

CITY OF SHORELINE

**SHORELINE CITY COUNCIL
SUMMARY MINUTES OF BUSINESS MEETING**

Monday, February 28, 2011
7:00 p.m.

Council Chamber - Shoreline City Hall
17500 Midvale Ave. N, Shoreline, WA

PRESENT: Mayor McGlashan, Deputy Mayor Hall, Councilmember Eggen, Councilmember McConnell, Councilmember Roberts, Councilmember Scott, and Councilmember Winstead

ABSENT: None

1. CALL TO ORDER

At 7:00 p.m., the meeting was called to order by Mayor McGlashan, who presided.

2. FLAG SALUTE/ROLL CALL

Mayor McGlashan led the flag salute. Upon roll call by the City Clerk, all Councilmembers were present.

3. REPORT OF THE CITY MANAGER

Julie Underwood, City Manager, provided reports and updates on various City meetings, projects, and events.

4. COUNCIL REPORTS

Mayor McGlashan stated that Mayor Charles Royer was present at the dinner meeting to discuss the Healthy City Strategy.

5. PUBLIC COMMENT

a) Afia Menke, Shoreline, discussed the legal challenging of medical marijuana and urged the Council to support natural medicine over pharmaceuticals.

6. APPROVAL OF THE AGENDA

Upon motion by Deputy Mayor Hall, seconded by Councilmember Eggen and unanimously carried, the agenda was approved.

7. CONSENT CALENDAR

Upon motion by Deputy Mayor Hall, seconded by Councilmember McConnell and unanimously carried, the following Consent Calendar items were approved:

- (a) Minutes of Study Session of February 7, 2011
 Minutes of Workshop Dinner Meeting of February 14, 2011
 Minutes of Business Meeting of February 14, 2011

- (b) Approval of expenses and payroll as of February 18, 2011 in the amount of \$673,612.01 as described in the following detail:

***Payroll and Benefits:**

| Payroll Period | Payment Date | EFT Numbers (EF) | Payroll Checks (PR) | Benefit Checks (AP) | Amount Paid |
|----------------|--------------|------------------|---------------------|---------------------|--------------|
| 1/23/11-2/5/11 | 2/11/2011 | 38540-38739 | 10533-10564 | 46255-46263 | \$409,911.87 |
| | | | | | \$409,911.87 |

***Accounts Payable Claims:**

| Expense Register Dated | Check Number (Begin) | Check Number (End) | Amount Paid |
|------------------------|----------------------|--------------------|--------------|
| 2/10/2011 | 46143 | 46147 | \$7,211.61 |
| 2/10/2011 | 46148 | 46158 | \$105,011.62 |
| 2/10/2011 | 46159 | 46177 | \$24,910.93 |
| 2/10/2011 | 46178 | 46184 | \$13,848.58 |
| 2/10/2011 | 46185 | 46206 | \$16,993.47 |
| 2/15/2011 | 46207 | 46207 | \$40.00 |
| 2/16/2011 | 46208 | 46209 | \$11,918.91 |
| 2/16/2011 | 46210 | 46213 | \$41,823.49 |
| 2/16/2011 | 46214 | 46227 | \$20,335.71 |
| 2/16/2011 | 46228 | 46253 | \$21,180.82 |
| 2/16/2011 | 46254 | 46254 | \$425.00 |
| | | | \$263,700.14 |

- (c) Resolution No. 312 Requesting that City Dues Supported Regional and Statewide Associations Work Toward Reducing Their Budgets and Membership Dues for 2011 and Future Years

- (d) Motion to Authorize the City Manager to Execute a Contract with TIAA-CREF for Administrative Services of the City of Shoreline's Section 401 (Social Security Replacement) and Section 457 (Deferred Compensation) plans

8. ACTION ITEMS: OTHER ORDINANCES, RESOLUTIONS, AND MOTIONS

- (a) Closed-Record Appeal of Certificate of Appropriateness issued for Ronald School

Mayor McGlashan gave an introduction of this item. He identified the interested parties, noted the rules that would be followed, and reviewed how the hearing would proceed. He stated that the item was scheduled for executive session. However, the Council has proposed conducting the deliberation in an open hearing. Additionally, he stated that the King County Landmarks Commission response received by the City Clerk's Office on February 24 would be stricken from the record and not considered.

RECESS

At 7:15 p.m., Mayor McGlashan called for a five-minute break. The meeting reconvened at 7:20 p.m.

Todd Scott, Preservation Architect, King County Landmarks Commission, explained the Certificate of Appropriateness (COA) Process. He stated that this item is before the Council because the COA issued by the King County Landmarks Commission was appealed by the Shoreline Preservation Society. The COA was issued in response to a development permit application filed by the Shoreline School District (SSD) for construction of the new Shorewood High School, which intends to incorporate the Ronald School into the new school design. The rules state that the hearing body for a COA appeal is the Shoreline City Council. Mr. Scott discussed Ronald School, its broad theme of education, reviewed historical and current photos, and its features of significance. He reviewed the site constraints, the proposed attachment to the school, and conceptual drawings of the new high school. Mr. Scott also reviewed Secretary of Interior Standards 1, 2, 5, 6, 7, 9, and 10, which applied to this development. He reviewed some of the standards such as ensuring distinctive features are preserved, that the building is attached on two stories, and that any new buildings are broken up to match the building massing. He also noted that there would be sidewalk improvements.

Councilmember McConnell communicated that she is impressed the new section looks very similar to and honors the old building. She questioned what the internal connection would be with the new section to the Ronald School. Mr. Scott responded that the interior is not landmarked; therefore, the uses are not specified. He replied that the SSD could answer those questions. Councilmember McConnell replied that it would be nice if students could use the old building.

Responding to Councilmember Eggen, Mr. Scott suggested that he discuss with the applicant the information about soil conditions which preventing the building from being further developed to the east. Councilmember Eggen said there has been discussion about alternatives and there were various alternatives presented. He said it seems like the Design Review Committee (DRC) worked with applicant to come up with the design; however, that is not the impression he got. Mr. Scott replied that there was not any design occurring in the DRC and that the alternatives were presented at public hearings where site constraints, the neighborhood, traffic flow, etc. was considered. The consensus reached was that the best location is the northeast corner. Councilmember Eggen confirmed with Mr. Scott that the Landmark Commission's focus was simply to determine whether the plan submitted by the architect was compatible with the national standards. Mr. Scott noted that there were alternatives to be considered located in the Shoreline

Municipal Code that also met the objectives of the applicant, and in this case, the applicant determined they wanted to use the historic building.

Councilmember Scott questioned what determines a quorum according to the SLC bylaws. Mr. Scott replied that the SLC bylaws state that a quorum consists of a majority of existing members. He said there were four members present, one Commissioner recused himself, and three voted on the item.

Councilmember Roberts noted that SLC is composed of seven members. Mr. Scott stated that Commissioner Stiles recused herself because at that meeting she was not present as a commissioner, only as the Shoreline representative. Councilmember Roberts verified with Mr. Scott that Commissioner Rich recused himself and asked if he was required to because of any state or city laws. Mr. Scott responded that he was not required to do so. However, because he is an employee of Bassetti Architects, he recused himself based on any possible appearance of fairness issues.

Councilmember Eggen asked City Attorney Ian Sievers if people who recuse themselves count as being a member present or the number of members voting. Mr. Sievers replied that the recused member left the meeting and was not present when the action was taken, thus he does not count. Councilmember Eggen concluded that three members is not a legitimate quorum. Mr. Sievers stated that there are seven members. He explained that Commissioner Stiles was not present, resulting in four members, then Commissioner Rich recused himself and appearance of fairness would require that he step down. Deputy Mayor Hall added that the departure of members does not take away from the quorum and inquired if the City Attorney could cite some authority. Mr. Sievers replied that he would have to look at the special rules. However, he said there is a general common law rule stating a quorum needs to be present. Additionally, he noted that there is a statute under the appearance of fairness that would cause a quorum to be lost if a member needs to recuse themselves. Mr. Scott highlighted that the Landmarks Commission serves 18 local jurisdictions and they typically lump actions for all those jurisdictions together.

David Mann, counsel on behalf of the Shoreline Preservation Society, communicated that this is important because Ronald School is a landmark in the City of Shoreline and the Council are the only people in the City who are hearing this issue. He encouraged the Council to step into this and save a historic landmark. Mr. Mann said that the Commission erred in fact, law, and in their procedures. He urged the Council to reverse the decision and remand the item to be heard again by the Landmarks Commission. He thanked the Council for agreeing to debate the matter in public. The Code, he explained, sets this item out for a standard review. The standard review consists of facts and the law. This item must be remanded if there is a factual error or if there is a question concerning the law. The Council has the full authority to modify, reverse, or remand the decision. He focused on the Secretary of Interior Standards and said that Ronald School was not designated a landmark because it was an educational facility. However, it was dedicated as a landmark because it is a rare example of an early 20th century semi-rural school building. Mr. Mann discussed Standard 2, which states that the historic character of the property shall be preserved. He asserted that if the Council looks at the distinctive materials, alterations, and spatial relationships that are being revised, the character of the building is not being preserved. He urged the Council to give deference to the Krafft decision, which concluded that the proposed

project does not meet Standard 2 because the historical content and character will not be retained. Mr. Mann then discussed Standard 9, which relates to massing, size, scale, and the architectural features. He submitted a declaration of Flo Lentz' speaking notes from the Commission meeting, which noted the massive addition to a small historic building. He said it is easy to dissect the project, but it is important to look at the entire development in context. He said this project does not keep with the size, character, and massing of the Ronald School. He questioned where the alternatives were that the Commission was charged to review. Additionally, he said that during the Landmarks Commission meeting a non-voting member should not have been counted as a part of the quorum. Mr. Rich is involved with the firm, he said, and there were only three members who voted on this, which is not a valid vote. He noted that Commissioner Rich works for the company that came up with the proposal, so of course he is not going to oppose it. He did the right thing by recusing himself, which meant that there were not enough Commissioners to approve the proposal. He urged the Council to remand this decision to look at other development alternatives.

Councilmember Eggen communicated that if SSD builds outside that 15-foot barrier, they could build anything they want. Therefore, it seems there is a massing issue whether Ronald School was there or not. Mr. Mann agreed, but said that is not what is before the Council. He said the Krafft testimony is that the west side could have a structure attached, which means the east and southeast side is not lost. Councilmember Eggen continued that Ms. Krafft's proposal was to have a small separation around the backside. Mr. Mann confirmed that it is shown in Exhibit 73 and it is an attempt to save the south and southeast side so it still retains that stand-alone presence. Councilmember Eggen replied that the current design shows that part of the brick is visible from the interior and questioned if it would ruin the character. Mr. Mann replied that it would because there is a two-story shorter connection that would cause the building to lose its whole nature.

Councilmember Roberts replied that SSD seemed really surprised that the appellant would argue the Landmarks Commission did not consider alternatives. He noted that there was discussion in the minutes concerning the limitations of the site. He inquired why the Council should expect the Landmarks Commission to come up with some other alternatives that would have Ronald School intact. Mr. Mann replied that they are charged with doing so. He stated that in Exhibit 93, there was an alternative presented, but if you look at the record and discussion, the Commission needed to have more information. A couple of drawings do not constitute consideration, he stated. Councilmember Roberts asked if there are any other landmark buildings that have been incorporated into a larger facility throughout King County. Mr. Mann replied he could not answer that and it is not a part of the record.

Deputy Mayor Hall further inquired if alternatives were presented to the Commission during their deliberations, and Mr. Mann replied that drawings were given but they were not considered. He also responded that Ms. Krafft felt that her proposal would meet the standards and criteria. Deputy Mayor Hall discussed the quorum and inquired if there is something he has that proves his point that there was not a quorum. Mr. Mann replied that he does not except for common law and said he will get it to the Council.

Councilmember Eggen said it seems as if the alternatives issue is controlled by the Shoreline Municipal Code and wondered if it is an unusual feature of municipal codes. Mr. Mann replied that he does not know what other city codes look like concerning this.

Councilmember McConnell said this quorum issue is serious. She questioned the recusing of the Shoreline representative on the Commission at the hearing and wondered whether other Commissioners were qualified enough to make decisions for local jurisdictions. Furthermore, she stated that the sooner alternatives are discussed the more likely they will be heard, incorporated, and wondered why they were not shared with the developers. Mr. Mann replied that he did not know why the alternatives were not discussed and that there is no record of it. He also communicated that maybe it was a direct procedural error not to have a Shoreline representative hear the discussion. He concluded that having a quorum of only three members is a significant error.

Councilmember Roberts discussed Standard 2 and noted that SSD said that the context stated that the existing site was already destroyed. **Deputy Mayor Hall called for a point of order to ensure this topic was raised earlier in the record.** Mr. Sievers clarified that the Council must limit the discussion to issues raised in the appeal statement.

Councilmember Roberts stated that Standard 2 speaks to spatial characteristics of the building and the appeal says spatial characteristics have been changed. He communicated that the question is whether Standard 2 requires that the building is landmarked as precisely a detached facility. Councilmember Roberts said that SSD communicated that the spatial characteristics have already been changed. Mr. Mann pointed out that in Exhibit 1 the City of Shoreline Landmarks Commission Historic Designation dated October 2008 communicates that there were no changes to that spatial area between then and now. Therefore, the same reason it was designated in 2008 still exists now.

Mayor McGlashan noted that the City contracts with King County and not every building would have representation. However, the City's member had a conflict. Mr. Mann noted that it was raised as an issue.

Rich Hill, counsel for Shoreline School District, asked the Council to affirm the COA decision so that the City's educational needs can be met as soon as possible. Mr. Hill referred to the Appendix and highlighted several pages denoting the location of certain rooms and the renovation and preservation of the site. He noted that the architect is very sensitive to the historic character and reviewed the setbacks, which are intended to protect Ronald School as a separate structure. Additionally, he said the Ronald School entrance is proposed to be adjacent to the Shorewood High School main school entrance. Mr. Hill announced that the burden of proof is on the appellant to demonstrate that the Landmarks Commission committed error in fact, judgment, or conclusion. The Council, he pointed out, is acting in an appellate capacity and the Landmarks Commission are the experts and deference is due to them. However, the Council can interfere if they determine that an error has been made. The rules and procedures are set forth in page 27 of the packet and there are two key rules that are applicable to the decision. The Commission, he said, found that the application met the Secretary of Interior Standards. He noted that there is substantive evidence cited in his brief. He added that there is no explicit legal requirement that

the application needs to meet these standards and the Secretary of Interior Standards are guidelines to meet the key rules. He added that the Landmarks Commission staff recommended this and Bassetti designed this with the standards in mind. He noted that there are other experts who have agreed with this proposal, including the Design Review Committee and the full Landmarks Commission. He stated that the City of Shoreline representative wrote a letter to the Landmarks Commission on behalf of the Historical Museum recommending approval of the application. Mr. Hill discussed the alternatives and said that there is a second handout, which has a site analysis that goes through eight considerations. He reviewed the eight considerations with a brief discussion and explanation on how the proposed development meets or exceeds each one. He also noted that the proposal meets the City's Town Center criteria and concluded that the alternatives do not meet the eight considerations.

Councilmember Winstead asked for more discussion on the alternatives to the proposal. Mr. Hill referred to the second page of the handout and said the site analysis was presented to the Landmarks Commission and all three of them were presented at the meeting. He noted that Ms. Nancy Callery discussed the alternatives; the Design Review Committee also discussed them. He noted that there was a Southwest alternative, a North-Central alternative, and a Northeast alternative. He reviewed each of the alternatives and explained the reasons why none of the three was proposed.

Councilmember Roberts discussed Standard 2 regarding Ms. Krafft and her belief that the proposal will destroy spatial relationships and significant features of the 1912 schoolhouse. Mr. Hill replied that Ms. Krafft thinks these features will be destroyed because of the attachment to the south side of the building and because another portion will become a part of a corridor, where students will be able to feel and touch history. He added that all of the Commissioners felt this enhances the historic environment. The incorporation of the Ronald School is desirable because it restores the school for historic use.

Deputy Mayor Hall questioned if Mr. Hill had anything to say about the quorum issue. Mr. Hill replied that the appellant's brief does not object to any lack of a quorum; they object to the lack of participation of a Shoreline representative. He pointed out that there was not any objection made at the time of meeting since there were thirty-five members that testified at the meeting. He also wondered why this issue was not listed in the appeal. He said that issue was not raised until this meeting and it is inappropriate, unfair, and not addressing this on its merits is inequitable. He added that the Shoreline representative on the Landmarks Commission recommended approval. He added that he spoke to Julie Koler who confirmed there was a legal quorum. He said that the SSD has to rely on the Landmarks Commission interpretation of their rules. He pointed out that Commissioner Rich could have rejoined the meeting and voted if there was a quorum issue. However, he concluded that it is a little late for the appellants to bring this up as an objection.

Councilmember Scott felt that the quorum issue is a key piece for him. Mr. Hill noted that the appellants had an opportunity to object and the deference goes to the Landmarks Commission rules. Mr. Sievers replied that he does not think that issue was well briefed. He added that the Landmarks Commission seemed to be very deliberate and knew what they were doing. He said he would have to investigate King County rules. The second part of this is the disqualification and whether the Landmarks Commission counts a disqualified member as a part of the quorum.

Mayor McGlashan also stated that he does not remember hearing any strong objection to the quorum. Mr. Hill replied that there was nothing in the appellant's opening brief related to a lack of a quorum. Councilmember Scott replied that the Council needs to know whether the Commission had a quorum or not. Councilmember Winstead inquired what King County Historic Preservation Officer Julie Kohler's position was, and Mr. Hill said she felt there was a quorum at the hearing.

Councilmember Eggen said that in the response brief it was noted that the Council shouldn't be ruling on errors in judgment but on procedures and facts. However, now they are being instructed to rule on facts, judgments, or conclusions and asked for clarification. Mr. Hill replied that the Council can rule on whether proper procedures were followed by the Landmarks Commission; decide whether there was an error in facts, an error in judgment, or an error in conclusion. He said substantial deference should be given to the Landmarks Commission.

Mayor McGlashan noted that there were two vacancies and two recusals. Commissioner Scott replied that the Landmarks Commission is an all-volunteer board and sometimes people don't make it. The vacancies, he explained, are appointed by the King County Executive and he hasn't filled them yet. He said it is very unusual to have every Commissioner at each meeting. In this case, one sitting member was out-of-state and one went to the wrong location.

Mr. Sievers added that the Council should try to see what findings and conclusion the Councilmembers dispute or contest. The Council can adopt some or all of the findings, he explained. Deputy Mayor Hall inquired if it is appropriate to go into substantive issues if the Council ultimately finds that there wasn't a quorum present. Mr. Sievers replied that if the Council finds there wasn't a quorum, then there wasn't a substantive decision.

Councilmember Roberts questioned if the deliberations are prejudicing the next application and next potential appeal. Mr. Sievers replied that there wouldn't be a need to have another hearing, but the Landmarks Commission would have to meet. Mayor McGlashan agreed with Councilmember Roberts and said having another hearing would be adding more information into the record.

**Councilmember Roberts moved to postpone action on this item until next week.
Councilmember Scott seconded the motion.**

Councilmember Winstead asked that if this question was not raised on appeal, should the Council be discussing it. Mr. Sievers replied that it wasn't brought up on the appeal, just as a concern. The opening brief did do a headcount, but didn't draw a conclusion from the headcount. He also noted that there were no statements about the lack of a quorum. He felt if the Council wanted to pursue the quorum issue, they could. Councilmember Winstead summarized that she doesn't want to delay this process if the Council isn't supposed to consider the quorum matter. Councilmember McConnell replied that she doesn't believe there is an issue because there isn't anything in the appeal says there wasn't a quorum.

Councilmember Scott referred to page 41 and said this needs interpretation and the City Attorney said he would have an answer by Wednesday. City Attorney Sievers communicated that he will have the Assistant City Attorney work on this issue in the coming days.

Deputy Mayor Hall agreed with the motion to the extent that if the Council decided there wasn't a quorum, there is no record. He said it is obvious the parties believe this matter is before the Council legitimately. He added that both of the attorneys agree with the recusals. Mr. Sievers explained the doctrine of necessity and Deputy Mayor Hall responded that if the Council sends this back to the Landmarks Commission to get a quorum and do it again, the decision would probably be the same. He summarized the quorum issue and said he doesn't think there is an error of fact and that the rules were followed. He said he will not vote to postpone the item.

Councilmember Eggen said he also doesn't want to delay the Council decision. He felt that a quorum was properly present, and even if not, the issue was not fully raised. He felt that the appellant and the respondent deserve an expedited answer. He concluded that he will not support the motion on the table.

Councilmember Roberts felt it would be prudent to postpone this item because there is a question raised indirectly in the brief that the Landmarks Commission violated the rules of procedure of the Shoreline Landmarks Commission as written in the Shoreline Municipal Code. He commented that the Council should follow its own procedures and determine from the City Attorney whether the Landmarks Commission follows the Council procedures. He also noted that the item is already on the Council meeting agenda for next week.

Councilmember McConnell referred to page 76 and said the language is from the attorney that represents the Shoreline Preservation Society stating that the decision is an error. She added that she agrees with Deputy Mayor Hall and said she is ready to render a decision at this meeting.

Councilmember Eggen confirmed that the Council would deliberate on the item at this meeting and vote next week.

Councilmember Winstead moved to call for the question, seconded by Councilmember McConnell. Councilmember Winstead then withdrew the motion.

Mayor McGlashan expressed concern that everyone is waiting for a decision on this and if the Council moved forward, there is a risk for another delay or another appeal. He supported postponing a Council decision until next week.

Councilmember Winstead inquired if a new appeal can be raised based on a new issue and Mr. Sievers responded that a new appeal cannot be made on the prior Landmarks Commission decision. However, if the item is remanded back to them, their new decision can be appealed.

Deputy Mayor Hall questioned what would occur if Council adopts finding of facts and decision and there is an appeal of the Council decision. Mr. Sievers replied that they can be appealed if there is an error of law and findings under the Land Use Petitions Act (LUPA).

Councilmember Eggen said that based on Mr. Sievers' comments he felt it would be safest to defer deliberations on this item until next week. Ms. Underwood confirmed that there is ample time on the Council calendar to hear the item another evening. Deputy Mayor Hall commented that if the Council doesn't begin deliberations until next week, they probably won't be able to have the written decision published next week. Mr. Sievers replied that it depends on how much the Council deviates from the recommended Findings and Conclusion. Deputy Mayor Hall noted that the Council won't have a quorum next week and won't be meeting.

Councilmember Roberts called for a point of order. Councilmember Roberts clarified that the questions have been asked and answered and noted that they all need to be germane to the motion.

Mr. Hill responded to questions about postponement and stated the schedule is tight. He added that a conditional use permit cannot be issued until this decision is made. He suggested that the Council deliberate tonight, give direction to the City staff, and keep the issue of the quorum open until next week.

A vote was taken on the motion to postpone action on this item until next week, which carried 4-3, with Deputy Mayor Hall and Councilmembers McConnell and Winstead dissenting.

9. ADJOURNMENT

At 9:42 p.m., Mayor McGlashan declared the meeting adjourned.

Scott Passey, City Clerk