

CITY OF BELLEVUE
CITY COUNCIL

Summary Minutes of Regular Session

April 15, 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 8:00 p.m.

2. Roll Call, Flag Salute

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

(a) Arbor Day-Earth Day Proclamation

Mayor Chelminiak read the proclamation declaring April 20 as Arbor Day-Earth Day in Bellevue and encouraged everyone to participate in community celebrations and tree plantings.

Laura Harper, Park Ranger, thanked the Council for the proclamation. She invited the Council and the public to attend the City's Arbor Day-Earth Day event on April 20 at Lewis Creek Park. She noted that Bellevue has been recognized as a Tree City USA for the 28th year. She commented on the benefits of trees including shade, beauty, and wildlife habitat.

(b) 2020 Census Awareness Month Proclamation

Mayor Chelminiak read the proclamation recognizing April 2019 as 2020 Census Awareness Month and reaffirming Bellevue's commitment to partnering with the U.S. Census Bureau to ensure an accurate population count in 2020. He noted that the census has a number of purposes, including to reapportion the U.S. House of Representatives and to determine federal funding.

3. Approval of Agenda

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

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

4. Communications: Written and Oral

(a) Pamela Johnston noted that she attended the earlier study session regarding transportation projects. She expressed concern that there was no discussion about coordinating with the City of Redmond for transportation interoperability. She referenced the SR 520/124th Avenue interchange and asked whether the City is looking at the link between transportation and crime. She commended the City's bike initiatives but expressed concern that the SR 520 bike trail is not a pleasant environment. She encouraged the development of a bike trail and linear forest in the BelRed corridor. She suggested a link from the MyBellevue app to information regarding both current and upcoming transportation projects.

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

6. Report of the City Manager: None.

7. Council Business and New Initiatives

Councilmember Lee said that he and Councilmember Zahn recently traveled to the National League of Cities (NLC) conference and attended a session on the census. Mr. Lee spoke to the benefits of obtaining an accurate census count, including the ability to successfully compete for federal funding. He said it provides an opportunity to engage residents in community building. Mr. Lee said King County and others have created a fund to ensure that everyone is counted, and the City is contributing \$50,000 to that effort. He suggested that the City work with local organizations and groups to encourage the public to participate in the census.

Councilmember Zahn said she participated in the 2020 Census: Let's Get Real event held at Redmond City Hall. She said there was a discussion about applying for joint regional grants that could be used in multiple cities. She said the Seattle Foundation would be the granting agency and the effort would allow jurisdictions to pool resources.

8. Consent Calendar

Mayor Chelminiak highlighted items on the consent calendar including funding for a crosswalk along the Mountains to Sound Greenway, a contract with REI for paddleboard rentals at Enatai and Meydenbauer Bay beach parks, STEM classes for youth during the summer, traffic safety agreements to improve lighting on Eastgate Way, and improvements to the Midlakes pump station to accommodate growth in the BelRed corridor.

→ 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 March 25, 2019 Extended Study Session
Minutes of April 1, 2019 Study Session
Minutes of April 1, 2019 Regular Session
- (b) Resolution No. 9576 authorizing execution of a three-year enterprise license agreement with Environmental Systems Research, Inc. (ESRI) for the licensing and support of Geographic Information Systems (GIS) software and services for the City, including maintenance of existing software, training, and technical support, in an amount not to exceed \$307,900 plus all applicable taxes.
- (c) Resolution No. 9577 authorizing execution of a two-year General Services Contract, with the option to renew for an additional two-year term, and concurrent lease agreements with Recreational Equipment Inc. (REI) to operate a paddle sport rental program out of the Enatai Beach Boathouse located at 3519 108th Avenue SE and Meydenbauer Bay Whaling Building located at 2 - 99th Avenue NE.
- (d) Motion to award Bid No. 19033, Mountains to Sound Greenway Trail Crosswalk Improvements at Lake Washington Boulevard (CIP Plan Nos. PW-M-1, PW-R-46 and PW-M-20), to Road Construction NW as the lowest responsible and responsive bidder in the amount of \$218,671.50, plus all applicable taxes.
- (e) Resolution No. 9578 authorizing execution of a General Maintenance Agreement (GMB 1069) with the Washington State Department of Transportation (WSDOT) clarifying roles and responsibilities for maintenance of storm water facilities, landscaping and irrigation systems in the vicinity of SR 520, Bellevue Way, Northup Way, Points Drive, and 108th Avenue NE.
- (f) Resolution No. 9579 authorizing execution of a five-year General Services Contract with Play-Well TEKologies in an amount not to exceed \$250,000, plus all applicable taxes.
- (g) Motion to award Bid No. 19020 for Lewis-Vuemont Detention Outlet 177th Avenue SE to Pro Grade Enterprises, Inc., as the lowest responsive and responsible bidder, in an amount not to exceed \$115,987.50 plus all applicable taxes (CIP Plan No D-64).
- (h) Motion to award Bid No. 19022 for Midlakes Pump Station Capacity Improvements to Redside Construction LLC, as the lowest responsive and responsible bidder, in an amount not to exceed \$5,772,179.60 plus all applicable taxes (CIP Plan No S-61).

- (i) Ordinance No. 6460 authorizing: 1) execution of a grant agreement (and supplements if necessary) with the Washington State Department of Transportation (WSDOT) to accept \$542,000 in federal Highway Safety Improvement Program (HSIP) funding to support construction of lighting improvements on SE Eastgate Way from Richards Road to 139th Avenue SE; 2) amending the 2019-2025 Capital Investment Program (CIP) Plan to increase the program budget for the Traffic Safety Improvements program (CIP Plan No. PW-R-46) by \$542,000; and, 3) amending the 2019-2020 General CIP Fund to increase the appropriation by \$542,000.
- (j) Resolution No. 9580 authorizing execution of six easements necessary for the Central Puget Sound Regional Transit Authority (Sound Transit) East Link project on City of Bellevue-owned property.
- (k) Resolution No. 9581 authorizing the execution of a one (1) year Professional Services Agreement with Random Access Inc., for work including, but not limited to, the upgrading of the current permit tracking system, AMANDA, to the latest version, reconfiguration of the system architecture and implementation of additional modules, renewable for four successive one-year terms with 60 days' notice and agreement by both parties in an amount not to exceed \$800,000, plus all applicable taxes.
- (l) Resolution No. 9582 authorizing execution of a five-year General Services Contract with AlphaBEST Education in an amount to not exceed \$250,000, plus all applicable taxes.
- (m) Resolution No. 9583 authorizing execution of a Turnback Agreement (TB1-0255) with the Washington State Department of Transportation (WSDOT) for a portion of right-of-way along Northup Way between Bellevue and 108th Avenue NE, which provides for the subsequent transfer of the physical right-of-way from WSDOT to the City of Bellevue.
- (n) Motion for payment of claims and payroll, March 1, 2019-March 31, 2019.
- (o) Ordinance No. 6461 authorizing amendment of the 2019-2025 Utility Capital Investment Program (CIP) Plans by decreasing the Sewer System Pipeline Replacement Program (CIP Plan No. S-66) in 2019 by \$750,000 and increasing the Midlakes Pump Station Capacity Improvements (CIP Plan No. S-61) in 2019 by \$750,000.

9. Public Hearings

- (a) Public Hearing and action on Resolution No. 9584 authorizing the execution of documents necessary to release two existing public utility easements, both located at 10210 SE 10th Street, which have been declared surplus to the City's needs and

are no longer required for providing continued public utility service; the granting and recording of such releases being deemed in the best interest of the public.

City Manager Brad Miyake introduced the two public hearing items related to the release of surplus utilities easements.

Hannah Peshkov, Senior Real Property Agent, described the proposed release of a water easement and a sewer easement at 10210 SE 10th Street. She said both of the easements will be relocated, and the gas easement is no longer needed. She said staff is requesting Council action to authorize the execution of the documents necessary to release the two surplus public utility easements.

→ 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. 9584, and Councilmember Stokes seconded the motion.

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

- (b) Public Hearing and action on Resolution No. 9585 authorizing the execution of documents necessary to release an existing water line easement located at 1050 160th Avenue SE (Tillicum Middle School), 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.

Kim Bui, Real Property Agent, described the proposed release of a water line easement at 1050 160th Avenue SE (Tillicum Middle School). She noted that the easement will be relocated on the site as part of the redevelopment of the school. Ms. Bui requested Council action to authorize the execution of the documents necessary to release the surplus water easement.

→ 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. 9585, and Councilmember Stokes seconded the motion.
- The motion carried by a vote of 7-0.

10. Land Use

- (a) Final action on The Flats at 15th Place Rezone Application; a rezone of a 24,750 square feet single parcel at 15516 NE 15th Place, from Community Business (CB) to Multifamily Residential (R-30). Permit File No. 17-125912-LQ.

Mayor Chelminiak introduced the consideration of final action regarding The Flats at 15th Place rezone application.

City Attorney Kathy Gerla said that quasi-judicial proceedings are matters in which the Council makes a decision regarding the rights of specific interested parties under the City's regulations. Under the state Appearance of Fairness Act, Councilmembers must disclose any ex parte contacts regarding The Flats rezone application. The Council last considered this application during its April 1 Regular Session. At that time, Councilmembers indicated they did not have any ex parte contacts to disclose. She said staff reviewed the emails received by the Council since that time and did not find any new emails on the topic. She encouraged Councilmembers to disclose any ex parte contacts they have had outside of their City email accounts.

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

Mr. Chelminiak said the application was filed by Toll Brothers to rezone a single parcel located at 15516 NE 15th Place from Community Business (CB) to Multifamily Residential (R-30, or 30 units per acre). Following the Land Use Director's recommendation to approve the rezone application, the Hearing Examiner held a hearing on November 8, 2018. The Development Services Department (DSD), the applicant (Toll Brothers), and the owner of the adjacent property to the east (Kasar Investment Company) participated in the hearing.

The Hearing Examiner issued her recommendation on November 26, 2018, recommending approval of the rezone application with conditions. She then issued an order on December 5 regarding DSD's motion for clarification, amending and clarifying her decision while still recommending approval of the rezone.

Mayor Chelminiak said the Council earlier determined that an appeal of the Hearing Examiner's recommendation filed by Kasar Investment Company had been abandoned. There are no appeals related to this matter before the City Council. In making its decision, the Council considered the Hearing Examiner's recommendation and the record developed through the hearing. Mr. Chelminiak said DSD staff's recommendation addressed how the proposal meets the five decision criteria for approving rezones outlined in the Land Use Code. The Hearing Examiner incorporated that discussion into her recommendations.

The only issue raised by Kasar Investment Company before the Hearing Examiner was whether the proposed rezone meets the criteria of LUC 20.30A.140D, which states that the rezone should not be materially detrimental to uses on property in the immediate vicinity of the subject property. Kasar Investment did not dispute that the other four criteria were met. Kasar argued before the Hearing Examiner that the rezone of the Toll Brothers property will trigger requirements of the transition area design district provided in LUC 20.25B. Kasar Investment submitted a real estate appraisal indicating a loss of value to its property of \$492,000, based on a hypothetical, multifamily townhome development. However, Kasar has not submitted a development proposal to redevelop the property. Therefore, it is unknown whether and to what extent the restrictions in the transition overlay district would apply.

As the Hearing Examiner noted, if Kasar Investment were to develop the property for multifamily use, the transition area design district requirement of concern to Kasar would no longer apply. Based on the record, Kasar Investment has not produced evidence that the rezone will result in material detriment to its property, and the applicant Toll Brothers met its burden to demonstrate that the rezone should be approved.

Mayor Chelminiak said a question has been raised about the Hearing Examiner's order on DSD's motion for clarification, and whether the transition area design district requirement would be triggered at the time of the rezone of the Toll Brothers property or at some later point.

Councilmember Robertson opined that DSD's motion for clarification to the Hearing Examiner's order created a lack of clarity as to whether the transition area design district requirements would apply to the Kasar Investment property at the time of rezone or at the time Kasar might redevelop the site. If the Council approves the rezone, the property would have nonconforming status. In that case, if Toll Brothers develops its property with multifamily development, Kasar Investment Company would be able to exist in its current state without any new requirements because it would be a legal nonconforming use.

Ms. Robertson said the overlay district requirements would not be triggered unless development on the property triggers the Land Use Code requirements for nonconforming sites. If the Council approves the rezone, she said it would be helpful to ensure that the Council's decision clarifies this point that there would not be an immediate need to do anything because Kasar would be legally nonconforming.

Responding to Mayor Chelminiak, City Attorney Gerla confirmed that the Council is authorized to make that clarification related to the Hearing Examiner's decision.

- Deputy Mayor Robinson moved that the Council approve The Flats rezone application and direct the City Attorney's Office to draft an ordinance incorporating and adopting the Findings of Fact, Conclusions of Law, and Conditions from the Hearing Examiner's November 26, 2018 recommendation, and the Hearing Examiner's December 5, 2018 order, with the clarification earlier discussed concerning when the transition district overlay requirements would apply to Kasar Investment Company's property. The Council will take action on the ordinance at a later date. Councilmember Robertson seconded the motion.

Councilmember Robertson said she read the full record and listened to the audio recording of the hearing. She said the issue of the rezone related to whether the rezone will not be materially detrimental to the use of properties in the immediate vicinity. The concern expressed by Kasar Investment Company was that, with the property developing to multifamily-high density, there would be a transition area between commercial and residential development, which requires a setback and a 20-foot vegetation buffer under the Land Use Code.

Ms. Robertson said that Kasar provided an appraisal, as did the applicant. Kasar's appraisal demonstrated that the use and value is approximately \$1.5 million under its current configuration. She said Kasar opined that the highest and best use for the property is townhomes, and they placed a value on that. Ms. Robertson said it is important to note that the townhomes are not an outright allowed use on the Kasar Investment property. Building townhomes would require either a development agreement with the City or a Comprehensive Plan Amendment (CPA) and a rezone. She said Kasar's hypothetical residential use assumed a certain value, which they reduced based on the 30-foot setback and 20-foot buffer requirements.

Ms. Robertson said the important thing for her was that, if Kasar developed a townhome use, the setback and buffer requirements would not apply because those are transition area requirements between commercial and residential properties. If Kasar developed townhomes, their project would be next to residential development and the hypothetical scenario would not be applicable. Ms. Robertson said that the evidence she found in the record, provided by Kasar Investment Company, is highly speculative in her opinion, and it does not consider that the transition area code would not be applicable. If no change is made to the property, Kasar would be a legal nonconforming use and the setback and buffer would not be required.

Councilmember Robertson concluded that there is no material detriment related to the rezone based on the record. She agreed with the Hearing Examiner's finding and expressed support for the rezone proposal.

Mayor Chelminiak noted that Councilmembers were provided the documentation of the record as well as an audio recording of the hearing.

- 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 8:48 p.m., Mayor Chelminiak declared the meeting adjourned.

Charmaine Arredondo, CMC
City Clerk

/kaw