

CITY OF BELLEVUE
CITY COUNCIL

Summary Minutes of Regular Session

February 19, 2019
8:00 PM

Council Chamber
Bellevue, Washington

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

ABSENT: None.

1. Call to Order

Mayor Chelminiak called the meeting to order at 8:03 p.m.

2. Roll Call, Flag Salute

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

(a) Ms. Asia Washington

Councilmember Nieuwenhuis introduced Neha Krishna, who was crowned Ms. Asia Washington in 2018. Originally from India, Ms. Krishna has worked for four major technology employers in the Puget Sound area.

Ms. Krishna thanked the Council for the recognition. She described her childhood in India and her move to the United States. She currently works for Google North America and lives in the Bridle Trails neighborhood.

(b) Bluegrass Music Education Month Proclamation

Deputy Mayor Robinson read the proclamation recognizing February as Bluegrass Music Education Month in Bellevue. She noted that the 26th Annual Wintergrass Music Festival will be held at the Hyatt Regency Hotel in Bellevue from February 21 through February 23.

Wendy Tyner, Development Director for the Wintergrass Festival, highlighted the performances and educational opportunities during the three-day event. She noted that half of the 250 youth

participating in the festival receive full scholarships. The festival received a Country Music Association (CMA) award last year for teaching excellence and has received Grammys and other awards in the past. Ms. Tyner said there will be a number of exhibitors at the event. Children 12 years and younger receive free admission. She thanked the City for its focus on arts and cultural activities and for recognizing the role of those efforts in pursuing economic development goals.

(c) Teen Dating Violence Awareness and Prevention Month Proclamation

Councilmember Nieuwenhuis read the proclamation recognizing February as Teen Dating Violence Awareness and Prevention Month in Bellevue.

Diane Kuslich, representing the LifeWire Board of Directors, said she originally became familiar with the LifeWire organization as a client. She shared a number of statistics demonstrating the extent of teen dating violence and abusive behavior. She said approximately 1.5 million high-school students, nearly half of all college women, and one-third of college men report abuse or controlling behavior. She said that one in three U.S. teens will experience dating violence, and one in five teens will experience severe physical violence from their intimate partners. Ms. Kuslich said that only one-third of teens who experience a violent relationship ever tell anyone about the abuse, and 81 percent of parents believe teen dating violence is not an issue.

Ms. Kuslich thanked the City for the proclamation and for its ongoing support of LifeWire and other organizations that help victims of domestic violence.

3. Approval of Agenda

Mayor Chelminiak suggested the addition of Agenda Item 10(a) to discuss the Flats rezone.

- Deputy Mayor Robinson moved to add Agenda Item 10(a), Flats Rezone, and Councilmember Robertson seconded the motion.
- The motion carried by a vote of 7-0.
- Deputy Mayor Robinson moved to approve the agenda, as amended. Councilmember Robertson seconded the motion.
- The motion carried by a vote of 7-0.

4. Communications: Written and Oral

Mayor Chelminiak, noting the agenda item related to Puget Sound Energy's Lake Hills transmission line project, said the Council may not hear public comment on PSE's Energize Eastside project. He said the Hearing Examiner will hold a hearing regarding the Energize Eastside project on March 28, 2019. Information about how to participate in that process is provided on the City's website. He said it is important to provide input at that time in order for the information to be included in the Hearing Examiner's closed record.

- (a) Bud Titus said he is an electrical engineer and he worked for Puget Sound Energy (PSE) in the past. He expressed concern regarding the plans for tree removal related to the Lake Hills transmission line project. He said he would like to propose an option that would not require the extensive removal of vegetation. He distributed written materials to the Council regarding his proposal.
- (b) William Bain, a resident of Bellevue Towers, recalled that he previously requested approval of funding for the City to create a climate action plan. He said that cities generate approximately 70 percent of greenhouse gas (GHG) emissions and can make a significant difference in reducing those emissions. He thanked the City for its support of efforts to transition to alternative energy sources and technologies. He said the report presented during the earlier Study Session provides important guidance. However, he expressed concern that the City will not meet the 2020 King County-Cities Climate Collaboration (K4C) goal for the reduction of greenhouse gas emissions.
- (c) Jennifer Keller, a Lake Hills resident, expressed concern regarding climate change. She thanked the City for today's update on the Environmental Stewardship Initiative (ESI) and for its support of environmental goals related to the state legislative agenda. She encouraged the City to research effective programs in other cities. She said it is important to have specific plans and schedules for achieving goals.
- (d) Michele Wylen, a Lake Hills resident, expressed concern that the public was left out of the planning process for the Lake Hills transmission line project. She said there is evidence to suggest that there are other feasible options. She said that, without Puget Sound Energy's data, the community will never know whether the transmission line is warranted or needed. She encouraged the Council to delay in granting the easements requested by Puget Sound Energy [Agenda Item 11].
- (e) Don Marsh, representing 300trees.org, said he is seeing a new attitude at Puget Sound Energy, and he has met with a number of Councilmembers as well. He is a member of the technical advisory group for PSE's Integrated Resource Plan (IRP). He encouraged further discussion regarding PSE's plans for electrical facilities. He noted a letter he received from a resident describing the problems the person experienced in granting an easement to PSE. Mr. Marsh asked the City to help facilitate conversations with PSE.
- (f) David Hoffman, Puget Sound Energy, provided an update on the utility's outages and repairs during the recent snow storms, and thanked the City for its coordinated efforts. He recalled that litigation related to PSE's Lake Hills transmission line project ended in 2017 when the court supported the City Council's approval of the project permit. Mr. Hoffman said PSE continues to develop a vegetation management plan that reflects the values of East Bellevue residents. He noted that the self-healing grid is an effective tool in certain situations, and PSE is implementing that technology where appropriate. However, he said the Lake Hills transmission line is necessary to ensure redundancy in electrical power. Mr. Hoffman encouraged the Council to approve the easements under Agenda Item 11(a).

- (g) Heidi Dean, a Newport Hills resident, expressed concern regarding Microsoft's plans to assist with affordable housing efforts, which she suggested has undesirable strings attached. She opposes the involvement of A Regional Coalition for Housing (ARCH) in setting policies and engaging in neighborhood planning. She opined that ARCH's agenda is to implement accessory dwelling units (ADUs) and backyard cottages. She said it is not appropriate for Microsoft's financial support or for ARCH to influence public policy.

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

6. Report of the City Manager

(a) Introduction of City Attorney Kathy Gerla

City Manager Brad Miyake introduced City Attorney Kathy Gerla and noted her previous experience with the City of Seattle, King County, and the Washington State Attorney General's Office, as well as in the private sector.

Ms. Gerla said she looks forward to working with the Council. Mayor Chelminiak welcomed her to Bellevue.

7. Council Business and New Initiatives

Deputy Mayor Robinson recommended the appointment of Anita Jain to the Human Services Commission. Ms. Robinson noted Ms. Jain's international experience as a school administrator and teacher.

→ Deputy Mayor Robinson moved to appoint Anita Jain to the Human Services Commission to serve a partial term expiring on May 31, 2021. Councilmember Robertson seconded the motion.

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

8. Consent Calendar

→ Deputy Mayor Robinson moved to approve the Consent Calendar, and Councilmember Stokes seconded the motion.

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

(a) Council Minutes

Minutes of January 28, 2019 Extended Study Session

Minutes of February 11, 2019 Extended Study Session

(b) Motion to award Bid No. 19025 for the SE 6th Street Sidewalk Project, west of Bellevue Way SE (CIP Plan No. PW-W/B-56) to Trinity Contractors, Inc. as the

lowest responsible and responsive bidder, in the amount of \$188,554.80, plus all applicable taxes.

- (c) Resolution No. 9551 authorizing the execution of a Professional Services Agreement with Perteet, Inc. in the amount of \$460,809, plus all applicable taxes, to provide consulting services for a City Disaster Debris Management Plan.
- (d) Resolution No. 9552 authorizing the execution of a contract with FieldTurf USA, Inc. for the purchase and installation of playground and spray park play area surfacing in an amount not to exceed \$440,956.12, plus all applicable taxes.
- (e) Resolution No. 9553 authorizing execution of an amendment to an existing agreement with Eastside Pathways in an amount not to exceed \$400,000, plus all applicable taxes.
- (f) Motion for Payment of Claims and Payroll for January 1, 2019 through January 31, 2019.
- (g) Ordinance No. 6455 amending the Bellevue City Code Sections 3.72.010, 3.72.020, and 3.72.030 addressing the rank of police department officers covered by the civil service.
- (h) Resolution No. 9554 authorizing execution of a Professional Engineering Services Agreement with KPG, Inc, in an amount not to exceed \$377,000, plus all applicable taxes, to provide planning and preliminary engineering for the BelRed Local Street Network, and an alignment study for extending 143rd Avenue NE from Bel-Red Road to NE 20th Street (PW-R-193).
- (i) Resolution No. 9555 authorizing execution of a new Professional Services Agreement with Pacifica Law Group LLP, outside counsel for the City, in the amount of \$230,000, plus all applicable taxes, for legal services related to the acquisition of the property rights needed for the Transportation Capital Investment Program (CIP) projects involving the widening of 124th Avenue NE from NE 12th Street to Northup Way (CIP Plan Nos. PW-R-166, PW-R-169, PW-R-191).
- (j) Resolution No. 9556 authorizing execution of amendment No. 2 to the Professional Services Agreement with Pacifica Law Group LLP, outside counsel for the City, in the amount of \$205,000, plus applicable taxes, for legal services in the litigation involving the design and construction of the 120th Avenue (Stage 2) road widening project. This project was part of the Transportation Capital Investment Program (CIP Plan No. PW-R-164).

9. Public Hearings

- (a) Public Hearing and action on Resolution No. 9557 authorizing the execution of documents necessary to release an existing water easement located at 9038 NE 39th Place, Yarrow Point, which has been declared surplus to the City's needs and is no longer required for providing continued public utility service; the granting and recording of such release being deemed in the best interest of the public.

City Manager Brad Miyake said staff is seeking Council action on Resolution No. 9557 following the public hearing.

Ira McDaniel, Real Property Manager, described the proposed release of a water easement at 9038 NE 39th Place in Yarrow Point, which is served by Bellevue's water utility. The resident is building a new house on the property and the water line was removed at the property owner's expense. The City received no public comment regarding the request.

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

No one came forward to comment.

- Deputy Mayor Robinson moved to close the public hearing, and Councilmember Stokes seconded the motion.
- The motion carried by a vote of 7-0.
- Deputy Mayor Robinson moved to approve Resolution No. 9557, and Councilmember Stokes seconded the motion.
- The motion carried by a vote of 7-0.

10. Land Use

- (a) Flats Rezone

City Attorney Gerla said the Flats Rezone is a quasi-judicial matter involving a rezone application submitted by the Toll Brothers. The Hearing Examiner recommended approval of the rezone application. However, an issue has surfaced regarding whether or not an appeal has been abandoned.

Ms. Gerla said the issue before the Council involves a motion seeking a briefing from the parties as to whether the appeal has been abandoned.

Responding to Mayor Chelminiak, Ms. Gerla confirmed that the appeal submittal of the Hearing Examiner's decision did not meet the requirements of the City Code. She said the issue before

the Council is whether the rules were met. Ms. Gerla said that a written briefing from the parties, if allowed, will address whether the rules are met.

- Regarding the appeal filed by Kazar Investment Company of the Hearing Examiner's recommendation and order on the application to rezone the property located at 15516 NE 15th Place, Councilmember Stokes moved that the Council direct the City Clerk to provide written notice to the appellant, the applicant, and the Development Services Department (DSD) that any party wishing to be heard on the issue of whether the appeal has been abandoned for failure to order a transcript of the hearing and post security pursuant to Section 3 of Resolution No. 9473, the rules of procedure for appeals before the Council, may file with the City Clerk written briefs, not to exceed 10 pages, and to serve copies on the other parties no later than 1:00 p.m. on March 1, 2019. Councilmember Robertson seconded the motion.

Responding to Councilmember Lee, City Attorney Gerla said the motion allows the Council to receive written briefs from the parties in this quasi-judicial proceeding. The Council may use that information in making its decision about whether the rules were violated.

Councilmember Robertson said a number of things could happen with this quasi-judicial rezone appeal. One is that the Council takes no action and the appeal is set for oral argument, and the Council later makes a decision on the merits of the appeal. The Council could dismiss the appeal without hearing from the parties, based on the issue of whether the appeal has been abandoned because the appellant did not meet the requirements of perfecting or completing the appeal by ordering and paying a deposit for the transcription. The Council could also ask the parties to weigh in on whether they think the Council should legally dismiss the appeal for failure to perfect it.

Ms. Robertson opined that it is fair, if the Council is considering taking procedural action before a full closed record hearing on the merits of the rezone application appeal, to decide procedurally whether the appeal should be dismissed for failure to perfect the appeal. She said that provides due process to all parties. She expressed support for the motion. Under Washington state law, the Council must make the final decision on every rezone application. Whether or not there is an appeal, the Council will be a quasi-judicial body in considering the Hearing Examiner's recommendation on the rezone. Without an appeal, the Council would not consider briefings from the parties but would consider only the Hearing Examiner's report. With an appeal, the Council would consider the Hearing Examiner's report and briefings from the parties.

Mayor Chelminiak expressed support for the motion. He said that, at some point, the parties would realize there was a procedural matter that was missed. Rather than proceeding with the appeal, Mr. Chelminiak said the City is being open and transparent by informing the parties and providing the opportunity to submit written briefs.

Councilmember Stokes concurred, noting that apparently this is the first time something like this has happened.

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

11. Other Ordinances, Resolutions and Motions

- (a) Resolution No. 9558 authorizing execution of four easements to Puget Sound Energy (PSE) across City of Bellevue-owned property along 148th Avenue NE and NE 8th Street.

Ira McDaniel, Real Property Manager, introduced discussion regarding the request to release four easements to Puget Sound Energy (PSE) across City-owned property along 148th Avenue NE and NE 8th Street.

Mike Brennan, Director of the Development Services Department (DSD), said the easements are related to a PSE transmission line project to connect the Lake Hills and Phantom Lake substations. The conditional use permit (CUP) was approved by the Council in May 2015. The transmission line provides a second source of power to the substations to improve electrical service reliability in the immediate neighborhood. The permit requires mitigation and the restoration of landscaping along the alignment.

PSE applied for the CUP and related land use permits in December 2011. The CUP application required an alternative siting analysis to evaluate multiple routes. The three primary options considered were along 148th Avenue, 156th Avenue, and 164th Avenue. The review of the permit application included five publicly noticed meetings, and information from the public was included in the record. City staff recommended approval of the CUP with conditions on October 30, 2014. The Hearing Examiner held a hearing on November 20, 2014 and recommended approval of the CUP to the City Council. The Council held a public hearing and approved the CUP with conditions in May 2015.

Mr. Brennan highlighted the mitigation and restoration measures applied to the permit regarding the location of poles, the alignment of the transmission line, and crossings of the City's right-of-way. The 148th Avenue alignment provides the best opportunity for effective mitigation. PSE is required to pay \$856,740 to the City to compensate for the loss of trees, and those funds will be used for landscape restoration. The landscaping standards are consistent with the level of quality required for the City's urban boulevards, and native plants will be used within critical areas on City-owned property. The transmission line project provides improvements to the substations, including landscaping and screening measures.

Mr. McDaniel noted that two easements are located on 148th Avenue and two are located on NE 8th Street. He said staff is seeking Council action to approve the resolution.

Responding to Councilmember Nieuwenhuis, City Attorney Gerla said the approved permits granted the use of City property within the easements. The decision on the permit was made following the analysis of alternatives and an evaluation of environmental impacts and code compliance. The permit decisions were upheld by the court and are final. Ms. Gerla said that the failure to authorize the easements could expose the City to risks.

Responding to Councilmember Nieuwenhuis, Mr. Brennan said an inventory of the vegetation along the transmission line alignment was completed. Trees will be removed, and the replacement of trees and vegetation will occur after the line is in place. The vegetation will be aligned with the City's urban boulevard standards. The permit requires that PSE maintain the vegetation for the first five years. The City will ultimately be responsible for maintaining the vegetation in the right-of-way.

In further response to Mr. Nieuwenhuis, Mr. Brennan said significantly more residents would have been negatively affected by the other two alignment options. With the 164th Avenue option, the poles would be placed in residents' front yards and the distribution lines would be placed underground at the residents' expense. The impact on vegetation was greater along 164th Avenue than along 148th Avenue, and 148th Avenue is classified as an urban arterial while 164th and 156th Avenues are neighborhood streets.

Responding to Councilmember Zahn, Mr. Brennan said that most of the public comment throughout the process was related to the potential loss of vegetation and other specific impacts on individual property owners. In further response, Mr. Brennan said the transmission line has been in the City's plan and in PSE's facilities plan for a number of years. Mr. Brennan confirmed that the City is in the final stages of working with PSE to ensure that the mitigation defined in the CUP is implemented through the clearing and grading permit. He noted that the landscaping plan is approved through an administrative permit and there is no public engagement process.

Councilmember Robertson noted that the CUP application was considered by the Council because the project is located within the East Bellevue Community Council's jurisdiction, and the EBCC must act on a City Council decision. The permit decision is final and cannot be reversed.

Ms. Robertson said the City's franchise agreement allows PSE to locate its facilities in the City's rights-of-way. The agreement addresses vegetation management, abandoned poles, use of the right-of-way, and other issues. Mr. Brennan said PSE will maintain the vegetation for a five-year period. Mr. McDaniel noted an easement provision regarding the restoration and mitigation areas.

Responding to Councilmember Lee, Mr. Brennan said DSD staff coordinate with the City's Environmental Stewardship Initiative (ESI) staff. Mr. Lee noted the ESI objective to expand the tree canopy.

Responding to Councilmember Stokes, Mr. Brennan said a variety of vegetation types will be removed and replaced with high-quality landscaping that complies with the urban boulevard standards. Mr. Brennan said that undergrounding the lines would also require the removal of vegetation, and nothing could be planted above the underground lines. He noted that the estimated cost of undergrounding was approximately 10 times the cost of the preferred alternative.

In further response to Councilmember Stokes, Mr. Brennan said PSE indicated that a self-healing grid would not provide the needed transmission capacity or redundancy.

Responding to Mayor Chelminiak, Mr. Brennan said the Hearing Examiner found the CUP application to be consistent with the Comprehensive Plan. Mayor Chelminiak noted that Puget Sound Energy is the applicant and makes the decisions about its projects. The City's role is to process the permits. Mr. Brennan said staff recommended the 148th Avenue alignment following an extensive analysis and a review of related project studies.

In further response to Mr. Chelminiak, Mr. Brennan said the project received a Shoreline Substantial Development Permit, Conditional Use Permit, Shoreline CUP, and Critical Areas Permit. The City is currently processing the Clearing and Grading Permit.

→ Deputy Mayor Robinson moved to approve Resolution No. 9558, and Councilmember Stokes seconded the motion.

Mayor Chelminiak said this has been a long, involved process with significant public input. The City and the Council have followed the law on this case, and a significant record was established by the Hearing Examiner. Mr. Chelminiak noted that the easements are aimed at reducing the impacts on the environment. He said an extensive inventory of vegetation was completed, and there are always tradeoffs with any project. He opined that routing the transmission line along 148th Avenue, which is already disruptive to habitat, is preferable to creating a new alignment that causes new disruptions and impacts for habitat.

Mr. Chelminiak read from the Hearing Examiner's decision that the 148th Avenue route has the fewest impacts on residential neighborhoods. He noted that one of the other alternatives would have required the installation of 70 poles in residents' front yards. Mr. Chelminiak said the selected alternative is the best plan for critical habitat. The project has been in PSE's facilities plan since 1993. Mr. Chelminiak read again from the Hearing Examiner's decision: "The City's electrical reliability study prepared by Exponent in 2012 specifically recommends the additions of the additional transmission feed to the Phantom Lake and Lake Hills substations."

Mayor Chelminiak said the Hearing Examiner's decision was not appealed. Mr. Chelminiak said that transmission lines provide power to the substations. The Lake Hills project will improve the reliability, redundancy, and resiliency of Bellevue's electrical system. Mr. Chelminiak expressed support for the motion.

Councilmember Robertson said she is an attorney who represents cities in land use matters, and she likes to be transparent and to explain the rationale of her decisions. She thanked everyone for caring about the community and the environment. She recalled that she voted against approving the Conditional Use Permit in 2015. However, the Council has a legal obligation to stand by its decision and to approve the easements. Ms. Robertson said the East Bellevue Community Council subsequently denied the permit. PSE appealed that decision and the case eventually went to the Superior Court and the Court of Appeals. The Washington Supreme Court declined to conduct a review of the matter. Ms. Robertson said that denying the easements would be acting in an arbitrary and capricious manner.

Councilmember Robertson said that granting the easements increases public safety and mitigation. She said PSE will manage the vegetation for five years. She noted that when the permit was initially submitted, the State Environmental Policy Act (SEPA) required nearly \$900,000 in mitigation from PSE. However, state law has changed since that time and the SEPA process can no longer be used to require mitigation. Ms. Robertson expressed support for the motion.

→ At 9:56 p.m., Deputy Mayor Robinson moved to extend the meeting to 10:15 pm. Councilmember Robertson seconded the motion.

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

Councilmember Nieuwenhuis thanked Councilmember Robertson for her legal perspective. Mr. Nieuwenhuis thanked residents for their involvement in the process. He said he is not happy about the loss of trees. However, the City cannot change PSE's project. He believes there will be a net increase in vegetation, including more types of plants, after the project is completed. Following up on Councilmember Robertson's comment, Mr. Nieuwenhuis said the City would not be able to achieve the same level of mitigation if the permits were submitted today.

Councilmember Stokes said he appreciated the public's engagement throughout this process. He said it is always difficult to complete public works projects and to try to minimize impacts. He believes there will be as many or more trees after the project is completed. He said the landscaping will be installed based on urban boulevard standards. Mr. Stokes said the City and the public can continue to encourage PSE to use clean energy sources. He looks forward to moving ahead and continuing to work together as a community. He thanked the Coalition of Eastside Neighborhoods for Sensible Energy (CENSE) for their efforts. Councilmember Stokes expressed support for the motion.

Councilmember Zahn thanked the public for their advocacy of issues and priorities. She said the only party that can change the project is PSE. She suggested that the City consider involving the public in determining the types of vegetation to be planted along the transmission line route. She noted that the permits have been issued, and the Council is obligated to grant the easements.

Councilmember Lee thanked the public for their extensive efforts. He believes that involvement improved the project, and he encouraged everyone to continue to stay engaged.

Deputy Mayor Robinson thanked everyone for their participation and for staying late tonight. She expressed appreciation for the public input provided by residents and businesses. She said that granting the easements will allow the project to be located on the opposite side of the road from Larsen Lake. She acknowledged that the community appreciates trees, and no one likes to see them removed. She is pleased that PSE is exploring clean energy alternatives. However, the City cannot compel them to do so. Ms. Robinson said the Council's job is to facilitate safe and reliable power for everyone in Bellevue. She expressed support for the motion.

→ The motion to approve Resolution No. 9558 carried by a vote of 7-0.

12. Unfinished Business: None.
13. Continued Oral Communications: None.
14. New Business: None.
15. Executive Session: None.
16. Adjournment

At 10:13 p.m., Mayor Chelminiak declared the meeting adjourned.

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

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