

DRAFT

CITY OF SHORELINE

SHORELINE CITY COUNCIL SUMMARY MINUTES OF SPECIAL MEETING

Friday, September 14, 2007 - 11:00 a.m.
Shoreline City Hall
17544 Midvale Avenue North, Room 305

PRESENT: Deputy Mayor Fimia, Councilmember Gustafson, Councilmember Hansen, Councilmember McGlashan, Councilmember Ryu, and Councilmember Way.

ABSENT: Mayor Ransom

1. CALL TO ORDER

At 11:08 a.m., the meeting was called to order by Deputy Mayor Fimia, who presided.

2. ROLL CALL

Upon roll call by the City Clerk, all Councilmembers were present with the exception of Mayor Ransom.

Councilmember Gustafson moved to excuse Mayor Ransom. Councilmember McGlashan seconded the motion, which carried 6-0.

3. GENERAL PUBLIC COMMENT

(a) LaNita Wacker, Shoreline, said this meeting which is being held on a Friday morning in such a small room suggests the same kind of secrecy that residents have been fighting. She said this meeting should have been held on a regular meeting night and televised so the City of Shoreline can be appraised of what is happening.

(b) Elaine Phelps, Shoreline, commented that she doesn't know why this meeting is at this time or in this room, but it is probably because of an urgent desire and need to get this matter settled. She said Councilmember Gustafson's comments at the last meeting are shameful and condemnable because he called his colleagues liars without hearing the evidence or waiting for an outcome. She said he is shameful and is glad he will no longer be a Councilmember.

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

- (a) Motion to Approve Settlement Agreement in King et al v. Fimia et al, King County Superior Court Cause No. 06-2-00803-1SEA

(Voting limited to Councilmembers Gustafson, Hansen, McGlashan, and Ryu)

Bob Olander, City Manager, stated that the special meeting was called because of timeliness. There is a concern about rising attorney fees from a fiscal point of view from all sides of this issue. Additionally, Councilmember Ryu will be out of town for the next two Council meetings, and the City would have to wait approximately three weeks for her to return in order to resolve the issue. He said it is somewhat ironic in that since the City has been added to this lawsuit, it allows for a settlement agreement. The City staff believes it is a reasonable settlement and it is likely to cost the taxpayers considerably more if it isn't settled. At this point the City is paying for two sets of attorneys; the defense of the plaintiffs and the defendants. Additionally, since the City was added to the lawsuit, the City had to hire outside defense since the City Attorney is conflicted on this case. He added that he also executed a contingency of \$50,000 within his authority for this. He said the risk factor must be considered and even if the City was found guilty of a technical violation, it could still be found liable for the plaintiff's attorney fees. Even though the settlement amount of \$159,000 is a great deal of money, he recommended that the City enter into this settlement agreement. He said it is likely that it will cost the City more if this case continues. He said if the settlement is not executed the City and the two parties would file for an extension because the City needs more time to defend itself. This, he explained, would lead to more arguments, briefings, analysis, and discovery, which would result in continuing legal fees. He noted that many people outside the City have expressed concern about the City spending far too much taxpayer money.

Ian Sievers, City Attorney, said there is a court-mandated trial schedule which includes preliminary filing dates on a number of legal documents and briefs. If the City doesn't reach a settlement there will be two sets of attorneys that the City is paying for beginning preparation for trial and a risk of the City paying for the plaintiff's attorneys. He added that the City has already been contacted by the Court about missing filing dates and the City can't enter a dismissal based on the civil rules of Superior Court. The agreement has no gag order and no admission of liability clause. Furthermore, there is an additional paragraph #13 which reiterates a section of the Revised Code of Washington (RCW) that states the document must be adhered to if executed. The agreement also states that once the agreement is executed the plaintiffs will dismiss the lawsuit. Additionally, the settlement has already been agreed to by the plaintiffs and the only thing required if the Council agrees to it is that the City Manager has to execute the document.

Deputy Mayor Fimia called for public comment on this item.

PUBLIC COMMENT

a) LaNita Wacker, Shoreline, stated that the Open Public Meeting Act (OPMA) is designed to protect the public, and she is a victim. However, she said she isn't a plaintiff in this lawsuit. She stated the people that brought the lawsuit on her behalf did the right thing. She thinks the settlement should be increased to \$240,000 and each plaintiff should be given \$10,000 and another \$40,000 fund should be reserved to

compensate the citizens. She clarified that the amount that was agreed to by the plaintiffs should be increased by an additional \$81,000, or \$240,000 total.

b) Bronston Kenney, Shoreline, clarified that he felt the list of Pro Shoreline representatives includes the supporters and financial contributors of the group. He said the current Council is being held to a higher standard than the previous Council. Secrecy, he felt, is one of the interests of the plaintiffs and they engage in it also. His opinion was that this is a politically-based lawsuit. He expressed concern that the City will have to defend future politically-based lawsuits. He concluded that this was a small issue and it warranted a few angry letters to the editor. He said the lawsuit was preposterous.

c) Bill Bear, Shoreline, supported the motion to settle this lawsuit. He said democracy is "messy and expensive," but he felt it is worth the cost. He said he is encouraged by the settlement. He encouraged the City to move forward and make the City government better. He supported openness in the future.

d) Elaine Phelps, Shoreline, said it is remarkable that the same people who have been against paying for the defense of the innocent persons on the Council now are claiming that the City needs to pay the plaintiffs out of the taxpayer's pockets. She commented that LaNita Wacker wants to pay double the costs. She hoped the names of Grossman, Hollinrake, Rasch, and King live in ignominy. She said the charges were false and petty.

e) Beth O'Neill, Shoreline, said the supporters of Deputy Mayor Fimia, Councilmember Way, and Councilmember Ryu come forth each week claiming that there isn't any evidence against them, but they haven't read the depositions or looked at the evidence. Responding to the charge that the lawsuit is frivolous, she said it's outrageous for anyone to think that someone would file a lawsuit that will inevitably cost them money. She added that there are no "deep pockets" funding this lawsuit, and Pro Shoreline isn't behind it either. She stated that she is not a member of Pro Shoreline. She said the lawsuit was filed because the law was broken. She said she has had an issue with Deputy Mayor Fimia, who used the Council forum three times to lie about her, and Councilmember Ryu, who used the Enterprise newspaper to do the same thing last year. She said they don't work for or appreciate the public. On the other hand, she said the defendants work for the City Council, the Chamber of Commerce, and the 32nd District Democrats, which they support and control.

f) Wendy DiPeso, Shoreline, said she is sorry that this case is still being debated in the public when it should be in court where the facts can be established. However, the City has an opportunity to put this behind us once and for all. She noted that this may set the undesirable precedent of people bringing lawsuits and expecting to be paid off with taxpayer money. She pointed out that when the emotion and the rhetoric is set aside, there is a distinct difference between those who represent the City now and those who represented the City before. She said the previous administration didn't allow public comment, and eminent domain was utilized when it came to the Aurora Corridor project. In the current administration, despite the fact that there is a minority pushing for

more democratic process, there is a new citizen advisory council for housing, and one being established for economic development. Additionally, there was consensus on the Aurora Corridor project. She encouraged the public to let go of the rhetoric and decide if it is appropriate for the Council to settle this. She expressed concern that three Councilmembers who are voting also have connections with the people who funded their campaigns and are the same people who brought the lawsuit.

Councilmember Gustafson moved to approve the Settlement Agreement in King et al v. Fimia et al, King County Superior Court Cause No. 06-2-00803-1SEA. Councilmember Hansen seconded the motion.

Councilmember Way asked the City Attorney to explain what role the defendant's attorney played in negotiating this settlement agreement.

Mr. Sievers said this settlement was negotiated without the defendant's attorney. However, once a tentative agreement was negotiated, the defendant's attorney was informed of the terms and has an advance draft copy of the settlement agreement for comments. In turn, he has received comments from Mr. Ramerman pertaining to the agreement.

Councilmember Gustafson thanked the plaintiffs for joining the City in the lawsuit so the City can take action to settle it and not cost the taxpayers any more money. He felt the cost of this going to trial would have cost over \$1 million. He said he can't allow this to continue and cost the taxpayers any more money. He supported the motion.

Councilmember McGlashan also favored the motion. He said he would have liked this to go to trial but the "bleeding must be stopped." He said he supports the motion "with a heavy heart."

Councilmember Way clarified that the defendants' attorney are not party to the agreement.

Mr. Sievers stated that the defendants' attorney reviewed the draft agreement after negotiations and neither the Councilmembers nor their attorney participated in the negotiations.

Mr. Olander added that the City didn't ask permission of the defendants or the defendants' attorney to negotiate a settlement.

Councilmember Way said she understands the reasons for the City coming to an agreement with the plaintiffs because of costs. However, she said the agreement feels like blackmail, or a "shakedown." She said even though this permits settlement, the scar on the City will remain for quite a while. She hoped it will heal and that there would be many things the full Council could agree on in the future. She added that she had nothing to do with the settlement and thanked the City Manager and the City Attorney for their work in bringing this to a resolution.

Councilmember Hansen stated he would rather this issue go to trial, but he has to represent the citizens of the City of Shoreline. If this matter is settled today, he calculated that it has cost the residents about \$500,000. However, if it isn't settled and a trial date is set, it will cost another \$500,000. He said he would love to see what the verdict would be, but he can't in good conscience subject the taxpayers of the City of Shoreline to another \$500,000. He expressed support for the settlement.

Councilmember Ryu commented that the settlement amount is too high, but she has to look at what is in the best interest of the City. The City, she added, had an obligation to provide legal defense and that was committed in February 2006. Now, the City of Shoreline has been named as a defendant. In spite of the pressure and difficulties that have been imposed on the Council and the City staff, the City has accomplished a lot. She said the new policies are more sensitive to Shoreline residents. She discussed the Aurora Corridor Project, the Parks Bond, the advisory committees, and other positive things that have transpired in the City. She hoped this settlement would start the healing process.

A vote was taken on the motion to approve a settlement agreement in the King et al v. Fimia et al, King County Superior Court Cause No. 06-2-00803-1SEA, which carried 4-0 (Voting was limited to Councilmembers Gustafson, Hansen, McGlashan, and Ryu).

9. ADJOURNMENT

At 11:54 a.m., Deputy Mayor Fimia declared the meeting adjourned.

Scott Passey, City Clerk

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