

CITY OF SHORELINE

**SHORELINE CITY COUNCIL
SUMMARY MINUTES OF STUDY SESSION**

Tuesday, September 6, 2011
7:00 p.m.

Shoreline City Hall - Council Chamber
17500 Midvale Avenue North

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.

(a) Proclamation of Back to School and Traffic Safety Awareness

Mayor McGlashan read the proclamation declaring the week of September 12, 2011 as "Traffic Safety Awareness Week" in the City of Shoreline. Captain Scott Strathy, Shoreline Police Department, accepted the proclamation and encouraged residents to be alert for children and follow the rules of the road.

Mayor McGlashan directed staff to display a commemoration video concerning the attacks on September 11, 2001.

3. CITY MANAGER'S REPORT AND FUTURE AGENDAS

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

4. COUNCIL REPORTS

At 7:10 p.m., Deputy Mayor Hall recused himself from the meeting due to his conflict of interest with the Point Wells item.

Mayor McGlashan recognized State Representative Ruth Kagi who was in the audience.

5. PUBLIC COMMENT

- a) LaNita Wacker, Shoreline, thanked the City for the Aurora Corridor Phase II project completion.
- b) Janet Way, Shoreline, encouraged the City to plan something more in future years to remember 9/11.
- c) Anthony Poland, Shoreline, commented that the Metro buses running down 198th Street are damaging the road. He asked that it be repaved.

6. APPROVAL OF THE AGENDA

Upon motion by Councilmember Eggen, seconded by Councilmember Winstead and carried 6-0, the agenda was approved.

7. STUDY ITEMS

(a) Point Wells Update

Scott MacColl, Intergovernmental Relations Manager, provided the staff report regarding the proposed development at Point Wells. He commented on the feedback received at the community meeting held last week and reiterated the City's concerns about the impacts of the project on Shoreline's quality of life, to include the road network, parks, police, and fire response services. His presentation included the history of the site and the City's efforts to voice its concerns. He also discussed Shoreline's lack of jurisdiction over the site and pointed out that the options going forward include: 1) using the legal system to fight the project in court; 2) working through Snohomish County in the project review process; and 3) negotiating a municipal agreement directly with the developer.

Ian Sievers, City Attorney, addressed the chances of success in the court system and that the ongoing processing of permits gives the City a unique opportunity to negotiate with Blue Square Real Estate (BSRE), but if the City pursues grounds to challenge the vesting it may not work in the City's favor. He felt it is in the City's best interest to rely on the opportunity to negotiate.

Joe Tovar, Planning and Community Development Director, discussed Option 2. He noted that if the municipal agreement process fails the City would investigate the environmental impact statement (EIS) and comment on the scope of the EIS to the hearing examiner. This, he explained, would lead to an appeal of the process to the County.

Mr. MacColl highlighted that Option 3 involves negotiation and the City staff feels that is the best option. He outlined certain municipal agreement proposals that would protect the City from project impacts. Mr. MacColl concluded by discussing the volume of public comment letters the City received from the previous week and next steps.

Mayor McGlashan noted that there have been no votes on this issue; only discussions in executive session. He confirmed that City staff is not aware of any litigation from other entities and opened the item to public comment.

a) John DeMuri, Shoreline, expressed opposition to the project, noting that the City cannot mitigate the destruction of the whole community. He urged the City to mount a serious challenge on all fronts.

b) Sandra Bailey, Shoreline, said she would rather see Point Wells used for parks and advised the City to have a community meeting first the next time an issue like this occurs.

c) Howard Brady, Shoreline, said he would be directly impacted by the development of Point Wells. He discussed traffic accidents and asked the City to use the strongest language possible to oppose this project.

d) Nancy Morris, Shoreline, said there is not enough environmental information to begin negotiations with the developer and expressed concerns about site cleanup and traffic caps. She felt that it would never be an acceptable area for residential usage.

e) Brad Jordan, Shoreline, stated that negotiation is not always the best way to go and urged the Council to exert power to protect the powerless Shoreline residents.

f) George Mayer, Shoreline, cited an *Everett Herald* article that said if the residents do not want it, BSRE would not proceed. He said if Shoreline took a poll of Richmond Beach residents, there would be overwhelming opposition to it.

g) Larry Newman, Shoreline, felt the Council should be bold and institute a fourth option: the City does not need to ask for consideration because it "holds all of the cards." He felt that the development would not be built if there were no access to it.

h) Robin Brumett, Shoreline, noted that her family is 100% in favor of legal action with no appeasement or negotiation. She doubted the efficacy of negotiations and a letter of intent.

i) Janet Way, Shoreline, felt that neither Snohomish County nor an international developer should be dictating anything to Shoreline. She urged the City to fight and the community will understand there is a cost.

j) LaNita Wacker, Shoreline, stated that the residents have talked about their concern and traffic. She suggested banning all cars from entering the site as other areas have done.

k) Jesse Salomon, Shoreline, said he is not comfortable with the City abandoning the legal fight concerning Point Wells. He felt the court system would find a way to rule in the City's favor.

l) Mark Davies, Shoreline, said he favored the letter of intent approach. He discussed the traffic concerns and said a one signal delay cycle is worth the benefits. He urged the residents and Council to look at the benefits.

m) Susan Chang, Shoreline, questioned the idea that the permit is vested. She inquired if the City has investigated all engineering solutions and expressed support for litigation.

n) Ed Slater, Shoreline, discussed the significant project impacts to properties along the transportation routes and spoke in favor of litigation. He urged the City to move towards annexation and obtaining control of the area.

o) Robin McClelland, Shoreline, expressed hope that the Council will inform the residents about what could be litigated and the estimated cost if it goes all the way to the State Supreme Court. She felt purchasing the property would be the best possible solution.

p) Tara Ashton, Shoreline, discussed the traffic impacts and said it is important to know that this is a Shoreline issue, not just a Richmond Beach problem.

q) Jack Malek, Shoreline, favored litigation, annexation, and going all the way to the Supreme Court. He said the City should coordinate efforts with Richmond Beach and Woodway and there should be some State Legislature involvement.

r) Jerry Patterson, Shoreline, requested clarification about the decision-making authority under the three options and asked if the City was foregoing litigation by stipulating to the validity of the permit. He suggested utilizing a limit on maximum capacity rather than counting cars.

s) Dennis Casper, Shoreline, said the City has been negotiating with the developer for 45 days plus several months and would like to know the results of that negotiation. He asked about the legal precedent related to assuming all impacts when the other side gets all the benefits.

t) Tami Ritoch, Shoreline, said all of this seems too premature to negotiate and that not all options have been explored. She urged the Council to represent the residents and enter litigation instead of giving up.

u) Carlton Findley, Shoreline, inquired about the money spent to-date, how much is budgeted in the future, and if risk analysis has been done on annexing a toxic clean-up site. He noted the City's advantage because the developer has to use Shoreline roads to get to the site.

v) Carrie Mandich, Shoreline, expressed concern about her family's health and well-being and beach access issues if the site is developed. She opposed having more traffic in Richmond Beach.

w) Sandy Bailey, Shoreline, noted that the developer is the only person who can decide if Shoreline can annex the property.

x) Kaycee Holt, Shoreline, on behalf of Save Richmond Beach, stated that they will file a lawsuit and encouraged the City to seek legal advice from an outside land use attorney. She said that if there were adverse impacts that cannot be mitigated, the developer would not be allowed to build an urban center. She added that she is disappointed that the City has left the legal battle to the citizens.

y) Anthony Poland, Shoreline, agreed that the City has taken itself out of the loop and there is no reason that the road can be restored. He felt that the City should litigate repeatedly until the developer gives up.

z) Nancy Morris, Shoreline, discussed toxic exposure and favored clean up, but does not want to be pushed into a major development.

aa) Mark Davies, Shoreline, said the letter of intent should ask for mitigation and a new train station.

bb) Tom Jameson, Shoreline, said that not all the options are favorable.

cc) Larry Newman, Shoreline, noted that there will be no Sound Transit train station for Point Wells residents to use.

dd) Don Olson, Shoreline, stated that there will be semi-trucks hauling dirt and other materials up and down Richmond Beach road if this development happens.

ee) Chaejon To, Shoreline, expressed concerns about his mother walking across Richmond Beach road during construction and after project completion.

ff) LaNita Wacker, Shoreline, discussed parking alternatives in other cities and said cars can be banned and people conveyances could be designed.

gg) Ed Slater, Shoreline, said that the City should pursue legal action to stop the urban designation because the City cannot stop all development there.

hh) Tara Ashton, Shoreline, said a city employee was given a tour of the Point Wells site by the developer and the developer used the term "boil the frog."

ii) Bob Flanagan, Shoreline, said he has not heard the term eminent domain, and if the street is widened it would eliminate his house and others.

Councilmember Roberts inquired if there has been a traffic cap implemented anywhere. Mr. Tovar replied that there have been none in this state, so the City would have to invent it. Mr. Sievers replied that if the City annexes Point Wells, it has no exposure to liability from toxic waste or any environmental issues because there are rigid federal requirements. Responding to Councilmember Roberts, Mr. Sievers explained that if the Town of Woodway and Richmond

Beach pursues lawsuits, the City could not have an agreement apply to those permits that would be in litigation. He further noted for Councilmember McConnell that the City is at an advantage to get more out of negotiation because there would be nothing to fall back on if litigation fails. Mr. Tovar added that if the agreement fails, the developer would still have to apply for a new permit under new zoning.

Councilmember Eggen stated that the Growth Management Hearing Board has invalidated the Comprehensive Plan (CP) of Snohomish County because they didn't follow the rules in defining Point Wells as an urban center. Mr. Tovar explained that they remanded it and told them to "fix it." He added that even if Snohomish County fixes the designation issue, the code would then apply. Mr. Sievers added that urban center is fine concept, but it is a strained fit when you read their code. The concept should probably be left in their CP and another designation should be given.

Councilmember Eggen pondered on what winning a lawsuit would mean and noted that the entire process is unfair to residents. Litigation, he said, is high-risk and high-gain. However, negotiation is moderate risk-moderate gain. He felt both efforts could run in parallel fashion. Mr. Sievers stated that negotiations would stop if the City sues and disagrees that the gain is high for litigation. Mr. Sievers noted that the City will comment on the EIS without an agreement and can expect payments and concessions, but if it follows traditional mitigation measures, it is very uncertain.

RECESS

At 9:05 p.m., Mayor McGlashan called for a five-minute break. The meeting reconvened at 9:12 p.m.

Councilmember Eggen noted that the draft agreement was written the way it was because BSRE does not think the traffic count will be as high as the City predicted. However, they have to demonstrate it will not be a problem. He said he is not completely confident the draft agreement will limit unit count, and he will not support an agreement that does not control traffic. He said if litigation were the path that has good chance of limiting traffic, he would favor that, but he has not seen a convincing argument that that is true. He noted that Kaycee Holt said she would appreciate further legal work and it is worthwhile to get a feeling about the odds of success. Councilmember McConnell agreed. He also noted that Shoreline should look into the option of buying Point Wells.

Councilmember Winstead added that buying Point Wells would require a citizen supported bond. She stated that the City is leaving no stone unturned and is looking at litigation and an agreement. She urged the residents to write the state legislators and the Snohomish County Executive. There are lots of procedural questions out there, she added. She noted that the Council is considering having a Point Wells update at each Council meeting.

Mr. Sievers explained how an application becomes vested. He noted that there are state vesting statutes and on February 14 the urban center development plan was adopted. According to Snohomish County regulations for urban centers, the project vested on March 1, 2011. He

explained that the County also passed vesting ordinances. There are state laws for vesting building permits and plats and they have one filed for a short plat. He concluded that there are two different actions and sources of vesting.

Councilmember McConnell said she has some concern about the legal questions tonight because some issues should not be discussed in a public forum. She noted that the Council gets it and she lives in Richmond Beach. She encouraged groups to do what they need to do and stated that litigation continues to be an option. She inquired about eminent domain and said the City is in contact with other land use attorneys. She noted that she does not think the residents will agree to buy this sixty-acre parcel on the waterfront. She said she has been entrusted to do the right thing, and nothing should be done until all the concerns are heard.

Councilmember Scott commented about the City's decision-making capacity and Councilmember MacColl responded that if the City goes through the Snohomish County process, the decision is left up to them. If the City litigates, the decision is left to the courts. Option 3 gives the City the ability to influence the final outcome. Councilmember Scott confirmed with Mr. MacColl that the options are not mutually exclusive.

Councilmember Roberts pointed out that the City has no ability to make decisions about it and should continue to comment. However, the City is in a bad spot. Snohomish County ignored Shoreline's Comprehensive Plan and their own code. Urban centers, he said, are supposed to be close to transit and highways, and it is absurd to think Snohomish County would think Point Wells could be an urban center. He concluded that people need to devote energy to fixing the Growth Management Act in the state legislature.

Mayor McGlashan agreed with everyone's comments. Mr. Sievers responded to him and stated that the only thing that can be litigated is the vesting. He explained that the City can possibly look at the Board's decision of non-compliance with SEPA, but the statute is very clear about the term "prospective." Mayor McGlashan commented that people raised the question about the access road, and Mr. Sievers noted that it should not be discussed outside of executive session. He also noted that cities can purchase property for parks purposes outside of its jurisdiction.

Councilmember Scott confirmed with the City Attorney that if it is purchased, there would be no property taxes due because it would be public property.

Councilmember McConnell also discussed the road and said the City should encourage limiting the traffic, even without BSRE. She stated the City needs to play hardball with the issue.

Mayor McGlashan thanked everyone and stated that this is a difficult issue and process. He agreed that there should be a second access road to Point Wells.

Ms. Underwood addressed next steps and encouraged residents to fill out comment forms. She confirmed with Councilmembers that they would like an additional legal opinion, which Mr. Sievers said could be arranged. Councilmember McConnell and Councilmember Winstead favored an additional legal opinion, if it is conscious of costs. Mr. Sievers stated that it has been done in other matters and he will generate a memorandum reviewing likelihoods and a possible

cause of action. He noted that confidential attorney-client matters could be disclosed in the future if Council waives the right.

8. ADJOURNMENT

At 9:55 p.m., Mayor McGlashan declared the meeting adjourned.

Scott Passey, City Clerk