

CITY OF BELLEVUE  
CITY COUNCIL

Summary Minutes of Extended Study Session

April 11, 2011  
6:00 p.m.

Council Conference Room 1E-113  
Bellevue, Washington

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

ABSENT: None.

1. Executive Session

Deputy Mayor Lee called the meeting to order at 6:00 p.m., and declared recess to Executive Session for approximately 30 minutes to discuss one item of potential litigation.

At 6:34 p.m., Deputy Mayor Lee announced that the Executive Session would continue until approximately 7:00 p.m.

The meeting resumed at 7:25 p.m., with Mayor Davidson presiding.

2. Communications: Written and Oral

- (a) Kathy Haggart, President and CEO of the Boys and Girls Clubs of Bellevue, said the 15<sup>th</sup> club in Bellevue will reopen this year in the former Lake Hills Library. She explained that the organization is interested in developing a main Clubhouse in downtown Bellevue on the City-owned Chapin property. She asked the Council to consider a partnership with the Boys and Girls Clubs to build a multi-generational community center providing a wide range of programming. Ms. Haggart submitted her comments in writing.
- (b) Todd Woosley, Hal Woosley Properties, spoke regarding the failed Wilburton Local Improvement District (LID). He reviewed the process to date, noting that some property owners did not receive notification from the City about the proposed LID. He said there was some confusion among property owners about when the 30-day protest period began. However, a sufficient number of protests were filed to defeat the LID. Mr. Woosley said that property owners and businesses are interested in working with the City to identify alternative financing for road projects in the area.

- (c) T.J. Woosley, representing Brierwood Center at 120<sup>th</sup> Avenue NE and NE 12<sup>th</sup> Street, stated that property owners and representatives are willing to work with the City on transportation improvement projects that benefit the community as a whole, while minimizing negative economic and physical impacts. He expressed concern regarding project costs, and stated that there is no need for a bike lane on 120<sup>th</sup> Avenue NE because a bike trail is planned along the BNSF rail corridor. He encouraged the City to embrace broad-based funding for Wilburton and Bel-Red corridor transportation projects.

### 3. Study Session

#### (a) Council Business and New Initiatives

Mayor Davidson said he has concerns that the investigation regarding conflict of interest is not inclusive enough to resolve the whole gamut of issues. He noted that Councilmember Degginger had a contract with Sound Transit from 2002 to 2004, and at the same time, had participated in Council votes on five occasions. Mayor Davidson suggested that the independent investigator look into this issue.

Mayor Davidson next voiced concern regarding the potential issue of incompatible offices related to Councilmember Balducci's service on the Sound Transit Board. He questioned how to handle a situation if the City reaches the point of legal action with Sound Transit. Mayor Davidson suggested expanding the independent investigations to look at these issues. He feels this approach would be healing for the Council and the community.

Deputy Mayor Lee spoke to the importance of public trust and fairness. Sound Transit light rail is a difficult and challenging issue that has divided the community to some extent. He said the Council always engages in debate in the interest of representing the public. Mr. Lee said that all Councilmembers should be open to public scrutiny, and he believes there is nothing to hide. If there is any question at all, he would rather approach it inclusively instead of singling out individuals.

Councilmember Chelminiak stated that the public and the Council, with the exception of two Councilmembers, had not seen the proposed scope of work for the consultant prior to a few minutes ago. He congratulated the Mayor for putting together a good scope of work. It points out that if new issues come to light regarding any Councilmember, the fact finder could take a look at them.

Mr. Chelminiak observed that Councilmembers have typically been straightforward about discussing potential conflicts of interest with the City Attorney. However, that did not happen in one case. The fact that it did not happen, and that it goes back months, raises a question about what happened. The City Attorney, who would have normally done what is outlined in the scope of work, indicates that she feels it necessary to have an independent party conduct the fact finding.

When the issue regarding Councilmember Wallace became public, Mr. Chelminiak said he received a phone call from a reporter asking him whether he favored an independent investigation. At that time, his answer was no because he wanted the City Attorney to do what is appropriate in her role as the Council's legal professional. He later received a phone call from the City Attorney, who informed him that she and the City Manager are recommending an independent review. Councilmember Chelminiak said he supports the City Attorney's recommendation.

With regard to Councilmembers Balducci and Degginger, Mr. Chelminiak said we know what they do. Mr. Degginger has been an attorney at his firm for a number of years, and has been open about his firm's involvement with Sound Transit. Mr. Chelminiak observed that Mr. Degginger's involvement with Sound Transit occurred eight years ago, and he questioned what the remedy would be if any issue was found to exist. Mr. Chelminiak stated that Councilmember Balducci's issues have been answered. There is potentially a future issue, and that can be addressed by the City Attorney. If the City Attorney wants extra help on that legal question, she can seek outside counsel. Mr. Chelminiak noted that the City Attorney solicited a peer review of her legal determination, which was supported as appropriate.

Councilmember Chelminiak said he prefers to proceed with the scope of work as drafted. He noted the one issue of nondisclosure related to Councilmember Wallace and GNP Railway, which is why he feels that an independent investigator is appropriate. Councilmember Chelminiak expressed support for moving forward with an independent investigation of this new matter regarding conflict of interest. He discouraged spending a lot of taxpayer money on investigating other allegations that have already been well vetted.

Councilmember Robertson said there has been a great deal of ugliness and allegations, and she feels the allegations will not end until there is a final, full and open review of all of the issues. She is not familiar with the votes that Mayor Davidson is referring to with regard to Councilmember Degginger. However, what she would like to get out of this is for the public to have the assurance that everyone on the City Council is working in the public's interest. She believes this to be true, and wants the public to have the same assurance. Ms. Robertson believes this can be achieved only through an independent review of all of the allegations. As the scope of work is developed, she suggested a parallel work item to draft an ethics code containing a specific procedure for how to handle similar allegations in the future. She said the scope of work needs to be inclusive and targeted to very specific allegations.

Mayor Davidson clarified that he was not saying that his research indicated that Councilmember Degginger had a conflict of interest. However, there were several times that he voted, and he wants to have the independent investigator take a look at that.

Councilmember Robertson requested clarification about Mayor Davidson's comments. He responded that, in reading a report from the City Attorney, Mr. Degginger represented Sound Transit some years ago from 2002 to 2004 in litigation with Qwest Communications. Mayor Davidson said he then went back and reviewed Council minutes and identified certain votes. He stated he was drawing no conclusions, only asking for an independent review.

Councilmember Degginger said he wished Mayor Davidson had called him before tonight's meeting. He noted that the Mayor's research did not include a phone call to him. Mr. Degginger said he has no problem with anyone reviewing anything. He has demonstrated a consistent policy of conferring with the City Attorney about his legal representation, and believes he did then as well. Mr. Degginger clarified that the Sound Transit matter was concluded in 2003. He supports a full review of any and all issues, including a review of work involving William Popp.

Councilmember Balducci questioned, given the interest in reviewing issues back to 2003, should past appointments to the Sound Transit Board be investigated as well? She observed that if being appointed to a regional board is potentially something that requires outside paid attorneys to investigate, should the investigation go back and look at every person who has ever served on the Sound Transit Board?

Councilmember Degginger concurred that Councilmember Balducci makes a good point. He opined that going back eight years looks fairly desperate and extremely political.

Councilmember Balducci stated that six Councilmembers have spoken, and the only individuals who have been named as the subject of the investigation are her and Councilmember Degginger. Does the proposed scope of the investigation pertain only to these two Councilmembers?

Councilmember Balducci said she hears what is being said about having a full and open disclosure. She believes there are citizens whose judgments about Councilmembers are based upon a Councilmember's position on substantive issues. In order to truly address concerns that have been raised, Ms. Balducci suggests looking at true conflicts of interest. This means a situation in which a Councilmember is going to benefit, potentially financially, from the selected light rail alignment. The issue is whether anybody has any financial interest that might cause them to have a vested interest in the outcome of the light rail alignment.

Ms. Balducci noted that this is the time of year in which elected officials file their public disclosure forms. She suggests reviewing those disclosures for all Councilmembers in order to address the issue of financial interest.

Responding to Deputy Mayor Lee, Mayor Davidson said he believes an inclusive investigation is necessary in order to clear the air and move forward. He does not like people adding a political agenda to the matter. Deputy Mayor Lee said the scope of the investigation should be more inclusive.

Councilmember Wallace said he welcomes the review of the matters that have been raised against him. He is confident it will show that he has not done anything wrong. He believes the community is not interested in specific individuals, but in knowing that the Council as a whole takes its responsibility seriously. He is looking for a fair and equitable review of the issues that have been raised. Aside from the issues that have been raised in *The Seattle Times* about him, Mr. Wallace said a number of issues have been raised about other Councilmembers. He believes that addressing all of the allegations will alleviate concerns about whether the issues are political.

Councilmember Chelminiak noted that paragraph 4 of the proposed scope of work appears to be consistent with what Mr. Wallace is saying. It indicates that the investigator will be able to speak to all Councilmembers and to ultimately make recommendations as to whether any issues need to be looked at.

→ Councilmember Chelminiak moved to adopt the proposed scope of work, and Councilmember Balducci seconded the motion.

Councilmember Robertson said she did not expect the Council to take action tonight. She is opposed to the motion. While she is not opposed to paragraph 4, Ms. Robertson said there needs to be something like paragraph 3 listing each individual who has been the subject of allegations, and the specific allegations that will be investigated. The same depth of analysis needs to be conducted for all of the allegations.

Deputy Mayor Lee said he will not support the motion. He stated that items in paragraph 3 have not been discussed by the City Council. Mr. Lee said that the Council needs to agree on which charges are to be investigated.

Councilmember Wallace said the scope of work has not been released to the public. He clarified that his previous comments about fair and equitable meant that questions raised about Councilmembers Balducci and Degginger should be investigated along with the allegations against him. He suggested an analysis of whether the past conflict of interest memos issued by the City Attorney apply the same standard that is contemplated in the scope of the independent investigation. Mr. Wallace said that all of the questions raised need to be vetted by the same standard. He could support the motion if the scope of work addresses Councilmembers Balducci and Degginger in the same manner that it addresses him.

Councilmember Balducci questioned whether Councilmembers named in the scope of work can vote.

Councilmember Robertson said the Council should not be voting on this tonight, and that only two Councilmembers saw the scope of work before 6:30 p.m. tonight. She noted that Council action was not scheduled for this meeting.

City Attorney Lori Riordan said she is concerned about having the Council vote on the motion as a whole, due to the fact that Councilmembers specifically named in the scope of work would be voting on whether or not they should be investigated. The law in Washington has a long history related to the question of when a Councilmember should recuse himself or herself. She cited a standard articulated in 1913 that no man should judge his own case.

Ms. Riordan suggested splitting the motion into separate motions for each scope of work. In this approach, the Councilmember named as a subject of investigation would recuse himself or herself. Responding to Councilmember Wallace, she said the current scope of work names one individual.

Councilmember Chelminiak shared that he was speaking today with a longtime resident about a matter involving a private nonprofit organization in the community. The individual commented that he had not seen a Bellevue City Council this dysfunctional since 1976. Mr. Chelminiak said that that hit him hard. He noted that the allegations about Councilmember Wallace surfaced within the past month. The allegations about Councilmembers Balducci and Degginger occurred many months ago.

Mr. Chelminiak read from the scope of work: “The City may additionally request review of questions regarding whether conflicts of interest exist for any Councilmember under applicable state and local law. Determination of where such additional review is warranted will be made upon conclusion of consultant’s interviews with Councilmembers, and may be undertaken by the consultant only if directed by the City.” He believes this provides the opportunity to move forward, and to address a serious issue that has been raised. Allegations about Councilmembers Balducci and Degginger have been extensively studied, and some people do not like the answer. Mr. Chelminiak acknowledged that the matter was not scheduled for Council action tonight. However, he believes it is time to move forward. He urged a “yes” vote.

Councilmember Wallace said that the issue that would get to a point of fairness relates to paragraph 3.

Mr. Wallace proposed a friendly amendment, noting that the language in paragraph 3 states: “Considering applicable provisions of state and local law, analyze whether any contracts voted on by Councilmember Wallace as a member of the Bellevue City Council or any other action taken by Councilmember Wallace as a member of the Bellevue City Council represent a conflict of interest. This analysis should be based on information gathered by conducting interviews and reviewing documents related to Councilmember Wallace’s private interests.”

Councilmember Wallace said it would be reasonable, and get the Council to the point where it appears fair to all concerned, to add the names of Councilmember Balducci and Councilmember Degginger after the three references to his name in the language cited above.

Councilmember Robertson seconded the friendly amendment.

Councilmember Balducci raised a point of order. If a Councilmember cannot vote on matters involving himself or herself, can an individual who is a subject to the investigation make motions involving himself or herself?

Mayor Davidson said he would entertain a motion to table the whole subject until all of these issues are resolved. He did not rule on the point of order, and Deputy Mayor Lee stated he would make a substitute motion.

→ Deputy Mayor Lee made a substitute motion to amend paragraph 3 of the independent investigator’s scope of work as follows:

“Considering applicable provisions of state and local law, analyze whether any contracts voted on by Councilmember Balducci, Councilmember Degginger, and Councilmember Wallace as a member of the Bellevue City Council or any other action taken by Councilmember Balducci, Councilmember Degginger, and Councilmember Wallace as a member of the Bellevue City Council represent a conflict of interest. This analysis should be based on information gathered by conducting interviews and reviewing documents related to Councilmember Balducci’s, Councilmember Degginger’s, and Councilmember Wallace’s private interests.”

Councilmember Robertson seconded the substitute motion.

Mayor Davidson reiterated that he would prefer a motion to table the matter.

Responding to Councilmember Degginger regarding the status of the motions if tabled, City Clerk Myrna Basich said the Council would have to direct taking the issue off the table.

Councilmember Robertson questioned whether the substitute motion is actually an amendment to Councilmember Chelminiak’s main motion.

There was discussion related to the nature of Mr. Lee’s motion.

Councilmember Chelminiak observed that if the Council votes, it is voting on the entirety of the document. His main motion was to adopt the scope of work. If Mr. Lee’s motion is considered a substitute for the main motion, and the motion passes, there is no more voting.

Ms. Basich said that, in conferring with the Deputy City Clerk, a substitute motion is in order and can be stated as such.

Councilmember Robertson questioned whether Councilmembers Balducci, Degginger, and Wallace will be voting on the substitute motion.

City Attorney Riordan reiterated that is it inadvisable for these individuals to vote on whether or not they are to be investigated.

Councilmember Balducci said she will not vote on whether she is being investigated or not.

Responding to Councilmember Degginger, Mayor Davidson clarified that what is before the Council is the substitute motion mentioning three Councilmembers.

Councilmember Degginger observed that it is sad that the Council has gotten into this conundrum, and it probably could have been avoided by an earlier consultation. The Council knows what the community is asking to have investigated, yet is attempting to dilute it, avoid it, or change it. Mr. Degginger is concerned that this will reflect poorly on the Council in the eyes of the community. It might satisfy some political agendas, but it does not represent the day lighting that is requested. He is concerned that it reflects diversion, politics, and hypocrisy.

Councilmember Degginger said this Council has a long history of accomplishing good things for the community. The Council is now spending hours on this issue, and has not even gotten to the evening's agenda at this point.

Councilmember Chelminiak noted that if the substitute motion is adopted, the focus of the inquiry is still the use and development of the BNSF right-of-way. He does not believe that Councilmembers Balducci or Degginger have been involved with the GNP right-of-way or Wallace Properties.

Deputy Mayor Lee disagreed with Councilmember Chelminiak's overview of his substitute motion.

Mayor Davidson again asked for a motion to table.

With the Mayor's permission, Councilmember Degginger asked the City Attorney what would happen if the scope of work had all of the Councilmembers' names. Could the Council vote?

Ms. Riordan said this is precisely why this type of matter is typically undertaken by the City Attorney, whose job is to advise the Council. This is her work on a day-to-day basis, and it is within her authority to negotiate and execute a contract for the independent analysis. Under that authority, it helps to alleviate the concern that Councilmembers are voting to decide whether they should be included in a review.

Ms. Riordan said she does not view this particular agreement as an investigative scope of work, in the sense that it is going to lead to pressing charges or anything of that nature. It is going to inform her legal advice to the Council on whether there is any reason to be concerned about past votes, and help her to advise the Council on how to proceed in the future with regard to allegations about conflicts of interest. If the scope of work referenced no Councilmembers and instead stated a general purpose to review conflicts of interest, she would be less concerned. However, if the scope of work names particular individuals, they need to recuse themselves from voting.

Councilmember Degginger questioned whether, if Deputy Mayor Lee's motion refers to multiple individuals, it would be appropriate to let the City Attorney do her job. If she feels she needs extra help with the contract, Mr. Degginger said he has no problem authorizing her to do so. He observed that the rest of the matter is a political exercise.

→ Councilmember Degginger proposed a second substitute motion to authorize the City Attorney to retain outside counsel if she believes it is necessary to assist her in investigating any allegations of conflict of interest regarding members of the City Council. Councilmember Chelminiak seconded the motion.

Councilmember Robertson reiterated her position that the Council should not take action tonight. She believes that the discussion is not productive. She is hearing that three or four

Councilmembers want a full, open, day lighted process, but the conversation is not resolving the matter.

Ms. Robertson asked the Mayor to advise the Council about what it is doing, and he again made the suggestion to table the motion.

- Councilmember Robertson moved to table the issue, and Deputy Mayor Lee seconded the motion.
- The motion to table carried by a vote of 4-3, with Councilmembers Balducci, Chelminiak, and Degginger opposed.

(b) Management Brief Providing an Update on Wilburton LID Process

Councilmember Degginger recused himself from participating in this matter, as he has done throughout the LID process. He noted that his law firm represents Home Depot, a party affected by the Wilburton LID.

Councilmember Balducci said the Council received a stack of letters from parties protesting the LID. One was from Lane Powell, Mr. Degginger's firm, and another was from Wallace Properties, Mr. Wallace's firm. She wondered whether there is an issue that needs to be resolved before further discussion.

Councilmember Wallace said there is a conflict of interest memo that he believes has been disclosed, which concludes that he has no conflict of interest.

Ms. Balducci said this was new information for her, and she has not seen the memo. She observed that the situations with Councilmembers Degginger and Wallace appear the same to her.

City Attorney Lori Riordan explained that the decision to form an LID is a legislative act, and that type of question is analyzed under RCW 42.23.070, the prohibited acts section. The issue does not involve a contract between the City and Wallace Properties. Ms. Riordan said that her legal analysis of the question, based on the facts she was given, is that there is not a conflict of interest for Mr. Wallace participating in the formation. That legal opinion was one that she released to *The Seattle Times*, with Councilmember Wallace's authorization. However, the opinion has not been reviewed by outside counsel. It was addressed after last October's discussion about conflicts of interest.

Moving on, City Manager Sarkozy made opening comments related to the Wilburton LID process. Protests to the LID formation were received from approximately 70 percent of the affected properties, which exceeds the required threshold of 60 percent needed to block the LID. The City is in the process of reviewing and validating the protests, and staff will come back to present its analysis along with alternatives for consideration.

Eric Miller, Transportation Capital Programming Manager, was present to respond to questions from the Council.

Responding to Mayor Davidson, Mr. Miller said it is possible to reevaluate which improvements would be included within a different LID, and what the boundaries would be.

Councilmember Robertson noted comments from some of the protest property owners about the timing of the LID protest period. She noted that she reviewed the materials given to the Council in the past, and all stated that the ordinance would take effect five days after passage and publication. She said she could understand how some of the property owners would then think they had those five days, plus the 30-day protest period. However, the reading from the City Attorney's Office by Monica Buck, Assistant City Attorney, is that the protest period began with passage of the ordinance. Ms. Robertson suggested that if any LIDs are formed in the future, the City should be clear about when the protest period begins and closes.

Ms. Robertson said there were also comments by some property owners that they were not notified about the LID. She said that future LID processes must ensure that all property owners are notified. She noted that many of the properties are not owner occupied, which could present a challenge for ensuring that the appropriate individual is notified.

Deputy Mayor Lee recalled that he was the only Councilmember who voted against the LID. He questioned how the funding will be replaced to complete the transportation projects.

Mr. Sarkozy said money has not been allocated to proceed with the NE 4<sup>th</sup> Street/120<sup>th</sup> Avenue NE project. Staff will present options for the Council to consider, including putting a hold on the project.

Councilmember Wallace suggested that the costs and technical complexities of forming an LID are what led past Councils to not pursue LIDs, based on the City's past experiences. He believes that a better approach would have been to have conversations with property owners in advance to gain some sense of how it would go. There were major players in the LID who comprised more than 40 percent of the affected property owners, including Bellevue School District, Home Depot, Best Buy, TRF, and K&G.

In looking at the Mobility and Infrastructure Initiative financing plan going forward, Mr. Wallace suggested that the City go out into some of the areas that are contemplated for projects, and try to come up with some cost estimates first before spending a lot of money and time to consider an LID. He questioned whether anyone other than the Spring District wants an LID on their property to cover the NE 15<sup>th</sup>/16<sup>th</sup> project and the rest of the MII Plan. If not, the City has an even larger budget gap than it did when the recession began.

Mr. Wallace said there are unanswered questions and significant project costs that have not been discussed. For example, there have been no discussions about the funding source for Phase 2 of the NE 15<sup>th</sup>/16<sup>th</sup> project. Property tax revenues contained within the original MII finance plan have been eliminated, and impact fees are not coming in as anticipated.

Mr. Wallace questioned whether there are realistic funding sources in a post-recession era, and noted that conditions have changed greatly since the MII plan was adopted. He would like to see the light rail tunnel added to that discussion, as that is the other major funding challenge.

Councilmember Balducci said she is not sure whether any direction is needed from the Council tonight, because the LID protest outcome has a legal effect. She acknowledged that the extent of the protest participation indicates that the LID is not a realistic option for the future.

In terms of next steps, Ms. Balducci suggested that the Council go back to the basic principles of the MII plan. The basis of the initiative is that there are major capacity projects needed within the community, and, if these are funded in the traditional manner of funding transportation projects, it would consume the entire Capital Investment Program (CIP) budget. The Council therefore developed a separate package containing high-capacity, expensive, and important projects. Ms. Balducci suggested that the Council revisit the appropriate balancing of transportation needs versus other needs within the community.

Ms. Balducci noted that the recession provides favorable construction costs. She suggested going back to the MII and reviewing the process and priorities. She questioned the status of grants involved in the MII plan.

Mr. Miller said the \$2.6 million grant for the 120<sup>th</sup> Avenue NE Stage 1 project is in a past due status now. The City is not past due on the \$2.3 million NE 4<sup>th</sup> Street grants until June 1, 2011. There is an additional \$3.3 million that is unsecured for the project. There is typically a one-year grace period to spend the money. However, those dates are approaching for the 120<sup>th</sup> Avenue NE project in less than a year.

Councilmember Balducci suggested wrapping up discussion on the LID, and then discussing the larger budget issues with Councilmember Degginger at the table.

Deputy Mayor Lee said it is good to see Councilmembers Balducci and Wallace talking about the MII plan, because a number of Councilmembers are pushing for a long-term financing plan to meet the City's needs. With the changes in the economy, the Council needs to focus on funding constraints. Mr. Lee said it is important to have the community involved in developing a vision of what Bellevue needs to be in 10 to 20 years, and in discussing how to fund that vision.

Councilmember Chelminiak observed that perhaps this has been a good example of how not to do an LID. Property owners did not see a significant advantage for them. With regard to grant funding, Mr. Chelminiak said that allowing grant funding to guide the City about when to complete projects is dangerous. With regard to the LID, he suggested that there is a perception that the road projects will be completed anyway from general taxpayer dollars, so why would anyone vote to pay LID assessments? Mr. Chelminiak acknowledged that it would be difficult to forego a state or federal grant. However, it might be necessary depending on the City's priorities and other funding sources.

Councilmember Robertson recalled that, the previous week, Council was presented with the alternatives for the NE 4<sup>th</sup> Street extension project. The Preferred Alternative and Option 1 are much less expensive than the original project budget. What is the actual budget shortfall at this point?

Mr. Miller noted that those are preliminary cost estimates. The adopted budget includes \$10.2 million from the LID, and the second part of the grant for NE 4<sup>th</sup> Street is not secured. The project is at the top of the Puget Sound Regional Council's contingency list. The adopted budget has a shortfall of \$13.5 million. The preliminary cost estimate for the preferred alternative is approximately \$7 million lower than the adopted budget.

Councilmember Robertson said that NE 4<sup>th</sup> Street is an important project, and she wants to keep moving forward regardless of the failed LID. She recalled that there is a \$25 million Council Contingency fund in the capital budget that the Council can draw from. She concurred with the comments by Councilmember Balducci and Councilmember Wallace about reviewing the MII finance plan and putting that into a realistic context.

Councilmember Robertson noted a letter received from a lawyer last week asserting that the City has a SEPA problem with the NE 4<sup>th</sup> Street project.

Mr. Miller said he is not familiar with the letter and cannot speak to that issue.

Ms. Robertson requested a response from staff on this issue.

Councilmember Wallace repeated Ms. Balducci's suggestion that the Council keep its comments to the LID and resume the broader policy and financing discussion during a future meeting with Councilmember Degginger present.

Mayor Davidson said he is looking for staff to come back with options before the Council starts solving the problem. There are a number of issues to discuss including federal grant funding and/or another LID, impact fees, and alternative financing sources.

Councilmember Wallace stated that Councilmembers appear to agree that the NE 4<sup>th</sup> Street project is a top priority. He suggested using the Council Contingency to fund the budget gap until another solution is identified.

Councilmembers concurred on Councilmember Degginger's rejoining the meeting.

City Manager Sarkozy said staff plans to bring this topic back next week.

Councilmember Balducci requested that staff develop a range of options for funding, timing, process, and any other key considerations.

Councilmember Degginger rejoined the meeting.

Councilmember Chelminiak recalled that NE 4<sup>th</sup> Street was identified as an important project for both the Bel-Red corridor and the Downtown. He believes that NE 2<sup>nd</sup> Street is an important project as well. He said if connecting to the Bel-Red corridor is removed from the MII plan, the Council needs to reconsider Downtown projects that have been deferred, as well as neighborhood projects and other priorities. The City should also be prepared to put some funding forward for the downtown transit tunnel.

Mayor Davidson indicated to Mr. Degginger that the discussion went beyond the LID issue. He reiterated that staff will bring back options for future consideration.

At 9:07 p.m., Mayor Davidson called for a five-minute recess.

The meeting reconvened at 9:20 p.m.

(c) Boys and Girls Club of Bellevue Request to Construct a Community Center on the City-Owned Chapin Property

Patrick Foran, Parks and Community Services Director, provided an overview of the Boys and Girls Clubs of Bellevue, which currently operates 14 sites in Bellevue. This includes programs at seven schools and three public housing sites. He noted the organization's recent acquisition of the old Lake Hills Library building, which is next door to the Project Learn program at the Lake Hills Clubhouse. He described the Boys and Girls Clubs of Bellevue's vision for a flagship facility in the Downtown. The organization was originally interested in partnering with the City to develop a facility in Surrey Downs Park. However, given a number of uncertainties related to that location, the City-owned Chapin site was identified as a possibility.

The Chapin property contains 4.26 acres and is zoned R-4, which allows community centers as a conditional use. It was acquired by the City in 1986 using 1984 voter-approved general obligation bonds. Mr. Foran reviewed pertinent land use regulations, Park and Open Space Plan policies, and Comprehensive Plan policies. He said the bonds have been repaid, and it appears that the City could sell or lease the property. The Chapin deed does not limit the use of the property.

Mr. Foran provided examples of similar agreements including past ground lease agreements with the Kinderling Center and Youth Eastside Services, a 2003 joint operating agreement with the Boys and Girls Clubs of Bellevue at the South Bellevue Community Center, and a 2004 agreement with the Pacific Science Center with regard to the Mercer Slough Environmental Education Center.

Councilmember Robertson noted that she met with Mr. Foran before the meeting about this project because she is the Council liaison to the Parks and Community Services Board. She strongly supports partnering with the Boys and Girls Clubs of Bellevue. She suggested soliciting input from the public and the Parks Board regarding the proposal. She is in favor of considering all options and exploring the proposal further. She noted the goal in the Park and Open Space

Plan to have one community recreation center for every 25,000 residents, equitably distributed throughout Bellevue.

Mr. Foran said there are currently four full-service community centers. The current population indicates that the City is needing a fifth center. The Downtown Implementation Plan has included plans for a community center for some time. There is no multi-service community center on the west side of Bellevue, and the Chapin site is well located to serve north, west and southwest Bellevue. Recreation and program space is at a premium within the community, especially on the west side.

Ms. Robertson believes there is a need to add a community center. She noted that the City will be going through the Ashwood Park master planning process next year. She suggested addressing the need for a community center along with that process.

Deputy Mayor Lee said the Boys and Girls Clubs are a great community asset. He praised the technology-focused program at the Lake Hills Clubhouse. He supports the consideration of a partnership involving the Chapin site. However, he wants to ensure that both parties receive a fair deal in any arrangement.

Mr. Foran said staff envisions developing a framework for the transaction which would be discussed with the Council to obtain specific direction.

Councilmember Balducci noted that the examples of similar arrangements demonstrate innovative agreements that have provided significant benefit for Bellevue citizens. She feels that the City should start with the vision that this is a positive opportunity to partner with an organization. She concurred with other Councilmembers' comments about exploring all of the legal and financial implications. She suggested looking into the potential for a similar arrangement with SPLASH.

Councilmember Chelminiak believes that this can be achieved in spite of the recession. He lives in West Bellevue, and he understands the need for facilities in that growing area. He feels this is a great opportunity for both the City and the Boys and Girls Clubs of Bellevue. He suggested that the current Boys and Girls Clubs property near Downtown Park could tie into the Meydenbauer Bay Park Plan. Mr. Chelminiak said it is important to involve neighbors of the Chapin property in the discussion. He noted past discussions about using the site as a fire station as well.

Councilmember Degginger said the proposal presents an interesting opportunity. He concurred with the need to involve the community early in the process.

Mayor Davidson agreed with his colleague's comments, noting that the land use zoning allows community centers as a conditional use, which he believes involves the quasi-judicial process for the City Council. Amendments to the Comprehensive Plan do not involve quasi-judicial issues. Dr. Davidson said the project will create traffic. However, the Boys and Girls Clubs of Bellevue have been great partners in the past.

Councilmember Wallace said there is clearly a need for a new Boys and Girls Clubs facility in or near Downtown Bellevue. As with any development, the City would be looking at applicable codes and engaging the community in the planning process. He sees potential in the option for a land exchange given the current Clubhouse near Downtown Park.

Mayor Davidson noted general Council support for moving forward to consider the proposal.

(d) Briefing on Energy Service Company Performance Contracting Options

Frank Pinney, Civic Services Facilities Manager, described the performance based energy services contracting method, which is designed to enhance the energy and cost efficiency of facilities. Washington state law allows municipalities to enter into this type of contract following a competitive selection process. With this type of agreement, a maximum cost and minimal energy savings is guaranteed by the contractor, and the projects pay for themselves with the energy savings. Qualified energy service companies (ESCOs) design, install and verify the savings.

Deputy Mayor Lee observed that the savings appear to actually be payments from other parties (i.e., Federal energy grants and Puget Sound Energy utility incentives).

Mr. Pinney said a grant for energy conservation projects has already been received but has not been allocated. It will be allocated to this project. The PSE incentive is based on the long-term savings that the projects will generate. Emma Johnson, Facilities Resource Conservation Manager, said additional energy savings of approximately \$80,000 will accrue directly to the City.

Mr. Lee said he would like to see more information on these details.

Mr. Pinney said the company involved with the contract guarantees savings. If cost savings are not achieved, the contractor owes that amount to the City.

Responding to Councilmember Degginger, Mr. Pinney said the guarantee period goes through the four-year payback timeframe. When the project is paid for with the savings, the guarantee period ends and the City continues to benefit from the savings. Ms. Johnson said the company will measure and verify the savings.

Responding to Councilmember Robertson, Mr. Pinney said the \$90,000 federal grant could be used for a different project. He said the estimated project cost of \$290,000 is in the Facilities Fund budget. Ms. Robertson asked why the City should initiate this project now, instead of next year or the year after. Mr. Pinney said that the savings provide money to be used for other purposes.

Responding to Ms. Robertson, Ms. Johnson said the City would receive the PSE utility incentive funds in the first two years of the program.

Mr. Pinney said the City is negotiating with the contractor, and it will be another two to four weeks before staff brings back a motion for Council consideration of the contract language. The project would start shortly after approval by the Council.

Councilmember Wallace questioned the provision that the contractor would guarantee the cost. If that is the case, he would think that the contractor would want a contingency to cover potential losses. It might be better to have them not guarantee the costs, and to have the City inspecting the work and controlling its own energy usage.

Ms. Johnson said the contract includes a five percent contingency for the guaranteed maximum cost. If the contractor spends less than that, the City does not pay more. The contract is based on open book pricing. For a given project (i.e., lighting upgrades), the contractor will quote a cost and the guaranteed savings from the project.

Councilmember Balducci acknowledged that the proposal fits into the City's Environmental Stewardship Initiative. When the contract is presented for Council action, Ms. Balducci said it would be helpful to see the specific plan and full financial details.

Deputy Mayor Lee expressed support for the goal of saving energy and streamlining costs. Responding to Mr. Lee, Ms. Johnson said the cost to the City is \$290,000. Each year the program saves the City \$80,000, which is used to pay the contractor for the project.

Mayor Davidson asked the Council to extend the meeting for Executive Session.

- Councilmember Robertson move to extend the meeting for 30 minutes, and Councilmember Balducci seconded the motion.
- The motion carried by a vote of 7-0.

#### 4. Executive Session

At 10:02 p.m., Mayor Davidson declared recess to Executive Session for up to 30 minutes to discuss one item of potential litigation.

The Executive Session concluded at 10:10 p.m., and the meeting was adjourned.

Myrna L. Basich, MMC  
City Clerk

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