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## CITY OF SHORELINE

### SHORELINE CITY COUNCIL SUMMARY MINUTES OF REGULAR MEETING

Monday, April 26, 2004  
7:30 p.m.

Shoreline Conference Center  
Mt. Rainier Room

**PRESENT:** Mayor Hansen, Deputy Mayor Jepsen, Councilmembers Chang, Fimia, Grace, and Ransom

**ABSENT:** Councilmember Gustafson

1. **CALL TO ORDER**

The meeting was called to order at 7:30 p.m. by Mayor Hansen, who presided.

2. **FLAG SALUTE/ROLL CALL**

Mayor Hansen led the flag salute. Upon roll call by the City Clerk, all Councilmembers were present, with the exception of Councilmember Gustafson.

**Upon motion by Councilmember Ransom, seconded by Deputy Mayor Jepsen and unanimously carried, Councilmember Gustafson was excused.**

(a) Proclamation of "Relay for Life Days"

Mayor Hansen read the proclamation recognizing "Relay for Life," a community-based event that raises funding for the support of cancer programs, including services to cancer patients, public education and cancer research. Relay for Life will take place at the Shoreline School District field from noon, Saturday, May 22 to noon Sunday, May 23. The Co-Chairs of the Shoreline Relay for Life committee, Kris Shelley and Jodi Temer, and the American Cancer Society partner, Chris Aversano, accepted the proclamation and invited Shoreline residents to participate in this event.

3. **CITY MANAGER'S REPORT**

Steve Burkett, City Manager reported that Police Chief Denise Turner received a promotion in the King County Sheriff's Office and would be leaving her position as Shoreline Police Chief. He acknowledged her leadership over the past four years, noting that crime rates are down and that police services were rated highest in the recent customer satisfaction survey.

- \* Status of Brightwater Negotiations
- \* Richmond Beach Community Council regarding Brightwater

Robert Olander, Deputy City Manager, reported on the status of the City’s appeal of the Brightwater Environmental Impact Statement, noting that the City and King County’s negotiations on mitigation have made significant progress. He asked for an executive session at the end of the meeting to review the status of the negotiations.

David Bannister, President of Richmond Beach Community Association, and Starla Hohbach thanked the City for allowing the organization to participate in the Brightwater negotiations. Ms. Hohbach then highlighted Richmond Beach’s specific mitigation requests of King County relating to traffic, transport of construction materials and debris, construction hours, street cleanliness, and the impacts of noise and lighting. She noted that King County considers barging/railing debris out of the construction area to be mitigation, but she felt it should be considered a “cost of doing business.” She also emphasized Richmond Beach’s request that King County follow all environmental regulations relating to the clean up of the Chevron site. She concluded by outlining what Richmond Beach residents would consider fair compensation for unmitigated impacts.

4. REPORTS OF BOARDS AND COMMISSIONS: none

Mayor Hansen announced that approval of the agenda would be taken next, followed by the public hearing, which is scheduled to begin at 8:00 p.m.

6. APPROVAL OF THE AGENDA

**Councilmember Fimia moved approval of the agenda, removing item 10(b) and placing it on next week’s agenda. Councilmember Grace seconded the motion, which carried 6-0, and the agenda was approved as amended.**

**Deputy Mayor Jepsen moved to amend the agenda further to add an executive session after item 10(a). Councilmember Grace seconded the motion, which carried 6-0.**

8. PUBLIC HEARING

- (a) Public hearing to consider amendments to the Shoreline Development Code

Ordinance No. 352 amending the Development Code Chapters 20.20, 20.30, 20.40, 20.50, 20.70, 20.80 and 20.90, including changes to zoning variance criteria; changes to home business regulations; allowing pitched roofs in high density residential zones to extend 5 feet above the base height limit of 35 feet; clarifying right-of way regulations, clarifying components of the sign standards and technical amendments

# DRAFT

Tim Stewart, Planning and Development Services Director, explained that the Development Code is reviewed each year in response to changing needs or desires in the community. It is also reviewed in order to bring it into conformity with the Comprehensive Plan. Mr. Stewart then briefly described the purpose of each of the proposed amendments, as outlined in the staff report. He noted they were initiated by citizens, the Planning Commission, and the City Council. Of the twenty-seven proposed amendments, thirteen are considered substantive, and fourteen are technical. He noted that the Council has three options for addressing amendments: it can accept them; further amend them; or reject them. If the Council initiates new amendments, they would be referred back to the Planning Commission for a public hearing before it could take action.

Mr. Stewart reviewed each of the amendments and explained the reason for them.

Mayor Hansen opened the public hearing.

(a) Janet Way, Shoreline, representing Thornton Creek Legal Defense Fund, expressed a general concern about the proposed changes to the Development Code. She asked for clarification regarding distribution, noticing, and appeal of State Environmental Protection Act threshold determinations. She then questioned what implications that amendments #4, #3, #TA4 and #TA9 would have on critical areas, homeowners, property owners, neighbors, and, in the case of #4, on pending court cases. She said amendment #3 should be more concerned about the public's right to know rather than slowing the development process. She wondered what effect the reasonable use exemption would have on the environment. She questioned the change of "hardship" to "practical difficulties," noting that it could impact not only homeowners and property owners but also critical areas. She said that technical amendments #TA4 and #TA9 could have huge implications on the community, and she also wondered why so many terms were changed in the right-of-way code.

(b) Ginger Botham, Shoreline, expressed support for amendment #7 (which is recommended for denial), noting that although housing the homeless in a tent city is a good thing, the public should receive prior notice. She felt the proposed changes relating to variance criteria remove many protections, and that the Council's policy should be that variances are not "common and easy" but rather the exception to the rule. She said most code changes during the past few years have made it easier to grant and receive variances, thus creating an "anything goes" situation in Shoreline. She said there would be no need to follow the code if one can get a variance. She asked the Council to consider what kind of city it wants, and whether it should follow the rules or find ways to circumvent them.

(c) Starla Hohbach, Shoreline, said the purpose of the variance amendments should not be to soften the criteria and allow staff more flexibility to determine what is reasonable. She said loosening standards would create more opportunities for variances to be granted. Allowing staff more flexibility will create more legal challenges. She objected to changes in the language of amendment #5 from "hardship" to "practical

difficulties,” as well as the elimination of criteria #11. She said one person at the City should not determine standards. She believed that the changes that are listed as technical are really substantial. She advised caution when determining what is considered a technical change.

(d) Chris Eggen, Shoreline, concurred with previous speakers’ comments. He noted that contrary to what Mr. Stewart asserted, there was very lively discussion on reasonable use in the Planning Commission. He said there must be specific standards for reasonable use, and staff should not be allowed any latitude to make policy. He wondered if a site development permit would require public notice, and expressed support for the tent city amendment, noting that neighbors should be aware of what is going on around them.

(e) Laurence Yaffe, Shoreline, opposed amendment #5, noting that the changes do not improve clarity or serve any meaningful purpose. He objected to criteria #1 involving the necessity of zoning variances, as well as the change to “practical difficulties” in criteria #2. He said there is no mention of severity or significance of difficulties, so all applicants could claim difficulty and receive a variance. He asserted there is no mention of potential modification of building plans in order to avoid the need for variance, and staff’s justification is unacceptably generous to builders. He felt that the fact that an applicant’s desired structure is not suited to the lot should not be valid criteria for granting a variance. He felt that criteria #11, which is proposed for elimination, is the bedrock principle upon which variance applications should be judged. He said staff needs more guidance for variance requests, not less. He urged the Council not to accept the proposed changes.

(f) John Budlong, Shoreline, urged the Council to oppose amendment #5 on the grounds that it gives the Planning Department, the Planning Commission and the City Attorney too much discretion to nullify critical areas environmental protections in the Development Code. He said these three bodies are already using the Critical Areas Reasonable Use Permit to circumvent the Development Code’s prohibition against building in critical landslide areas with slopes in excess of 40 degrees. He noted that the City approved the Casper project in Richmond Beach, which would allow a “mansion” to be built on an undersized lot with a 70-degree slope, a wetland and Type II stream. He said the Hearing Examiner rejected the application because it is an illegal, undersized lot. He said if the City allows these three agencies discretion to grant variances, then it will remove the only remaining protections people have because zoning variances are enforceable by statute. He asserted that Marlin Gabbert, Planning Commissioner and proponent of amendment #5, has a conflict on interest because he represents Mr. Casper. He urged the Council to oppose amendment #5 and help remedy this problem.

(g) Brian Derdowski, Issaquah, on behalf of the Thornton Creek Legal Defense Fund and Public Interest Associates, opposed the changes in amendment #5, noting that variance authority is limited and must comply with the Land Use Protection Act (LUPA) and the Growth Management Act (GMA). He said if variances are so broad that they allow changes that cumulatively affect a jurisdiction’s compliance, then they are

# DRAFT

unlawful. He objected to the criteria that would allow variances based on existing development in the vicinity or zone, including nonconforming development. He explained that this is not lawful and would allow an applicant to apply for a variance based on a nonconforming use. He also stated that the addition of “practical difficulty” would fail a legal challenge. He asked that staff prepare a written opinion about the City’s authority to adopt variance criteria under state statute. He asserted that the technical amendments are substantive, and that amendment #2 authorizing site development permits for many different applications is problematic. He said site developments permits were intended for subdivisions. It invites piecemeal analysis and opens up significant vesting issues if such permits are extended to all types of development. Mr. Derdowski suggested that staff provide an analysis of the differences in vesting if it is applied. He also felt the nonconforming uses amendment to be overly broad, suggesting that the term “abandonment” be moved to a previous section so that partial abandonment would allow the termination of a nonconforming use.

**Councilmember Fimia moved to leave the hearing open to receive written comments. Councilmember Ransom seconded the motion.**

Councilmember Fimia explained the reason for her motion, noting that there are enough questions to warrant additional Council review and additional public comment.

Mayor Hansen stated that it is not necessary to leave the hearing open because Council can always call another public hearing on this topic.

Deputy Mayor Jepsen spoke against the motion, noting that people can continue to submit comments while staff moves forward to address the issues raised tonight. Then another public hearing can be scheduled rather than leaving this one open. Councilmember Grace also opposed the motion for the same reasons.

Councilmember Ransom expressed concern about leaving the hearing open, despite the fact that many issues need to be addressed. He raised the possibility of closing the hearing but accepting written comments for 30 days.

Councilmember Fimia noted that people will need more time to comment, especially if the Council proposes additional amendments. She felt there is much to gain by leaving the hearing open.

Councilmember Chang felt the Council could continue on in its agenda even if the hearing is left open.

**A vote was taken on the motion, which failed 2-4, with Councilmembers Chang and Fimia voting in the affirmative.**

**Councilmember Ransom moved to close the public hearing but accept public comment on this item for the next 30 days before taking action. Councilmember Fimia seconded the motion.**

Deputy Mayor Jepsen felt Council could continue to take public comment while moving the process forward.

Mayor Hansen noted that any significant changes or amendments would require another public hearing and recommendation from the Planning Commission.

**A vote was taken on the motion, which carried 4-2, with Councilmembers Fimia and Chang dissenting.**

Mr. Burkett suggested scheduling a Council workshop to address these issues, and that Council might provide direction on which amendments staff should focus on.

Councilmember Fimia suggested putting each amendment on a separate page to provide clarity. She said she would send her recommendations in writing, and would be asking the Council to consider additional amendments.

5. PUBLIC COMMENT

(a) LaNita Wacker, Shoreline, announced two events sponsored by Friends of Fircrest: a fundraiser at the American Legion Hall on May 1, and a rally starting at Ridgecrest School on May 15. She encouraged the community to come out and support the Fircrest cause.

(b) Nancy Miller, Shoreline, urged the Council to support Richmond Beach's request that King County minimize the intrusion of construction for the Brightwater project through the use of barges and rail cars. She said heavily loaded trucks, traffic, and other factors pose significant safety hazards for the neighborhood, especially when the Hidden Lake Pump Station; the Richmond Beach Overcrossing; and Brightwater will be built concurrently. She urged the Council to ensure that mitigation funds are spent on safety measures in the community.

(c) Stan Terry, Shoreline, commented on a Seattle Times article that focused on the role that urban trees play in controlling storm water runoff and improving air quality. He noted that nationwide, more urban trees are cut down than what is harvested in national forests. He complimented the City for supporting the neighborhood mini-grant program, which often goes toward the planting of street trees. He noted that street trees are an important part of the design of the North City and Aurora Corridor projects. He concluded by urging the Council to consider forming an environmental quality commission similar to Lake Forest Park's, in which people in the community could provide guidance and direction to develop sound environmental policies.

(d) Ginger Botham, Shoreline, asked for clarification on maps in the Council packet describing acquisition and temporary use easements. She said that from the maps it is difficult to determine which properties the City is considering condemning. .

(e) Cindy Ryu, Shoreline, addressed Ordinance No. 350 and commented on the lack of time and notice given to property owners to grant easements. She said although she was contacted about temporary construction easements a few weeks ago, none of the items the project management team mentioned previously were in the easement document she received. She said staff did not mention the possibility of acquisition and condemnation action happening so soon. She said staff should have had the courtesy to inform property owners the Council would be considering condemnation. She said it came as a very unpleasant surprise to see her property address listed in tonight's agenda item authorizing "acquisition and condemnation."

(f) Janet Way, Shoreline, concurred with the previous comments, adding that some property owners are treated differently than others. She also concurred with Mr. Terry's comments about urban trees. She then suggested that the City find some way to give citizens a preview of the following week's agenda for next meeting, noting that she was not informed of tonight's agenda. She felt the City should use Channel 21, the City web site, and other means to give citizens a "heads up" about what is happening in Shoreline.

(g) Diana Stephens, Snohomish, representing the Chamber of Commerce, urged the Council to work with the property owners who want to redevelop properties along Aurora Avenue. She said the Shoreline Chamber of Commerce supports these developers, who plan on investing between \$40 and \$100 million, and that all they ask in return is for access to their property. She encouraged the Council to meet with WSDOT and the developers to find a way to allow left-turn access. She said accident statistics suggest that the locations in question do not pose a safety hazard. She said Shoreline cannot afford to have these businesses go elsewhere.

(h) Rick Beadle, representing Golden Nugget Casino, stated for the record his concern that the Aurora Corridor design could negatively affect accessibility to his business.

(i) Rick Stephens, President of the Shoreline Merchants Association, commented on the lack of communication between the City and Aurora businesses, noting that businesses are afraid of the Council's actions and some are moving out. He noted that one business owner hopes to expand and move to Woodinville. He said the Council needs to be open, but Councilmembers have not communicated to the business community on condemnation or easements. He affirmed that there are no accident statistics for the sections of Aurora Avenue where these developers want to build. He asserted that WSDOT's own manual states that a median can be a two-way left turn lane. He said all the businesses want is access. He urged Council to help businesses make Shoreline their location.

Responding to Councilmember Grace, Mr. Stephens clarified that businesses are concerned about eminent domain action. He also noted that Cingular Wireless is also moving out of Shoreline.

# DRAFT

(j) Brian Derdowski, Issaquah, Public Interest Associates, suggested that the Council separate the issues of acquisition and condemnation as other jurisdictions do in order to determine whether staff has performed their tasks appropriately. He said authorizing both acquisition and condemnation in one action ignores the important role of oversight over the acquisition negotiation. He said Council should ask staff to report on what other jurisdictions practice. He asked Council to delay action until staff reports back on whether the City is fully compliant with all federal guidelines for authorization of condemnation and acquisition.

(k) Richard Johnsen, Shoreline, said citizens should be allowed to speak passionately about issues, regardless of whether Councilmembers agree with them. He said he felt deprived because Mr. Crawford was not able to finish what he had to say at last week's Council meeting. He also suggested that Council meet with staff to determine a solution to the technical problem that occurred in last week's television broadcast that prevented him from understanding the presentation on the 2004 citizen survey report.

Councilmember Ransom asked that the members of Forward Shoreline who have been waiting be allowed to comment.

(l) Jeff Lewis, representing Forward Shoreline, stated that he will defer his comments until next week.

## 7. CONSENT CALENDAR

**Councilmember Fimia moved approval of the consent calendar. Councilmember Grace seconded the motion, which carried 6-0, and the following consent calendar items were approved:**

**Minutes of Dinner Meeting of March 22, 2004  
Minutes of Community Forum of March 29, 2004  
Minutes of Community Forum of April 1, 2004  
Minutes of Special Meeting of April 5, 2004  
Minutes of Community Forum of April 10, 2004  
Minutes of Special Meeting of April 12, 2004  
Minutes of Regular Meeting of April 12, 2004**

**Approval of expenses and payroll as of April 9,  
2004 in the amount of \$1,070,361.42**

## 9. ACTION ITEMS: OTHER ORDINANCES, RESOLUTIONS AND MOTIONS

(a) Ordinance No. 350 authorizing the acquisition and condemnation of certain real properties at 14507, 14515, 14525, 14701, 14703, 14705, 14709, 14711, 14713, 14715, 14721, 14725, 14729, 14717, 14727, 14729, 14731, 14817, 14825, 14901, 14915, 14927, 15011, 15005, 15007, 15009,



15011, 15031, 15015, 15017, 15023, 15027, 15029, 15019, 15033, 15201, 15332, 15555, 15565, 16005, 16017, 16037, 16053, 16301, 16357, 16340, 16330, 16300, 16200, 16032, 16048, 16004, 15736, 15740, 15744, 15730, 15526, 15210, 15208, 15216, 15222, 15226, 15230, 15206, 15214, 15214b, 15200a, 15200, 15200b, 15200c, 15202, 15236, 15238, 15240, 15252, 15036, 15030, 15010, 14926, 14910, 14720, 14710, 14700, 14540, 14510, 16503, 16510, and 15510 Aurora Avenue North; 15915 Westminster Way N.; 914 N 145<sup>th</sup> St; 826 and 820 N. 145<sup>th</sup> St; 15002 Midvale Avenue N; and 1111 N 157<sup>th</sup> St., Shoreline. Washington.

Mr. Burkett said tonight's action begins the right-of-way acquisition process for the Aurora project. He referred to the project schedule in the staff report, noting that the City is committed to construction starting this time next year and the right-of-way acquisition process is the critical path. He said the City must follow a federally regulated process in this case because of the use of federal funds on the project. The policies for right-of-way acquisition, adopted in 2001, do this. He assured Council that no buildings must be acquired, just narrow pieces of property along Aurora Avenue.

Continuing, Mr. Burkett said the other item to be authorized tonight is proceeding with the condemnation process in cases in which no agreement can be reached with the property owner. He said that the negotiation process may go into the beginning of next year, but eminent domain will probably be initiated in cases where it appears that agreement will not be reached in June of this year. He said if these two authorizations are not done concurrently, it will add several months to the schedule. He explained the significant differences between this action and the process in North City, i.e., that lengthy negotiations had already occurred in North City and in this case the negotiations have not begun.

Mr. Sievers reviewed the legal issues related to eminent domain. He emphasized that the acquisition process is guided by both federal and state laws. He referred to the Acquisition and Relocation Guidelines Manual developed two years ago and updated in November 2003. This ordinance gives authorization for condemnation rather than being a condemnation ordinance. Under the federal guidelines, the City is required to make an offer with an appraisal and allow the property owner to consider it. This must occur before condemnation can be filed. Under state law, applied in North City, condemnation can begin immediately and the appraisal is not required to be disclosed prior to condemnation.

Mr. Sievers described the other regulations that govern the condemnation, noting that this ordinance also lists temporary construction easements that will be needed. He noted that individual notice to the property owners for action on this ordinance is not required. Individual notice is provided for the court hearing on public use and necessity.

## MEETING EXTENTION

At 9:50 p.m. Councilmember Ransom moved to extend the meeting until 10:30 p.m. Councilmember Grace seconded the motion, which carried unanimously.

Kirk McKinley, Aurora Project Manager, provided the background on adopting the design for the Aurora Project and the adoption on November 17, 2003 of the Aurora Corridor Real Property Acquisition Guidelines update. This was reviewed by the Washington State Department of Transportation (WSDOT). He described the notices provided to property owners and tenants and the meetings with everyone along the corridor about the construction proposed and the schedule. He said in most cases all that is needed from property owners is a temporary construction easement and a license to underground utilities. He said the City doubled the funding to \$10,000 offered to property owners to connect to the new underground distribution lines.

Continuing, Mr. McKinley said appraisals have been developed, which are reviewed in a "review appraisal." This is presented with the offer to buy the right-of-way. Right-of-way totaling 38,000 square feet is required from 32 parcels. Most of this is in one- or two-foot sections. Other pieces are required at intersections. No buildings are to be taken, and in two cases where the buildings were too close to the sidewalk, the sidewalk was narrowed to accommodate them. Review materials have been sent to 14 parcels where only a temporary construction easement is required. There are 34 properties that will need a license to underground and 11 properties needing a permanent wall easement. Mr. McKinley concluded that full packages where right-of-way must be purchased will be sent out when all the appraisal information is complete. He emphasized this is the start of the right-of-way process and sets the groundwork in case condemnation is needed.

Mr. Sievers noted that Councilmember Chang owns property in the area in question. He said a property owner involved in a condemnation ordinance should not be at the Council table.

Responding to Councilmember Fimia, Mr. Sievers said Councilmember Chang should not participate in the discussion or vote.

**Councilmember Chang recused himself and left the Council table at 10:03 p.m.**

Councilmember Ransom wondered why Councilmember Chang should recuse himself, based on a Mountlake Terrace Supreme Court decision saying this was not necessary when a councilmember had made full disclosure of his property interests during the campaign. Councilmember Ransom said it was always well known that Councilmember Chang owned property in the Corridor.

Mr. Sievers said decisions on project design, budget authorizations, etc. are legislative decisions. If the public knows the interests, the councilmember can vote. However, this ordinance authorizes a transaction that could result in a financial benefit to Councilmember Chang. It is also a quasi-judicial decision to find this is a public use and necessity for this project. Either reason would require Councilmember Chang to step down.

Councilmember Ransom asked about Mr. Derdowski's concern about authorizing both acquisition and condemnation in the same ordinance. Mr. Sievers responded that even if condemnation were not addressed this evening, it would need to come back in another month or so because the City is ready to go out with offers and many of the appraisals are complete. Certain tax benefits accrue to property owners, related to reinvesting under threat of condemnation the proceeds from the sale of the property, by passing the condemnation finding with this ordinance.

Mr. Burkett said this approach is not unusual and several of the cities that have done similar projects have approached them in this way.

**Deputy Mayor Jepsen moved to pass Ordinance No. 350. Councilmember Grace seconded the motion.**

**Councilmember Ransom moved to include a mandatory (for the City) mediation process before condemnation is undertaken. Councilmember Grace seconded the motion.** Councilmember Ransom clarified that he would amend Section 1 of the ordinance to add language at the end that a formal mediation process shall occur before condemnation proceeds.

Councilmember Ransom said there was a timing issue with North City but there is not the same urgency here. He said mediation would help establish a better relationship with local businesses, which are very concerned about the terminology of condemnation. He felt a formal mediation process would be "a great step forward in public relations."

Mayor Hansen noted the City already has a mediation policy.

Councilmember Grace asked what the effect of mediation would be on the timeline. He noted a mediator would need to be hired and meetings scheduled.

Mr. Burkett said in addition to timing, there would be a cost to adding in mediation.

Mr. Sievers said this would delay the filing of condemnation and the project by at least a month to 45 days. He said there might be cases where the issue will have to go to trial. The City is working under a very tight timeframe under the guidelines, and there already is an incentive for the City to make a settlement. Mr. Sievers pointed out that mediation is mandatory in the courts before trial begins. He did not think mediation would be fruitful at the beginning.

Confirming that mediation is a mandatory requirement before the case goes to Superior Court, Councilmember Grace wished to ensure that every alternative is pursued before the case goes to court.

**A vote was taken on the amendment, which failed 2-3, with Councilmembers Fimia and Ransom voting in the affirmative.**

**Councilmember Fimia moved to amend the ordinance to delete the references to condemnation in Section 1 and add the word “acquisition” so that Section 1 is titled “Acquisition Authorized.” Councilmember Ransom seconded the motion.**

**As friendly amendments accepted by the maker and the seconder, Deputy Mayor Jepsen said the fifth “whereas” should be deleted and Mr. Burkett said the title of the ordinance would also need to strike the words “and condemnation”.**

Councilmember Fimia said her intent is to separate the actions of acquisition and condemnation. She argued that condemnation is the most powerful tool that the City Council has, i.e., taking property. This should be done very seriously. She felt this does not set a good precedent, especially when there is no rationale for doing it. She emphasized that the City Council should reserve the oversight responsibility that is given to it through the laws.

Councilmember Fimia said that in her experience acquisition and condemnation are usually separated. She recommended that the City make a good faith effort to acquire the property it needs for the project without the “hammer” of condemnation. This action skips the step of justifying to the Council that it needs to exercise the right of eminent domain. She did not believe this would affect the schedule at all, because the City will have to go through the process to get acquisition voluntarily anyway. It would not take much time on a City Council agenda to take the second step. Doing a two-step process keeps faith with the property owners and citizens and protects the oversight role of the City Council.

Responding to Councilmember Grace, Mr. Burkett said there is a potential for a six-month delay.

Mr. McKinley said that getting a court date for the eminent domain process takes six months. The longer the delay getting to that point, the more the process is delayed. Even though a court date is set, the negotiations continue.

Mr. Burkett said the condemnation authorization could be brought back in a month to six weeks. This would avoid losing the five or six months. But the reason to move forward as proposed is to ensure that the project moves along on schedule. He agreed that condemnation is a serious step, but he assured Council that the process is highly regulated, particularly by the federal government, with possibly three different appraisals to be considered. He said he has been in states where taxpayers are “ripped off” in right-of-way negotiations. So the federal government attempts to balance the right of fair compensation to the property owner with a system to discourage the possibility of property owners, thinking they “have the City over a barrel,” receiving a windfall.

#### MEETING EXTENTION

At 10:22 p.m. Councilmember Ransom moved to extend the meeting until 10:50 p.m. Councilmember Grace seconded the motion, which carried unanimously.

Responding to Councilmember Ransom, Mr. Burkett said in North City the City was simply attempting to acquire property for easements. There was no compensation involved. He reminded Council that negotiations went on for quite a period of time, which delayed the project. Under the original schedule, the project would have been under construction by now. He said if Council wished to have staff return with the condemnation ordinance in a month, the City will still be negotiating and not have answers from very many of the property owners.

Mr. McKinley felt it might be worse to initiate the dialogue with property owners and then in the middle pass a condemnation ordinance.

Deputy Mayor Jepsen contested Councilmember Fimia's comment that there is no rationale for this action. He noted that the Council had adopted the Acquisitions Guidelines in 2001 to set up the process. He agreed that condemnation should be taken very seriously as a method of last resort. The ordinance does not say that these properties will go through an eminent domain procedure.

Councilmember Grace wanted to know when the condemnation phase would return to Council if the amendment passed. Councilmember Fimia postulated that staff would return at the point where there are property owners who are not willing to negotiate. She did not believe that her amendment would delay the process. She said staff will acquire the property and then start the condemnation. She said if this is not a two-step process, there is no recourse for the property owner and the Council cannot provide due diligence. This approach makes staff justify the need to condemn property.

Mr. Burkett disputed that this approach would not delay the project. He reiterated that it would delay it several months, unless staff came back in a month or so.

Responding to Councilmember Grace, Mr. Sievers explained why temporary construction easements are included in the ordinance, noting that a failure to have temporary construction easements could stop the project.

**A vote was taken on the amendment, which failed 2 – 3, with Councilmembers Fimia and Ransom voting in the affirmative.**

**A vote was taken on the motion to pass Ordinance No. 350 authorizing the acquisition and condemnation of certain real properties as listed in the ordinance, which passed 4 – 1, with Councilmember Fimia dissenting.**

**Councilmember Chang returned to the Council table at 10:38 p.m.**

Responding to Councilmember Fimia, Mayor Hansen noted that Item 9(b) regarding the Sister City Policy amendment should be addressed tonight because a sister city visitation is scheduled to begin May 12.

MEETING EXTENSION

**Councilmember Fimia asked to amend the agenda to take item 10(a) next to accommodate members of the audience who were waiting to address this topic. Councilmember Ransom concurred.**

Deputy Mayor Jepsen reminded Council of the need for an executive session at the end of the meeting.

At this point, Mayor Hansen asked that the meeting be extended to 11:30 p.m. **A vote was taken to extend the meeting, which carried 6 – 0. The Council concurred with taking the “Aurora Property Access” item next.**

10. NEW BUSINESS

(a) Aurora Property Access

Councilmember Ransom introduced this item, which he and Councilmembers Chang and Fimia had requested. He said the following business owners in the first half-mile of the Aurora Corridor requested that Council discuss their development interests:

- George Choi, who has the options on the property at 150<sup>th</sup> and the ski shop, where he wants to build a bank and a 60 unit condominium for \$23 million;
- Dan Dally, owns the Pepper Hill Business Mall with 25 businesses and wishes to add 35,000 square feet of retail space and perhaps some apartments;
- Larry Wheaten, General Manager of Goldies, a business that pays between \$740,000 and \$800,000 each year in taxes and would like to make improvements;
- Tim Isley, who owns two square blocks between 145<sup>th</sup> and 147<sup>th</sup> between Aurora and Whitman and wishes to build a new casino of 10,000 square feet with retail shops and restaurants and will consider some apartments on the upper floor; and
- The Panos family, who own the Park Plaza between 152<sup>nd</sup> and 155<sup>th</sup>.

Councilmember Ransom said that all of these businesses are asking about the Council’s willingness to make some concessions to them for their developments. He said that the state has 30 different ways to provide tax incentives to businesses to locate in Shoreline, but these businesses are not asking for any of them. They are asking the City to make a concession, i.e., to go to WSDOT and argue for a two-way left-turn median on Aurora Avenue. He said an example of this would be 150 feet of two-way left-turn and then a 25-foot long safety island, repeating this design again and again for the half-mile. This would allow left-turn access into these properties. The businesses indicate they will agree to the WSDOT proposal of no left-turns out of their properties. They feel that the ability of customers to access their properties from the north and south is critical to the success of their businesses.

Councilmember Ransom emphasized that the combined investment of these businesses is about \$100 million. He described this as “a dream come true for the City in terms of

investments.” He concluded that the businesses are anticipating the deliberation of the Council on their request and he suggested that Council has the following options:

- Deny any concessions (the City is likely to lose any additional investment these property owners are likely to make);
- Agree to go to WSDOT and try to find a compromise that will meet the businesses’ needs, such as the two-way median described above; or
- Give the businesses specific or behavioral instructions as to what the Council will agree to for business development incentives and under what circumstances, so everyone clearly understands the terms of criteria for assistance and what the assistance will be.

Councilmember Ransom asked that Mr. Choi, Mr. Dally, and Mr. Panos be provided an opportunity to address the Council.

Ken Panos, owner of the Park Plaza Shopping Center, said his tenants viewed negatively anything that restricts access and the two-way median is very important to protect the shopping center’s access. He asked how the current design was developed, noting that WSDOT says Shoreline developed the standards. Shoreline says WSDOT sets in place the standards. Mr. Panos did not know who is accountable. He said a number of local merchants, in addition to his family, are concerned about limitations on access. He urged the Council to make a recommendation to study the access question or have WSDOT study it.

Councilmember Fimia said the Councilmembers who brought up this issue are not advocating for a study. They are advocating for the City Council to sit down with WSDOT and explore how much leeway they actually have.

Mr. Panos said he asked to meet with WSDOT and staff from Shoreline, but this was denied.

Councilmember Fimia said she is not saying Mr. Panos should meet with WSDOT. She asked if Mr. Panos would be willing to forego left-turns out of the business and exit via right turns only. Mr. Panos said left-turn ingress would be something of a win.

Responding to Deputy Mayor Jepsen, Mr. Panos said the current access is at Wendy’s. He understood this is a difficult access. He explained that Safeway patrons come through the shopping center parking lot to use this access. He said they might have to close the easement between the properties if the circulation requires patrons to cross their property to 152<sup>nd</sup> Avenue.

Deputy Mayor Jepsen said the right-turn only does not address this problem, but Mr. Panos said at least getting the left-turn would be a partial win. He said Shari’s would be very severely impacted by no left-turn.

Mr. Dally described his proposed development at the Pepper Hill Shopping Center. He said all the 25 businesses there are low to medium profitability with 75 employees altogether. He feared if his tenants leave, the new tenants will not be as desirable. He said he has had the property for 20 years and he would like to rebuild to have a mixed use building with underground parking at the south end. However, the approximate 110 – 150 apartments or condos need direct left-turn access, as would the businesses. He mentioned working with the City of Seattle along Aurora Avenue. Left-turn access was denied for two years and finally the City of Seattle changed its mind and allowed access.

Mr. Dally said his redevelopment in Shoreline could be reoriented but there would be no retail facing Aurora. He distributed pictures of the type of development that could occur on the Pepper Hill site. He suggested a double left-turn lane southbound on Aurora Avenue at 145<sup>th</sup> Street. He said this would be a preference of WSDOT. However, it would require taking some property at 145<sup>th</sup>. This solution would also require working with the City of Seattle. He said a double left-turn lane would cut down from 900 feet to 145 feet the length of the left-turn lane. This would leave room for a direct access left-turn pocket into Pepper Hill. Mr. Dally concluded that whether the development of Pepper Hill occurs now or later, the current businesses need direct left-turn access to keep them profitable.

Councilmember Ransom said the left-turn Mr. Eisley is concerned about is at the end of his building between the space between the Hideaway and the Pepper Hill building. Mr. Eisley is considering taking down the Hideaway and getting a left-turn at the edge of his property about 450 feet from the corner of 145<sup>th</sup> Street into his proposed retail space.

George Choi, who had spoken to the Council previously about his project, said he started discussing it in 1997. At that time there was no debate about left or right turns from Aurora Avenue. He described his efforts at developing the site. In 2001 he and his architect began serious discussions and he spoke with Paul Cohen of the Planning and Development Services Department and other staff. He emphasized that his project of a 25,000 square foot bank building with 60-unit condominiums will only be feasible with left-turn access. He said he will provide parking on site. Mr. Choi distributed information regarding the bank that he is working with and the draft contract he is discussing with the bank. He concluded that his project will be good for Shoreline and the Council has the power to make the decision to allow the project to move forward.

Councilmember Fimia thanked Mr. Choi for coming to Council to demonstrate the seriousness of his project. She confirmed with Mr. Choi that his project could move forward without a left-turn out of the property.

Councilmember Ransom referred to the easement map on page 230 of the Council packet, pointing out that the properties in question are #10 and #9 (Choi), #5 (Dally), #4, #3, #2 and #42 (Eisley), and #49 (Panos).

Councilmember Fimia said she is seeking Council direction to sit down with WSDOT staff to see what concessions can be made by WSDOT to change the design of the project



to modify the access. She said there is no proposal to take existing left-turns in the design away from property owners on the opposite side of the street, as suggested in a letter by Mr. Burkett to the Seattle Restaurant Store.

Councilmember Chang concurred with Councilmember Fimia. He said it is important to provide the business owners in this segment of the project the opportunity to survive. Left-turn access is critical to this. If WSDOT is willing to work with the City, a continuous left-turn from 145<sup>th</sup> to 155<sup>th</sup> with some safety accommodations in between will be workable and fair for business owners.

Councilmember Grace asked who from WSDOT could participate in this and has the authority to say that a change could be made.

Councilmember Fimia said she would leave this up to WSDOT. She suggested the Deputy Administrator has indicated that if Council asks, WSDOT would be willing to sit down and work with the City with the understanding that left-turns out of businesses would be off the table. WSDOT "would make the call."

Responding to Councilmember Grace's question about a timeframe, Councilmember Fimia said this would be up to WSDOT. The idea is to sit down with WSDOT as soon as possible, with the understanding a decision is needed as soon as possible. Whatever modification is agreed to would drive the schedule. Staff would provide a briefing on the new schedule; what the modifications would be; what the benefits would be of changing the design and schedule; and then weigh the pluses and minuses. She believed her proposal could result in "an amazing win-win" for the City. Council could stand together and then be able to say that "we have done a miracle on Aurora Avenue, and that is make it work as best it can for all the needs that it has to serve."

Councilmember Ransom asked the staff's description of the documentation provided by Mr. Choi. He asked if Mr. Choi has a line of credit in the contract.

Mr. Sievers said one packet contains an unsigned letter of intent to lease part of the property with a purchase and sale agreement. Mr. Burkett said the other document was an annual report for Pacific International Bank.

Mr. Choi explained he has a group of 13 investors. Some of them have been supporting him for as long as three or four years. He said he talked to the PI Bank two and half years ago. The bank chairman is worried about the delays in the project because its current lease is expiring. If decisions do not come forward as soon as possible, the bank will consider other options. Mr. Choi says construction needs to start as soon as possible.

Mayor Hansen read into the record two letters from the Department of Transportation:

"I am following up with you on a brief discussion I had with a Shoreline City Councilmember about the SR-99 project. I was asked if WSDOT would be willing to consider any changes to the plan currently being

April 26, 2004

designed by the City. I explained that we will look at any proposal the City wants to put forward, but it needs to be consistent with the RCW and WAC regarding access management. In particular, median treatment is required. A continuous two-way left-turn lane is not acceptable. The WAC is very clear and does not allow any deviation from this requirement. Please give me a call if needed to discuss this any further.” This is an e-mail by Ron Paananen, WSDOT Northwest Region Deputy Regional Administrator.

From Douglas D. MacDonald, Secretary of Transportation, an excerpt, dated April 19, 2004. “I would like to clearly reiterate what I’ve stated verbally and what our staff has communicated in writing—that medians are required on this project. While there are a number of complex design, safety, and regulatory reasons for this decision, the primary reasons are the necessity for vehicles to cross three lanes of traffic when turning left, the high volume of vehicles on the portion of Aurora in Shoreline, and the high accident history. I trust this provides useful clarification. I look forward to a continued productive partnership on this and other projects in your city and region.”

Mayor Hansen said these statements are consistent with conversations he has had with Secretary MacDonald as far back as three years ago. At that time the Shoreline Merchants Association submitted its plans for Aurora, which were rejected. He said this issue has been reviewed time and time again.

#### MEETING EXTENSION

At 11:25 p.m. Councilmember Ransom moved to extend the meeting to 11:45 p.m. Councilmember Fimia seconded the motion, which carried unanimously.

Mayor Hansen said he does not support “denying any concessions” but he is also not for making any concessions. He said the two letters he read state WSDOT’s position on this matter. If the Council starts making promises and setting the rules, and then the City is not able to meet the criteria, this sets the City up for lawsuits. He said it would be foolish to change course now.

Councilmember Grace suggested that a representative of WSDOT come to the May 3 meeting to discuss WSDOT’s position. He said this will not slow the process and the City owes it to the business owners and developers to ask directly whether adjustments are possible. If WSDOT says no adjustments will be possible, the City can tell the business owners that nothing can be done.

Mayor Hansen had no objection to having people come to the Council meeting.

Upon Councilmember Ransom’s suggestion, Mayor Hansen said he would like to see the May 3<sup>rd</sup> workshop noticed as a special meeting.

Councilmember Fimia said there must be an element of advocacy for the businesses in the discussion. Of course, safety is the major consideration; but the City must ask WSDOT “what their bottom line is regarding redesign.” It will not be help if three Councilmembers say they do not want to change the design, even if WSDOT did make concessions. The Council must be on the same page with WSDOT about getting to the bottom line. The Transportation Research Board Access Management Manual lists two-way left-turn lanes as an application of a median in six-lane undivided roadways. She felt the City “could get more concessions out of WSDOT using the documentation in here and by assuring them they would not ask for left-turns out of the businesses.” She said the City has nothing to lose by doing this advocacy and perhaps a lot to gain. She said the Council should fight for these current and potential businesses. Without this advocacy, the Council may not hear what the real bottom line is.

Deputy Mayor Jepsen said he will not advocate for the extended two-way left turn lanes. He said this is what we currently have, an “unlimited free-for-all”.

Councilmember Fimia said the City must justify with best engineering available the decision to deny access to existing and new businesses. Council should not come to the table with a specific solution but should ask WSDOT how to provide access.

Mayor Hansen asked if May 10 was acceptable if May 3 does not work for WSDOT as time to “present their case.”

Councilmember Fimia said she was told that there is not just one design WSDOT would accept.

**Councilmember Fimia moved to invite a representative from WSDOT to the Council meeting on May 3<sup>rd</sup> to speak about alternative designs that might be acceptable to them for allowing greater access for businesses. Councilmember Chang seconded the motion, which passed unanimously.**

9. ACTION ITEMS: OTHER ORDINANCES, RESOLUTIONS AND MOTIONS

- (a) Resolution No. 213, amending Resolution No. 194 by amending Section D of the Sister City Relationship Policy relating to City expenditures

**Deputy Mayor Jepsen moved to adopt Resolution No. 213. Councilmember Ransom seconded the motion.**

Councilmember Ransom felt the policy is too restrictive in not supporting City Councilmembers’ ability to attend various activities. He feared the Sister City Association would not be able to pay for Councilmembers’ travel to sister cities. Councilmember Chang agreed.

April 26, 2004

A vote was taken on the motion, which carried 6 – 0, and Resolution No. 213 was approved.

MEETING EXTENSION

At 11:34 p.m. Deputy Mayor Jepsen moved to extend the meeting until midnight. Councilmember Ransom seconded the motion, which carried unanimously.

11. EXECUTIVE SESSION

At 11:35 p.m. the Council recessed into executive session until 12 o'clock midnight to discuss litigation. At midnight Mayor Hansen announced that the meeting would be extended for twenty minutes and the executive session continued until then. At 12:15 a.m. the executive session concluded and the meeting reconvened.

12. ADJOURNMENT

At 12:15 a.m. Mayor Hansen declared the meeting adjourned.

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Sharon Mattioli, City Clerk