

CITY OF BELLEVUE
CITY COUNCIL

Summary Minutes of Regular Session

March 18, 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. Mayor Chelminiak led the flag salute.

3. Approval of Agenda

→ Deputy Mayor Robinson moved to approve the agenda, amended to add Agenda Item 10(a) to consider Ordinance No. 6458 regarding the abandonment of an appeal related to the Flats Rezone. Councilmember Stokes seconded the motion.

→ The motion to approve the agenda, as amended, carried by a vote of 7-0.

Mayor Chelminiak noted the recent terrorist attacks at two mosques in New Zealand. He said Councilmembers were invited to a meeting tonight hosted by the Muslim Association of Puget Sound (MAPS) in Redmond. While not able to attend, Mr. Chelminiak expressed the City's support for MAPS and for the Islamic Center of Eastside in Bellevue. Mayor Chelminiak shared a letter he sent on behalf of the City Council to be read during the MAPS community meeting. He highlighted the inclusive values set forth in the Council's vision statement: Bellevue welcomes the world. Our diversity is our strength. Mayor Chelminiak requested a moment of silence to remember those who were killed in the recent attacks.

4. Communications: Written and Oral

- (a) David Bowling, speaking on behalf of Congregations for the Homeless (CFH), thanked the Council for its investment in helping individuals who are experiencing homelessness. He thanked the Council for working toward a year-round solution for the men's homeless shelter. Mr. Bowling thanked Kevin Wallace for the time he has put into this effort and noted that CFH's Board is fully committed to the project.
- (b) Kevin Wallace, a former Bellevue City Councilmember, spoke about the great team of architects, engineers, and contractors who came together to address the need for a permanent men's homeless shelter. All of them were eager to do whatever they can to help. He noted that CFH is the only provider of overnight shelter for men on the Eastside. Mr. Wallace said the team has developed a plan and cost estimate and will continue to work together through a value engineering effort. He invited everyone to support CFH's fundraising via the organization's website. He spoke to the importance of everyone working together for the benefit of the community.

5. Reports of Community Council, Boards and Commissions

- (a) Bellevue Youth Link's 21st Annual Gumbo Night

Amanda Li and Joydeep Hazra, representing the Bellevue Youth Link Board, invited the Council to the 21st Annual Gumbo Night on Wednesday, April 17. Members of the City Council, Bellevue School District Board, Parks and Community Services Board, and the Human Services Commission will attend the event to discuss Youth Link's priorities in a casual setting.

Councilmember Zahn, a member of the Youth Link Board, said it was fun and productive to spend time with everyone at the previous year's Gumbo Night. She said the Youth Link Board and members are committed to learning and growing together and to bettering the community. She noted the upcoming leadership awards in May.

6. Report of the City Manager

- (a) Bellevue Conflict Resolution Center Update

[Item moved to earlier Study Session.]

7. Council Business and New Initiatives

There was no discussion.

8. Consent Calendar

Mayor Chelminiak highlighted the pedestrian improvements project on 156th Avenue NE, which is one of the projects funded through the Neighborhood Safety, Connectivity and Congestion Levy.

- 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 February 25, 2019 Extended Study Session
Minutes of March 4, 2019 Study Session
Minutes of March 4, 2019 Regular Session

 - (b) Motion to approve Payment of Claims and Payroll February 1, 2019 - February 28, 2019.

 - (c) Motion to award Bid No. 19029, 156th Avenue NE Pedestrian Improvements - Main Street to NE 6th Street (CIP Plan No. PW-R-199, PW-W/B-49) to Axum General Construction, Inc. as the lowest responsible and responsive bidder, in the amount of \$421,945.15 (CIP Plan No. PW-R-199, PW-W/B-49), plus all applicable taxes. This project is partially funded by the Neighborhood Safety, Connectivity and Congestion Levy.

 - (d) Motion to award Bid No. 19000 for Fire Hydrant Standardization 2018 to HighMark Enterprises, LLC , as the lowest responsive and responsible bidder, in an amount not to exceed \$412,358.38 plus all applicable taxes (CIP Plan No. W-82).

 - (e) Ordinance No. 6456 authorizing execution of a grant agreement with King County to accept funding through the Youth and Amateur Sports Fund for the recently completed Coal Creek Park Trailhead and to amend the 2019-2020 CIP Plan P-R-11 Parks Renovation and Refurbishment in the amount of the final King County grant distribution amount.

 - (f) Resolution No. 9565 authorizing the execution of a five-year General Services Contract with Stripe Rite, Inc., in the amount of \$624,000, plus all applicable taxes, to provide on-call traffic marking maintenance.

 - (g) Resolution No. 9566 authorizing the execution of a General Services Contract with Stripe Rite, Inc. in the amount of \$623,735.05, plus all applicable taxes, for an initial one-year term, with the option to renew annually for four additional years, to provide annual City-wide traffic striping maintenance.

 - (h) Motion to award Bid No.19010 for a three-year Guardrail Maintenance and Repair Contract to Petersen Brothers, Inc., in the amount of \$143,708.20, plus all applicable taxes.

- (i) Resolution No. 9567 authorizing the execution of a three-year General Services Contract with All Stripes, LLC, in the amount of \$270,000, plus all applicable taxes, to provide on-call traffic marking maintenance.

9. Public Hearings

- (a) Public Hearing and action on Ordinance No. 6457 amending the Bellevue Land Use Code, Title 20 of the Bellevue City Code, Chart 20.10.440 Uses in land use districts Wholesale and Retail - Residential Districts to identify the residential Land Use Districts where Garden Supply Retail and Nursery Uses may be allowed when they have been operating continuously since before 1955; providing for severability; and establishing an effective date.

City Manager Brad Miyake introduced discussion regarding Ordinance No. 6457.

Trish Byers, Code Development Manager, said the proposed Land Use Code Amendment (LUCA) allows garden supply retail and nursery uses that have been in continuous operation since before 1955 in the R-4, R-10, R-15, R-20, and R-30 districts. The purpose is to provide additional goods and services to the surrounding neighborhood and to allow business owners to improve structures or to clear the site and build a new structure. Ms. Byers noted that the current nonconforming status of the Bellevue Nursery prohibits those activities. The business has been in continuous operation since before 1955.

In November 2018, the Council directed staff to determine whether the Bellevue Nursery Comprehensive Plan Amendment (CPA) proposal could be addressed as a LUCA instead of as a CPA. In December, staff presented a proposed LUCA to the Council, which directed staff to bring back a proposed schedule for processing the LUCA. In January 2019, staff received Council direction to set tonight's public hearing.

Ms. Byers said the Bellevue Nursery was developed as a nonconforming use under the 1955 Zoning Code in what was then the R-8.5 district, which was designated as residential with a minimum lot size of 8,500 square feet. The R-8.5 district was renamed to R-4 in 1978. In developing the proposed LUCA, staff included comparable land use districts with a minimum lot size of 8,500 square feet. A nonconforming use is a legally established use of a structure or land that no longer conforms to the district regulations due to changes in the code requirements or annexation. The LUCA will allow the site to be cleared and rebuilt as well as allow subordinate uses occupying up to 25 percent of the floor area of the primary use. Examples of subordinate uses are a coffee shop, landscaping services, and/or a classroom.

The proposed LUCA meets the decision criteria outlined in LUC 20.30J.135: 1) the amendment is consistent with the Comprehensive Plan, 2) the amendment enhances public health, safety or welfare, and 3) the amendment is not contrary to the best interests of the citizens and property owners in Bellevue. Ms. Byers said the LUCA maintains the character of the surrounding neighborhood, and the business owner is able to add subordinate uses or to clear the site and rebuild.

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

The following individuals came forward to comment:

1. Xintian Yang thanked the Council for considering the alternative solution of a LUCA. He asked for additional consideration and clarity regarding the details of the LUCA and the provision for subordinate uses. He expressed concern about the potential for a mixed use site with a housing unit above the nursery. He said he would like the LUCA to clearly allow either a residential use or the nursery use, but not both. He expressed concern that the LUCA will infringe on individual property rights.
2. Xianding Zhou said he lives one block from the Bellevue Nursery. He expressed concern about allowing mixed uses on the site.
3. Thanhy Mather said the issue of mixed uses is confusing. He expressed an interest in greater clarity regarding that provision. He expressed concern regarding the future use of the site.
4. Vinh Bui spoke in opposition to allowing mixed uses at the Bellevue Nursery location. He said he was puzzled by the LUCA that the Council was being asked to approve. He believes that allowing mixed uses is contrary to the decision made by the Council last year.
5. Pamela Johnston said she is opposed to allowing mixed uses at the Bellevue Nursery site. She expressed concern regarding the future use of the site and the potential impacts on the residential neighborhood. She expressed an interest in the site's drainage and the potential for chemical spills.
6. Edwin Tian, owner of the Bellevue Nursery, thanked Councilmembers and City staff for their consideration and spoke about the nursery as a critical neighborhood business. He said the structure is outdated and, with the competing market, the Bellevue Nursery needs to change. Mr. Tian said he would like to expand the business to offer more services to the community and to retain valued employees. He said he is asking to be treated equally to other neighborhood businesses. Mr. Tian said he did not expect his CPA application to turn into a political issue.
7. Heidi Dean expressed concern regarding the potential for the site ceasing to exist as a nursery. She said she appreciates the City's work on the LUCA. She said the Bellevue Nursery's owners initially stated in their CPA proposal that they would continue the business as a nursery and wanted to add additional services. She questioned the appropriateness of possibly building two condos on the site. Ms. Dean said she was not supportive of what she considers upzoning in a residential neighborhood.

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

Councilmember Robertson noted her interest in allowing the nursery to continue operating and to add subordinate uses. She said she was surprised that the LUCA would allow the property owners to apply for a planned unit development (PUD) to build two housing units above the nursery. She said she is not in favor of the housing element. Noting that the Bellevue Nursery is on a small site, Councilmember Robertson asked whether adding two housing units above the nursery is realistic. She questioned what would happen if housing units are added and the nursery later closes at some point in the future.

Ms. Byers acknowledged that the nursery is on a triangular, constrained site. She noted the potential for two housing units on the site. However, a number of elements would affect whether the PUD would be permitted. The application for a PUD requires public notice, an initial public meeting, a recommendation from the Director of the Development Services Department (DSD), a decision by the Hearing Examiner, and potentially an appeal before the City Council. Ms. Byers suggested it would be challenging to develop the nursery and a PUD on the small site.

Responding to Councilmember Robertson, Legal Planner Trisna Tanus said a nursery is the only business that would be allowed under the proposed LUCA. In further response, Ms. Tanus confirmed that under the current code, the business could continue to operate as a nursery or the owners could demolish the nursery and develop a residential PUD. However, they would not be allowed to have both uses on the site.

Councilmember Stokes opined that it would not be feasible to develop two condos above the nursery.

Responding to Deputy Mayor Robinson, Ms. Byers said the LUCA allows only residential and/or nursery uses. Ms. Byers confirmed that the PUD process involves a robust public engagement process and studies neighborhood impacts.

Councilmember Lee expressed support for keeping the nursery in the community. He noted that, if the nursery closes in the future, the site could be redeveloped as a residential use.

Councilmember Zahn recalled previous Council discussion about changing the nursery to a conforming use to allow the owners to rebuild within the same footprint and/or to add subordinate uses. Responding to Ms. Zahn, Ms. Byers said the LUCA applies to all garden supply and nursery uses that were established prior to 1955. Ms. Byers said the Bellevue Nursery is the only business that fits that description based on the City's available information.

Responding to Mayor Chelminiak, Ms. Byers confirmed that the site is currently zoned as residential and the property owner could apply for a PUD now. Mr. Chelminiak suggested that removing the PUD option effectively results in a downzone of the property. He noted that the LUCA makes the Bellevue Nursery site a legal conforming use, which would help the business

owner achieve the financing needed to redevelop the site. Responding to Mayor Chelminiak, Ms. Byers said the current zoning of the area allows attached accessory dwelling units (ADUs). In further response to Mr. Chelminiak, Ms. Byers confirmed that it might be possible to develop a home and ADU on the site instead of a PUD.

Mayor Chelminiak expressed concern about taking away a property owner's right to pursue a PUD. He opined that it would be difficult to develop a PUD on the site. However, the Council cannot make that decision tonight. Mr. Chelminiak said the LUCA provides the opportunity for the owner to continue to operate the nursery.

→ Councilmember Lee moved to adopt Ordinance No. 6457, and Deputy Mayor Robinson seconded the motion.

Councilmember Robertson thanked staff and the Council for considering her suggested path of a LUCA instead of the original CPA proposal. She expressed support for allowing the nursery to redevelop and to add subordinate uses. However, she said she was surprised to learn about the potential for mixed uses. She recalled that she previously requested language specifying that a PUD could not be used to create a mixed use project with the nursery. However, the Council did not support the request. Ms. Robertson opined that the site is not appropriate for a mixed use development.

Councilmember Nieuwenhuis suggested an amendment that would prohibit a PUD on the nursery site.

Councilmember Lee said he would not support that amendment.

Deputy Mayor Robinson recalled that the original objective of the Council was to preserve the new owner's ability to redevelop the nursery and to retain jobs in the community. She said an application for a PUD triggers a robust neighborhood process that studies the project's impacts. She opined that it is not the Council's role to dictate what an individual can or cannot do with their property separate from the City's usual PUD process.

Councilmember Zahn concurred with Mayor Chelminiak's concern about taking property rights away from landowners by removing the PUD option.

Councilmember Stokes opined that developing both a nursery and PUD on the site is not feasible. He noted that the majority of the community wants to keep the nursery in Bellevue.

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

10. Land Use

- (a) Consideration of the Appeal by Kasar Investment Company regarding the Flats Rezone and Ordinance No. 6458 determining the abandonment of the appeal of the Hearing Examiner's November 26, 2018 recommendation and December 5, 2018 order on motion for clarification in the matter of the application of Toll

Brothers, LLP for a rezone of property at 15516 NE 15th Place, Bellevue Washington.

Mayor Chelminiak introduced discussion regarding the Flats Rezone abandonment of appeal matter addressed in proposed Ordinance No. 6458.

City Attorney Kathy Gerla reviewed the rules for quasi-judicial proceedings in which Councilmembers serve as judges. Under the Appearance of Fairness Act, local government officials may not engage in ex parte or off-the-record contacts with parties in order to maintain their impartiality. Local government officials must disclose all ex parte contacts with the applicant or members of the public on the topic of this application whether verbal exchanges, emails, or other writings.

Ms. Gerla recommended giving Councilmembers the opportunity to disclose any ex parte contacts. She said staff searched all emails that have been received through the Council's email addresses. Therefore Councilmembers need only to disclose any contacts beyond those emails. The disclosure of an ex parte contact should include the name of the person, date of the contact, method of communication, and the substance of the communication.

Mayor Chelminiak said he had no ex parte contacts, and each Councilmember responded that they have had no ex parte contacts.

Mayor Chelminiak recalled that during the February 19, 2019 Regular Session, the Council approved a motion directing the City Clerk to inform the parties involved in the Flats Rezone application of the opportunity to provide the Council with written briefs on the issue of whether the appeal was abandoned. The City Clerk informed the parties of that opportunity in a letter dated February 20, 2019. Both Kasar Investment Company and Toll Brothers, LLP, submitted separate briefs pertaining to the issue of abandonment. The Development Services Department did not submit a brief.

The Council has reviewed and considered the arguments in the briefings. Based on the record before the Council, the Council would find that the appeal filed by Kasar Investment Company has been abandoned. The Council's appellate rules of procedure contained in Resolution No. 9473 require the appellant to order a full transcript from the City Clerk of the hearing before the hearing body within 30 days of the decision. The resolution further states that the appellant shall post security for the transcript when the appeal is submitted. If an appellant fails to post security, the appeal shall be considered abandoned.

Mayor Chelminiak noted that Resolution No. 9473 is written in mandatory terms and is binding. It is undisputed that Kasar Investment Company failed to comply with the Council's appellate rules by not ordering the transcript and posting security by January 4, 2019. The Hearing Examiner's recommendation included a reference to the resolution, as Kasar Investment Company acknowledges in its brief, and the resolution was available on the City's website on and after the date of the Hearing Examiner's recommendations.

→ Deputy Mayor Robinson moved to find that appellant Kasar Investment Company's appeal is abandoned under Resolution No. 9473. Councilmember Robertson seconded the motion.

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

Mayor Chelminiak read Ordinance No. 6458 for the record.

→ Deputy Mayor Robinson moved to adopt Ordinance No. 6458, and Councilmember Robertson seconded the motion.

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

11. Other Ordinances, Resolutions and Motions: None.

12. Unfinished Business: None.

13. Continued Oral Communications: None.

14. New Business: None.

15. Executive Session: None.

16. Adjournment

At 9:26 p.m., Mayor Chelminiak declared the meeting adjourned.

Charmaine Arredondo, CMC
City Clerk

/kaw