

CITY OF BELLEVUE  
CITY COUNCIL

Summary Minutes of Regular Session

July 17, 2017  
8:00 p.m.

Council Chamber  
Bellevue, Washington

PRESENT: Mayor Stokes, Deputy Mayor Chelminiak, and Councilmembers Lee, Robertson, Robinson<sup>1</sup>, and Simas

ABSENT: Councilmember Wallace

1. Call to Order

The meeting was called to order at 8:10 p.m., with Mayor Stokes presiding.

2. Roll Call, Flag Salute

All Councilmembers except Councilmember Robinson and Councilmember Wallace were present. Councilmember Robertson led the flag salute.

Mayor Stokes read a commendation recognizing Planning Director Dan Stroh for his 27 years of service with the City of Bellevue and his key role in major planning efforts during his career. Mr. Stokes said Mr. Stroh's knowledge, professionalism, and dedication will be missed.

Kurt Triplett, Kirkland City Manager and member of the ARCH (A Regional Coalition for Housing) Board, thanked Mr. Stroh for his work with ARCH and presented him with the Housing Champion Award.

(a) Parks and Recreation Month Proclamation

Councilmember Robertson, Council liaison to the Parks and Community Services Board, read the proclamation declaring June as Parks and Recreation Month, and urged everyone to enjoy and recognize the many benefits of Bellevue's parks, recreation facilities, and programs.

3. Approval of Agenda

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

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<sup>1</sup> Councilmember Robinson joined the meeting at 8:57 p.m. via speakerphone.

→ The motion carried by a vote of 5-0.

4. Communications: Written and Oral

- (a) Pamela Johnston said she was concerned about HB 1595, which State Representative Joan McBride addressed in the earlier Study Session. Ms. Johnston said it authorizes cities to charge for the storage and use of data by citizens. She is opposed to adding those fees for Bellevue.
- (b) Jim Nathman expressed concerns regarding the men's homeless shelter project. He said the plan was presented last summer with no alternatives and no thought to the impacts to Bellevue College students. He said the City avoided responding to residents' concerns by having a well-meaning spokesperson stating that the concerns are based on fears. He said the project team has indicated there is no time to consider other sites. He is concerned that the shelter on property not owned by the City will be turned over to a non-City organization. He expressed concern about public safety and said the City should prevent problems before they occur. He said that rezoning the Spring District as an urban village is part of the City's plans to eliminate the light industrial area in the BelRed corridor that previously provided an appropriate shelter location. He believes the City is making the wrong choice.
- (c) Michelle Wannamaker spoke in opposition to the men's low-barrier homeless shelter proposed in the Eastgate transit-oriented development (TOD) district. She said the Eastgate Residents Committee (ERC) has been vocal in its opposition and believes that democratic processes were abandoned. She said documents indicate that the City began discussing the EG-TOD rezone for the shelter in 2014. She said shelters are a permitted use in the three new Eastgate land use districts and are to be implemented through a development agreement. Two of the three zoning districts exist only in the Eastgate area. Ms. Wannamaker expressed concern regarding residents' ability to protect their neighborhoods.
- (d) Chris Johnson, Bellevue Chamber of Commerce, spoke in support of the levy project update [Agenda Item 6(b)]. He thanked Council, City staff, and the Transportation Commission for their work. He thanked Mayor Stokes for his leadership in suggesting that staff study and identify near-term transportation improvements in the Eastgate area.
- (e) Calvin Tonini spoke in support of the residential permit parking zone proposed near Interlake High School by Ordinance No. 6357. He suggested clarification regarding the vague language related to public outreach.
- (f) Jack McCullough commented on affordable housing in the Downtown. He thanked the Council for endorsing the 1.0 FAR (floor-area ratio) overlay and the 2.5:1 ratio that has been identified as an appropriate ratio. However, he said there are projects that will not be able to take advantage of the FAR incentive. He suggested that the Council consider providing staff with a modest authority to allow for modifications to development standards to the building envelope to accommodate a certain amount of affordable

housing. He said the City's current code has included the concept of development standard modifications since 1991. Mr. McCullough left written comments of suggested code language for the affordable housing FAR exemption.

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

6. Report of the City Manager

(a) 2017 Annual Resident Performance Survey Data

City Manager Brad Miyake said 2017 marks the 20<sup>th</sup> performance measure survey conducted by the City. The data helps the Council and staff understand how residents perceive City services. Staff will highlight the topline results tonight, and the full survey results will be available at the end of July.

Finance Director Toni Call introduced discussion regarding the 2017 Annual Resident Performance Survey data, noting that a total of 511 respondents participated in the survey conducted in March and April. The margin of error is 4.3 percent with a 95-percent confidence level.

Nathan Wiggin, Research Director, Northwest Research Group, highlighted the survey results regarding the overall quality of life in Bellevue, overall quality of City services, value of services for tax dollars paid, and whether Bellevue is headed in the right or wrong direction. He said 94 percent of residents indicated that the overall quality of life in Bellevue exceeds or greatly exceeds their expectations, and the percentage has remained steady since 2012. Similarly, 92 percent of residents indicated that the overall quality of city services exceeds or greatly exceeds their expectations. In response to the question about whether residents feel they are getting their money's worth for tax dollars, 79 percent of residents indicated they receive or definitely receive their money's worth. With the exception of a slightly higher rate in 2014, the result has remained relatively constant since 2012.

Mr. Wiggin said 77 percent of residents indicated that Bellevue is headed in the right direction, which reflects a slight decrease since 2014. He noted comments from residents that Bellevue is headed in the right direction with regard to development/growth, planning/infrastructure, light rail, and City leadership/elected officials.

Ms. Call said the Council has taken several actions during the past year to address the reasons identified for Bellevue heading in the wrong direction, including transportation projects and the current work on the affordable housing strategy.

Mr. Wiggin said 97 percent of residents indicated that Bellevue is a good or excellent place to live, and 94 percent indicated that their neighborhood is a good or excellent place to live.

Responding to Councilmember Simas, Mr. Wiggin said that surveys of certain cities indicate that 15-25 percent of the residents feel their city is headed in the wrong direction, 30-40 percent feel

their city is heading in the right direction, and the rest of the survey respondents fall somewhere in the middle.

Deputy Mayor Chelminiak noted that development/growth was identified by residents as the reason that the City is headed in both the right and wrong direction. He opined that development and growth is generally seen as more of a negative than positive factor in the Pacific Northwest.

Mr. Wiggin said a key concern in the Pacific Northwest is housing affordability. He said the results of recent surveys in other areas of the country indicate that development and growth is primarily considered a negative attribute.

(b) Neighborhood Transportation Levy Project Update

Mr. Miyake noted the recent celebration in the Chevy Chase neighborhood related to the completion of sidewalk improvements, as the first project of the neighborhood transportation levy approved by voters in November. He said the neighbors in attendance were very appreciative of the project.

Transportation Director Dave Berg said Mayor Stokes, Councilmember Lee, Councilmember Robinson, and numerous residents attended the celebration of the sidewalk improvement project. Mr. Berg said the project is the first phase of a levy-funded project that will replace 1.75 miles of sidewalks in the Crossroads area. He said Judi Miller attended on behalf of the Chevy Chase Community Club to express residents' appreciation.

Mr. Berg described the branded sign that will be placed at every levy project site to highlight the projects for the public. He noted pending improvements along the 150<sup>th</sup> Avenue corridor in the Eastgate area and along Newport Way. There are also a number of pedestrian safety projects in the Lake Hills area and bike facilities projects citywide.

Mr. Berg highlighted Agenda Items 8(b), (h), and (j), which involve projects that are leveraging levy funds to acquire grant funds. For those three items, the City's \$235,000 of levy funds has leveraged \$1.4 million in grant funds.

Mayor Stokes thanked staff for quickly moving the levy projects forward.

7. Council Business and New Initiatives

Mayor Stokes congratulated Councilmember Jennifer Robertson for being featured in the "Dynamic Women" article in the 425Business magazine. Ms. Robertson thanked Mr. Stokes for the recognition.

8. Consent Calendar

Councilmember Robertson noted earlier public comment regarding the residential permit parking zone to be adopted by Ordinance No. 6357, and requested clarification regarding public outreach. She said the ordinance states that the parking zone will take effect when the signs are

installed. However, the agenda memo states that the signs will go up after the City decides, with public outreach, that they are needed.

Transportation Director Berg said staff will follow up to provide information to the Council and the individual who spoke during oral communications.

- Deputy Mayor Chelminiak moved to approve the Consent Calendar, and Councilmember Robertson seconded the motion.
- The motion to approve the Consent Calendar carried by a vote of 5-0, and the following items were approved:
  - (a) Council Minutes  
Minutes of June 26, 2017 Extended Study Session
  - (b) Ordinance No. 6356: 1) authorizing execution of a grant agreement (and supplements if necessary) with the Washington State Department of Commerce for acceptance of \$23,526 in state Energy Efficiency Program funding for the 2017 LED Street Light Conversion project; 2) amending the 2017-2018 General Capital Investment Program (CIP) Fund to increase the appropriation by \$44,158 to recognize the Department of Commerce funding and an energy conservation rebate of \$20,632 from Puget Sound Energy (PSE); 3) amending the 2017-2023 CIP Plan to increase the project budget for the Minor Capital - Signals and Lighting program (CIP Plan No. PW-M-20) by \$44,158; and 4) authorizing execution of a purchase agreement with Consolidated Electrical Distributors, Inc. for the 2017 LED Street Light Conversion Project, a Neighborhood Safety and Connectivity Levy project (CIP Plan No. PW-R-199) in the amount of \$83,218.00, plus all applicable taxes.
  - (c) Resolution No. 9288 authorizing execution of a Professional Services Agreement with S&B Inc., for a contract value not to exceed \$140,378.15 plus all applicable taxes, for the purchase and replacement of station Remote Telemetry Units (RTU's), and for engineering and systems integration services.
  - (d) Ordinance No. 6357 related to a residential parking zone; repealing Ordinance Nos. 6026, 6104, and 6267; establishing Residential Permit Parking Zone 2; and delegating authority to the City Manager or designee to establish time-limited parking or time of day restrictions for vehicles without a Zone 2 permit on an as needed basis on various streets surrounding Interlake High School.
  - (e) Resolution No. 9289 authorizing an amendment to the sublease with the Bellevue Convention Center Authority (BCCA) to extend the City's use of the Expansion Parcel, located at 709 112th Avenue N.E., for an additional two years for parking purposes.

- (f) Resolution No. 9290 authorizing execution of an amendment to the Professional Services Agreement with Keating, Bucklin & McCormack, Inc., P.S., to increase the total contract amount from \$90,000 to \$250,000 to provide legal representation in the lawsuit of Williams v. City of Bellevue and Stephen Mylett, USDC Cause No: C16-1034RAJ.
- (g) Ordinance No. 6358 amending Ordinance 6333 adopted on December 5, 2016, as previously amended, to increase the biennial appropriation to the 2017-2018 Housing Fund (Fund 1900) by \$27,474 pursuant to funding authorized by the ARCH Executive Board Action Resolution 2017-1 to provide expenditure authority for an increase in ARCH specific staffing which is fully supported by ARCH revenues; and authorizing administrative officials to administer and expend funds from Fund 1900 for the purposes state herein.
- (h) Ordinance No. 6359: 1) authorizing execution of a grant agreement (and supplements if necessary) with the Washington State Department of Transportation (WSDOT) for acceptance of \$595,186 in state Pedestrian and Bicycle Program funding for the Northup Way Non-Motorized Safety Improvements Project; 2) amending the 2017-2018 General Capital Investment Program (CIP) Fund to increase the appropriation by \$595,186; and, 3) amending the 2017-2023 CIP Plan to increase the budget for the Minor Capital - Traffic Operations program (CIP Plan No. PW-M-2) by \$595,186.
- (i) Ordinance No. 6360 authorizing acceptance of 2016 Assistance to Firefighters Grant funds from the Department of Homeland Security (DHS), Federal Emergency Management (FEMA), of up to \$92,861 to establish a formal Fitness and Injury Prevention Program for uniformed fire personnel; establishing a project within the Operating Grants, Donations and Special Reserve Fund; amending the 2017-2018 Operating Grants, Donations and Special Reserves Fund by increasing the appropriation by up to \$92,861; appropriating revenues to that fund; and authorizing expenditures of said grant funds.
- (j) Ordinance No. 6361: 1) authorizing execution of a grant agreement (and supplements if necessary) with the Washington State Department of Transportation (WSDOT) for acceptance of \$778,559 in federal Safe Routes to School Program funding for the Sherwood Forest Elementary School and Interlake High School Non-Motorized Safety Improvements Project; 2) amending the 2017-2018 General Capital Investment Program (CIP) Fund to increase the appropriation by \$778,559; and, 3) amending the 2017-2023 CIP Plan to increase the budget for the Minor Capital - Traffic Operations program (CIP Plan No. PW-M-2) by \$778,559.

*[Councilmember Robinson joined the meeting via speakerphone.]*

9. Public Hearing

- (a) Public Hearing on the Land Use Code Amendment (LUCA) that would remove quasi-judicial appeals to the City Council in Process I and Process III land use matters.

Mayor Stokes read the rules for the public hearing.

City Manager Miyake introduced staff's presentation regarding the proposed Land Use Code Amendment (LUCA) that would remove quasi-judicial appeals to the City Council in Process I and Process III land use matters.

Carol Helland, Code and Policy Director, said that, following the public hearing, staff is seeking Council direction regarding whether to finalize the LUCA for adoption or whether an alternate course of action is desired. She said this is the Council's third meeting on this topic. The Council initiated the LUCA on April 10 and retained the authority to hold the public hearing. During the May 22 meeting, the Council endorsed the scope of the amendment, process schedule, and public outreach plan.

Ms. Helland said the notice of public hearing was published in *The Seattle Times* on June 29, as well as in the weekly permit bulletin. The notice was provided to the Washington State Department of Commerce, as required by state law, and notification of the proposed code amendment was provided to the subscribers of the weekly permit bulletin.

Ms. Helland said enhanced public notification included the creation of a code news web site. Each of the City's proposed code amendments have their own web page. Mailings were expanded to include interested parties for the Energize Eastside project, as well as for any other project currently in Process I or Process III review. The information was presented to the East Bellevue Community Council on June 6. Ms. Helland said she and Mr. McFarland held a public meeting at City Hall on June 22 to present information and answer questions regarding the quasi-judicial LUCA.

Ms. Helland said the City received great feedback from the public regarding public outreach in general. She said the City will provide targeted postcard mailings for residents within 500 feet of projects and expand the use of project fact sheets. Staff is also updating the City's web site to provide an interactive map of permit applications.

Ms. Helland said the question for consideration before the Council and the public is: Should the City Council amend the Land Use Code to remove quasi-judicial appeals to the City Council of Hearing Examiner decisions and recommendations in Process I and Process III land use matters?

Matt McFarland, Assistant City Attorney, said Process I land use matters include conditional use permits (CUPs), shoreline conditional use permits (SCUPs), preliminary subdivision approvals (plats), and planned unit developments (PUDs). Under the current code, the Hearing Examiner issues a final decision on Process I matters, and that decision is appealable to the City Council. Under the proposed LUCA, the Council would no longer adjudicate Process I appeals, which would be forwarded directly to the Superior Court.

Process III land use matters include all rezones citywide, as well as CUPs, plats, and PUDs proposed within the jurisdiction of the East Bellevue Community Council. Under the current code, the Hearing Examiner issues a recommendation, not a decision, to the City Council. The Council considers the recommendation and issues a final decision on Process III land use matters, subject to the EBCC's approval for CUPs, plats, and PUDs within its jurisdiction.

Mr. McFarland said that, under both the current and proposed code, the Hearing Examiner's Process III recommendations go before the City Council for final decisions, regardless of whether an appeal is filed. Under the current code, if an appeal is filed, the Council adjudicates the merits of the appeal at the same time it formulates its final decision on the rezone or permit application. The proposed LUCA would eliminate the quasi-judicial appeal to the Council. However, the Council would remain the final decision maker, subject to the EBCC's approval or disapproval authority for matters within its jurisdiction.

Mr. McFarland said the staff report outlines the benefits of the proposed process amendment. Councilmembers' primary role is as legislators. When the Council hears an appeal, Councilmembers are required to act as judges. The Council must review all of the evidence in the record and issue a written decision supported by the controlling legal authority. Under the proposed LUCA, the Council would retain its primary legislative role to adopt Comprehensive Plan policies and development regulations to achieve the community vision. However, the Council would no longer adjudicate land use appeals.

With respect to the Hearing Examiner's role, it is important to remember that the Council is not an advocate when it hears quasi-judicial appeals. Instead, the Council is required by law to conduct the proceeding and issue a decision that is fair, impartial, and unbiased.

Quasi-judicial decisions based exclusively on public opinion rather than on an impartial examination of the record, and an impartial application of the law to the evidence, do not comply with the law and are susceptible to judicial challenge. For example, a quasi-judicial decision that does not correctly apply the law to the facts, or is not supported by substantial evidence, will be overturned by the reviewing court in a subsequent judicial challenge.

In contrast to Councilmembers, Hearing Examiners are trained land use experts who are impartial and objective decision makers. Hearing Examiners are hired based on their background in land use and municipal adjudication and are trained to think, act, and to issue decisions like a judge. They are not influenced by politics or election cycles, which is crucial for quasi-judicial decision-making because bias, politics, and public opinion should not influence the final decision.

Mr. McFarland said an added benefit is that the LUCA would allow the Council to communicate more freely with the public regarding Process I land use applications without the appearance of bias corrupting a future quasi-judicial decision by the Council. In addition, consistent with Comprehensive Plan policies adopted by the Council pursuant to its legislative authority, the land use process would be improved when the quasi-judicial LUCA promotes objective decision-making by trained specialists, which promotes efficiency, reliability, and cost-effectiveness in the land use process.



Mr. McFarland said the proposed amendment would shorten the process between permit application and the approval or disapproval of the application. He said this is consistent with the City's Comprehensive Plan policies and with state law addressing the efficiency of the land use process.

Subsequent to 1995 regulatory reform, Mr. McFarland said many jurisdictions throughout the state have increased the authority of Hearing Examiners and removed their City Councils from the quasi-judicial land use appeal process. The reasons given for the adoption of the process change include increased Council access to the public during permit review, the avoidance of political influence or pressure in the land use process, reduced Council exposure to liability, and increased efficiency and predictability.

Mr. McFarland said the City of Redmond recently eliminated quasi-judicial appeals to its City Council for Type I and Type II permit applications. He said the cities of Covington, Edmonds, Everett, Kirkland, Mercer Island, and Shoreline have all made comparable amendments to their Land Use Codes during the past few years.

As part of the Council's comments during previous study sessions, along with the many public comments received during the enhanced public notice period, staff looked at the number of appeals heard by the Council since regulatory reform occurred in 1997. Eight Process I and Process III appeals were heard by the Council since that time, and one of those appeals was granted by the Council. The Council denied four appeals and remanded three appeals to the Hearing Examiner. The processing time for the Council to consider an appeal varies greatly. However, the longest time period was 21 months (i.e., Helistop appeal) and the shortest was 2.25 months (i.e., Michael's Toyota appeal).

Responding to Deputy Mayor Chelminiak, Mr. McFarland confirmed that three appeals were remanded to the Hearing Examiner for clarification and/or further hearing. Those appeals were again considered by the Council for final decisions. Mr. Chelminiak recalled that two of those appeals were ultimately denied by the Council. The third appeal, involving the Open Windows School in 2000, was denied. However, the Council granted the CUP with additional conditions. Mr. McFarland said that case ultimately went to the Superior Court.

Responding to Councilmember Robertson, Ms. Helland said all but one of the appellants in the eight cases had legal counsel. Ms. Helland said that, in almost every public hearing related to a land use permit action in recent years, the parties are represented by attorneys.

City Attorney Lori Riordan noted that Councilmember Robertson and her husband were the appellants in the eighth appeal, Michael's Toyota, and acted as their own legal counsel. Ms. Robertson recalled that the appeal was denied.

Responding to Mayor Stokes, Ms. Helland said the Lake Hills transmission line permit application was not appealed to the Council. The Council approved the Hearing Examiner's recommendation in making its final decision, and the EBCC disapproved the project. Puget Sound Energy appealed the denial of the permit, and the case went before the Superior Court and the Court of Appeals for final resolution.

- At 9:16 p.m., Deputy Mayor Chelminiak moved to open the public hearing, and Councilmember Robertson seconded the motion.
- The motion carried by a vote of 6-0.
- 1. Karen Morris said many residents cannot afford to appeal matters to the Superior Court. She opposes any proposal that takes away the ability of citizens to resolve problems with City government. She said it is important for residents to be able to appeal matters to the Council. She fears the proposal is part of a larger pattern of separating decision-makers from direct contact with and accountability to the public.
- 2. Pamela Johnston, representing the Bridle Trails Community Club, thanked Carol Helland for her work to enhance the public outreach process. She noted comments by others that the public needs to get involved earlier in land use processes. However, she said the public does not necessarily know about projects or understand them early in the process. Ms. Johnston submitted her comments in writing.
- 3. Steve Kasner said the public is unhappy with the transparency of the City. He believes this is a poor process for the public. He said the public does not know who the Hearings Examiners are, and the City has an incredible legal staff to make decisions. He recalled that the Council reversed two Hearing Examiner decisions (i.e., Kimberlee Park, McTavish Highlands). However, that might have been before the 20-year window referred to by staff. He expressed concern that the decision on the proposed LUCA is being rushed. He would like to let the new Council decide in January whether to change the quasi-judicial process.
- 4. Todd Andersen said there is no such thing as a neutral Hearing Examiner. He expressed his lack of confidence in government and City staff.
- 5. Josh Whited, an attorney representing Ina Tateuchi and Helicopters Unsafe Here, said he wanted to voice strong opposition to the LUCA. He asked the Council to reconsider the proposal. He opined that the number of appeals the City addressed during the past 20 years is not too many. He said the City has wide discretion in its consideration of conditional use permits (CUPs). He said the City Council serves as an important check on staff and the Hearing Examiner.
- 6. Russ Paravecchio spoke in opposition to the LUCA. He opined it would be unacceptable to allow a change in the system that would decrease the number of steps, undermine current procedural requirements, or eliminate public input into the land use permitting process. He said citizens should not be required to expend funds to take an appeal to court. He questioned the Council's bypassing of the Planning Commission in its consideration of the quasi-judicial LUCA. He said it is the Council's primary responsibility to protect citizens.
- 7. Brian Derdowski said the LUCA will disadvantage neighborhoods that cannot afford to go to court. He said appeals to the Council are affordable and democratic, and enable

local wisdom and compromise. He believes the current process provides a balance between the bureaucracy and elected officials. He said land use issues are political, and local government elections are driven by money from land developers. He opined that a good contested land use hearing allows the City Council to test its decisions. He said the LUCA does not improve public participation. He opined that public notice does not necessarily mean the public will participate more fully. He would like the Planning Commission to consider the quasi-judicial LUCA. He said he would submit additional comments in writing.

8. Don Marsh said the proposed LUCA is complicated and difficult for the public to understand. He said residents cannot afford to appeal land use matters to the courts. He said the current process works for the community.
9. Steve Fricke spoke in opposition to the quasi-judicial LUCA. He opined that the staff presentation is biased. He questioned who benefits from the proposed change in the Council's process. He said that eliminating the Council's role in quasi-judicial appeals eliminates the public's opportunity for a speedy appeal process and for having their voices heard. He suggested that Councilmembers who do not feel qualified to participate in quasi-judicial matters should step down. He urged the Council to not adopt the LUCA.
10. Randy Gaddy spoke opposed to the LUCA, which he believes takes away basic democratic rights. He said the Council, and not the Hearing Examiner, is accountable to the public. He asked the Council to postpone its decision until January.
11. Mike Young said he is an attorney and has family members with careers in municipal planning. He does not have hostility toward the City and is not currently involved in any land use processes. He expressed appreciation for staff's presentation and noted that it answered a number of his questions, while raising some new questions. He opined that past reversals or remands of the Hearing Examiner's decisions indicate that the Council felt the cases were not right for approval at that time. He questioned the concepts of efficiency versus effectiveness as those relate to the accountability of elected officials to their constituents. He noted that land use decisions can impact many people, not just the property owner. He sees the fact that Councilmembers, as politicians, are making decisions as a positive favor.
12. Barry Zimmerman said he opposes the LUCA for all of the reasons mentioned by previous speakers. He believes the proposal is based on the flawed assumption that public opinion should not influence outcomes. He said the Council works for the public, and he believes the proposal reflects a willingness to bow to corporate interests. He said the public is not satisfied with the City's land use staff. He expressed concern about the City's relationship with Puget Sound Energy with regard to the Energize Eastside project. He said there is no such thing as a neutral Hearing Examiner and there is no accountability to the public. He would like the Council to wait until January to make a decision.

- Deputy Mayor Chelminiak moved to extend the meeting until 10:30 p.m., and Councilmember Lee seconded the motion.
- The motion carried by a vote of 6-0.
- 13. Barbara Braun said citizens expect the Council to build a quality of life for its citizens and to not be a rubber stamp for developers. She believes that removing the Council from quasi-judicial appeals will place too much power in the hands of City administrators and private developers. She said there is no evidence that the Council's involvement in quasi-judicial matters is too burdensome. She would like to move toward a system similar to Seattle with an elected mayor and Council districts.
- 14. Michelle Wannamaker noted that filing an appeal with the Superior Court is not an option for many residents. She expressed concern that the consideration of the LUCA is moving too fast. She asked the Council to defer a decision until after the election.
- 15. Richard Kaner said he understands the benefits of the proposed LUCA as outlined by staff. However, he feels it diminishes the opportunity for an average citizen to challenge a ruling. He said the City should not abdicate the opportunity to determine its destiny. He said it is important that the public has the right to a legitimate rebuttal or voice.
- 16. Janis Medley read a portion of a letter written by Richard Aramburu and previously sent to the Council. She said the Council is in the best position to review its own codes and to propose conditions on CUPs and rezones. While the Hearing Examiner has land use expertise, he or she is not elected or otherwise accountable to the community. She said the Council should continue its oversight role and should not eliminate the possibility of appeals by both proponents and local citizens. She thanked the Council for the public's opportunity to be heard tonight.
- 17. Randy Grein said this is a complex issue, especially for citizens not familiar with legal proceedings. He recently spoke with two former Councilmember about quasi-judicial hearings to gain a better understanding of the Council's limitations related to the quasi-judicial role. He requested an explanation of the Council's current limitations and the benefits of the proposed LUCA.
- 18. Kathleen Sherman expressed concern that the proposed LUCA will eliminate involvement in land use matters for homeowners and community associations due to limited funds. She said the proposal is the first step in changing Bellevue from a community of homeowners to a city of commercial interests and renters. She would like to have a voice in her local government. She said that, if the Council is concerned about liability, it should get more insurance.
- 19. Calvin [no last name given] said he is supportive of the LUCA because it will allow citizens to talk to their elected officials about land use matters. He is sympathetic to the concerns raised by others about the Hearing Examiner and about not wanting to file

appeals with the Superior Court. He suggested the City bring back the Board of Adjustments, which is a committee of citizens, to hear appeals.

20. Arthur Robey, a resident of the Cherry Crest neighborhood, spoke about moving forward together. He expressed concern about potential projects in the future, for example, high-density, low-income housing in his neighborhood. He said it is important for the public to have a voice in the democratic process.
21. Valerie Barber said it is important for individuals to have a voice in their community and municipal government. She opined that the LUCA will remove the ability for citizens to be involved in city government. She encouraged efforts to enhance the public's involvement in local government.
22. Warren Halverson expressed concern regarding the lack of public outreach related to the proposed LUCA and the timing of the decision. He said the Council's previous discussions, and the presentation before the East Bellevue Community Council, were attended by only a few citizens. He suggested forming citizen focus groups in the fall before the next election to enable the Council to build in oversight, safeguards for the public, and avenues for better participation in decisions. He noted that during the May discussion, two Councilmembers indicated that, if the LUCA is adopted, it should not go into effect until all current major projects are decided and/or after all current Councilmembers have left the Council. He said the effective date of any changes to the process should occur after decisions on the homeless shelter, Downtown fire station, and PSE's Energize Eastside project. He encouraged the Council to provide checks and balances on land use matters. He said he appreciates the Council's commitment to transparency, full stakeholder participation, and fact-based analysis.
23. Norm Hansen spoke about the need for checks and balances in the democratic process. He believes that removing the Council from its quasi-judicial role will reduce its influence in decisions. He expressed concern that developers are driving policy. He believes that seven Councilmembers can come up with a better decision than one Hearing Examiner.

City Clerk Kyle Stannert indicated to Mayor Stokes that Fiona Cofield left written comments, which will be entered into the public hearing record.

24. Jack McCullough said the Council is not the best-equipped entity to act as a decision-making tribunal in quasi-judicial matters. He believes the Council should adopt the proposed LUCA. He noted earlier comments during the public hearing regarding accountability, making good policy decisions, communicating with citizens, and having checks and balances in the City's processes. He said these are important responsibilities for the Council in its role as a legislative body, but not as quasi-judicial decision-makers. In the current quasi-judicial process, Councilmembers are acting as judges and cannot be influenced by what they think should happen or by what constituents want to happen. The quasi-judicial role requires that the Council review only what is in the record and how those facts are applied to the law in order to make a reasonable decision. He said the

decisions the Council makes as judges should be not different than the decisions of the Hearing Examiner or a Superior Court judge. Mr. McCullough said three of the eight cases mentioned by staff were remanded to the Hearing Examiner. Four of the other five matters resulted in the Council's denial of the appeals. Mr. McCullough suggested that the behavior in the room while he is speaking is not consistent with the treatment a judicial tribunal should receive. He noted concerns expressed by the public about the opportunity to be heard. He said there are numerous opportunities for the public to provide input through City staff, early hearings, and the Hearing Examiner's process. He said removing the Council from the quasi-judicial process does not deprive anyone of their rights. He said a keystone of the democratic process is the rule of law and understanding that, when individual rights are at stake, decisions should not be political.

- Deputy Mayor Chelminiak moved to extend the meeting to 10:45 p.m., and Councilmember Robertson seconded the motion.
  - The motion carried by a vote of 6-0.
25. Colin Getty thanked Brian Derdowski for articulating the public sentiment about retaining democratic rights. He questioned how earlier and a higher frequency of public notification enables the public to become involved, given the intent to remove the public's only method of direct, decisive action. He said the language of the LUCA reminds him of top-down, elitist, bureaucratic governance measures used by corrupt officials driven by individual profit. He said effective public involvement is the ability to have direct influence on land use proposals. He questioned whether proponents of the LUCA live in a jurisdiction affected by the amendment.
  26. Tom Seiter said he is concerned that a person who does not live in Bellevue is talking about why public disclosure is a bad thing, and why the LUCA is a remedy to the Council's having to consider eight appeals in 20 years. He opined that the Council has a moral responsibility to allow individuals to avoid hiring an attorney. He said having to hear quasi-judicial appeals is the price of democracy. He urged the Council to disregard the proposal.
  27. Jason Beffa said that, much like all government positions, unbiased, professional and honest records are why people are put in positions of power, in the Council's case as legislators, not judges. He questioned the problem with the Council handling quasi-judicial appeals. He does not see the Council's role in tonight's public hearing as very different from handling quasi-judicial appeals. He said the concern regarding bias does not lie with the general public's ability to influence matters in their own neighborhoods, but solely with local government's susceptibility to be influenced by special interests.
  28. Heidi Dean, a Newport Hills resident, stated her understanding that Mr. McCullough's law firm represents Intracorp, which is one of the largest contributors to several Councilmembers' campaigns. She said Bellevue should not base its decision on what other jurisdictions are doing with regard to the Council's quasi-judicial role. She wants to do what is right for Bellevue and its residents.

29. Steve O'Donnell said he has never seen anything more preposterous being considered in his experience in politics and the community. He said state law does not prohibit ex parte communications during quasi-judicial matters, but only requires that Councilmembers disclose those meetings and contacts. He noted that he is the co-founder and past president of CENSE (Coalition of Eastside Neighborhoods for Sensible Energy). He urged the Council to drop the issue. He thanked Councilmembers for their time and their thoughtful consideration of the matter.

→ At 10:32 p.m., Deputy Mayor Chelminiak moved to close the public hearing. Councilmember Robertson seconded the motion.

→ The motion carried by a vote of 6-0.

Deputy Mayor Chelminiak noted that there are two very different perspectives. He thanked everyone for their comments. He said he ran for the City Council to legislate and to make policy. He did not run for Council office to be a lawyer or a judge, which is the role required of Councilmembers in the current quasi-judicial process. When a matter is quasi-judicial, Mr. Chelminiak said he will not discuss or read emails regarding the project. The only information Councilmembers may consider is the evidence already included in the Hearing Examiner's record.

Mr. Chelminiak said that, in the helipad case, there was a question about whether or not the approach to the helipad faced directly west, or slightly off of west? In theory, he could not even look at the compass in his car, driving up NE 8<sup>th</sup> Street, to determine that. If the Council makes a mistake in the issuance of permits, Councilmembers can be held personally liable. He does not want to be in that position.

Mr. Chelminiak noted public comments about wanting their voices to be heard. As a Councilmember in a quasi-judicial matter, he cannot listen to the public because the Council's appeal decision must be based on the Hearing Examiner's record. He said that is a significant barrier between him as a Councilmember and the people he is obligated to represent.

Mr. Chelminiak said he listened carefully to all of the comments tonight. He opined that the best way to plan and permit the homeless shelter project and the Downtown fire station is through a development agreement. He would like to have been able to engage in a development agreement for Puget Sound Energy's Energize Eastside project. As that project moves forward, the issues will be time, manner, and place: What times can they work on it? How are they going to build it? Where are they going to build the project within their preferred route? Mr. Chelminiak said those are the issues the Council will be able to influence.

Mr. Chelminiak addressed the public comments regarding appeals remanded to the Hearing Examiner. The purpose of the remands was to seek clarification regarding the decision. He said the Hearing Examiner considers the totality of the record in making his or her decision. Mr. Chelminiak reiterated that he truly appreciated the public testimony.

- Deputy Mayor Chelminiak moved to extend the meeting to 11:00 p.m. Councilmember Robertson seconded the motion.
- The motion carried by a vote of 6-0.

Councilmember Robertson said the City Council is a legislative body, and properly drafted legislation will fulfill the Council's objectives related to land use matters. She said removing the Council from the quasi-judicial appeal process does not save attorney's fees for individuals. The appellants involved in all eight appeals over the past 20 years had one or more land use attorneys representing them.

Ms. Robertson noted that, in the case of a PUD appeal, the Hearing Examiner ruled in favor of the neighborhood's objections and denied the permit. However, the Council reversed that decision because it felt the Land Use Code was not correctly applied. Ms. Robertson observed that the result was not what many residents would expect to happen.

Ms. Robertson said the Council is limited to considering the Hearing Examiner's record when it considers quasi-judicial appeals. While an individual commented tonight that ex parte contacts are allowed but they must be disclosed, Councilmembers avoid them because it would require detailed documentation and because engaging in ex parte contacts can result in challenges of bias. Ms. Robertson said the law states that individuals serving in quasi-judicial roles must not only be fair, but they must also appear fair.

Ms. Robertson said she would rather be able to hear from the public and to avoid participation in quasi-judicial appeals. While she is a land use attorney with the expertise to better understand appeals, she does not necessarily see that as the proper role for the City Council.

As a city attorney in her day job, Ms. Robertson said she wants the cities she works with to not be involved in quasi-judicial matters due to the potential for politics to influence decisions. She is less concerned about being personally sued. However, she is more concerned about wasting taxpayer dollars when the City is sued for damages related to a political decision versus a decision supported by the record and the law.

Ms. Robertson opined that it is not in the public's best interest for the Council to engage in procedures that could create a liability and require the City to pay damages. Bellevue is self-insured so when the City pays legal damages, the money is direct taxpayer dollars and not payment from an insurance company.

Ms. Robertson said the Council's role is to ensure that the Land Use Code is properly designed. She noted that three issues have been mentioned by the public: homeless shelter, Puget Sound Energy's Energize Eastside project, and the City's Downtown fire station. The City is the developer for the fire station project and she does not see that it would serve the public for the Council to be the judge on the City's project.

With regard to the homeless shelter, Ms. Robertson said the City does not have the code in place to allow the Council to abrogate its responsibility. She is not willing to approve the change in the



quasi-judicial process until code language is in place with regard to shelters. She would like to see a homeless shelter code that, like the marijuana code, specifically addresses the use, defines terms, establishes criteria and conditions, and outlines the process, including the potential for a development agreement.

Councilmember Robinson noted that she is calling in to the meeting from out of town because she cares so much about this issue and she values the input of the public and her colleagues. She said it would be helpful to have an illustration comparing how the process would work if the Council is and is not involved in the quasi-judicial role. She questioned whether staff could use a past appeal as an example to demonstrate whether the outcome would have been different without the Council's involvement and whether the difference benefits the public. She is not interested in making the process easier for the City or Council. She wants to do what best serves the community.

Councilmember Lee said he appreciated the public interest and comments. He said the Council's role is to represent the public. He has been on the Council for many years and has been involved in the appeals noted by staff. He was also involved in a lawsuit related to a quasi-judicial matter. He concurred with Councilmember Robertson's comments that the quasi-judicial process exposes Councilmembers to the potential for legal action.

Mr. Lee said he is not a lawyer and does not want to serve in that role. He is dedicated to serving the public to ensure that outcomes fit with the community's goals and priorities. He acknowledged that this is a difficult issue. He said people are frustrated and feel they are not being heard, both locally and nationally. Mr. Lee said he is not in a rush to take action on the LUCA. He noted that, legally, it is potentially best for the Council to change the quasi-judicial process. However, the question is how to best represent the public.

→ At 10:55 p.m., Deputy Mayor Chelminiak moved to extend the meeting to 11:15 p.m. Councilmember Robertson seconded the motion.

→ The motion carried by a vote of 6-0.

Councilmember Simas said this is a challenging issue. In looking at the issue, he is interested in identifying the root issues and the problem that needs to be solved. He observed that residents want to be assured that the Council has their best interests in mind. He said he is not sure whether the current or proposed process is best. However, he concurred with Councilmember Robertson that the City needs to look for a better way to affect this process. If the Council cannot find a better way of supporting the public and making sure that everyone follows the rules in Bellevue, perhaps the current process should remain in place. He is open to continued discussion and does not want to rush the decision.

Mr. Simas said one thing that bothers him about the current process is that most cases end up going to the Superior Court. All of the cases had lawyers involved before they went before the Council, which is counter to the argument that the current process saves residents' money. He said the appeals process is expensive whether a case goes before the Council or the court. He is

not prepared to vote until the Council is comfortable that the LUCA is better than the current process.

Mayor Stokes said the Council has been talking about removing itself from the quasi-judicial process for several years. In one appeal case since he has served on the Council, the Hearing Examiner granted the developer's proposal. In the Lake Hills transmission line case, the Council concurred with the Hearing Examiner on a narrow decision based on the record. The case went through the Superior Court, and the Appeals Court upheld the Hearing Examiner's decision and the Council's approval. The State Supreme Court denied review. Throughout that process, Councilmembers could not talk with the community about the project application.

Mayor Stokes said Councilmembers have been concerned for some time that the quasi-judicial process prevents them from working with the community for the greatest public benefit. He said it is not a Councilmember's job to act as a judge. He understands that certain members of the public are concerned that they will lose the ability to influence decisions. However, the Council must consider how it affects all residents and taxpayers. If the Council is removed from the quasi-judicial process, Councilmembers can talk with residents and work toward better solutions. He said the Bellevue way is to try to do what is best for the citizens. He said the Hearing Examiners are well qualified to do their jobs.

Mayor Stokes said the choice is whether to continue the current process, which limits the ability of Councilmembers to interact with residents, or to change the process and be able to work more fully with the community. He clarified that he is not driving this process but rather the issue is being considered based on the interests of others on the Council, now and in the past. He would like to get beyond the anger expressed by some and to work together.

10. Land Use: None.

11. Other Ordinances, Resolutions and Motions

- (a) Ordinance No. 6362: 1) amending the 2017-2018 General Capital Investment Program (CIP) Fund to increase the appropriation by \$45,134,950 for the project appropriation for implementing the Transportation Infrastructure Finance and Innovations Act (TIFIA) loan and 2018 administrative costs; 2) amending the 2017-2023 CIP Plan by a) modifying the scope of five existing projects from design only to full project implementation (CIP Plan Nos. PW-R-169, PW-R-170, PW-R-173, PW-R-174, PW-R-191); b) increasing the 7-year project budgets by a total of \$99,600,000; and c) increasing G-101 7-year project budget by \$100,000 for TIFIA administrative and debt issue costs for 2018; 3) increasing the 2017-2018 General Fund appropriation by \$454,500 to provide expenditure authority for an increase in TIFIA project specific services; and 4) authorizing execution of any necessary funding agreements and supplements with the Washington State Department of Transportation (WSDOT) to administer the TIFIA funds.

→ Deputy Mayor Chelminiak moved to adopt Ordinance No. 6362, and Councilmember Robertson seconded the motion.

→ The motion carried by a vote of 6-0.

- (b) Resolution No. 9291 authorizing execution of Amendment 1 to the Professional Services Agreement with Parametrix, Inc. (Contract No. 1650264) by \$955,491.16 for a total contract amount of \$1,078,384.25, plus all applicable taxes, to advance design from 30% to final design and prepare construction documents for the eastbound lane of NE Spring Boulevard, between 130<sup>th</sup> Avenue NE and 132<sup>nd</sup> Avenue NE (CIP Plan No. PW-R-174).

→ Deputy Mayor Chelminiak moved to approve Resolution No. 9291, and Councilmember Robertson seconded the motion.

→ The motion carried by a vote of 6-0.

- (c) Resolution No. 9292 authorizing execution of Amendment 1 to the Professional Services Agreement with Parametrix, Inc. (Contract No. 1650266) by \$1,438,841.14 for a total contract amount of \$1,532,589.74, plus all applicable taxes, to advance design from 15% to final design and prepare construction documents for the 130<sup>th</sup> Avenue NE, between BelRed Road and NE 20<sup>th</sup> Street project (CIP Plan No. PW-R-170).

→ Deputy Mayor Chelminiak moved to approve Resolution No. 9292, and Councilmember Robertson seconded the motion.

Mr. Chelminiak noted that Items 11 (a), (b), and (c) involve a federal loan at a very low interest rate to expedite a number of major transportation projects.

→ The motion carried by a vote of 6-0.

12. Unfinished Business: None.

13. Continued Oral Communications: None.

14. New Business: None.

15. Executive Session: None.

16. Adjournment

At 11:11 p.m., Mayor Stokes declared the meeting adjourned.

Kyle Stannert, CMC  
City Clerk

/kaw