

CITY OF BELLEVUE
CITY COUNCIL

Summary Minutes of Regular Session

June 6, 2011
8:00 p.m.

Council Chamber
Bellevue, Washington

PRESENT: Mayor Davidson, Deputy Mayor Lee, and Councilmembers Balducci, Chelminiak, Degginger, Robertson, and Wallace

ABSENT: None.

1. Call to Order

The meeting was called to order at 8:05 p.m., with Mayor Davidson presiding.

2. Roll Call, Flag Salute

Upon roll call, all Councilmembers were present. Councilmember Robertson led the flag salute.

(a) Proclamation for Mountains to Sound Greenway Summer Kickoff

Mayor Davidson read a proclamation declaring June 18 and 19 as the kickoff to the Mountains to Sound Greenway Summer. He presented the proclamation to Danny Levine, representing the Board of Directors of the Mountains to Sound Greenway Trust.

(b) Proclamation for World Elder Abuse Awareness Day

Mayor Davidson read a proclamation recognizing Friday, June 17, as World Elder Abuse Awareness Day, which was established in 2006 to raise public awareness and action against elder abuse. The proclamation was presented to Cindy Sharek, representing The Bellevue Network on Aging. Ms. Sharek described warning signs of elder abuse and how to seek assistance.

Moving on, Deputy Mayor Lee said he would like to introduce a motion.

→ Deputy Mayor Lee moved to add Agenda Item 2(c), Consideration of a limited waiver of the attorney-client privilege to allow for the presentation by Jeffrey Coopersmith the conclusions of the preliminary report dated May 16, 2011, and the report regarding Councilmember Degginger dated June 5, 2011. Councilmember Robertson seconded the motion.

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

- (c) Consideration of a Limited Waiver of the Attorney-Client Privilege to allow for the Presentation of Conclusions regarding Potential Conflicts of Interest

Mayor Davidson asked staff to describe the implications of the proposed waiver of the attorney-client privilege.

Deputy City Attorney Kate Berens recalled that the City retained Jeffrey Coopersmith to address the issues raised regarding alleged conflicts of interest on the part of Councilmembers. The contract directed Mr. Coopersmith to interview Councilmembers and to provide a preliminary report regarding his determination of the scope of the investigation. The contract created an attorney-client relationship between Mr. Coopersmith and the City. The attorney-client privilege belongs to the client, who has the right to waive the privilege if desired.

Ms. Berens reported that Mr. Coopersmith has provided the City with a preliminary report, as well as a second report regarding Councilmember Degginger. If the Council would like Mr. Coopersmith to provide an oral presentation of the conclusions in the reports, the Council needs to consider a limited waiver of the attorney-client privilege.

→ Councilmember Degginger moved to agree to a limited waiver of the attorney-client privilege associated with the contract for services with Jeffrey Coopersmith for the purpose of allowing the presentation of the conclusions in the Interim Report dated May 16, 2011, and the report regarding Councilmember Degginger dated June 5, 2011, and to allow the public release of copies of these two reports. Councilmember Balducci seconded the motion.

Councilmember Degginger recalled that the Council took a strong position related to the conflict of interest investigation, with the precepts that the findings would be open and transparent. He believes it is appropriate to share the conclusions of Mr. Coopersmith's work, which was funded by Bellevue taxpayers.

→ The motion to agree to a limited waiver of the attorney-client privilege associated with the contract for services with Jeffrey Coopersmith, for the purpose of allowing the presentation of his conclusions, carried by a vote of 7-0.

Mr. Coopersmith reviewed his findings related to allegations of conflicts of interest involving three Councilmembers. He reported that he conducted a preliminary inquiry consisting of interviews and receipt of materials provided by Councilmembers to determine whether any of the allegations warranted further review or investigations. Mr. Coopersmith interviewed six of the seven Councilmembers, and received information about allegations that have been made. These were compiled into an interim report. Findings and conclusions regarding allegations about Councilmember Balducci are included in the Interim Report dated May 16. Allegations about Councilmember Degginger are addressed in the report dated June 5.

Mr. Coopersmith said that the Interim Report addresses allegations made against Councilmember Kevin Wallace. However, that review has not been completed due to the need to gather additional information. Mr. Coopersmith emphasized that, at this point in the investigation, no conclusions have been made as to whether Councilmember Wallace was laboring under a conflict of interest or not. He has been assured of Councilmember Wallace's continued cooperation. Mr. Coopersmith hopes to complete this review expeditiously.

Mr. Coopersmith addressed the allegations against Councilmember Balducci related to her service on the Sound Transit Board. One issue identified as an area of concern was the common law doctrine of incompatible offices. Mr. Coopersmith explained that an existing statute overrides this doctrine. In this case, the statute that created the Sound Transit Board requires that the Board include three elected officials from the Eastside. Therefore, the doctrine of incompatible offices is not applicable.

The second issue related to Councilmember Balducci was the question of whether her membership on the Sound Transit Board ran afoul of any state laws about conflicts of interest. Mr. Coopersmith clarified that the law and standards that apply to conflicts of interest for the City Council are "thin" (i.e., RCW 42.23.030 and RCW 42.23.070, and potentially the appearance of fairness doctrine). In 1989, the Bellevue City Council passed an ordinance adopting two provisions of state code, one of which was repealed by the state legislature in 1994. The remaining provision incorporates the two RCW sections listed here. There is no City Council ethics code other than a reference to state law. Mr. Coopersmith said it was determined that Councilmember Balducci has no conflict of interest under the statutes, and details are provided in the Interim Report.

Mr. Coopersmith said he also looked at whether Councilmember Balducci would need to recuse herself from any discussions on the City Council, including Executive Sessions, related to any litigation that might be contemplated against Sound Transit. In conversations with Ms. Balducci, Mr. Coopersmith said he was informed that she would recuse herself from the Sound Transit Board in the event of any such litigation or discussions about litigation. He understands that Councilmember Balducci intends to formalize her recusal from the Sound Transit Board on those issues, if she has not already done so.

Mr. Coopersmith said that he also looked at whether Councilmember Balducci would need to recuse herself from the Bellevue City Council, and the findings indicate that she would not need to do so. The only state law that could possibly apply is RCW 42.23.070, which requires that a Councilmember not use his or her position to secure special privileges or exemptions for himself/herself or others, and also states that a Councilmember cannot engage in any business or professional activity that the officer might reasonably expect would induce him or her to disclose confidential information acquired by reason of his or her official position. Mr. Coopersmith said that this raised the issue of whether Councilmember Balducci would be required to recuse herself from the City Council on litigation matters, in addition to recusal on the Sound Transit Board. He concluded that she would not. Mr. Coopersmith explained that if she recuses herself from litigation matters before the Sound Transit Board, it is not considered to be a risk that she would be putting herself in a position that could inadvertently disclose confidential information. Mr. Coopersmith said that his review found no conflict of interest for the applicability of the

incompatible offices doctrine with respect to Councilmember Balducci.

Moving to Councilmember Degginger, findings and conclusions related to allegations against him are presented in the report dated June 5. The allegations all related to his status as a shareholder of the law firm of Lane Powell. Mr. Coopersmith reported that the review, based on state law cited above, found no conflict of interest with respect to Councilmember Degginger. The review also looked at the rules of professional conduct governing attorney conduct.

Mr. Coopersmith explained that an allegation was brought to his attention by Deputy Mayor Lee, which was based on certain citizens' complaints that Lane Powell's receipt of substantial legal fees from Sound Transit suggested that Sound Transit was rewarding Lane Powell in some fashion for Councilmember Degginger's actions on the City Council. Mr. Coopersmith said a factual investigation of the way that Sound Transit chooses outside counsel was conducted. This involved interviews with Sound Transit's General Counsel and three staff attorneys. Substantial information about Sound Transit's payments for legal services was obtained through a public disclosure request as well.

The investigation found that Sound Transit's legal department chooses outside counsel through a process that is insulated from the Sound Transit Board and Sound Transit CEO. It was determined that there is no reasonable likelihood that the Sound Transit Board is making decisions about awarding legal work to Lane Powell based on Councilmember Degginger's votes or actions on the City Council. All of Lane Powell's legal fees were commensurate with its status within the community and its level of expertise. In some years, including 2010, the payments from Sound Transit to Lane Powell were a small fraction of Sound Transit's overall budget. In 2010, Lane Powell received \$661,000 in legal fees. However, the firm that received the highest payments from Sound Transit received more than \$4 million.

Mr. Coopersmith said his investigation looked at the types of matters handled by Lane Powell and found that 65 percent of the fees paid by Sound Transit in 2010 related to a matter that originated in 2005. There are no votes or action from Councilmember Degginger in 2005 that would have resulted in Lane Powell receiving that work based on his actions. The current review found no basis to believe that Sound Transit was rewarding or punishing Lane Powell based on Councilmember Degginger's actions.

Continuing, Mr. Coopersmith explained that the review looked at whether Councilmember Degginger was laboring under conflict of interest in 2003, which is a matter raised by Mayor Davidson. Councilmember Degginger represented Sound Transit against Qwest in 2002 and 2003, and there was a concern that this represented a conflict of interest based on certain Council votes and discussions in 2003.

Mr. Coopersmith referred the Council to pages 13 and 14 of the June 5 report, and highlighted a May 27, 2003, discussion concerning Eastside Transit Partnership's formation of a subcommittee. There was an August 4, 2003, Consent Calendar item authorizing the four-party agreement involving Sound Transit. There was a September 15, 2003, discussion concerning the Access Downtown project; an October 6, 2003, discussion concerning a letter from the Seattle Mayor about plans for the I-90 corridor; and a November 17, 2003, vote authorizing a lease with

Sound Transit related to the Bellevue Transit Center. Mr. Coopersmith said he found that none of these actions created any conflict of interest with respect to Councilmember Degginger's votes or actions on the Council in 2003.

With regard to the rules of professional conduct, Mr. Coopersmith said the review found only two rules that potentially applied. Neither rule was found to have any applicability to Councilmember Degginger's current situation, however. Mr. Coopersmith noted that Mr. Degginger's membership on the City Council does not constitute representation of the City of Bellevue; he is not acting as a lawyer, but rather as a public official. This affects the analysis with regard to the rules of professional conduct. Mr. Coopersmith summarized that no conflict of interest was found with regard to Councilmember Degginger.

With regard to Councilmember Wallace, Mr. Coopersmith said he would like to complete that investigation as soon as possible. He feels confident that the review team is getting complete cooperation from Councilmember Wallace in terms of documents, and initial interviews have been conducted.

Mayor Davidson thanked Mr. Coopersmith for his thorough review and report.

Councilmember Degginger added his thanks for the detailed report and presentation. Mr. Degginger cited statements in the report regarding the City Attorney's conclusions that his participation in deliberations involving the Sound Transit East Link project did not violate any laws. Mr. Coopersmith confirmed that the conclusions he reached were the same as the conclusions of the City Attorney.

Mr. Degginger noted a footnote in the report regarding documents pending from Councilmember Wallace. Mr. Coopersmith clarified that he could not make a formal document request of Mr. Wallace until the interim report was completed. The report was completed on May 13, and Mr. Coopersmith then submitted a formal request for documents to Councilmember Wallace's attorney. He was immediately told that he would be provided with all of the requested documents. Mr. Coopersmith said that Mr. Wallace's attorney indicated last week that he would receive the documents this week.

Responding to Councilmember Balducci, Mr. Coopersmith confirmed that he found no violation regarding allegations against Ms. Balducci with regard to the doctrine of incompatible offices and the conflict of interest issue. He said he did not recall the City Attorney opining on the incompatible offices issue. However, he found the City Attorney's analysis to be correct. Mr. Coopersmith noted that his conclusion was based on Ms. Balducci's statements that she would recuse herself from the Sound Transit Board in litigation matters involving the City of Bellevue.

Councilmember Balducci recalled that the City Attorney initiated a peer review of her analysis, which also had cleared Ms. Balducci with regard to any conflicts of interest. She asked the City Manager to provide a report to the public regarding the amount of money that has been spent on all of the legal reviews, including the City Attorney's time.

Deputy Mayor Lee thanked Mr. Coopersmith for his work. Mr. Lee said it is important to provide full disclosure and an investigation of this matter for the public. Deputy Mayor Lee stated that he was not interviewed. However, his name was mentioned in the report as providing Mr. Coopersmith with correspondence from citizens. Mr. Lee noted that this is a serious matter that needs to be studied. However, the only information he had to share were the emails that he forwarded to Mr. Coopersmith.

Deputy Mayor Lee asked about Councilmember Balducci's intent to recuse herself from the Sound Transit Board, but not from the City Council. Mr. Coopersmith explained that he was retained by the City of Bellevue to conduct an analysis of whether there were conflicts of interest for Councilmembers. With respect to Councilmember Balducci's responsibilities to Sound Transit, he did not opine.

With regard to recusal from one board and not the other, Mr. Coopersmith cited RCW 42.23.070, subsections 3 and 4. Subsection 3 states that a municipal officer cannot engage in any business or professional activity that the officer might reasonably expect would induce him or her to disclose confidential information acquired by reason of his or her official position. He believes that, if Councilmember Balducci were to participate in Executive Session discussions with both the City Council and Sound Transit Board about litigation matters between Sound Transit and the City, she would run afoul of that provision. By recusing herself from the Sound Transit Board, Ms. Balducci removes herself from the business or professional activity that one could reasonably expect would induce her to disclose confidential information.

The second provision of the statute addresses whether Councilmember Balducci would disclose confidential information acquired by reason of her official position, or use such information for her personal gain or benefit. Mr. Coopersmith observed that personal gain or benefit is not relevant in this situation. However, with regard to whether she would disclose confidential information that she learned from the Bellevue City Council, by recusing herself on the Sound Transit side, she is not in a position to breach confidentiality. Mr. Coopersmith opined that if Ms. Balducci were to disclose confidential information learned in Executive Session with the City Council to anybody, including someone at Sound Transit, she might violate that statute. However, any Councilmember could run afoul of this statute if he or she does not maintain the confidences related to the position.

Deputy Mayor Lee noted the issue of the appearance of having disclosed confidential information learned in Executive Session, and questioned whether Councilmember Balducci puts herself into a difficult situation in this regard. Mr. Coopersmith said that RCW 42.36, the appearance of fairness doctrine, applies only to quasi-judicial matters, and he believes that it is not applicable in this situation.

Mr. Coopersmith explained that he has tried to confine the analysis to rules and statutes that actually govern the conduct of the City Council. If there are other issues in terms of appearance, they are not reflected in any rule or statute, and the City of Bellevue does not have an ethics code with any sort of appearance rule. It is therefore a decision to be made within the political realm, versus being a matter of law.

Councilmember Balducci stated that Deputy Mayor Lee's concern for the Sound Transit Board is appreciated. She has consulted with the Board about these issues, and has recently verbally notified the Sound Transit CEO, Board, and staff that she will be recusing herself. Ms. Balducci has requested a draft letter from the City Attorney's Office, which she will then submit to Sound Transit.

Regarding Deputy Mayor Lee's last topic with Mr. Coopersmith, Councilmember Balducci said that this is a contentious, difficult issue. All Councilmembers have people with whom they speak and who they represent. Any Councilmember could be tempted to share confidential information learned in Executive Session, and it is incumbent on all Councilmembers to maintain that confidence. In the absence of any evidence that anyone has violated that rule, Ms. Balducci said that no presumptions should be made that any Councilmember has done anything but meet his or her duty.

Deputy Mayor Lee commented that it is important to have clear distinctions and disclosures with regard to City Council discussions. He acknowledged that Councilmember Balducci is in a difficult position, and that he is in a similar position as the Suburban Cities Association's representative to the Regional Transit Committee.

Councilmember Robertson thanked Mr. Coopersmith for his work, and encouraged him to complete the remaining review as quickly as possible. She hopes that this transparent process will reassure the public that all Councilmembers are working in the best interest of its citizens. Ms. Robertson noted multiple references in the report about the Bellevue City Council not having an ethics code, and therefore the review was analyzed based on state law. Upon the resolution of this matter, Ms. Robertson would like the Council to develop an ethics code.

Mayor Davidson questioned whether Councilmember Balducci would recuse herself from a Sound Transit policy board issue that was discussed outside of Executive Session. Councilmember Balducci stated her understanding that there is no need to recuse herself from policy decisions, but only from litigation-related decisions. She reiterated that state law requires that elected officials serve on the Sound Transit Board. If the Bellevue City Council wants to define that as a violation in a future ethics code, Councilmember Balducci opined that it would not be wise for Bellevue to remove itself from participating on the Sound Transit Board or any other regional forum.

Responding to Mayor Davidson, Mr. Coopersmith read from the report: "Councilmember Balducci has informed us that she will recuse herself from all Sound Transit discussions and decisions concerning any potential litigation between the City and Sound Transit, and will formalize that recusal prior to participating in any Council discussions concerning potential litigation with Sound Transit." His understanding is that if an Executive Session of the Sound Transit Board results in a decision about litigation, and the Board takes a related vote in a public session, Ms. Balducci intends to recuse herself from that vote. She would not otherwise be recused from policy decisions on the Sound Transit Board.

Councilmember Wallace said that he has been diligently working on responding to Mr. Coopersmith's request for information.

Councilmember Chelminiak thanked Mr. Coopersmith for the thorough report, which ratifies the City Attorney's determinations and communications to the Council on March 14. He thanked Mr. Coopersmith for addressing allegations against Councilmembers Balducci and Degginger, and for confirming the City Attorney's previous decisions regarding those issues.

Councilmember Chelminiak expressed appreciation for the City Attorney's work, and for her having it peer reviewed in the past. He observed that the Interim Report includes approximately 16 pages related to Councilmember Degginger, approximately six pages related to Councilmember Balducci, a couple of pages dealing with all three Councilmembers, and three paragraphs related to Councilmember Wallace.

Mr. Chelminiak said the review has investigated allegations about two Councilmembers and confirmed previous determinations by the City Attorney. He noted that it has been nearly three months since this issue arose on March 14, and the report contains only three paragraphs on the matter that brought the Council into this discussion. Mr. Chelminiak said he has confidence that Mr. Coopersmith will thoroughly review activities involving Councilmember Wallace, and he is thankful that Mr. Wallace will participate fully.

Councilmember Chelminiak thanked Mayor Davidson for his work on this difficult matter.

3. Communications: Written and Oral

- (a) Hossein Khorram noted that he owns properties in Bellevue and spoke in favor of extending building permits, clearing and grading permits, and utility extension agreements for an additional year. He believes this is in the best interest of the public given the current economy. He submitted an article about the positive impact of construction activity on employment and the overall economy.
- (b) Tom Galasso expressed support for Mr. Khorram's submittal of information. He noted the slowed economy and encouraged the extension of building permits and/or the reclassification of certain projects. He encouraged the City to do whatever it can to preserve and attract construction activity in Bellevue.
- (c) Ronald Bartel, an Enatai resident, described the many changes over the years including the construction of I-90 and Bellevue Way, and increasing road noise and pollution. He expressed concern that Sound Transit will not buy their homes if light rail travels along Bellevue Way, which will increase negative impacts for residents. He noted that a newly proposed route travels across the Mercer Slough and constructs a new parking facility near Enatai homes. Mr. Bartel said that he and an increasing number of residents would rather sell their homes for a new parking facility, especially if doing so would protect the Mercer Slough, Bellevue Way, the Winters House, and property along 112th Avenue. Residents have signed letters, and they hope the City will present their offers to Sound Transit to initiate discussions with each resident about purchasing their properties for a fair and reasonable price. He asked the City to do all it can to fully protect the environment as well.

- (d) Ralph Guditz spoke in favor of the extension of building permits. He expressed concern that his pending building permits, representing nine years worth of effort, will expire irrevocably in 58 days. He noted that construction activity generates sales tax revenue for the City. Mr. Guditz asked the Council to take action on extending permits.
- (e) Jim Horn, former State Senator and Chairman Emeritus of the Eastside Transportation Association, expressed disappointment with the decision of the State Supreme Court related to the use of I-90 for light rail. The Association initiated its petition in July 2009, and the Supreme Court spent five months before accepting jurisdiction of the case. The Court ultimately stepped aside from ruling on the writ of prohibition and constitutionality of light rail on I-90. Senator Horn submitted an article about the impacts on freight transport of using the I-90 center roadway for light rail.
- (f) Will Knedlik, representing Citizens Own Sound Transit (COST), expressed concern about Sound Transit's pressure on the City of Bellevue to identify funding for a light rail tunnel. He observed that the State Supreme Court has indicated that there is no legal authority to use I-90 for this purpose. Mr. Knedlik expressed concern about the significant expenditures on light rail planning. He asked that the City and Sound Transit not spend any more money on the East Link light rail project until the use of the I-90 bridge is resolved. Mr. Knedlik submitted his comments in writing.
- (g) Patrick Bannon, Bellevue Downtown Association (BDA), thanked Mayor Davidson for his welcome remarks at the Bellevue Jazz Festival, and thanked the City for its support of the event. He noted an agenda item regarding the scope of the Downtown Transportation Plan Update, which is funded in the current City budget. Mr. Bannon reiterated the BDA's support for moving forward to update the Downtown Transportation Plan.
- (h) Al Cecil, representing Build a Better Bellevue, introduced himself as a retired structural engineer, and commented on the May 16 report showing the eastward extension of the Sound Transit B7 alternative across I-405. He observed that the elevated structure is not likely feasible and/or is very expensive. He presented an alternative tunnel and retained cut crossing at I-405, and submitted copies of his concept to the Council.
- (i) Gary Ritner, Brookshire Condominiums, noted that 170 families live along the proposed B7 light rail alignment. If the B7 line is built, Mr. Ritner said residents would prefer that Sound Transit buy their properties at a fair price.
- (j) Brian Parks, Vice President of the Phantom Lake Homeowners Association, thanked the Council for considering, on tonight's agenda, an outlet channel restoration grant approval. This would provide needed relief at peak storm events. Mr. Parks said he attended a meeting with Parks and Utilities staff earlier in the day. He noted that the weir would also need lowering to reduce the average lake level and ordinary high water mark. Mr. Parks submitted a handout regarding lake levels, noting that the average lake level is up by approximately one foot. He asked the Council to consider approving funds to adjust the weir in conjunction with the outlet restoration project.

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

5. Report of the City Manager

(a) Management Brief providing update on the Police Defibrillation Program

City Manager Steve Sarkozy opened staff's briefing on the Police defibrillation program, which was previously approved as a one-year trial program.

Dr. Mickey Eisenberg, King County Emergency Services Director, reported on the first year of the program. He noted that sudden cardiac arrest is the leading cause of death among adults in western countries. He explained that every minute of delay from the moment of collapse to a defibrillatory shock decreases the odds of survival by 10 percent.

Dr. Eisenberg reported that Seattle and King County have the highest survival rate from sudden cardiac arrest in the world. He thanked Police Chief Pillo and Fire Chief Eisner for their support, noting that the City of Kent also participates in the program, which places an automated external defibrillator (AED) in every Police vehicle. Over a one-year period, Bellevue and Kent Police were initially dispatched for cardiac arrest response in 64 cases, and arrived before emergency medical personnel in 28 percent of the cases. Dr. Eisenberg thanked the Council for its support of the program.

Mayor Davidson expressed support for the program and thanked everyone for their work.

(b) Management Brief providing update on Downtown Transportation Plan

Transportation Director Goran Sparrman referred the Council to the material provided in the meeting packet on the Downtown Transportation Plan Update funded in the 2011-2012 budget.

Councilmember Robertson expressed support for the process, and said she is pleased to see a robust public engagement plan. She would like to add the Bellevue Chamber of Commerce to the document summarizing the update process. She questioned the lack of any reference to individuals whose first language is not English.

Mr. Sparrman said that the City intends to work with all key stakeholders, including the Bellevue Chamber of Commerce. He acknowledged the increasing immigrant population in the community and said that staff will conduct outreach to all citizens.

Kevin O'Neill, Assistant Director of Transportation, explained that the City follows Title 6 of the Civil Rights Act, and conducts an analysis of the predominant languages spoken within a study area. The Transportation Department has printed project information in as many as five different languages in the past, based on the demographics of specific areas.

Councilmember Robertson reiterated the need to add the Bellevue Chamber of Commerce by name along with the references to the Bellevue Downtown Association. She noted that a group

of Main Street citizens are working to establish a neighborhood association, and she wants to be sure that they are included in the outreach efforts.

Deputy Mayor Lee said that he met with Mr. O'Neill to preview the Downtown Transportation Plan. He echoed Councilmember Robertson's comments about conducting extensive public outreach. He suggested including neighborhood associations and the broader community as well.

Mr. Sparrman confirmed that staff plans to conduct a broad outreach program within and beyond the Downtown.

Councilmember Chelminiak expressed support for staff's public involvement strategy and plan [Pages 5-7 through 5-9 of the meeting packet], and for staff's past outreach to non-English speakers. He concurred with the importance of involving homeowner associations in and near the Downtown. He expressed support for the plan's emphasis on mass transit. Mr. Chelminiak commented that transportation has become a significant issue for the Human Services Commission, and he urged staff to involve the Commission in the planning process. He commented on the importance of the transportation plan for the community's overall quality of life.

Mr. O'Neill noted that the plan references the Transportation Commission and Planning Commission, and he agreed that the process should also involve the Human Services Commission and other Boards and Commissions.

Councilmember Chelminiak said he envisions something more robust than briefings to the Boards and Commissions. He suggested considering an ad hoc group of Commissioners who meet on a regular basis to review planning issues.

Councilmember Wallace requested the report on the projected growth in daily person trips, and Mr. Sparrman said staff will provide the information. Mr. Wallace observed that he does not see guiding principles in the packet materials. He noted the need to analyze the costs and benefits of items that will achieve the goal of reducing congestion. Mr. Wallace questioned what key decisions are needed in order to proceed with a productive plan update process.

→ Councilmember Balducci moved to extend the meeting to 11:00 p.m., and Councilmember Wallace seconded the motion.

→ The motion to extend the meeting carried by a vote of 7-0.

Responding to Councilmember Balducci, Mr. O'Neill explained that the Downtown Transportation Plan update is intended to build on the existing Downtown Implementation Plan, which encompasses transportation, land use, urban design, and community character. The transportation plan will be updated to address changed circumstances, while also being consistent with the overall vision of the DIP. In further response, Mr. O'Neill said Transportation staff is working with Planning and Community Development staff to look at existing development and what has occurred during the past 10 years. Growth projections will be extended to the 2030 horizon as part of the update process.

Councilmember Balducci recalled that the initial 2020 forecasts placed a strong emphasis on achieving certain mode split targets in order to increase transportation capacity within the Downtown. This provided the basis for the Council's strong support of a major high-capacity transit investment in the Downtown.

Ms. Balducci said it would be interesting to determine whether there are interception strategies that would capture trips outside of the Downtown and move them into the Downtown system. The Downtown Circulator discussed in the past would work in this way to some extent, and light rail provides another opportunity to reduce the number of cars entering the Downtown during peak periods.

Ms. Balducci expressed an interest in reviewing work plan items that are not currently funded in the budget. She questioned whether, if the Council were to reprioritize certain items, it would be possible to incorporate some of that work into the update process schedule.

Mr. O'Neill said that the intent of the Downtown Livability Land Use Code work is to stay generally consistent with the floor-area ratios established within the Downtown, but to look at the overall incentive system.

Dan Stroh, Interim Director of Planning and Community Development, explained that staff is working on the Downtown forecast because it is a critical input to the Downtown Transportation Plan update. Downtown growth can be affected to some extent by Land Use Code planning. However, much of the growth is a matter of what Bellevue can absorb within the region. Mr. Stroh said staff's current plan is to bring back the Downtown Livability work as a budget proposal for the next biennium.

Deputy Mayor Lee noted that the 2030 forecast projects gridlock, and he believes that future transportation solutions will involve both land use planning and development incentives.

At 10:00 p.m., Mayor Davidson declared a brief recess. The meeting resumed at 10:06 p.m.

(c) Management Brief regarding South Kirkland Park and Ride

City Manager Steve Sarkozy referred to meeting materials beginning on page 5-11 of the packet regarding the South Kirkland Park and Ride. He noted the draft letter to the Kirkland City Council on page 5-19 of the packet, which staff plans to present to the Kirkland City Council for its meeting on Tuesday.

Councilmember Chelminiak commented that adjacent residents are concerned about construction and other impacts associated with the project. They have been working primarily with the City of Kirkland to address their issues.

Mayor Davison noted a general Council consensus in support of the letter.

(d) Management Brief regarding Recent State Supreme Court Decision on the Use of I-90 Center Roadway

Mr. Sarkozy noted the management brief on page 5-21 of the packet regarding the recent State Supreme Court Decision on the use of the I-90 center roadway for light rail.

Councilmember Balducci addressed comments made during Oral Communications. One citizen testified that the Supreme Court has ruled that there is no authority to cross Lake Washington with light rail. She has read the decision and does not interpret it to be making such a statement.

Mayor Davidson said the item can be brought back for discussion during a future meeting.

Councilmember Robertson requested information regarding the new litigation on this topic.

(e) Management Brief regarding Request for Building Permit Deadline Extension

Mr. Sarkozy noted the management brief beginning on page 5-23 regarding Ralph Guditz' request for a building permit extension. He said the Council has supported extensions in the recent past due to the slowed economy, and he suggested bringing this back to a future meeting.

Councilmember Robertson said there is another major project that would be affected by an extension, which is the Tateuchi Performing Arts Center Eastside. She supports addressing this in the near future.

(f) Management Brief providing update on Phantom Lake

Mr. Sarkozy noted the management brief regarding Phantom Lake in the packet, and the related Consent Calendar item to accept a grant to address residents' concerns. He indicated that the item will come back to the Council.

(g) Management Brief regarding Eastside Pathways

Mr. Sarkozy noted the management brief on page 5-29 of the packet regarding the kick-off meeting for the Eastside Pathways program on June 10.

Patrick Foran, Parks and Community Services Director, described the formation of the Eastside Pathways program by a group of private citizens. The program is focused on responding to the needs related to the community's changing demographics and the complexity of challenges facing families. The program is based on the Collective Impact model, which organizes community service providers, including school districts and the City, to work in a strategic way to maximize the effectiveness of the community's collective resources.

Mr. Foran noted that the program is consistent with the objectives of the existing Wrap Around Services Program. The program is the result of a grassroots effort, and the City is now involved on the core team.

Councilmember Chelminiak said he met with John Stokes, a former Board Member of the Bellevue Schools Foundation and a current Bellevue Parks Board Member, and with Shelley Noble about this program. The concept represents a new way of doing business, and involves supporting and mentoring children from cradle to career. Mr. Chelminiak believes that the program is a good fit for Bellevue, and he noted that strong education benefits the community in a number of ways, including economic development.

Deputy Mayor Lee said he is excited about the program, and he believes that the grassroots effort is promising for the community. He noted that the program addresses, in part, Bellevue's changing demographics, and he wants to be sure that a diverse group of individuals and organizations become involved. Mr. Lee observed that social assimilation is as important as education.

Councilmember Robertson expressed strong support for the program, and noted her conversations with some of the founding members. She said that poverty exists in Bellevue. She has learned that Bellevue does not do a better job than other communities in dealing with children at risk, but it just happens to have fewer of them. Ms. Robertson said that the program follows the Bellevue tradition of proactively addressing issues before they become a more difficult problem. She encouraged Councilmembers to attend the June 10 meeting. Councilmember Robertson noted her ongoing interest in having annual joint meetings with the Bellevue School Board. She suggested a meeting this fall, which will be an opportunity to discuss Eastside Pathways.

Councilmember Balducci noted that a key principle of this approach is continuous communication to develop trust among nonprofits, corporations and government agencies, and to enable them to see that their interests will be treated fairly. She said that this was an important process in the development of the Wrap Around Services Program as well. Ms. Balducci believes that Eastside Pathways will be able to expand upon that program to address, for example, issues of achievement within the school district. She encouraged an emphasis on the whole child, and noted that the Wrap Around Services Program addresses a broad range of needs from dental care to activities before and after school.

City Manager Sarkozy said that staff would like to pull Agenda Item 8(m) from the Consent Calendar.

6. Council Business and New Initiatives

(a) Appointments to Library Board

→ Councilmember Robertson moved to reappoint Chiho Lai and Andrew Peabody to the Library Board. Deputy Mayor Lee seconded the motion.

→ The motion for appointments to the Library Board carried by a vote of 7-0.

7. Approval of the Agenda

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

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

8. Consent Calendar

→ Deputy Mayor Lee moved to approve the Consent Calendar, with the exception of Agenda Item 8(m). Councilmember Robertson seconded the motion.

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

- (a) Minutes of May 2, 2011 Study Session
Minutes of May 2, 2011 Regular Session
Minutes of May 9, 2011 Extended Study Session

- (b) On-Call Educator and Sweeping Services General Services Agreements

Resolution No. 8235 authorizing execution of a General Services Agreement with Action Services Corporation, for on-call educator and sweeping services for a period not to exceed two years with an option to renew for two additional years;

Resolution No. 8236 authorizing execution of a General Services Agreement with Bravo Environmental, for on-call educator and sweeping services for a period not to exceed two years with an option to renew for two additional years;

Resolution No. 8237 authorizing execution of a General Services Agreement with Davidson Macri Sweeping, Inc., for on-call educator and sweeping services for a period not to exceed two years with an option to renew for two additional years; and,

Resolution No. 8238 authorizing execution of a General Services Agreement with Olson Brothers Pro-Vac, for on-call educator and sweeping services for a period not to exceed two years with an option to renew for two additional years.

- (c) On-call Roll-up, Overhead Door Maintenance and Minor Repair Services General Service Agreements

Resolution No. 8239 authorizing execution of a General Services Agreement with Davis Door Service, Inc., for on-call roll up, overhead door maintenance and minor repair services for a period not to exceed two years with an option to renew for two additional years; and,

Resolution No. 8240 authorizing execution of a General Services Agreement with

Specialty Door Service, Inc., for on-call roll up, overhead door maintenance and minor repair services for a period not to exceed two years with an option to renew for two additional years.

(d) On-call Fencing, Gates and Safety Railing Services General Service Agreements

Resolution No. 8241 authorizing execution of a General Services Agreement with All Around Fence Company, for on-call fencing, gates, and safety railing services for a period not to exceed two years with an option to renew for two additional years;

Resolution No. 8242 authorizing execution of a General Services Agreement with Quality Fence Builders, Inc., for on-call fencing, gates, and safety railing services for a period not to exceed two years with an option to renew for two additional years; and,

Resolution No. 8243 authorizing execution of a General Services Agreement with SeaWest Construction, for on-call fencing, gates, and safety railing services for a period not to exceed two years with an option to renew for two additional years

(e) Resolution No. 8244 authorizing execution of a contract with MethodFactory, in an amount not to exceed \$204,600, for the upgrade and ongoing support of the GovMax Budget System.

(f) Ordinance No. 6002 authorizing execution of an Interlocal Agreement with King County authorizing the City of Bellevue Fire Department to conduct annual fire inspections, issue Operational Permits when appropriate and necessary, and work with King County to enforce the International Fire Code in Fire District 14.

(g) Resolution No. 8229 repealing Resolution No. 4803 and establishing a new policy and procedure for naming public parks and parks and recreation facilities.

(h) Motion to award Bid No. 11143 to Milne Electric, Inc., in the amount of \$72,183.72, as the lowest responsible bidder, to complete electrical and lighting improvements for the Wilburton Hill Park Sportsfield Lighting Replacement project.

(i) Ordinance No. 6003 authorizing execution and acceptance of a King Conservation District 2011 Membership Jurisdiction Grant Agreement for a pilot project to remove organic and sediment build-up and vegetate erosion areas in the Phantom Lake outlet channel; amending the 2011-2012 Operating Grants, Donations and Special Reserves Fund to establish a new project and to increase the appropriation by \$60,000; and authorize the expenditures of said grant funds.

(j) On-call Construction Inspection Services Contract

Resolution No. 8245 authorizing execution of an agreement with Jacobs Project Management Co., in an amount not to exceed \$120,000, to provide on-call construction inspection for the 145th Place SE-SE 16th Street to SE 24th Street, SE 22nd Street-145th Place SE to 156th Avenue SE Improvements project, and other 2011 construction projects, as needed, to insure proper construction inspection and management; and,

Resolution No. 8246 authorizing execution of an agreement with WH Pacific, in an amount not to exceed \$76,000, to provide on-call construction inspection for the 102nd Avenue NE Crosswalk and Safety Improvements project, and other 2011 construction projects, as needed, to insure proper construction inspection and management.

- (k) Motion to award Bid No. 11012 for Upper Vasa Creek Check Dam Repair, to Palensky Dozing, Inc., in the amount of \$174,246.47, as the lowest responsible and responsive bidder (CIP Plan No. D-59 and S-32).
- (l) Motion to award Bid No. 11079 for Kelsey Creek 121st Avenue SE Culvert Fish Passage and Stream Channel Improvements, to BCI Contracting, Inc., in the amount of \$509,985.30, as the lowest responsible and responsive bidder (CIP Plan No. D-81).

Item Postponed:

- (m) Resolution No. 8247 authorizing execution of an amendment to the Professional Services Agreement with Hillis Clark Martin & Peterson, to increase the contract amount by \$50,000, for a total contract amount of \$150,000 for legal services.

9. Public Hearings

- (a) Development Agreement Associated with Kelsey Creek Shopping Center

Resolution No. 8248 authorizing execution of a Development Agreement with Kelsey Creek Center, LLC, providing for a proportional adjustment to transportation impact fees for development at Kelsey Creek Shopping Center.

Mr. Sarkozy recalled that the redevelopment of the Kelsey Creek Shopping Center has been under discussion for a number of years.

Deputy City Attorney Kate Berens highlighted the main details of the proposed development agreement with Kelsey Creek Center, LLC, which allows for a proportionate reduction in transportation impact fees, based on the occupancy of the shopping center. The property owner has received land use approval for redevelopment. The development agreement creates an incentive to ensure that redevelopment is completed and tenants are in place by June 2012.

Councilmember Robertson questioned whether the development agreement is a response to an increase in impact fees in January 2010.

Eric Miller, Capital Programming Manager, said the impact fee increased from \$500 per trip to \$2,000 per trip.

Councilmember Balducci questioned her understanding that approving the development agreement would potentially result in a reduction of 20 percent of the entire Capital Investment Program (CIP) assumption with regard to impact fees for the 2011-2012 biennium. Staff confirmed that her understanding is accurate. Ms. Balducci questioned the justification for entering into the development agreement, as well as the implication for other development projects.

Ms. Berens said this presents a policy question for the Council. She recalled that the City and Council have heard concerns from the community over the past several years about the vacancies in the Kelsey Creek Shopping Center.

Councilmember Balducci stated that she is pleased to see the redevelopment project. However, she questioned how the situation will be handled with the next developer who might request a waiver of impact fees.

Ms. Berens said that the City's policy includes the flexibility for this type of development agreement. She noted that the developer has been talking with the City about redevelopment since approximately 2003, well in advance of the Council's most recent adoption of impact fees. Those discussions addressed amendments to the concomitant zoning agreement and other issues that differentiate it from other potential development applications to come before the City.

→ Councilmember Balducci moved to open the Public Hearing, and Deputy Mayor Lee seconded the motion.

→ The motion to open the Public Hearing carried by a vote of 7-0.

The following citizens came forward to testify:

- (1) Jack McCullough, representing Kelsey Creek Center LLC, spoke in favor of the development agreement. He briefly reviewed the history of the site, including negotiations with City staff that began in 2009, before the most recent adjustment to impact fees. He described the development of a site design and plan, noting that they are ready to move forward with construction.
- (2) Nat Franklin said that he is the managing member of Kelsey Creek Center LLC, and he has owned the Center since 1988. He has been working since 1990 to redevelop the site and to negotiate the existing concomitant agreement. Mr. Franklin said that he must have Council support in order to construct the project. He described his work with City staff, particularly since 2009, to find a way to redevelop the site. He noted that all permits have

been granted, and the groundbreaking is scheduled for Thursday, pending Council approval. Mr. Franklin explained that he provided \$580,000 to the City under the concomitant zoning agreement to complete off-site mitigation, and the culvert will be renovated for \$2.5 million. He described transportation improvements to be provided as part of the project, as well as landscaping, street lights, sidewalks, sewer facilities, and a stormwater vault. Mr. Franklin noted on- and off-site costs of approximately \$9 million at this point, before beginning construction. He reviewed the benefits of the project for the community including site improvements, sales tax revenues, and job opportunities.

- Councilmember Degginger moved to close the Public Hearing, and Councilmember Balducci seconded the motion.
- The motion to close the Public Hearing carried by a vote of 7-0.
- Councilmember Balducci moved to approve Resolution No. 8248, and Councilmember Degginger seconded the motion.

Councilmember Balducci said that she visits the shopping center weekly and strongly supports redevelopment. She observed that the testimony by Mr. McCullough and Mr. Franklin provides important background information and justification for the terms of the development agreement. She acknowledged that the project has been many years in the making, and it has involved significant work to determine how to resolve stream-related issues. Councilmember Balducci said she supports the proposed development agreement, and she hopes to see a groundbreaking on Thursday.

Responding to Councilmember Degginger, Mr. Miller said that the impact fee rate of \$500 was in effect from December 2004 until January 2010.

Responding to Councilmember Robertson, Mr. Miller said the current impact fee rate is \$2,000 per PM peak hour trip. This will increase on January 1, 2013, to \$3,000.

Councilmember Robertson said that she is excited about project and has wanted to see redevelopment of the site for some time. She acknowledged the benefits of the project including tax revenues, employment, and a positive impact on property values. She suggested that this is an appropriate time for the Council to review impact fees on a broader basis, in order to stimulate more development and redevelopment projects. She noted that the current impact fees were set during a time of unprecedented development activity.

Responding to Councilmember Wallace, Mr. Miller confirmed that the transportation improvements related to the Kelsey Creek Center project are not in the Transportation Facilities Plan (TFP). Responding to Mr. Wallace, Ms. Berens explained that the Growth Management Act requires transportation impact fees that are roughly proportional to the new trips generated (capacity) by the project. The City has separate authority to require contributions for non-capacity impacts including frontage improvements and SEPA-related traffic mitigation.

Councilmember Wallace reviewed that impact fees were tripled in 2009, and the City moved

from using mobility management areas to a citywide impact fee. He suggested that there is a general problem with the current impact fee schedule. He would like to see the redevelopment of shopping centers. However, he is not willing to support a special arrangement for one project.

→ Deputy Mayor Lee moved to extend the meeting to 11:30 p.m., and Councilmember Robertson seconded the motion.

→ The motion to extend the meeting carried by a vote of 7-0.

Responding to Councilmember Chelminiak, Mike Brennan, Director of Development Services, said that there are always commercial permits pending with the City. While large scale projects are not currently moving through the construction permitting phase, there is currently design review activity for the more significant projects that will occur when the economy begins to recover.

Councilmember Chelminiak observed that the Kelsey Creek Center project is a unique situation, and it involves a specific timeline and commitment regarding the completion of the project and full occupancy. He noted that the community has been wanting redevelopment of the site for some time. He supports moving forward with the development agreement.

Deputy Mayor Lee stated that revitalizing neighborhood shopping centers is important. He said that the applicant provided good background information about the project and his work with City staff. He noted the issue of whether the City's development requirements and related costs are reasonable. Mr. Lee said he will support the motion, and he supports Councilmember Wallace's suggestion to review impact fees. Deputy Mayor Lee concurred with Councilmember Chelminiak, however, that the Kelsey Creek Center project is unique and in need of help.

Responding to Councilmember Robertson, Mr. Miller said that less than \$20,000 in impact fee revenue has been collected in 2011. No impact fee revenues were projected for 2010, but the City did collect \$100,000 in 2010. Councilmember Robertson reiterated that impact fees should be reviewed, and suggested that lower fees might stimulate development. She supports the project, but she wants to review impact fees.

→ The motion to approve Resolution No. 8248 carried by a vote of 5-2, with Councilmembers Robertson and Wallace dissenting.

Mayor Davidson stated that the Council has discussed impact fees a number of times.

Councilmember Robertson noted that impact fees have not been addressed since she has been on the Council, however.

Mayor Davidson agreed to scheduling a future agenda item on impact fees.

10. Land Use: None.

11. Other Ordinances, Resolutions and Motions

- (a) Ordinance No. 6004 authorizing purchase of certain real property from Seattle Children's Hospital pursuant to the City's existing option for Stage 1 of the NE 15th/16th Street Project; directing that the "Option Notice" be provided to Seattle Children's Hospital; authorizing execution of all documents necessary to close on the Option Parcel consistent with the terms of that certain Purchase and Sale and Sale of Real Property dated December 12, 2007 with Seattle Children's Hospital; and establishing an effective date.

City Manager Sarkozy opened discussion regarding the proposed purchase of property from Seattle Children's Hospital related to Stage 1 of the NE 15th/16th Street corridor project.

Max Jacobs, Real Property Manager, recalled that the City previously obtained the option to purchase this parcel as part of an earlier transaction involving property that had been held on behalf of King County cities as a potential jail site. The option period extends from March 2009 to March 2012. The option purchase structure established a fixed price plus annual interest until the closing of the option purchase. The current purchase price is approximately \$3.5 million, which is fully funded in the NE 15th/16th Multi-Modal Corridor project. Mr. Jacobs noted that purchasing the property now advances the project and realizes substantial savings of approximately \$250,000.

Responding to Councilmember Robertson, Rick Logwood, Transportation Department, said that staff is scheduled to provide an update to the Council on the NE 15th/16th Street project next week. Current Capital Investment Program (CIP) funding does not anticipate construction within the 2011-2017 timeframe.

Councilmember Robertson questioned the implications of not exercising the option to purchase this property at all before the 2012 deadline. Ms. Berens said the City has not recently discussed the matter with Seattle Children's Hospital. However, it is possible the Hospital would exercise its put right. In further response, Ms. Berens said the property was appraised in 2007.

Ms. Robertson expressed concern that the agreement did not require an updated appraisal. Ms. Berens said the City was motivated to enter into the agreement with Children's Hospital and also wanted to accomplish and fulfill its obligation to the King County jail cities. In further response, Ms. Berens said the Hospital's put right extends seven years beyond the option period.

Responding to Councilmember Degginger, Mr. Jacobs estimated a purchase price of approximately \$7.3 million if the transaction was delayed until 2019, which is the end of the Hospital's put right period. In further response, Ms. Berens confirmed that the City received its share of proceeds with the original sale of the jail property.

Councilmember Wallace observed that there is no choice but to purchase the property. Otherwise, interest costs will continue to accrue.

Councilmember Balducci recalled that, due to her employment, she recused herself from previous discussions about the sale of the former jail-designated property. She continued to

recuse herself after the sale, in an exercise of caution, because there was a reversion clause that if for some reason the sale was found to have violated the terms, the property could revert to the City of Bellevue, on behalf of King County cities.

Responding to Ms. Balducci, Ms. Berens said that the property would no longer revert to King County. If one of the cities were to use its sale proceeds for an improper use, those proceeds could potentially revert back to the County.

Councilmember Balducci observed that the terms of the deal appear to have been drafted to provide some certainty for the City to purchase the property. Mr. Sarkozy recalled that, at the time of the purchase option agreement, Seattle Children's Hospital was uncertain about the ultimate size of its Bellevue facility. It was possible that the Hospital would need the site.

Responding to Ms. Balducci, Ms. Berens said the purchase was not funded in the 2009 CIP Plan because, although the original purchase and sale agreement was executed in 2007, the transaction did not close until 2009.

Responding to Ms. Balducci, Mr. Logwood said a portion of the property can be utilized for construction staging for the NE 15th Street bridge and structure. The other components that are still under study are the multi-purpose pathway and trail connection, and the potential use by Puget Sound Energy to expand its substation.

Councilmember Degginger recalled that the potential to sell part of the property to PSE was a fairly significant issue at the time of the original agreement. Ms. Berens said PSE still has plans to expand its substation at the site. Mr. Sarkozy noted that this is one of the key substations serving the Downtown, and there is a critical need for expanding that capacity. PSE has discussed being able to serve the Bel-Red corridor from this substation as well.

→ Councilmember Degginger moved to adopt Ordinance No. 6004, and Councilmember Chelminiak seconded the motion.

Councilmember Chelminiak noted the positive outcome of going from a jail to a children's hospital.

→ The motion to adopt Ordinance No. 6004 carried by a vote of 7-0.

12. Unfinished Business: None.

13. Continued Oral Communications: None.

14. New Business

Councilmember Balducci requested that the Council receive more advance notice and information on action items, especially for items that have not been discussed for some time.

15. Executive Session: None.

16. Adjournment

Mayor Davidson declared the meeting adjourned at 11:30 p.m.

Myrna L. Basich, MMC
City Clerk

/kaw