CITY OF BELLEVUE
BELLEVUE PLANNING COMMISSION
STUDY SESSION MINUTES

July 12, 2017 Bellevue City Hall
6:30 p.m. City Council Conference Room 1E-113

COMMISSIONERS PRESENT:	Chair deVadoss, Commissioners Carlson, Barksdale, Morisseau, Walter
COMMISSIONERS ABSENT:	Commissioner Laing
STAFF PRESENT:	Terry Cullen, Dan Stroh, Department of Planning and Community Development; Charmaine Arredondo, City Clerk's Office; Matt McFarland, City Attorney's Office; Chris ~~Jalocki~~Jolokai, IT; Matt Segal, Jessica Skelton, Pacifica Law Group
COUNCIL LIAISON:	Mayor Stokes
GUEST SPEAKERS:	None
RECORDING SECRETARY:	Gerry Lindsay

CALL TO ORDER
(6:35 p.m.)

The meeting was called to order at 6:35 p.m. by Chair deVadoss who presided.

ROLL CALL
(6:35 p.m.)

Upon the call of the roll, all Commissioners were present with the exception of Commissioner Laing, who was excused.

Comprehensive Planning Manager Terry Cullen noted that the Commission's bylaws are silent as to how to deal with remote participation. In lieu of that, the advice of the City Clerk's Office was to follow the City Council process, which is that remote participation must be approved by vote at the beginning of the meeting.

A motion to allow Commissioner Barksdale to participate via Skype was made by Commissioner Carlson. The motion was seconded by Commissioner Morisseau and the motion carried unanimously.

Commissioner Barksdale participated in the meeting via Skype.

APPROVAL OF AGENDA
(6:36 p.m.)

A motion to approve the agenda was made by Commissioner Morisseau. The motion was seconded by Commissioner Carlson and the motion carried unanimously.

COMMUNICATIONS FROM CITY COUNCIL, COMMUNITY COUNCILS, BOARDS AND COMMISSIONS – None
(6:37 p.m.)

STAFF REPORTS
(6:37 p.m.)

Mr. Cullen said the Commission's final meeting before the August break, and indeed the final meeting for the current officers, would be July 26. He asked the Commissioners to commit to coming to that meeting for a small celebration and some photos.

Mr. Cullen noted that Assistant Planning Director Dan Stroh was leaving the city after 28 years to embark on a new and exciting journey.

Mr. Stroh said it has been a privilege to serve the city as Planning Director since 1998. He said during his tenure with the city there have been many changes and many initiatives worked through. It has been through the combined efforts of the staff, the Planning Commission, the public and the City Council that the community has been able to achieve so many amazing things. Bellevue is constantly moving forward and continues to be an amazing community. He said moving on would indeed be bittersweet and that he would continue to have an interest in Bellevue. He thanked the Commissioners for the role they play and said the partnership between the Commission and the staff is part of what had made it possible for Bellevue to achieve great things.

Chair deVadoss commented that Mr. Stroh always gives 200 percent in whatever he does. He said that is a reflection of Mr. Stroh personally as well as all city staff and the city itself.

PUBLIC COMMENT – None
(6:43 p.m.)

STUDY SESSION: Digital Transition
(6:43 p.m.)

Mr. Cullen said the digital transition project has been underway for a year. The project involves switching over to an electronic format for all materials, including the packets. He said each Commissioner would be issued an iPad and receive training in how to use them and other important considerations, including compliance with the Open Public Meetings Act and public records retention. The City Council is using the format with great success.

Mr. Cullen said the cost of printing and delivering the Commission packets between January and October 2016 exceeded $60,000. The savings to the taxpayers by moving to digital transition will certainly add up over time. During the transition period, the packets will be delivered both in paper and electronic format, but once the switch to digital format only is completed, the costs of all the equipment will be recuperated in a matter of only three months.

A great number of considerations has gone into the transition, including a number of legal considerations. Mr. Cullen thanked the staff team that made it all possible, specifically Charmaine Arredondo, Assistant Director in the City Clerk's Office, Matt McFarland, Assistant City Attorney, Chris ~~Jalocki~~Jolokai and Mark Zocher from the IT department, Kristin Gulledge with the Planning and Community Development department, and Kathy Ebner~~Edner~~ with public

records.

Ms. Arredondo noted that the Commission is required to receive training in the Open Public Meetings Act and Public Records Act every four years. The Council received the training three weeks ago.

Commissioner Barksdale asked if the Comprehensive Plan amendment criteria could be addressed as part of the discussion. Mr. Cullen said that was not the area of expertise for those present making~~to make~~ the presentation. He said the Commission could direct staff to put the discussion on a future agenda.

Matt Segal with Pacifica Law Group said he has been working as an outside attorney for the city on various projects for the past 17 years. He said his partner Jessica Skelton has been working with the city for about ten years. He said over the years the two of them have provided training for the Council and the city's boards and commissions.

Ms. Skelton said the general governance of the Commission is that as a public body Washington law applies. To the extent that the Commission's bylaws and procedures conflict with state law, municipal and state law controls. Where rules or procedures are not addressed by the Commission's bylaws, the Commission is explicitly governed by the City Council's rules, which are adopted in Resolution #8928, and by Roberts Rules of Order.

The Open Public Meetings Act is a statutory chapter that applies to all public bodies in the state, including commissions, boards, councils, committees and subcommittees. In 2014 the legislature made a change to the Act to impose a training requirement. Accordingly, every member of a governing body must complete a training session within 90 days of taking the oath of office or assumes his or her duties. Additionally, every member must take the training at intervals of no more than four years. Under the Act, a governing body is defined by statute to include multimember boards, commissions, committees, councils or other policy or rule-making bodies, including those that take action on behalf of a governing body and conduct hearings, take testimony or public comment. The Planning Commission certainly falls within that definition.

The basic provisions of the Open Public Meetings Act are fairly straightforward. All meetings must be open to the public except in instances where the purpose of the meeting falls within a very explicit and specific statutory exemption for an executive session. All open meetings must be noticed and have agendas, and there must be published meeting materials and minutes. All meetings where~~were~~ city business is received, discussed or acted upon must have a quorum of members of the body. For the Commission, a quorum is a majority of the members. Under the statute, what constitutes an action is defined very broadly as including the transaction of official business, including but not limited to, the receipt of public testimony, deliberations, discussions, considerations, reviews, evaluations and final actions. No legal action can be taken by a body except in a public meeting.

Under the Open Public Meetings Act, there is no meeting and the Act does not apply where there is not a quorum present at a meeting. The converse is also true, namely that action taken by a quorum of members of a body outside of a public meeting is a violation of the Act. Members of a body must be careful not to take action, rather intentionally or unintentionally, outside of a regularly scheduled public meeting or a properly constituted public meeting.

Ms. Skelton noted that the current Commission bylaws defines a quorum as a majority of the members. There is in the current bylaws a provision that talks about determining a quorum at the

beginning of a meeting and assuming the quorum to continue regardless of whether or not some members might leave the meeting. That provision is not compliant with state law and will need to be revised. Without a quorum present, a body is very limited in what it can do. It can take steps to determine whether a quorum exists, and it can recess or adjourn.

In 2014, the legislature revised ~~the Under~~ the Open Public Meetings Act to mandate the posting of meeting agendas online at least 24 hours in advance of a meeting. That does not, however, invalidate subsequent modifications to the agenda, nor does it invalidate otherwise legal action taken instances where an agenda was not posted. At a special meeting, only action that appears on the posted agenda may be taken. Under the current bylaws, any member may move to amend the agenda, though the decision to do so must be unanimous. State law, however, allows agendas to be changed by majority vote.

Ms. Skelton said the state Supreme Court recently issued a decision that clarified the circumstances under which an executive session can be conducted to discuss issues outside of a public meeting. The statute sets out very specific statutory exemptions from the Open Public Meetings Act, including things like selecting or considering the acquisition of real estate or considering the minimum price of real estate; reviewing negotiations on the performance of publicly bid contracts; to receive or evaluate complaints or charges against a public officer or employee; to evaluate the qualifications of an applicant for public employment or to review the performance of a public employee, though the discussion of salary, conditions of employment and final hiring or discipline decisions must be taken in an open public meeting; to evaluate the qualifications of a candidate for appointment to elected office; to discuss with legal counsel representing the agency in matters related to enforcement actions, litigation and potential litigation; and for other specific purposes set forth in RCW 42.30.110. As of 2017, an executive session can also be called to discuss a data security breach. Before convening an executive session, the presiding officer must publicly announce the purpose for excluding the public and the time the session will be concluded. An executive session may be extended by announcement of the presiding officer.

A 2017 case that was handed down on June 8 regarded the purposes for an executive session. In the case, the state Supreme Court considered the executive session provision regarding the minimum price at which real estate will be offered for sale or lease. The court determined that the plain language limited the discussion in executive session to consideration of the lowest acceptable value to sell or lease a property as provided in the specific language of the provision, and unanimously held that executive sessions may not be used to discuss contextual factors, such as impacts on jobs, the environment, the quantity of land taken, and property improvements. The case signals that the court will interpret the provision for executive session very narrowly.

Ms. Skelton said there are situations in which a meeting might occur unexpectedly. In the case of Wood vs. Battleground School District, the court determined that serial meetings are conversations between smaller groups of a public body that put together would constitute a quorum. If Commissioner Walter were to talk to Commissioner Carlson, and then if Commissioner Carlson were to talk to Commissioner Morisseau, who in turn talks to another Commissioners, a quorum could inadvertently be put together in what potentially could constitute a serial meeting. The state Supreme Court has not yet weighed in on how it will treat serial meetings, but it has suggested the following criteria to determine whether in fact a meeting occurs: the members must intend to meet and transact official business; the members must communicate about issues that may or will come before the Commission for a vote; and the members must take action under the broad definition of the term. In the Citizens Alliance case, the court held that a meeting had not occurred where only three of the six body members

participated in a discussion and a fourth member passively received an email about the issue. However, putting together positions through deliberations and discussions that involve a quorum of the body is probably moving beyond what the court has held to be okay.

Commissioner Barksdale said it was his understanding that a serial meeting occurs when one Commissioner talks to another Commissioner who talks to another and so forth until a quorum of the body have been involved in the conversation. Ms. Skelton confirmed his understanding. Commissioner Barksdale then asked about a survey taken by a quorum of the body on a topic that is not around a decision the body would make, such as a survey of how all the members of the body felt a particular meeting went. Ms. Skelton stressed caution given how broadly action is defined. Should a member of the body express displeasure about an issue that is likely to come up again and multiple members of the body weigh in, the risk is run of violating the Open Public Meetings Act. The fewer such conversations the better. Commissioner Barksdale clarified that he was talking about a survey in which the body members were responding to the single person who put the questions out there, not to and among each other. Ms. Skelton said what gave her pause about such situations is that it sounds almost like a vote. Of course it would depend on the context and what is being asked, but anytime a quorum of Commissioners is being asked to weigh in on something it could fall within the broad definition of action.

Turning to the issue of social media as it relates to the Open Public Meetings Act, Ms. Skelton said the state Supreme Court in the Citizens Alliance case determined that there was no serial meeting triggered by the passive receipt of an email by one councilmember. However, the court left open the issue whether other types of communications using other forms of social media would constitute a serial meeting. One member of a body tweeting to another, who posts to a website where additional comments are made, runs the risk of constituting a serial meeting, and the best practice is to avoid it.

Violations of the Open Public Meetings Act can result in civil penalties against members, and fees assessed against the city. In 2016 the legislature increased the penalty provisions. The statute now provides that a member who attends a meeting where action is taken in violation of the Open Public Meetings Act can lead to a liability of $500 for a first offense and $1000 for subsequent offenses. Beyond the fine amounts, being fined can erode the public's trust and confidence in the way in which their business is being taken care of in compliance with the law.

Commissioner Walter asked if a quorum of elected officials appearing at a social gathering, such as a neighborhood association for which all of them are members, can participate in the business of the association, including voting for officers. Ms. Skelton said she could not see in that scenario a risk of potentially violating the Open Public Meetings Act because the elected officials would not be discussing issues that are likely to come before the body they serve as elected officials.

Commissioner Morisseau noted that four of the Planning Commission members live in the Newport Hills community. At one point the Commission had a zoning change coming to it about a specific site in the Newport Hills community. The public was very vocal about it, and there was a discussion of the topic by the neighborhood association. The topic ultimately was brought before the Commission. She asked if the four Planning Commission members should have participated in the conversation at the neighborhood association level knowing that the issue would eventually come to the Commission. Ms. Skelton said that specific scenario potentially constitutes action relative to discussion of the issue. She said the wise move in that situation would be for the Commissioners not to participate in the discussion at the community association level. If there were less than a quorum of Commissioners as members of the association, the

problem would not exist. Mr. Segal said even if there were a quorum of Commissioners present for a such a meeting, they could listen to the discussion provided they did not engage in the debate. Ms. Skelton said that would fall into the category of passive receipt of information.

Ms. Arredondo added out of an abundance of caution, the city provides notice in such instances where it is known that a quorum of Councilmembers will be present. Mr. Segal said that certainly is one way of dealing with the issue. Where it is thought that there is going to be a quorum of any body present at a meeting, the city can notice it as a special meeting. Such meetings, however, must truly be open to the public.

Commissioner Barksdale asked what constitutes "open to the public." Ms. Skelton said the term is interpreted as meaning the public is able to observe what is going on. Mr. Segal noted that the University of Washington regents got into trouble for having dinners at which a quorum was present, the dinners were roped off and the public was only allowed to stand outside and observe. The court found that to be a violation of the law. The public must have the opportunity to participate, though there is no requirement for the public to participate.

Commissioner Barksdale asked how the courts interpret things like forums such as NextDoor. He asked if the Commissioners can engage in a discussion with the community via NextDoor provided the community has been notified and the public is allowed access. Mr. Segal said the courts have been fairly rigorous in applying the concepts that have existed~~existing~~ pre-digital to digital usage. For example, the email case in 2001 and other cases involving social media and cell phones have all been decided on the framework of existing laws. The best course of action when contemplating a community meeting would be to check in with staff or the City Attorney's Office in advance to keep things from becoming an issue.

Commissioner Morisseau asked if it makes a difference where Commissioners post opinions to sites such as NextDoor as residents rather than in an official capacity as Commissioners. Ms. Skelton said even when posting as a resident, if a quorum of the body also engaged in the discussion on social media, there would be a risk of violating the Open Public Meetings Act. Ms. Segal allowed that the issue is certainly interesting in regard to the First Amendment. He said at a certain outer limit, the members of a body have a right of personal expression in their individual capacity. In the scenario of commenting on a community forum, it seems less likely that there would be multiple members of the body doing the same thing; that is what would cause an issue.

Turning to the Public Records Act, Mr. Segal said it rose out of a citizen initiative in the early 1970s and has continued to evolve since then. The basic framework remains as it was, which is that any public records are subject to disclosure when requested by a member of the public. Records can only be withheld from disclosure if there is a specific exemption created by the legislature. There is a strong presumption that the courts will rule and enforce in favor of disclosure. The Act has a mandatory training requirement, which is important given that the Act touches nearly every aspect of government transactions.

The scope of the Public Records Act is extremely broad. It applies to anything that is a writing that pertains to the performance or conduct of any government function and that is prepared, owned, used or retained by a government agency. The word "writing" is also interpreted broadly to include not just paper or emails but virtually any form of electronic record, which has created additional issues and questions about how to produce and retain records that are located in so many different places and in so many different forms.

The courts in 2000 struggled with the issue of whether or not an email was a public record. That was around the time when email use was taking off in terms of a pervasive form of government communication. Over the years there has been a dichotomy developed about whether or not emails are public records. The general thinking is that if an email has anything to do with the government or the duties of members of governmental bodies, it will be considered a public record. That includes emails on official Planning Commission accounts as well as emails on personal accounts if they have to do with the conduct of government. Purely personal emails that have no relation to government function are not considered public records, but as a general matter it is a good idea to avoid using official government email addresses for personal use.

A case called West vs. Vermillion was recently decided by the Washington Court of Appeals, a review of which was denied by the Washington Supreme Court and for which there is a petition pending before the United States Supreme Court. The case relates to the question of whether or not a court may require a search of emails on the personal email account of a city councilmember. Despite some strong constitutional arguments to the contrary, the court of appeals concluded that emails on a personal email account can be considered public records. As a practical matter, transacting Planning Commission business on a personal account could result in the account being subject to review should a public records request be filed that encompasses materials on that account. It should never come to that because of the court's finding in Nissen vs. Pierce County. The case involved a Pierce County prosecutor who despite having two cell phones, an official county cell phone and a personal cell phone, decided to transact a lot of business on his personal cell phone, including texting and calling. A public records request was made to Pierce County for all text messages and all call logs relating to a particular subject matter. The trial court found that just because a person is serving as an elected official does not mean that person must give up their constitutional rights. The Supreme Court had a different view and ultimately overruled the lower court. In its finding, the Supreme Court found that where a request for information is submitted for information that is contained on a personal device, such as text messages and call logs, a person may provide a good faith affidavit indicating either that there are no such records located on the personal device or that a personal search of the device was made for anything that is in fact a public record. Such scenarios can be avoided by making sure there is a clear dividing line between any personal communications and any records, communications or electronic data created as part of serving as a member of the Commission. That can be done by segregating materials in separate folders on a computer and by avoiding the use of personal devices and accounts for government business. The issuance of electronic devices and official emails to the Commissioners will make things less complicated.

Mr. Segal said a number of attempts were made over the past few years to obtain searches of home computers. While most of those attempts involves councilmembers, in the case Hangartner vs. City of Seattle, the King County Superior Court ordered a search of the personal hard drives of the all-volunteer board members of the Seattle monorail project. The affidavit procedure was not in place at the time but could certainly be used now. The case, however, serves as a reminder that any records stored on a personal device that relate to the work of the Commission may be fair game in a records request.

Metadata is data about data and is information that is embedded in electronic documents. The data includes such information as when a document was created and even who has edited the document. There is a lot of metadata that has no substantive value whatsoever, but there is also information of importance included. The Supreme Court in O'Neal vs. Shoreline indicated that metadata is a public record. The court found that someone making a public record request for an email is entitled to the substance of the email as well as the native format containing the metadata. Records that have retention value~~, they~~ must be kept in a format that protects the

metadata. A records request must specifically ask for metadata in order to receive it, however.

In regard to social media, Mr. Segal said it is an area where segregation and retention is somewhat blurry. Much attention is being paid currently to whether or not social media posts need to be retained. The office of White House counsel has concluded that tweets sent out by members of the Executive Branch are in fact public records and in some cases the tweets are official policy. There is currently a lawsuit in federal court relating to the issue under the Presidential Records Act. The upshot is that all persons involved in government at any level and in any capacity should be aware of what is required relative to social media posts.

The process of retention is admittedly complicated. It is subject to a very detailed schedule that is created by the Secretary of State and the archives. While the Commissioners do not necessarily need to have the requirements memorized, the staff should have retention information and should be working with the Commissioners to store information. Moving to being fully digital will be greatly beneficial in that it will allow retention to be done on a much easier basis. Planning Commission communications via the official Commission email server will be retained in accord with the law without the Commissioners having to worry about it. The same goes for communications and records created using city devices.

Commissioner Morisseau noted that to date the Commissioners have been communicating with staff using personal email addresses. She asked if the Commissioners are obligated to keep all such communications for six years. Mr. Segal said the six-year requirement only applies to a narrow category of what is considered official public records. They are usually documents such as the agenda, the minutes, and any recommendations or resolutions the Commission passes. Office files and memoranda are subject to a more limited retention period. Many communications have no retention value whatsoever and can be deleted immediately. The only exception is once a records request is filed, the records sought cannot be deleted until the request has been resolved. The prudent approach is not to hang onto documents that have no retention value for any length of time, because if a request is filed for them, they may need to be turned over. He stressed asking staff about how long particular documents need to be kept.

Mr. Segal said how records requests are handled is an important issue. Fortunately for the Commissioners, the city has a robust infrastructure in place to address and respond to requests. The bottom line is that virtually all requests should be coming in independent of individual Commissioners, and the Commissioners should hear about the requests from someone in the City Clerk's Office. If by chance a records request is received from members of the public seeking documents, the request should be forwarded to staff right away. That is because an official response is required within five days. The obligation of Commissioners in response to a request for records is to conduct a reasonable search for the documents. The fewer places documents are, the easier it will be to conduct the search. Commissioners are not, however, obligated to find every single bit of data, every email and every piece of paper; Commissioners are only required to make good faith efforts.

The Public Records Act includes some hefty monetary provisions. If anyone sues under the Act and wins, having established that they did not receive records they should have received, they are entitled to attorney's fees and penalties of up to $100 per day per document.

Mr. Segal explained that in 2017 there have been several amendments to the Public Records Act. Many of them relate to response times and scope of requests, which is handled primarily by the City Clerk's Office. A much broader cost-shifting provision has been added to the statute which is designed to address large electronic requests which the legislature considered correctly to be

getting out of hand. Cities can now recoup costs associated with large data retrieval requests.

Mr. Segal stressed that city resources and city facilities cannot be used to support a candidate or ballot proposition. There are some exceptions relating to developing objective and fair presentations of facts and posting them to the web, and to debating issues in an open meeting.

Mr. Cullen said he would send the Power Point presentation to the Commissioners.

Ms. Arredondo distributed a fact sheet with regard to RCW 40.14 and what constitutes a public record. The sheet included tips and guidelines for how to manage Commission-related email. She introduced Cathy Ebner, the city's public records officer who takes in all public records requests for the city and stressed the need to forward any requests received by individual Commissioners directly to staff or Ms. Ebner.

Ms. Arredondo noted that the individual iPad devices have ~~-~~applications loaded for everything they will immediately need.~~had loaded onto the home page everything that will immediately be needed~~. She noted that the iLegislate app is used to access the Commission meeting packets. She said as each meeting is loaded, the previous meetings will be available by scrolling through. Multiple meetings can be kept on the devices, or the older meetings can be deleted from the devices. Items can be bookmarked, and items that are bookmarked will appear under the bookmarks tab. The videos tab will include Council meeting videos. The ideas tab does not function, and the accounts tab shows only the personal account for the device holder.

The agenda tab will include 13 items for each meeting, beginning with roll call and ending with adjournment. Clicking on any of the items will reveal the related documentation and information. Attachments will appear on the right-hand side of the screen, and the notes section can be used to record annotations; the notes can also be deleted. The bookmarks section allows for establishing bookmarks in relation to documents to make them easily findable. There is no limit on the number of bookmarks that can be created, and bookmarks can be added for particular items. Clicking the email tab will incorporate the associated document into the email as an attachment.

Commissioner Morisseau asked if the devices will need to be brought to the city to add any apps. Ms. Arredondo said no apps, beyond those needed to use them as intended, have been loaded onto the devices. Additionally, functions such as texting and picture taking have been locked down. If an app such as Skype is needed to participate in meetings remotely, staff would need to load the app onto the devices.

The Commissioners were given their iPads.

Mr. ~~Jalocki~~Jolokai said the technology resource uses policy applies to city employees and all users of equipment owned by the city. He stressed that the iPads are not intended for personal use, though he allowed that that can happen incidentally. Everything on the devices is subject to the Public Records Act and they carry with them no right to privacy. The devices have been restricted to avoid to the degree possible any conflicts with public records. Primarily the only records on the devices will be through email. The devices utilize records retention inboxes making it easy to move email messages to the appropriate retention inbox. Ownership of the data will rest with the city and the devices will be monitored through the city's mobile device management application.

Commissioner Carlson asked if, were he to write an article for the *Seattle Times* using the device, the document would be subject to a public records request. Mr. ~~Jalocki~~Jolokai said it would be

and reiterated that everything done on the devices is subject to public records inspection, including all notes and edits made in relation to the meeting materials. Commissioner Carlson said it was his understanding that the notes and edits made on printed materials are not subject to a public records request, but Mr. Cullen said that is not necessarily the case and the Commissioners should be retaining copies of all notes and edits made on paper copies. Ms. Arredondo clarified that much depends on what the notes cover.

Mr. ~~Jalocki~~Jolokai stressed the need for all emails on the devices be~~are~~ consistent with the same standards expected through other forms of communication, and that the content of the messages adhere to the city's standards as far as not being obscene, harassing, threatening, or having no legitimate or lawful purpose. Any personal uses of the messaging system that differ from city policy must contain a disclaimer.

Mr. ~~Jalocki~~Jolokai said there are two different types of authentication for the devices. The PIN code will get the user into their device, but a password is needed to use the device. Each device has a unique PIN code and password.

Commissioner Morisseau asked if any of the Outlook~~outlook~~ tools have been disabled on the devices, such as the ability to archive emails. Mr. ~~Jalocki~~Jolokai said the archive function is available along with the ability to move emails to specific folders. Ms. Arredondo added that all Planning Commission emails will be permanently retained and will not be deleted in the system.

Mr. ~~Jalocki~~Jolokai briefly reviewed with the Commissioners how to use the devices.

BREAK
(8:28 p.m. – 8:34 p.m.)

STUDY SESSION: Planning Commission By-Laws
(8:34 p.m.)

Mr. McFarland stated that in July 2015 the Council amended the city code to require all Council-appointed boards and commissions adopt by-laws that are consistent with state law and city code. The Commission's current by-laws are not fully consistent with state law, and the goal of the Council is to have uniform and consistent by-laws for all boards and commissions where possible. The Planning Commission, however, has specific procedures to follow and a specific and important role to play. The Commission has its own code section in the Bellevue city code, and the proposed revisions, where appropriate, track city code BCC 3.64.

Mr. McFarland called attention to Article II, subsection D of the by-laws. He noted that the current by-laws state that where a quorum is found to exist at the beginning of a meeting, it is presumed to exist until the meeting is adjourned even if Commissioners leave the meeting. The approach is inconsistent both with the Open Public Meetings Act and with BCC 3.64.030(C). The proposed update tracks city code and is consistent with the Open Public Meetings Act in stating that a quorum must be maintained through the entirety of the meeting.

With regard to Article V, subsection A, Mr. McFarland noted that the current by-laws state that meetings begin at 7:00 p.m. on Wednesdays. Because that is no longer correct, the proposed amended version states that regular meetings begin at 6:30 p.m. on the second and fourth Wednesdays of each month unless there is a critical or time-sensitive work, and the Commission may recess for either the month of August or December. It also states that regular or continued meetings that fall on a holiday shall be rescheduled by the Commission. That tracks BCC

3.64.030(A).

Subsection G in Section V addresses remote participation. The paragraph tracks BCC 3.64.030(E) relative to the parameters and requirements for remote participation. The current by-laws do not address the issue at all.

Mr. McFarland noted that subsection J in Section V sets the time for adjourning the meeting, though the draft leaves the actual time blank. The current by-laws state that no new business can be heard after 11:00 p.m. without a majority vote of the Commissioners. There is no city code relative to the Planning Commission that specifically addresses adjournment, and as such the Commission is free to either include an adjournment time or language that speaks to an extension of the time on a majority vote of the members present.

Commissioner Barksdale asked if paragraph J could simply refer to an adjournment time specified by the meeting agenda to allow for some flexibility. Ms. Arredondo said the idea is to have an end time. The City Council meetings are from 6:00 p.m. to 10:00 p.m. every Monday, but they have the option of extending the end time; the Commission would have the same option by majority vote. Mr. McFarland said the idea is to track the same process used by the Council where practical. Including in the by-laws an adjournment time, leaving open the possibility of extending the time by majority vote, would track the Council's procedures.

Mr. Cullen noted that in all the jurisdictions he has worked for he had never seen an end time. He asked if it is required or is intended just to mirror the Council's procedure. He said the expectation generally is that the Commission will discuss and take action on all the matters listed on the agenda. Mr. McFarland said where there is a set end time, it can certainly be extended. The Council does so all the time by majority vote. There is an advantage to having an end time, but also in having the flexibility to extend it. The stop time in the current by-laws is 11:00 p.m.

Mr. Cullen pointed out that the Commission's schedule over the past year was unusual in the amount of business conducted. Some meetings started at 4:30 p.m. rather than 6:30 p.m. Various methods were used to extend the meeting times while remaining reasonable. If the Commission insists on including an end time, there will be a clear need to also include flexibility. The Commission may also need flexibility in setting the meeting start time. Ms. Arredondo said the flexibility to start meetings early already exists in the current by-laws; all that is needed is to notice an early start as a special meeting.

Commissioner Barksdale asked if the Commission would be obligated to continue on until the end time published on the agenda even if the Commission finishes its business earlier. Ms. Arredondo said the meeting can adjourn whenever the business is concluded. She added that there is no set rule for the amount of time a meeting can be extended. The Council frequently extends for ten minutes at a time hoping to get through in that amount of time, but there is nothing that says a meeting cannot be extended for a full hour at a time to avoid multiple extensions. A motion to extend a meeting must be made prior to the end time stated in the by-laws, and is not required until then even if the agenda includes an earlier end time.

Mr. McFarland commented that having time periods listed on the agenda certainly keeps people mindful of how long they have, but a published end time does that as well.

Mr. McFarland called attention to subsections D and E in Article VI. He said the order of business is highlighted in D and tracks the system used by the City Council. One change is that Public Comment is changed to Oral and Written Communications. Subsection E talks about

when the agenda may be modified, supplemented or revised by a majority affirmative vote of the Commission members present. The current by-laws state that the agenda may be modified, supplemented or revised only by unanimous vote, but state law only requires a majority vote.

Mr. McFarland stated that Articles VI and VII are a pair and are the most important issues for the Commissioners to review and discuss. Subsections C and D of Article VII both address the issue of public hearings and oral communications. Subsection C is very similar to the current by-laws, though there are some changes, but Subsection D closely tracks the Council's by-laws and procedures. It is understood that the Commission has unique functions. As proposed, public hearing testimony is limited to three minutes per person rather than the current five minutes. Applicants for privately initiated Comprehensive Plan amendments are allowed 15 minutes. A statement is included encouraging speakers to indicate support or opposition rather than to simply repeat testimony previously given. No specific time limit is placed on the length of public hearings. Subsection D places a time limit of 30 minutes or oral communications, which tracks with the Council's approach. Speakers are also limited to three minutes each, though the Commission is allowed the flexibility to extend the time limits as deemed necessary.

Mr. Cullen commented that there were two follow-up items from the Commission's retreat in November 2016. One was that the Commission deferred any action on how to address public comment. The proposed by-laws address the issue and the Commissioners should plan to discuss the issue fully in September. The other issue was the idea to sit down as a group and have a discussion about guiding principles. The guiding principles may actually influence how the Commission should approach public comment, so if possible that discussion should be held in September as part of the overall conversation.

Ms. Arredondo clarified that the one thing in the code that the Commission does not have the flexibility to change is the 15 minutes allowed in total for the proponents of any privately initiated Comprehensive Plan amendment.

Mr. McFarland said Article X has to do with ethics and is a section that is not variable. He urged the Commissioners to read the section carefully and noted that it tracks BCC 3.64.010(E) and complies with the city's ethics code in BCC 3.92. He said there is a statement of ethics in the current by-laws but it does not track the appropriate law.

Article 13 subsection A is not variable. BCC 3.64.040 includes a statement regarding Council communications that could be included as a second paragraph if so desired. It reads: "Formal communications with, or feedback to, the Council shall represent the official majority and/or minority opinions of the Commission and not those of individual Commissioners. Commission members wishing to express an individual opinion shall provide their comments at the public comment opportunities on the meeting agenda."

Mr. McFarland noted that Article XIV has to do with records and is heavily amended from the current by-laws.

Commissioner Walter said it would be helpful in discussing the by-laws in September to include clear indications as to which sections cannot be changed.

Commissioner Morisseau asked if hyperlinks could be included to the specifically referenced state and city codes. Ms. Arredondo said she would look at doing that.

ELECTIONS

(9:13 p.m.)

Mr. Cullen noted that elections are traditionally held at the last meeting in June each year. Withdrawal of the Bellevue Technology Center Comprehensive Plan amendment caused that meeting to be canceled, making it necessary to hold over the elections to the next Commission meeting.

Chair deVadoss said the new officers once elected will take up their duties beginning in September.

Mr. Cullen outlined for the record the process. He said the Chair would ask for nominations; a second is not required for a nomination. The Chair will then close the nominations. A motion to close the nominations is not required. If there is only one nominee, the Chair will simply declare the nominee elected. If there is more than one nominee, the Chair will call for a separate vote for each nominee. Voting will be done with a voice vote by each individual Commissioner. The election will be declared final when one nominee receives the majority of votes. If no nominee receives a majority of votes after the first round of voting, then successive rounds of voting will be conducted until one candidate receives a majority of the votes. The elections process is concluded once the two officer positions have been elected. Mr. Cullen asked the Commission to approve~~He sought from the Commission voted approval of~~ the election process.

A motion to affirm the election process as outlined was made by Commissioner Carlson. The motion was seconded by Commissioner Carlson and the motion carried unanimously.

Chair deVadoss asked for nominations for Chair.

Commissioner Morisseau nominated Commissioner Walter.

Absent additional nominations, Chair deVadoss declared Commissioner Walter to be the new Chair.

Chair deVadoss asked for nominations for Vice Chair.

Commissioner Morisseau nominated Commissioner Barksdale.

Absent additional nominations, Chair deVadoss declared Commissioner Barksdale to be the new Vice Chair.

MINUTES TO BE SIGNED

A. May 10, 2017

A motion to approve the minutes as submitted was made by Commissioner Morisseau. The motion was seconded by Commissioner Barksdale and the motion carried without dissent; Chair deVadoss abstained from voting.

B. May 24, 2017

Commissioner Morisseau called attention the ninth paragraph on page 15 and asked staff to verify from the recording if the minutes accurately~~accurate~~ reflect what she said. She said it was her recollection that she was in agreement with Commissioner Walter about the ten percent, and also in agreement with Commissioner Walter about the park fees, but did not necessarily agree that the motion should address both issues together. Mr. Cullen said he would review the recording.

Commissioner Morisseau referred to the fifth paragraph on page 19 and noted that as drafted the minutes imply that staff had not followed through with a promise to make a presentation on the legal ramifications of the amenity incentives. She said in fact the staff simply never had the time to do so. She asked to have the second sentence revised to read "…on several occasions promised a presentation to the Commission but were not allocated time to follow through."

A motion to approve the minutes as amended, subject to revising the ninth paragraph on page 15 to the satisfaction of Commissioner Morisseau, was made by Commissioner Carlson. The motion was seconded by Commissioner Carlson and the motion carried unanimously.

PUBLIC COMMENT – None
(9:23 p.m.)

ADJOURN
(9:23 p.m.)

A motion to adjourn was made by Commissioner Morisseau. The motion was seconded by Commissioner Barksdale and the motion carried unanimously.

Chair deVadoss adjourned the meeting at 9:23 p.m.