fast timeline is driven by the SHB's statutory mandate to decide all cases within 180 days of filing, unless all parties waive this deadline. The standard of review in the SHB is *de novo*, meaning that the Board will consider all issues anew. The SHB rules allow for discovery, including interrogatories and depositions, and the testimony of witnesses including experts.

The EBCC's primary purpose for filing the Petition with the SHB was to secure meaningful review of Judge Downing's decision regarding its alleged lack of jurisdiction, and the EBCC desires to be careful stewards of public money. Accordingly, the EBCC sought a stay of proceedings with the SHB, seeking to spare all parties the effort and expense of a hearing until after the Court of Appeals rules on the jurisdictional question. Unfortunately, PSE refused to agree to a stay, and refused to waive the 180 day deadline for decision.

Meanwhile, on December 18 Judge Downing issued his decision on the second PSE permit at issue: the Conditional Use Permit. This time, Judge Downing upheld the EBCC's disapproval of the permit and denied PSE's appeal. PSE appealed that order to Division I of the Court of Appeals. The two appeals—EBCC's appeal of the SCUP decision and PSE's appeal of the CUP decision—have been consolidated.

At this time, the EBCC seeks additional funding for necessary legal expenses. Since the City Council's original decision regarding expenses for the Court of Appeals review, the scope of the appeal has increased significantly. Not only does the EBCC still wish to appeal Judge Downing's decision denying jurisdiction over the SCUP, but the EBCC must also defend its decision to disapprove the CUP. The EBCC requests \$15,000 (in addition to the \$15,000 already granted) for a total of \$30,000 for the consolidated appeals.

In addition, the EBCC seeks funding for the proceedings before the Shorelines Hearings Board. The EBCC's counsel has estimated up to \$30,000 to cover the proceedings before the SHB, including discovery, expert witnesses, and hearing time. As noted, the EBCC has attempted to spare all parties this expense by seeking a stay of the hearing until after the Court of Appeals issues its decision, but PSE opposed the stay.

The appeals have been filed and deadlines are quickly approaching. The EBCC requests the City Council act on this matter at its February 8, 2016 meeting so that counsel for EBCC can continue to meet deadlines in the SHB matter.

● Page 3

February 3, 2016

We thank you for your careful consideration.

William Capron

Chairman, East Bellevue Community Council