

CITY OF BELLEVUE  
CITY COUNCIL

Summary Minutes of Regular Session

June 18, 2018  
8:00 PM

Council Chamber  
Bellevue, Washington

PRESENT: Mayor Chelminiak, Deputy Mayor Robinson, and Councilmembers Lee, Nieuwenhuis, Robertson, Stokes, and Zahn

ABSENT: None.

1. Call to Order

Mayor Chelminiak called the meeting to order at 8:07 p.m.

2. Roll Call, Flag Salute

All Councilmembers were present. Councilmember Lee led the flag salute.

(a) Parks and Recreation Month Proclamation

Deputy Mayor Robinson read the proclamation recognizing July as Parks and Recreation Month and encouraged everyone to enjoy the benefits of Bellevue's parks and recreation facilities and programs.

Debra Kumar, Chair of the Parks and Community Services Board, thanked the Council for the proclamation. She said Bellevue, the City in a Park, has 2,700 acres of park land and more than 90 miles of trails. She noted the Parks and Community Services Department's role in supporting community events, recreation programs, and human services. Last year, more than 26,000 individuals of all ages and abilities participated in the City's recreation programs and adult sports leagues. Ms. Kumar thanked the Council for supporting the mission of building a healthy community.

3. Approval of Agenda

→ Deputy Mayor Robinson moved to approve the agenda, amended to add the Mini City Hall Update originally scheduled for the earlier Study Session under Agenda Item 6. Councilmember Stokes seconded the motion.

→ The motion carried by a vote of 7-0.

4. Communications: Written and Oral

- (a) Sabina Bagirova expressed appreciation for the support her family received from staff at the Mini City Hall when they first relocated to Bellevue. She said they provide great customer service and outreach, including referrals to English language classes, employment resources, and other services and information.
- (b) Josh Gannis, speaking on behalf of the Eastside Heritage Center, invited everyone to come to the Bellevue Strawberry Festival this Saturday and Sunday (July 23-24) at Crossroads Park. The event will include food vendors, family activities, interactive heritage displays, a classic auto show, and strawberry shortcake. He noted that the winner of the annual haiku contest will be announced at the festival.
- (c) Pamela Johnston thanked City staff for distributing information about the Bridle Trails bear and for scheduling classes about wildlife. Regarding the homeless shelter permitting Land Use Code Amendment (LUCA), she suggested a review of county and state laws regarding homeless shelters to determine how they impact the City's proposed regulations. She said tent cities have a code of conduct and they complete criminal background checks. She suggested looking at that code of conduct. She said King County's policies indicate that an individual should not be in a temporary shelter for longer than four weeks. She questioned whether a temporary shelter would accept children with parents and victims of domestic violence.
- (d) Karen Studders said the faith community feels strongly that there should be no requirements regarding buffers and warrant checks related to shelters serving individuals experiencing homelessness. She suggested broadening the Good Neighbor Agreement (GNA) Advisory Committee to include a member of the faith community, which has been serving those individuals over the past 25 years. The faith community would like the code of conduct to be limited to compliance with Bellevue's laws and regulations. She said a number of provisions in the draft LUCA border on criminalizing homelessness. She encouraged the Council to include in the LUCA both the development agreement and Conditional Use Permit (CUP) permitting options.
- (e) Karen Morris said she was disappointed with the tone of the June 11 public hearing regarding the homeless shelter permitting LUCA. She expressed concern regarding inappropriate comments in the audience, including by religious leaders. She feels that the LUCA is based too heavily on having absolute trust in a particular organization. She said it is frustrating that individuals expressing concerns are characterized as opposing shelters. Referring to claims that people will not come to shelters that require the proof of identification and warrant checks, Ms. Morris said that other shelters, including the rotating shelter, do follow that practice. She expressed concern regarding the separation of church and state. She asked the Council to listen to their constituents.

- (f) Fiona Cofield expressed her opposition to the development agreement permitting option in the draft homeless shelter LUCA, noting that she believes such agreements do not have the binding requirements provided in the CUP process. She said the approach conflicts with the Council's stated commitment to increased transparency. She said the LUCA does not include sufficient provisions to enable the facility to operate optimally for the shelter residents and the surrounding community. She said the draft LUCA proposed by Councilmembers Nieuwenhuis and Robertson appropriately reflects their concerns about both shelter residents and nearby residents. She expressed support for the CUP process, which she believes provides greater accountability and assurances of public safety.
- (g) Sohier Hall, a Woodinville resident and the CEO of Luum, spoke in support of the transportation mobility/commute pool grant discussed during the earlier Study Session. He thanked City staff for all of their work in preparing the grant application and the Council for its support of the initiative. He highlighted the important role of employers in implementing the program. He noted that the project is not about technology but about providing a public benefit to improve everyone's quality of life.
- (h) Marc Berejka, representing REI, thanked the Council for its support of the transportation commute pool grant project discussed during the Study Session. He thanked the Council for the proclamation recognizing July as Parks and Recreation Month. He looks forward to bringing REI to Bellevue, and he appreciates the positive partnership with City staff. He thanked the City for its support of the Wilburton trestle reconstruction, Eastside Rail Corridor, and the Downtown bike demonstration project. He expressed support for efforts to make Bellevue one of the most innovative cities in the country that also values sustainable development.
- (i) Stephanie Walter expressed appreciation for the community tour led by the City Manager, Fire Chief, and other staff over the weekend. She said it was a wonderful experience, and she encouraged other neighborhoods to consider a similar tour. She thanked staff for listening to residents.
- (j) Melissa Harp disagreed with comments during the June 11 public hearing on the homeless shelter permitting LUCA that the shelter at St. Peter's Church in the Crossroads area had not experienced any problems. She read excerpts of a letter from three residents near the shelter, who expressed concerns regarding burglaries, fighting, eight known crimes committed by shelter residents, trespassing, individuals drinking and sleeping in bus shelters, and the harassment of high school students. She said Crossroads Shopping Center experienced loitering, arguments, bad language, trespassing, panhandling, drunkenness, and shoplifting. The Kindering Center experienced loitering, the removal of light bulbs from outdoor fixtures, and public urination and defecation. The latter has also occurred in Crossroads Park, where a fire was started in the bushes and men were found sleeping in the children's play area. She said it is imperative for neighbors to be included in the planning of any shelter and for the City to have enforcement power over shelter codes of conduct. She expressed support for a 1,000-foot buffer around shelters and criminal background checks of shelter residents. She said St. Peter's Church stopped hosting a low barrier shelter after that experience, and Congregations for the Homeless

and the City concluded that residential areas should be avoided for low barrier shelters. Ms. Harp asked the Council to allow the City to revoke a shelter permit for repeated public conduct violations.

5. Reports of Community Council, Boards and Commissions: None.

6. Report of the City Manager

(a) Mini City Hall Update [*From Study Session, Agenda Item 2(d)*]

City Manager Brad Miyake noted that the Mini City Hall was opened at the Crossroads Shopping Center years ago with the mission of providing personalized information referrals and outreach to the East Bellevue community.

Mike McCormick Huentelman, Assistant Director for Neighborhood Services, introduced staff's update, noting that the Mini City Hall was established 24 years ago with the philosophy of reaching out to engage with individuals rather than expecting them to come to City Hall for assistance and information. He noted that a video regarding the impact of the Mini City Hall is available on BTV.

Ying Carlson, Mini City Hall Supervisor, reported that more than 21,000 individuals visited the Mini City Hall last year. Staff handled more than 46,000 requests, with more than half of those related to the need for human services. The requests cover a wide range of topics including inquiries about paying utility bills, help for victims of domestic violence, and where to find help for opening a business in Bellevue. Information is also provided related to the City's capital projects, land use issues, neighborhood mediation, and other services and initiatives.

Ms. Carlson said that Mini City Hall staff have worked with the Utilities Department to provide referrals to the rate reduction program. She said staff is able to assist individuals in 14 different languages, and 90 percent of the staff and volunteers are bilingual. Ms. Carlson said she was a volunteer before she began working for the City 12 years ago. She noted partnerships with nonprofit organizations to offer services and information referrals. She said the Mini City Hall helps to build trust with the community, and she noted that people will always remember how you make them feel. She said staff members are trained to recognize trends and needs within the community. The Mini City Hall's mission is to make people feel welcome and a part of the community. Ms. Carlson said the current high-priority issues include affordable housing, concerns by senior adults about aging in place, starting a business, naturalization and citizenship information, and health care.

Mr. McCormick Huentelman expressed appreciation for the 21 years of service by Barb Tuininga, who is retiring at the end of June. He noted her role in the focus on providing accessible information and referrals that are linguistically appropriate, culturally competent, and marked with empathy, good listening, and a spirit that put a friendly face on government. He described Ms. Tuininga as a pioneer in the City's efforts to be more equitable and culturally competent as an organization.

Mr. McCormick Huentelman said staff will present, for Council action in July, the renewal of the five-year lease for the Mini City Hall space.

Councilmember Lee said the Mini City Hall is a great model that proves the need for community outreach and assistance. He thanked staff for their work with Bellevue's diverse community.

Councilmember Robertson expressed support for the concept of getting out into the community through the Mini City Hall and other efforts. She questioned whether similar services could be provided at the Marketplace at Factoria in conjunction with the existing Police Department office. City Manager Miyake said staff is working on a budget proposal regarding the expansion of community outreach services.

Councilmember Stokes noted that Mini City Hall staff often attend community events, which complements the City's outreach efforts.

Mayor Chelminiak thanked staff for the update and congratulated Ms. Tuininga for her service.

7. Council Business and New Initiatives

Councilmember Robertson noted that she, the Library Board Chair, and a City staff person interviewed candidates for the Library Board. She said it is always so difficult to make a selection due to the impressive qualifications of the applicants.

- Councilmember Robertson moved to appoint Ankit Saraf to serve a partial term expiring on May 31, 2021, and Jillian Selem to serve a four-year term expiring May 31, 2022, on the Library Board. Councilmember Stokes seconded the motion.
- The motion carried by a vote of 7-0.

8. Consent Calendar

- Deputy Mayor Robinson moved to approve the Consent Calendar, and Councilmember Stokes seconded the motion.
- The motion to approve the Consent Calendar carried by a vote of 7-0, and the following items were approved:
  - (a) Council Minutes  
Minutes of May 29, 2018 Extended Study Session  
Minutes of June 4, 2018 Study Session  
Minutes of June 4, 2018 Regular Session
  - (b) Resolution No. 9420 authorizing execution of a one-year General Services Contract with Behavioral Interventions Inc. (BI), in an amount not to exceed \$93,000.00, including all applicable taxes, with the option to renew for an

additional two years, for parts and services related to the Bellevue Electronic Home Detention (EHD) Program

- (c) Resolution No. 9421 ratifying the Emergency Declaration of the City Manager for construction of emergency public works to address repair of the Innisglen 8-inch AC Water Main.
- (d) Ordinance No. 6418 amending Ordinance 6389, adopted November 27, 2017, as previously amended, to increase the appropriation to the 2017-2018 General Fund budget by a net of \$105,000 (total cost increase is \$210,000, which is offset by a \$105,000 reduction to Council operating contingency as previously appropriated) and the Development Services Fund budget by \$70,000 to allow Council priorities to proceed within the 2018-2020 timeframe.
- (e) Resolution No. 9422 authorizing the amendment of Modified Professional Services agreement #1650114 with CI Security Inc. to perform information security consulting, including: departmental risk assessments, regulatory security compliance and security incident response assistance, in an amount not to exceed \$250,000, plus all appropriate taxes.
- (f) Resolution No. 9423 determining that portions of two existing easements located at 4630 167th Avenue Southeast (Cougar Ridge Elementary School) are surplus to the City's needs and are no longer required for providing continued public utility service; and setting a time and place for a public hearing to consider the partial release of these easements.
- (g) Resolution No. 9424 authorizing execution of a professional service agreement with Barker Landscape Architects to provide engineering, architectural, and site design services for the Mercer Slough Farm Building and Boardwalk, in an amount not to exceed \$259,489, plus all applicable taxes.
- (h) Motion to approve payment of claims and payroll for the period May 1, 2018 through May 31, 2018.

## 9. Public Hearings

- (a) Limited Public Hearing of the Hearing Examiner's April 5 Decision denying Ina Tateuchi's Application for Revocation of a Conditional Use Permit (CUP) issued to Kemper Development Company for the development and use of a helistop on the Bellevue Place building.

Mayor Chelminiak introduced the Limited Public Hearing regarding the Hearing Examiner's decision denying Ina Tateuchi's Application for Revocation of a Conditional Use Permit (CUP) issued to the Kemper Development Company for the development and use of a helistop on the Bellevue Place building. The hearing is confined to the issues decided by the Hearing Examiner after taking testimony on March 22, 2018. The Hearing Examiner's findings, conclusions, and

decision were issued on April 5, 2018, and appealed by appellants, Ms. Tateuchi and Helicopters Unsafe Here (HUSH), on April 18, 2018.

The respondents to the appeal are the Kemper Development Company and the City's Director of the Development Services Department. The parties were allowed to submit additional briefs and written comments related to the appeal by 1:00 p.m. last Wednesday. The materials submitted were reviewed by the City Attorney's Office to ensure compliance with the City Council's rules and were provided to the Council on Friday, June 15.

Mayor Chelminiak said the Council has not been able to take public comment on the matter because it is a quasi-judicial proceeding and does not follow the Council's normal process. The record for the matter officially closed with the issuance of the Hearing Examiner's decision, and no additional evidence or public comment can be considered by the Council in rendering its decision on the appeal. The original Conditional Use Permit (CUP) was issued pursuant to Ordinance No. 6000 on May 16, 2011. Ms. Tateuchi initially filed the Application for Revocation on February 4, 2016.

Noting that the Council received emails relating to the matter, Mayor Chelminiak asked staff to explain the quasi-judicial proceedings and to lead the Council through the disclosure of any ex parte communications.

Nick Melissinos, Deputy City Attorney, said that quasi-judicial proceedings are matters pending before the City Council in which the Council makes a decision regarding the rights of specific interested parties under the City's regulations. Councilmembers must act as judges and maintain fairness and impartiality.

The matter tonight is an appeal filed by the appellants of the Hearing Examiner's decision denying the Application for Revocation of the CUP issued to the Kemper Development Company for the development and use of a helistop on the Bellevue Place building. Therefore, the appellants, the holder of the CUP, and the City are the sole parties to the matter.

The Council's consideration of the matter will include the parties' presentation of argument. As a quasi-judicial matter, the hearing falls under the provisions of the state's Appearance of Fairness Act. Mr. Melissinos said that Councilmembers may not engage in ex parte communications in order to maintain their impartiality. Local government officials, under state law, must disclose all ex parte contacts with the parties or members of the public, whether verbal exchanges, emails, or other writings. If a local official acting in a quasi-judicial capacity cannot exclude ex parte information from their consideration, basing their decision solely on the record made in earlier proceedings, or affirm that they will maintain their impartiality, they are to be recused from participating in the decision.

If a Councilmember discloses an ex parte communication, they should state the following: name of the person who contacted the Councilmember, the date or approximate date of the contact, the method of communication, and the substance of the communication. If a written communication or a transcript of voicemail messages exist, those items should be submitted for the record. Mr. Melissinos noted that staff printed the emails received by the Council's email addresses.

Councilmembers need only to disclose any contacts received, regardless of format, separately from the Council's email addresses with the City. The emails and verbal disclosures will be preserved for purposes of maintaining a record of the ex parte contacts, should there be a need for them in subsequent legal proceedings.

Mr. Melissinos said the parties involved in ex parte communications may rebut the substance of the communication in their arguments to the Council. However, the Council will not consider new evidence presented through ex parte communications.

Mayor Chelminiak asked Councilmembers to disclose any ex parte communications regarding the matter.

Mayor Chelminiak noted that Rick Grimes, who testified before the Hearing Examiner, is his neighbor. He does not recall having any conversations with him regarding the matter. Mr. Chelminiak said he previously disclosed that the sound recordings related to the helistop application were conducted within a few hundred feet of his home. He noted that he and the Hearing Examiner worked for Snohomish County at the same time in the past.

Councilmember Robertson said she has not had any contacts with anyone to discuss the matter. However, she noted that she is a municipal attorney with an emphasis in land use issues, and she occasionally represents cities engaged in land use disputes. She said there is currently a matter in a city for which she serves as City Attorney involving mediation with a private party. The parties are in the process of retaining Alison Moss, who is also Kemper Development Company's legal counsel, as the mediator. She was chosen from the King County land use and environmental mediation list. Ms. Robertson said she was unaware before today that Ms. Moss was a party to the helistop matter, and they have not discussed the case. Councilmember Robertson said the two matters are unrelated, and the mediation matter involves a city in Pierce County. She affirmed that she is able to be fair and impartial in judging the appeal solely on the basis of the record.

Councilmember Zahn disclosed that she was contacted by John Su in early February, and she met with him on February 26. Ms. Zahn said she was unaware of the helistop. However, Mr. Su shared his concerns about the helistop related to the new higher FAR (floor area ratio) for the Downtown. Ms. Zahn affirmed that she is able to make a decision based solely on the record made in the Hearing Examiner's proceedings with impartiality.

Deputy Mayor Robinson and Councilmembers Lee, Nieuwenhuis, and Stokes confirmed that they did not have any ex parte contacts and that they are able to make a decision on the appeal with impartiality. Mayor Chelminiak affirmed that he is able to make a decision with impartiality as well.

Mr. Melissinos described the process for the Limited Public Hearing. The parties will have the opportunity to present oral argument based on the Hearing Examiner's record. The appellants will have 20 minutes to present their arguments and will proceed first. They may reserve a portion of their time for rebuttal. The respondents will share a total of 20 minutes to present their arguments. Upon conclusion of the respondents' arguments, the appellants will be permitted to make rebuttal arguments if they chose to set time aside.



The Council may ask questions of any party or of staff about the matter contained within the record. However, new material not contained in the record made before the Hearing Examiner may not be presented. After all argument is presented and the Council has asked any questions, the Council will have the opportunity to deliberate and render a decision tonight or during a subsequent meeting.

Mr. Melissinos said the appellants bear the burden of proof. The City Council may grant the appeal if the appellants have carried the burden of proof and the Council finds that the Hearing Examiner's decision is not supported by material and substantial evidence. In all other cases, the appeal shall be denied.

The Council shall accord substantial weight to the Hearing Examiner's decision. In this context, 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 where there is a sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness of the decision.

If a majority of the Council concludes that the Hearing Examiner's decision is supported by material and substantial evidence as documented in the findings of fact, conclusions and decision, the Council would vote to deny the appeal and uphold the Hearing Examiner's decision. If a majority of the Council believes that the record does not contain sufficient evidence on one or more of the applicable statutory criteria for denying the Application for Revocation, the Council may remand the matter to the Hearing Examiner to take additional evidence on a particular criterion. If remanded, the instructions to the Hearing Examiner should provide sufficient detail to be clear to the Examiner, staff, and the parties to avoid confusion.

Mayor Chelminiak said the Council is interested in, and expecting to hear oral argument tonight, about the Application for Revocation of the CUP pertaining to the issues of abandonment and misrepresentation, and not to the relative safety of this type of heliport or helicopters in general. The Council anticipates that the oral arguments will proceed in a professional manner and that pejorative commentary is avoided.

Responding to Mr. Chelminiak, the appellants indicated they would like to preserve 10 minutes for rebuttal.

Liz Stead, Land Use Director, provided the staff report regarding the Process I appeal to the City Council. She said that Ina Tateuchi is the appellant, Kemper Development Company is the permit holder, and the City is the permitting authority. The City Council originally approved the helistop Conditional Use Permit (CUP) by Ordinance No. 6000 in 2011. In December 2016, the King County Superior Court ordered the City to process Ms. Tateuchi's Application for Revocation of the helistop CUP. The City's Development Services Department has processed the Application for Revocation as a Process I land use matter under the Land Use Code.

The helistop is located on the rooftop of the Bellevue Place/Bank of America building, 10500 NE 8<sup>th</sup> Street, in Downtown Bellevue. Process I matters are addressed in Land Use Code sections

20.35.100 through 20.35.150. The Development Services Department provided public notice of the Application for Revocation on March 2, 2017; March 9, 2017; and June 8, 2017. A public meeting was held on June 27, 2017. The Director issued a recommendation on March 1, 2018 that the Hearing Examiner deny the application, and a public hearing was held before the Hearing Examiner on March 22, 2018. The Hearing Examiner's decision denying the application was issued on April 5, 2018, and the appeal to the City Council to be heard tonight was filed on April 18, 2018.

Ms. Stead said there are two revocation criteria for a Conditional Use Permit, which are listed in Land Use Code section 20.30B.170B. Section 1 addresses whether the use for which the approval was granted has been abandoned for at least one year. The second criteria is that approval of the permit was obtained by misrepresentation of material fact.

- Deputy Mayor Robinson moved to open the Limited Public Hearing, and Councilmember Stokes seconded the motion.
- The motion carried by a vote of 7-0.

#### Appellant

Peter Eglick, Eglick & Whited, said the firm is the legal counsel for Ina Tateuchi and HUSH (Helicopters Unsafe Here). He said this is an important issue for the City because it relates to the interpretation of the Conditional Use Permit (CUP) code and to the application of the grounds for revocation. He reminded everyone that when the matter previously came before the Council and after two remands to the Hearing Examiner, the Council decided to approve the CUP under Ordinance No. 6000. However, the decision included a condition that the helistop would be used only by twin engine helicopters. The representation to the Council at the time by Kemper Development Company was that the condition was a reason to approve the CUP. At that time, Kemper Development Company told the Council: "Condition 3 has been revised to limit use to twin engine helicopters, which are generally quieter and safer than those with single engines." Mr. Eglick said the same argument was used in Superior Court to uphold the CUP over the objections of Ms. Tateuchi.

Following the decision in that court against Ms. Tateuchi, an application was unexpectedly submitted to remove the condition requiring twin engine helicopters. That action led to the filing of the appeal presented before the Council today. However, following the helicopter accident near Seattle Center, the proposal to remove the condition was withdrawn.

Mr. Eglick said the helistop has never been used and is therefore abandoned. He said the argument made by staff was that abandonment requires a showing of intent. He said the revocation provision [Land Use Code 20.30B.170B(1)] states that, if the use has been abandoned for one year, the criterion has been met. The code does not require the demonstration of the intent of the permit holder. Mr. Eglick said the helistop has been abandoned for seven years. He said the appellants argued that the permit was obtained through misrepresentation.

Mr. Eglick said they obtained, through discovery, emails between the Kemper Development Company and the City. They indicated that, even while the Council was presented with the safety-related condition, it was known that the helistop would not be used if the twin engine condition was applied to the CUP. The argument was that the helistop would be safe with the twin engine condition. However, the emails indicated that the helistop would not be used under that condition. Mr. Eglick said the emails have been provided to the City Council.

Mr. Eglick said that, when they got to the point of seeking revocation, they first applied through a process called Request for Interpretation. In the middle of the process, City staff turned them down. He said the appellants asked for an interpretation that the CUP had been obtained through misrepresentation and that it had been abandoned. Staff's recommendation was against the appellants, who then appealed to the Hearing Examiner.

Midway through the Hearing Examiner's process, City staff informed the appellants that they were not engaged in the appropriate process. Mr. Eglick said City staff requested that the appellants withdraw the Request for Interpretation and advised that the City would accept an Application for Revocation as the appropriate process. He said the appellants entered into a stipulation agreement with the City and agreed to withdraw from the Hearing Examiner's process. He noted that the stipulation is written on the City Attorney's pleading paper.

Mr. Eglick said they filed the Application for Revocation. A few months later, they received a letter from the City indicating that the appellants did not have the right to pursue the matter. The appellants decided to take the matter to the court. He noted a statement by the Kemper Development Company that they were weary of litigation. Mr. Eglick encouraged the Council to read the description of the judge's comments and actions. He said she indicated that, while the City had said that the approach was unorthodox, it did not matter. The judge said that, if the City persuades a party to withdraw a pending appeal, the City must comply with its legally binding agreement. Mr. Eglick said City staff advised the appellants to file the Application for Revocation.

Mr. Eglick said the court's decision on the appeal assumes that the appellants must show intent with regard to the abandonment of the helistop. He said the code states that abandonment occurs after one year. He said the revocation provision for nonconforming uses in a different code section, which is used interchangeably with the CUP code section by City staff and the Kemper Development Company, does address the issue of intent. Mr. Eglick said the nonconforming use standard is very different because it addresses intent. However, the code applicable to CUPs does not include language regarding intent.

Mr. Eglick said the helistop has never been used since 2011, with the exception of a test flight reported by the Kemper Development Company. The original decision was based on the company's assurance regarding the type of helicopter to be used by the helistop. He said that Kemper Development Company now states it cannot use the helistop. However, they are allowed to maintain the permit.

## Respondents

Matt McFarland, Assistant City Attorney, spoke on behalf of the City's Development Services Department (DSD). He said City staff processed Ms. Tateuchi's Application for Revocation consistent with the City's Land Use Code, which led to the Hearing Examiner's decision and the subsequent appeal. He said the standard of review for the City Council and the burden of proof are set by Land Use Code section 20.35.150(A)(7)(a), which governs Process I appeals to the Council. The City Council is required to accord substantial weight to the decision of the Hearing Examiner, and the appellant bears the burden of proof to demonstrate that the Hearing Examiner's decision is not supported by material and substantial evidence.

Mr. McFarland said the Hearing Examiner's decision is straightforward and well-reasoned. It provides an accurate description of the underlying facts, identifies the applicable revocation criteria under the Land Use Code, and applies the revocation criteria to the relevant facts in reaching its conclusion. The decision recognizes that the request for revocation is quite narrow and is constrained by the provisions of LUC 20.30B.170.

The provision regarding abandonment states that a CUP may be revoked only upon a finding that "the use for which approval was granted has been abandoned for a period of at least one year." The second issue regarding misrepresentation states that approval of the permit was obtained by the material misrepresentation of fact.

Mr. McFarland said the abandonment revocation criteria does not define what constitutes abandonment. It does not state that the absence of landings and flights constitutes abandonment. In opposing the Application for Revocation, the Kemper Development Company pointed to evidence in the record showing that the company applied for and received the necessary building permit to develop and upgrade the helistop to current Federal Aviation Administration (FAA) design standards and the City Code.

Mr. McFarland said the Kemper Development Company complied with the condition imposed by the City Council for operating the helistop by filing monthly operations reports with the City for the first year of its existence, and by continuing to file operations reports twice annually thereafter.

When filing the operations reports, the Kemper Development Company represented to the City that the helistop remains fully operational, even during periods when there are no takeoffs or landings. The company also pointed out that it continues to operate the communication lines and website, which complies with a condition of the CUP approval imposed by the Council.

Mr. McFarland said the Council should note that the March 5, 2015, operation report filed by the Kemper Development Company identifies and documents a January 1, 2015 landing and takeoff at the helistop. Given this information, the record before the Hearing Examiner showed that the company had developed, established, and maintained the helistop.

Mr. McFarland said that Reilly Pittman, Senior Planner with the City of Bellevue, explained during the public hearing before the Hearing Examiner that the one-year abandonment criterion

in the Land Use Code is not satisfied in this case because the Kemper Development Company has actively maintained its helistop.

Mr. McFarland said that both the Land Use Director and the Hearing Examiner concluded that ongoing helicopter activity is not necessary to establish a helistop or to demonstrate that the use remains operational. He said this is particularly true given that the helistop use authorized by the City Council in Ordinance No. 6000 is far broader than a use that is limited to the landing and departure of helicopters. For example, the ordinance identifies flight requirements, hours of operation, maintenance requirements, reporting requirements, the communications line and website requirement, vesting provisions, and a condition that limits the use of helistops to twin engine helicopter.

Mr. McFarland said the appellant argued in its brief that the general definition of “land use” in LUC 20.50.032 supports a finding of abandonment. He cautioned the Council from straying too far from the revocation criteria contained in LUC 20.30B.170B and from substituting a generic definition for the specific use approved by the City Council in Ordinance No. 6000. However, even taking the appellant’s argument at face value, he said the fact that the Kemper Development Company has actively maintained a fully operational helistop supports the finding of no abandonment and satisfies the definition of “land use.”

If the Council was inclined to venture beyond the revocation criteria, the common law standard for abandonment is instructive and appropriate for the Council to consider as well. The Land Use Code revocation criterion does not define abandonment. Under common law, a finding of abandonment ordinarily depends upon the concurrence of two factors: an intention to abandon and an overt act or failure to act which carries the implication that the owner does not claim or retain any interest in the right to the nonconforming use. Contrary to the appellant’s claim that a lack of helicopter flights constitutes abandonment, Mr. McFarland said there is no act or omission that, as a matter of law, is proof of abandonment.

Mr. McFarland said the Development Services Department’s position has two prongs. The record shows that the Kemper Development Company has not abandoned the helistop use under the applicable Land Use Code revocation criteria, without any consideration of KDC’s intent or the common law criteria just mentioned. However, the common law abandonment criteria is useful and instructive for the Council to consider because the Land Use Code does not define the elements of abandonment.

Mr. McFarland said the appellant also argues that evidence showing that the helistop was omitted from internet listings is evidence of abandonment. He noted that such evidence was not presented during the land use process conducted by the Development Services Department, and it would not have changed the Director’s recommendation. The helistop’s appearance on internet listings was not a condition of approval in Ordinance No. 6000. Mr. McFarland said the appellant has not provided any authority showing that this would be a federal requirement for the operation of a helistop.

Mr. McFarland said the evidence demonstrates that the Kemper Development Company has maintained and improved the helistop, which remains fully operational and ready to use. He said

the Hearing Examiner correctly concluded that Ms. Tateuchi's Application for Revocation fails in light of the record. Mr. McFarland said the Hearing Examiner's decision should be upheld by the City Council.

Alison Moss, representing the Kemper Development Company, clarified that she did not know that the Jennifer Robertson who contacted her about a mediation case involving Ruston, Washington was a Bellevue City Councilmember.

Ms. Moss said the helistop CUP was issued seven years ago. The permit is for a private use helistop on the Bank of America building at Bellevue Place. The Supreme Court has held, in the Mission Springs case, that a permit such as a CUP is a valuable property right. She said that is the reason that the Kemper Development Company has vigorously defended the CUP against repeated attacks over the past seven years.

Ms. Moss noted that Mr. McFarland highlighted some of the 23 conditions attached to the CUP. Additional conditions relate to the frequency of flights, which are limited to five flights per week; flight path; reporting requirements; submittal of documents to the FAA; a Fly Neighborly Guide; lights; weather station; fire suppression; and the submittal of a standard operating procedures manual. The record reflects that the manual was submitted to the City. The code referenced by Ms. Stead and Mr. McFarland authorizes, but does not require, revocation in the two circumstances under discussion.

Turning to the issue of misrepresentation, Ms. Moss said the argument relates to a condition that limits the use of the helistop to light turbine, twin engine helicopters. She said it is important to know how that condition was established. In 2008, the Kemper Development Company applied for a CUP to activate and use a landing pad on the top of the Bank of America building. The permit referenced the Eurocopter EC135, a twin engine helicopter, to size the landing pad because twin engine helicopters are heavier than single engine helicopters.

The Hearing Examiner held a two-day hearing and, in July 2009, issued a decision approving the CUP. As drafted at that time, Condition A3 limited the use of the helistop to light turbine helicopters. It gave examples of the types of helicopters that could use the helistop, which included single engine and twin engine helicopters.

Ms. Moss said Ms. Tateuchi appealed that decision to the City Council, which remanded the matter to the Hearing Examiner two times to address the FAA recommendations. The Hearing Examiner held three more days of hearings and, at 11:00 p.m., the last hour of the last day of the hearings, Ms. Tateuchi submitted into the record evidence of helicopter accidents over a five-year period. That document included all types of helicopter landings and was not limited to landings on buildings in an urban setting. It included offshore oil, heavy lift, and emergency medical services at all hours of the day and night. The Hearing Examiner accepted the information.

Ms. Moss said Ms. Tateuchi argued that it meant that twin engine helicopters are safer than single engine helicopters. Ms. Moss said that Ms. Tateuchi's expert, on examination, testified to the Hearing Examiner that there are a "plethora" of twin engine helicopters available. She said

Merriam-Webster defines “plethora” as an abundance or profusion. Based on that last-minute information, the Hearing Examiner modified Condition A3 and described it as a “slight” modification in a conclusion of law. Ms. Moss said the Hearing Examiner amended the condition to limit the type of helicopter that could be used to “light turbine twin engine” helicopters.

Ms. Moss noted that Ms. Tateuchi’s legal counsel suggested that the Council actually heard evidence, argument and testimony on this issue. Ms. Moss said the Council did not. She said that Ms. Tateuchi’s pleadings before the Superior Court, which are cited in the respondent’s brief, acknowledge that the City Council did not take any testimony or argument regarding the type of helicopter that would be allowed to use the helistop.

Ms. Moss said Ms. Tateuchi’s brief cites two sentences in a 30-page legal memorandum submitted by the Kemper Development Company. The memorandum includes a paragraph describing all of the conditions in the CUP that are designed to ensure safety. Ms. Moss noted conditions regarding a safety determination by the FAA, pilot certification and training, a Fly Neighborly Guide, electronic weather monitoring, and a Fire Department test evacuation, as well as 10 more conditions.

Ms. Moss said that was the information before the City Council when it considered the CUP. Ordinance No. 6000 accepted all of the Hearing Examiner’s conditions and adopted the conclusion of law stating that the amendment to Condition A3 was a slight amendment. She noted the Superior Court’s denial of Ms. Tateuchi’s appeal and approval of the CUP.

Ms. Moss said Mr. Eglick mentioned earlier that, in the course of discovery for the code interpretation, the Kemper Development Company voluntarily gave the judge five emails. The first occurred on April 18, 2011, four months after the Hearing Examiner’s final decision including Condition A3. Ms. Moss said the emails indicate that what the appellants are doing is discussing the effect of a condition that came as a complete surprise to KDC, which did not seek or request the revision. She said KDC and its attorney and consultant were trying to understand the effect of that condition. What they show is that, in 2011, the predominate charter helicopters in use in the region were single engine helicopters. However, corporate users, such as Microsoft, were upgrading to twin engine helicopters. Ms. Moss said the conclusion was that charter helicopter use might decrease, but corporate helicopter use would remain. She said that is what the emails demonstrate.

Ms. Moss said the misrepresentation of material fact is the same thing as fraud, which requires a knowing misrepresentation or concealment of a material fact made to induce someone to take an action or not take an action. To prove misrepresentation requires that Ms. Tateuchi demonstrate that the Kemper Development Company misrepresented a fact, and that the fact induced the Hearing Examiner to recommend that the City Council approve the CUP, and that the City Council’s approval was based on that fact.

Ms. Moss said the standards of misrepresentation have not been met, and the Kemper Development Company has complied with the condition. Ms. Moss asked the Council to deny the appeal and to uphold the Hearing Examiner’s decision.

### Appellant Rebuttal

Mr. Eglick said he hoped the City Council would not make a decision tonight, but would go back to review the record. He read a sentence from the KDC response memorandum dated October 31, 2011 from the Superior Court proceedings: "The dual engine Eurocopter EC135 is expected to be the helicopter that is used most frequently." He said that is not a statement by Ms. Tateuchi. He noted that he was not the lawyer at that time, so he cannot comment on whether the Hearing Examiner's condition came up in the last hour of the last day of the hearings. However, the condition was imposed and adopted by the Council.

Prior to October 2011, the Kemper Development Company brought a motion to dismiss in Superior Court in an attempt to prevent Ms. Tateuchi's challenge. At that time, Mr. Eglick said they acknowledged that the City's record is clear that the EC135 is expected to be a frequent user of the helistop and cited transcripts from the Hearing Examiner's hearings. Today, the testimony asserts that Ms. Tateuchi fabricated the requirement.

Mr. Eglick said KDC also said to the Superior Court: "One type of twin engine helicopter is the EC135. This model is expected to be the one that will most frequently use the helistop." He said that KDC told the Council that the twin engine condition would make the helistop safer, which is reflected in the record. Mr. Eglick questioned why they just listened to an argument about how that condition does not matter.

Citing the issues of misrepresentation and abandonment, Mr. Eglick said the suggestion was just made that misrepresentation in the City's code is the same as fraud. He said there is no authority for that and, in fact, fraud in the state of Washington requires the demonstration of eight different elements. He said misrepresentation does not require the demonstration of eight elements. He said a statement that is inaccurate and material is relevant under the City's code.

Mr. Eglick noted the repeated use of language regarding twin engine helicopters, even when KDC knew it would not be able to use the helistop after it received its permit. With regard to revocation, he said the standard is not intent. The appellant is not obligated to show intent but rather that the use has been abandoned for more than one year. He said the code for CUPs does not impose a definition for abandonment that addresses whether the helistop is not used or expected to be used. Instead, that definition is imposed for the revocation of nonconforming use permits. He said that is understandable because a CUP is a somewhat less valuable or certain entitlement.

Mr. Eglick noted Ms. Moss' reference to the Mission Springs case and said that case was not about a CUP. It was about an approval that was supposed to be administrative and a City Council that unlawfully interfered in the administrative decision. Mr. Eglick said the City of Bellevue has a process for the revocation of a CUP, and there is a reason for that. The code states that the CUP is subject to revocation. He said the Mission Springs case is a red herring. In this case, the CUP is for a use that is defined in the City Code.

Mr. Eglick said the Assistant City Attorney said to pay no attention to how "use" is defined in the code. He argued that the Council should look at the code and its definition of "use," which



points to the term “land use.” Land use is defined as how a site is used, and it refers to “human activity.” Mr. Eglick said there is no human activity at the helistop.

Mr. Eglick said the argument has been made that the Hearing Examiner found, and the record shows, that the helistop has been maintained in every way. He asked where that is demonstrated in the record. The record shows that there was a building permit to complete improvements after the CUP was granted. Those were completed in 2013. The record shows that KDC submitted periodic written reports indicating “no flights.” He said there are no maintenance records. He asked the Council to review the record for any evidence that the helistop has been maintained in any way.

Mr. Eglick urged the Council to review the testimony of Mr. Pittman before making a decision. Mr. Pittman is the staff person who wrote the Development Services Department’s recommendation to deny Ms. Tateuchi’s Application for Revocation. Mr. Eglick said he asked Mr. Pittman whether he visited the helistop, and he was told by Mr. Pittman that it was not necessary to do so. Mr. Eglick said the information cited by staff was that KDC has submitted periodic reports stating “no flights” and that the helistop is operational. He said one of Mr. Pittman’s comments was that non-use is use, or words to that effect. Mr. Eglick said the Council gets to decide if that is what the code really means. The appellant’s view is that the code does not say that. He said there is nothing in the record to demonstrate that the helistop is operational.

Mr. Eglick said he was stymied, in looking at the transcript of the hearing before the Hearing Examiner, by language that KDC was complying with the condition for periodic reports, so that must show they have not abandoned the use. He and the appellant responded with a suggestion to review all of the conditions. One important condition addresses making sure, as new buildings come in, that there is a change in the flight path, if possible, to prevent an accident.

- Deputy Mayor Robinson moved to extend the meeting until 11:00 p.m., and Councilmember Stokes seconded the motion.
- The motion carried by a vote of 7-0.

Continuing, Mr. Eglick said they were being told that the use has not been abandoned under the section of the code that addresses abandonment because KDC was submitting periodic reports. He said they countered with a suggestion to discuss all of the conditions, and they were told by Mr. Pittman, and ultimately the Hearing Examiner, that the other conditions were not relevant.

Mr. Eglick said the ultimate test for abandonment on the record in this case is what the KDC legal counsel stated to staff in a February 20, 2013 letter: “If not modified, the practical effect of the twin engine restriction is the helistop will not be used.” He noted that the helistop has not been used, which he considers abandonment.

Mayor Chelminiak said he did not anticipate a Council decision tonight. However, the Council would discuss the matter in Executive Session tonight and come back at a later date for further discussion and a decision.

Councilmember Robertson directed a question to Mr. Eglick regarding page 8 of his brief, lines 2 and 3, which state: "The case law concerning nonconforming uses does not apply to CUPs." She asked for a citation supporting that legal argument. Mr. Eglick said he did not have a citation. However, he questioned why a case about a nonconforming use would explicitly state that it did not apply to CUPs. He cited the Miller vs. Bainbridge Island case, which he considers the controlling case related to nonconforming use law.

Continuing, Ms. Robertson noted that the City Code changed after the issuance of the CUP, which she feels renders the helistop a nonconforming use. Mr. Eglick said they could have applied under the nonconforming use provision. However, the fact that the helistop became at some point a nonconforming use does not change the fact that it involves a CUP that is subject to specific revocation provisions. Had an argument been made on that issue, Mr. Eglick said his response would be that the use vested as a CUP and not as a nonconforming use.

Councilmember Robertson noted that Mr. Eglick stated in his rebuttal that the record does not demonstrate evidence of maintenance and compliance with all of the permit conditions. He confirmed that was his view and encouraged Ms. Robertson to keep in mind that they were not allowed to address the other conditions. She questioned whether there is anything in the record indicating a failure to comply with the conditions.

Mr. Eglick said that was not their argument. They were not intending to argue that point until the compliance with conditions was raised by the other side. Mr. Eglick said they pointed out that there was no listing anywhere of the existence of the helistop. In talking about maintaining the helistop as operational, he said it would be unusual to have those conditions maintained and yet the helistop would not be listed anywhere as an operating helistop.

Continuing, Councilmember Robertson said she did not see any requirement in the decision granting the CUP that there should be takeoffs and landings on any specific schedule. Instead, the permit placed a limitation on the maximum number of flights. Mr. Eglick said he was not aware of any specific language. However, the issue of abandonment applies under the code, regardless of whether a minimum number of flights is cited.

With regard to the misrepresentation claim, Ms. Robertson questioned whether anything in the record demonstrated that there was knowledge of the twin engine condition being an issue, prior to the Hearing Examiner's final decision. Mr. Eglick said he did not believe the issue was raised prior to the Hearing Examiner's decision, but it was apparent prior to the City Council's decision.

Deputy Mayor Robinson asked whether the Kemper Development Company intends to have any twin engine helicopters other than their own use the helistop. Ms. Moss said she did not know the answer to that question.

Mayor Chelminiak questioned whether there is a place in the record indicating how the helipad would be used and by whom. He questioned whether the Council is allowed to use the record created during the first Hearing Examiner process. Ms. Moss deferred to the City Attorney's Office regarding that question. She did not recall that being an issue for the original CUP

hearing. She said the issue of whether the helistop would be used by single or twin engine helicopters was not before the Hearing Examiner and was never discussed by the City Council.

In further response to Mayor Chelminiak, Ms. Moss said the issue was raised at 11:00 p.m. during the fifth and final night of the hearing in 2010. Ms. Tateuchi's expert submitted a two-page document regarding accident rates for single and twin engine helicopters. She said the document is in the recent Hearing Examiner record because they submitted it. Ms. Moss said the document argued that twin engine helicopters were safer and that there were many twin engine helicopters. At that time, the Hearing Examiner then changed Condition A3 to limit the use of the helistop to twin engine helicopters. He modified several conditions based on the remand from the City Council, and he referred to all of his revisions as "slight modifications."

Deputy Mayor Robinson questioned whether the Kemper Development Company intends to request a permit change that will allow single engine helicopters to use the helistop. Ms. Moss said she was not aware of any plans to make that request.

Mayor Chelminiak stated his understanding that a request was made to the City in 2013. Ms. Moss confirmed that there was a request to modify the condition to allow single engine helicopters. However, it was subsequently withdrawn. In further response, Ms. Moss said the request was withdrawn following the local news helicopter accident in order to wait until the National Transportation Safety Board concluded its analysis of that accident.

Responding to Mayor Chelminiak, Mr. Eglick said he was not involved in the initial Hearing Examiner's process and decision. However, he suggested a review of the record on that issue rather than relying on recollections. Mr. Eglick said the request to modify the condition to allow single engine helicopters was submitted in February 2013. It was made public in June 2013, at which time Ms. Tateuchi hired Mr. Eglick. They opposed the request because staff indicated it would make a decision on the issue without taking it to the City Council. Mr. Eglick said the request was put on hold. The local news helicopter accident occurred after that point but was cited as a reason to further defer the request. He said the request was withdrawn in 2015.

Responding to Mayor Chelminiak, Mr. Melissinos said the City Council may review the minutes of the 2009 hearing before the Council. He said this is a closed record appeal comprised of the record within the volumes distributed to the Council in hard copy and electronic format.

Mr. Chelminiak questioned whether the record indicates that the helipad can accommodate the landing of a twin engine helicopter at this time. He recalled that a couple of the twin engine helicopters failed to comply with the Noise Code. He said he was not looking for an answer tonight but rather requesting a review of that issue. Mr. Melissinos said that is a question for the parties to address at this time.

Ms. Moss said they submitted a letter dated September 5, 2017 that enclosed the relevant documents from the original CUP application. She said those documents are in the record and she would provide the citation for Mr. Melissinos.

With regard to the immediate usability of the helistop by a twin engine helicopter, Mr. Eglick said that Mr. Dearborn's [legal counsel with Ms. Moss] emails included a comment that there would be problems with the twin engine helicopter in terms of noise. Mr. Eglick said it was stated elsewhere that they are quieter. Mayor Chelminiak said he believed the record referred to the two helicopters that participated in test landings in 2015. Mr. Eglick clarified that Ms. Tateuchi's Application for Revocation did not focus on whether the helistop could comply, whether or not the permit was revoked.

Ms. Moss said her understanding is that, if the revocation issue is resolved, the Kemper Development Company has the legal authority to land a twin engine, light turbine helicopter. Mayor Chelminiak said he understands the legal authority. However, he questioned whether the helistop is technically operational for a helicopter landing. Ms. Moss said yes and noted that the flight logs indicate that the helistop is fully operational. She said that is included in the record. She said the noise tests are not in the record but were part of the original CUP proceedings. She said the original CUP files are not part of the record that applies to this appeal.

Councilmember Stokes questioned the definition of "use" in the CUP. Ms. Moss said staff did an excellent job of describing the use in one of the three previous proceedings dealing with the arguments of abandonment. She referred to the formal Land Use Code Interpretation in the Hearing Examiner record, page 744: "What is necessary to establish a helistop is having infrastructure, maintenance, procedures, processes, and operations established in compliance with City Code and the conditions of the CUP." Ms. Moss said that was staff's conclusion, and she believes it is the proper analysis.

Responding to Mr. Stokes, Ms. Moss said the helistop is ready for a twin engine helicopter to land. She said the Hearing Examiner drew an analogy to a bed and breakfast guest house, which is open and ready to accept guests, whether or not anyone is actually staying there.

Mr. Eglick referred Mayor Chelminiak to an email string (Item DSD 4024) between the Kemper Development Company and its consultant, which is attached to a brief submitted by the appellant on February 4, 2016. It is contained within the record. With regard to Councilmember Stokes' question, Mr. Eglick said there is no legal reason preventing the Kemper Development Company from using the helistop. Mr. Eglick opined that failing to use the helistop equates to abandonment. He reiterated that Mr. Dearborn indicated in an email that the use of twin engine helicopters might not comply with the Noise Code.

Councilmember Stokes asked, if the question of the use of twin engine helicopters was not an issue, whether Mr. Eglick would still make the argument that KDC had abandoned the helistop. Mr. Eglick said yes, they would still request the revocation of the permit. He said the abandonment relates to the absence of use and flights over the past seven years, whether by a single engine or twin engine helicopter.

Councilmember Lee questioned whether the record defines an "operational heliport." Mr. McFarland said Land Use Code section 20.50.40 contains a definition for helistop, which refers the reader to the definition for heliport. He said the definition refers to a permanent facility.

In further response to Councilmember Lee, Mr. McFarland said the conditions for operating this specific helistop are embedded in Ordinance No. 6000. However, the definition of helistop in the Land Use Code indicates it is the same as a heliport, except for the functions of storing and refueling allowed with a heliport.

Responding to the same question, Mr. Eglick cited the documents submitted by the Kemper Development Company many years ago [Volume 2 of 4 of the Hearing Examiner's Exhibits, Page 883, Footnote 2, Definitions used by the International Building Code and International Fire Code for heliport]: "A heliport is an area of land or water, or a structural surface, which is used as a permanent facility for the landing and takeoff of helicopters."

Ms. Moss commented that the CUP has specific conditions requiring the reporting of flight times, flight paths, and other information. Responding to Mr. Lee, Ms. Moss said the permit does not require a minimum number of flights but limits the helistop to a maximum of five flights per week.

Councilmember Zahn asked whether FAA or other approvals were required for the helistop. Mr. McFarland said there was a flight path approval related to the original CUP matter. However, he was not aware of similar approvals in the current record.

Ms. Moss said that issue is not addressed in the current record. However, the original CUP approval involved an extensive analysis of FAA requirements. The record indicates that the City Council remanded the CUP to the Hearing Examiner to address FAA issues. She said she would not comment beyond what is in the current record.

Responding to Ms. Zahn, Mr. Eglick said he did not believe the record included any language about maintenance, other than the Kemper Development Company obtaining a building permit to complete improvements to the helistop.

Ms. Moss said there are three standards in the Land Use Code regarding the revocation of a CUP: abandonment, misrepresentation, and the issue of failing to comply with specific conditions of the permit. The latter criterion was not a part of the proceeding under discussion. She said the abandonment argument relates solely to the takeoff and landing of helicopters. Ms. Moss said the record showed that KDC obtained a building permit and completed the improvements needed to satisfy City Code and FAA regulations. The record also demonstrates that KDC prepared and submitted an operations manual, prepared and maintained a web page, and filed all of the required flight logs. She said many of the required annual reports indicate that the helistop is fully operational. She said that information is contained in the record.

→ At 10:37 p.m., Deputy Mayor Robinson moved to close the public hearing.  
Councilmember Stokes seconded the motion.

→ The motion carried by a vote of 7-0.

Mayor Chelminiak thanked everyone for their participation.

→ Councilmember Robertson moved to extend the meeting to 11:15 p.m., and Deputy Mayor Robinson seconded the motion.

→ The motion carried by a vote of 7-0.

10. Land Use: None.

11. Other Ordinances, Resolutions and Motions: None.

12. Unfinished Business: None.

13. Continued Oral Communications: None.

14. New Business: None.

15. Executive Session

At 10:40 p.m., Mayor Chelminiak declared recess to Executive Session for approximately 30 minutes to discuss the quasi-judicial matter. He said the Council would not make a decision tonight.

16. Adjournment

The Executive Session was concluded at 11:24 p.m., and the meeting was adjourned.

Charmaine Arredondo, CMC  
Assistant Director, City Clerk's Office

/kaw