

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Action on Ordinance No. 940 - Adopting Council's Decision on the Closed-Record Appeal Hearing of the Shoreline Preservation Society Regarding the Naval Hospital Chapel Landmark Designation and Waiving Council Rule of Procedure 3.5 Regarding City Ordinances Requiring Three Readings
DEPARTMENT:	City Attorney
PRESENTED BY:	Margaret King, City Attorney Julie Ainsworth-Taylor, Assistant City Attorney
ACTION:	<input checked="" type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input type="checkbox"/> Motion <input type="checkbox"/> Discussion <input type="checkbox"/>

PROBLEM/ISSUE STATEMENT:

On July 26, 2021, the City Council held a closed-record appeal hearing on an appeal filed by the Shoreline Preservation Society (SPS). The decision being appealed was the Shoreline Landmarks Commission's (Shoreline Commission) revised designation of the Naval Hospital Chapel, located within the Fircrest Campus at 1902 NE 150th Street in Shoreline. The revised designation was based on a Request for Reconsideration filed by the Washington State Department of Social and Health Services (DSHS) and, after holding a hearing on March 25, 2021, resulted in a modification to a portion of the landmark boundary.

After reviewing the Record and considering briefing submitted by SPS and DSHS, and arguments presented at the July 26 hearing by SPS, DSHS, and the Shoreline Commission, the City Council determined to remand the matter to the Shoreline Commission based on Issue No. 7 which asserted that the Shoreline Commission failed to provide timely public notice.

Tonight, the City Council will consider adoption of proposed Ordinance No. 940 which provides the findings and conclusions supporting its decision. In considering proposed Ordinance No. 940, the City Council will need to waive Council Rule 3.5 which requires ordinances to have three readings.

RESOURCE/FINANCIAL IMPACT:

Action on proposed Ordinance No. 940 has no financial impact.

RECOMMENDATION

Staff recommends that the City Council review the Findings and Conclusions drafted by Staff as set forth in Exhibit A to Attachment A to ensure they adequately reflect the City

Council's decision. After the Findings and Conclusions are deemed appropriate, Staff recommends that the City Council waive Council Rule 3.5 and adopt Ordinance No. 940 to effectuate its decision and to direct the City Clerk to cause the City Council's decision to be promptly sent to the Shoreline Landmark Commission.

Approved By: City Manager **DT** City Attorney **MK**

BACKGROUND

On July 26, 2021, the City Council held a closed-record appeal hearing on an appeal filed by the Shoreline Preservation Society (SPS). The decision being appealed was the Shoreline Landmarks Commission's (Shoreline Commission) revised designation of the Naval Hospital Chapel, located within the Fircrest Campus at 1902 NE 150th Street in Shoreline. The revised designation was based on a Request for Reconsideration filed by the Washington State Department of Social and Health Services (DSHS) and, after holding a hearing on March 25, 2021, resulted in a modification to a portion of the landmark boundary.

In its appeal, SPS presented nine (9) issues. After reviewing the Record and considering briefing submitted by SPS and DSHS, and arguments presented at the July 26 hearing by SPS, DSHS, and the Shoreline Commission, the City Council determined to remand the matter to the Shoreline Commission based on Issue No. 7 which asserted that the Shoreline Commission failed to provide timely public notice.

The Staff Report for the July 26, 2021, appeal hearing can be viewed here: [QUASI-JUDICIAL: Closed-Record Appeal Hearing - Shoreline Preservation Society, Regarding Naval Hospital Chapel Landmark Designation](#).

The City Council's final decision must be adopted by ordinance and is to be supported by findings of fact and reasons justifying its decision. Tonight, the City Council will consider adoption of proposed Ordinance No. 940 (Attachment A) which provides the findings and conclusions supporting its decision.

DISCUSSION

At the July 26 appeal hearing, after the City Council's deliberation on the nine (9) issues presented by SPS, the Council directed Staff to prepared findings consistent with those deliberations and remanding the matter to the Shoreline Commission based on a failure to provide timely notice of the March 25, 2021 public hearing where the Petition for Reconsideration was considered.

The issues presented by SPS and the Council decision on each of those issues are shown below:

1. Did the Shoreline Landmark Commission err in granting the Motion for Reconsideration filed by DSHS because it did not apply the proper legal standard for a motion for reconsideration?

Council Decision: No Error

2. Did the Shoreline Landmark Commission err when it concluded that revising the eastern boundary to exclude the proposed 60 feet by 240 feet section would not have a significant adverse impact on the integrity and character of the Chapel setting?

Council Decision: No Error

3. Did the Shoreline Landmark Commission err because it failed to give due consideration to the findings set forth in the February 2, 2021, Findings and Fact and Decision of the Shoreline Landmark Commission?

Council Decision: No Error

4. Did the Shoreline Landmark Commission err when it did not accept testimony and arguments on protecting the existing landmark from environmental harm?

Council Decision: No Error

5. Did the Shoreline Landmark Commission err to the extent it considered evidence of DSHS's intent to use and develop the Fircrest property in the future?

Council Decision: No Error

6. Did the Shoreline Landmark Commission err to the extent its decision to revise the boundary was a response to a threat of litigation by DSHS?

Council Decision: No Error

7. Was the Appeal Action the result of an unfair and improper public process due to a lack of reasonable public notice and unfair timeline causing substantial harm to Appellant?

Council Decision: Error, failed to provide timely notice; Remand

8. Was the Appeal Action the result of an unlawful and unfair hearing process because Appellants were not given the opportunity to rebut DSHS arguments recently presented to Appellant?

Council Decision: No Error

9. Was DSHS required to notify the Washington State Department of Archaeology and Historic Preservation or tribal groups of its motion for reconsideration?

Council Decision: No Error

Pursuant to the City Council's direction, Staff prepared Findings of Fact and Conclusions to support the Council's decision. Those Findings and Conclusions are attached to this Staff Report as Exhibit A to proposed Ordinance No. 940. As noted above, tonight, the City Council will consider adoption of Ordinance No. 940 which provides the findings and conclusions supporting its decision. In considering proposed Ordinance No. 940, the City Council will need to waive Council Rule 3.5 which requires ordinances to have three readings.

RESOURCE/FINANCIAL IMPACT

Action on proposed Ordinance No. 940 has no financial impact.

RECOMMENDATION

Staff recommends that the City Council review the Findings and Conclusions drafted by Staff as set forth in Exhibit A to Attachment A to ensure they adequately reflect the City Council's decision. After the Findings and Conclusions are deemed appropriate Staff recommends that the City Council waive Council Rule 3.5 and adopt Ordinance No. 940

to effectuate its decision and to direct the City Clerk to cause the City Council's decision to be promptly sent to the Shoreline Landmark Commission.

ATTACHMENTS

Attachment A: Ordinance No. 940

Exhibit A: Findings of Fact and Conclusions

ORDINANCE NO. 940

**AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON
SETTING FORTH THE CITY COUNCIL'S DECISION ON THE APPEAL
OF THE SHORELINE PRESERVATION SOCIETY REGARDING THE
LANDMARK DESIGNATION OF THE SHORELINE NAVAL CHAPEL
ON THE FIRCREST SCHOOL CAMPUS.**

WHEREAS, Pursuant to an Interlocal Agreement with King County and Shoreline Municipal Code (SMC) Chapter 15.20 Landmarks Preservation, the King County Landmarks Commission serves as the Shoreline Landmarks Commission (hereinafter, the "Commission") to provide historic landmark designation and protection for the City; and

WHEREAS, as provided for in Chapter 15.20 SMC and the rules of procedures for the Commission, the City Council hears appeals of a decision of the Commission; and

WHEREAS, the Shoreline Preservation Society sought landmark designation of the Shoreline Naval Chapel on the Fircrest School Campus (Chapel). On February 2, 2021, the Commission issued a decision designating the Chapel and a surrounding forested area as a Shoreline landmark; the Washington State Department of Health and Human Services (DSHS) sought reconsideration of that decision; and

WHEREAS, on March 25, 2021, the Commission held a public hearing to consider DSHS's request for reconsideration, heard arguments from DSHS, Shoreline Preservation Society, the Washington State Department of Natural Resources, and members of the public. The Commission determined that the landmark boundary could be slightly modified without negative impacts to the integrity and character of the Chapel; and

WHEREAS, on April 22, 2021, the Commission issued a revised decision with the modified boundary; the Shoreline Preservation Society filed an appeal of that decision to the City Council on May 20, 2021, setting forth nine (9) issues; and

WHEREAS, on July 26, 2021, the City Council held a closed record appeal hearing to consider arguments of the Shoreline Preservation Society, DSHS/DNR, and the Commission along with information contained in the Record; and

WHEREAS, the City Council determined that of the nine (9) issues presented, only the issue alleging untimely notice of the March 25, 2021 public hearing had merit and that the Commission's failure to provide timely notice warranted remand for the Commission to hold a properly noticed public hearing; and

WHEREAS, on August 9, 2021, the City Council considered the Findings of Fact and Conclusions drafted by the City Attorney's Office and waived Council Rule 3.5 to take action on this Ordinance;

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF SHORELINE,
WASHINGTON DO ORDAIN AS FOLLOWS:**

Section 1. Findings of Fact and Conclusions.

A. The City Council hereby adopts the Findings of Fact and Conclusions set forth in Exhibit A to this Ordinance as the findings and conclusions supporting its decision on the Shoreline Preservation Society’s appeal.

B. The City Council hereby finds and concludes that with the exception of Issue No. 7, the Shoreline Preservation Society failed to demonstrate the Shoreline Landmarks Commission erred.

Section 2. Remand to Shoreline Landmarks Commission.

A. The City Council hereby finds and concludes the Shoreline Preservation Society demonstrated, and the Record supports, that the Shoreline Landmarks Commission failed to give timely public notice of the March 25, 2021 public hearing and remands this matter to the Shoreline Landmarks Commission to hold a properly noticed public hearing on DSHS’s request for reconsideration.

B. The City Clerk is hereby directed to send a certified and complete copy of this Ordinance to the Shoreline Landmarks Commission as soon as reasonably possible but no later than its effective date.

Section 3. Corrections by City Clerk. Upon approval of the City Attorney, the City Clerk is authorized to make necessary corrections to this Ordinance, including the corrections of scrivener or clerical errors; references to other local, state, or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering and references.

Section 4. Severability. Should any section, subsection, paragraph, sentence, clause, or phrase of this Ordinance or its application to any person or situation be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this Ordinance or its application to any person or situation.

Section 5. Publication and Effective Date. A summary of this Ordinance consisting of the title shall be published in the official newspaper. This Ordinance shall take effect five days after publication. This Ordinance shall not be codified.

PASSED BY THE CITY COUNCIL ON AUGUST 9, 2021.

Mayor Will Hall

ATTEST:

APPROVED AS TO FORM:

Jessica Simulcik Smith
City Clerk

Julie Ainsworth-Taylor, Assistant City Attorney
On Behalf of Margaret King, City Attorney

Date of Publication: , 2021
Effective Date: , 2021

**FINDINGS AND CONCLUSIONS
OF THE
SHORELINE CITY COUNCIL**

**IN THE APPEAL OF THE SHORELINE PRESERVATION SOCIETY’S APPEAL OF
THE SHORELINE LANDMARKS COMMISSION’S APRIL 22, 2021, DECISION ON
RECONSIDERATION RELATED TO THE LANDMARK DESIGNATION
OF THE SHORELINE NAVAL CHAPEL**

A. FINDINGS OF FACT

1. Based on Shoreline Municipal Code (SMC) Chapter 15.20, Landmarks Preservation, and an Interlocal Agreement with King County, the King County Landmarks Commission serves as the Shoreline Landmarks Commission (hereinafter, the “Commission”) to provide historic landmark designation and protection for the City.
2. On September 28, 2020, Northwest Vernacular, on behalf of the Shoreline Preservation Society (“SPS”), filed a Landmark Registration Form with the Commission seeking Shoreline Landmark designation of the Naval Hospital Chapel (“Chapel”) as well as adjacent forested landscape and pathways surrounding the Chapel. The Chapel and adjacent property are all located on the State of Washington’s Fircrest School Campus (Index No. 1). The Fircrest School Campus, Tax Parcel 162604-9010, is an approximately 90-acre parcel owned and managed by two Washington State departments – the Department of Health and Human Services (“DSHS”) and the Department of Natural Resources (“DNR”). The Chapel was constructed in 1944 and, until 1959, the Fircrest School Campus was the home of the U.S. Navy Hospital, including the Chapel. The Campus now serves as a residential/school facility for individuals with developmental disabilities. The total area sought to be designated was approximately 3 acres. *Index 1, Index 32(D), Index 106.*
3. On November 19, 2020, the Commission held a public hearing to discuss SPS’s landmark designation request (November Hearing, Index No. 32). Commissioners Handy, Lemay, Moore, Ossa, Earley, Lake, Pilgrim, and Blue, along with Shoreline special member Galuska, were present. The Commission heard from SPS and DSHS along with accepting public comment (oral and written). At this public hearing, DSHS requested the proposed boundary be moved eastward and SPS representative Young suggested a compromise on amending the eastern boundary by carving out the area needed for future parking in advance. The Commission decided to continue the discussion until a future Commission

hearing as details regarding designation boundaries and interior features needed to be better defined. *Index 32(F), 32(H), 32(I)*.

4. On January 28, 2021, the Commission continued the public hearing on the application for designation. (January Hearing, Index No. 50). Commissioners Lake, Lemay, Moore, and Earley (who were present at the November Hearing) along with Commissioners Kralios, Alsobrook, Woo, and Tucker (who were not at the November Hearing) participated as did Shoreline’s special member Galuska. The Commission heard from SPS and DSHS along with accepting additional public comment (oral and written). At this public hearing, there were two (2) maps initially presented: one map was the boundary as proposed in the original nomination, the other map was one submitted by DSHS that showed a relocated eastern boundary line approximately 80 feet to the west.

The Record reflects that the Commissioners deliberated extensively on the appropriate boundaries and the buffering effect of the landscape. The Commission crafted a “compromised boundary” which was subsequently defined as being an area that retained the parking lot and pathways as contributing features but adjusted the boundary to include the area south of the parking lot. Afterward, Commissioner Lemay showed a revised map that she had hand drawn. Lemay’s map included the area to the north of the parking lot rather than to the south. The deliberations reveal there was confusion amongst the Commissioners on the boundary line and the Record denotes that the vote was for the boundaries as originally nominated with an amendment – the south line revised to exclude the area to the south of the contributing parking lot. A revised map reflecting the revision was subsequently prepared by Northwest Vernacular at the request of the Commission. On February 2, 2021, the Commission issued its Findings of Fact and Decision memorializing this designation which included the revised map prepared by Northwest Vernacular. *Index 1, Index 50(F), 50(I), 50(J), Index 52, Index 55*.

5. On February 21, 2021, DSHS filed a timely Petition for Reconsideration pursuant to Commission Rule IX(2) (Index No. 59). With its Petition, DSHS asserted that the Commission based its decision regarding the eastern boundary on apparent errors or omissions of fact as to the “compromised” boundary line. There is nothing in the Record that demonstrates that either DSHS or the Commission provided the Petition for Reconsideration to SPS or any other member of the public at the time of filing or a reasonable time thereafter. While not required by the Commission’s Rules, the Commission determined that a public hearing on the Petition for Reconsideration should be held and scheduled the hearing for March 25, 2021. The Landmarks Coordinator sent notice to DSHS on March 18, 2021, but did not send notice to SPS and other interested parties of record until March 19, 2021. *Index 49, Index 59, Index 66, and Index 71*.
6. On March 25, 2021, the Commission held a public hearing to consider DSHS’s Petition for Reconsideration (March Reconsideration Hearing, Index No. 86). After hearing from DSHS, SPS, and members of the public, the Commission modified the boundary to exclude the area to the north of the contributing parking lot and include the area to the south of the contributing parking lot.
 - a. Five (5) of the same Commissioners that were present at the January Public Hearing, including Shoreline’s special member Galuska, attended the hearing. Commissioners Lemay, Woo, and Tucker were absent. Commissioner Blue, who was not in attendance

- at the January Public Hearing, was present at the reconsideration hearing and participated. Commissioners Blue and Lake conducted a site visit prior to the March Reconsideration Hearing. *Index 86(J), 86(M)*.
- b. Landmarks Coordinator Sarah Steen advised the Commission that for the March Reconsideration Hearing the Commissioners' review was to be based on: (a) evidence submitted at the previous hearing and documentation of current site conditions; (b) public comment related to the potential impact of revising the boundary to the feeling and setting of the Chapel building; and (c) the Commission's review of prior hearing deliberations concerning the boundary and impact assessment of a boundary revision on the feeling and integrity of the Chapel building. *Index 86(A), 86(J)*.
 - c. DSHS put forth argument supporting its Petition for Reconsideration, specifically that the designation boundary was inconsistent with the Commission's deliberations at the January Public Hearing. Public comment was received generally opposing revising the boundary. Issues presented during the parties' statements and public comment included DSHS's future plans for the Fircrest property, the historical importance of the forest setting to the Chapel, and the importance of trees within that setting along with habitat they provide. Specifically, Richard Ellison, a retired professor, testified about "edge effects" and forest conditions. *Index 86(J), 86(M)*.
 - d. Commissioner Earley stated she believed the Commission was not confused when voting in January. There was, however, also Commissioner and public testimony conceding that there was confusion about the boundary. *Index 86(H), 86(J), 86(M)*.
7. On April 9, 2021, the Commission issued its Preliminary Determination of Boundary Revision (Index No. 92) and, at an April 22, 2021, meeting the Commission formally adopted the final landmark designation map after confirming it adequately reflected the deliberations at the March Reconsideration Hearing (Index No. 105). Commissioners Lake, Lemay, Moore, Tucker, Kralios, Alsobrook, Blue, and Woo were in attendance, however, since they were not at the March Reconsideration Hearing and did not have an opportunity to fully review the record, Commissioners Lemay, Tucker, and Woo abstained from the vote. Public comments were accepted by the Commission regarding the map. The Commission's Findings of Fact and Decision with the new map was issued on April 22, 2021. *Index No. 105(D), 105(G), Index 106*.
 8. On May 20, 2021, SPS submitted a timely Notice of Appeal to the City of Shoreline appealing the Commission's granting of reconsideration and the modification of the landmark boundary. Based on SPS's Notice of Appeal, nine (9) issues were identified by the City and those issues were set forth by the City Clerk in a Notice of Hearing and Case Schedule issued June 2, 2021. SPS and DSHS/DNR filed briefing in conformance with the Clerk's Notice.
 9. On July 26, 2021, the Shoreline City Council held a closed record hearing to consider SPS's appeal (July Appeal Hearing).
 - a. SPS was represented by Janet Way, Lance Young, and Wendy DiPeso. DSHS/DNR was represented by Assistant Attorney General Joseph Christy. The Landmarks Commission was represented by Sarah Steen, Landmarks Coordinator. All of the

parties were each allowed to present their arguments followed by an opportunity for the City Council to ask clarifying questions.

- b. The City Attorney confirmed that all councilmembers participating in the July Appeal Hearing stated that they could do so in an unbiased and impartial manner, consistent with Washington's Appearance of Fairness Doctrine as it relates to quasi-judicial proceedings. Any councilmember that had any communications with any of the parties disclosed the communication on the record. Parties were asked if they had any objections to any member participating in the July Appeal Hearing. There were no objections.
- c. Issue 1 alleges that the Commission erred when it granted DSHS's Petition of the Reconsideration. Commission Rule IX(2) states that an aggrieved person may petition the Commission for reconsideration on the grounds that the decision was based on (i) errors or omissions of fact or (ii) that new information bearing on the decision, and not reasonably available to the petitioner at the time of the decision, is available. DSHS's Petition stated that it was based on errors or omissions of fact relating to the Commission's confusion over the area that was to be excluded via the Commission's compromised boundary. SPS asserted that the Commission did not comply with the legal standard in Rule IX(2) because there was no error of fact as the Commissioners knew what they were voting on. *Index 59; DSHS Response Brief; Argument of DSHS; SPS Opening Brief and Reply Brief; Argument of SPS; Argument of Landmarks Commission.*
- d. Issue 2 alleges that the Commission erred when it found that a revision to the boundary would not have an adverse impact on the integrity and character of the Chapel setting. SPS argued about the initial design of the Chapel and the importance of its setting for Navy Captain Boone, citing to the original nomination form (Index No. 1). DSHS noted that SPS's original nomination did not provide specific evidence that the area north of the parking lot was integral to the integrity of the Chapel site and there was no basis for concluding that it is integral given the speculative argument presented by SPS. *SPS Opening and Reply Brief; Argument of SPS; DSHS Response Brief, Argument of DSHS; Argument of Landmarks Commission.*
- e. Issue 3 contends the Commission was required to, but did not, give consideration to the February 2 Decision. The Record denotes that all of the previous evidence was available to the Commission for the March Reconsideration Hearing and the Commission was advised that the information was to be utilized when addressing the Petition for Reconsideration. *Index 86(A), SPS Opening Brief and Reply; Argument of SPS, DSHS Response Brief, Argument of DSHS; Argument of Landmarks Commission.*
- f. Issue Numbers 4, 5, and 6 allege errors based on the Commission's: failure to accept testimony, incorrectly basing its decision to revise the boundary on DSHS's future use of the Fircrest School Campus, and improperly ceding to DSHS's threat of litigation. DSHS's responds that the Commission did not prohibit any testimony and that there is no evidence in the Record that the Commission's decision of DSHS's Petition for Reconsideration was based on future development plans or legal threats. The Commission argued that the area removed was topographically and visually separated and, therefore would not negatively impact the Chapel. The Commission further

argued that it had no authority to address environmental concerns. SPS presented expert testimony, through Richard Ellison that, according to SPS, provided a technical scientific opinion on the potential environmental harm of the boundary revision due to edge effects and the buffering function the forested area was providing to existing trees and landscape closer to the Chapel.

The Record does denote discussion on the future of the Fircrest School Campus, but the Commission argued that regardless of DSHS's future intent, the Commission evaluates only the impact to the historic resource. The Record also denotes that the Assistant Attorney General representing DSHS at the March Reconsideration Hearing made statements about future appeals if the Commission's decision was adverse to DSHS. *DSHS Response Brief; Argument of DSHS; Index 86(H), 86(J), 86(M); SPS Opening Brief and Reply Brief, Issue No. 4; Argument of SPS; Argument of Landmarks Commission.*

- g. Issue 7 alleges error based on inadequate public notice. Ms. Sarah Steen, Landmarks Coordinator for the Commission, testified at the July 26 Appeal Hearing that at least ten (10) calendar days' notice should have been provided as stated in the Commission's Rules of Procedure (Index 49) and that she did not provide the required notice. SPS stated that the Commission violated their own Rules regarding required notice and that SPS did not have enough time to adequately prepare for the March Reconsideration Hearing, preventing them collecting necessary information, seeking legal help, and/or preparing effective evidence and argument in response to the Petition for Reconsideration. DSHS asserted that even if notice was untimely, SPS was not substantially harmed because they presented written and oral argument for the March Reconsideration Hearing. *Argument of Landmarks Commission, SPS Opening Brief and Reply Brief, Issue No. 7; Argument of SPS, DSHS Response Brief, Issue No. 7; Argument of DSHS.*
- h. Issue 8 alleges error based on a failure of the Commission to allow SPS to rebut DSHS's closing argument. SPS contends that as the applicant of the original nomination, it should have been given the opportunity to rebut DSHS's closing argument. Both DSHS and the Commission argued to the contrary. *SPS Opening Brief, Issue 8; Argument of SPS, DSHS Response Brief, Argument of DSHS; Argument of Landmarks Commission.*
- i. Issue 9 relates to Washington State Governor's Executive Order 21-02 (EO 21-02), dated April 7, 2021, which requires state agencies to consult with DAHP and tribal groups. SPS contends that DSHS violated EO 21-02 because it did not consult. DSHS/DNR responded that its Petition for Reconsideration was not a "project" subject to EO 21-02 and the City Council has no enforcement authority for this executive order. The Commission argued that regardless of whether the state owns the land, the landmark preservation regulations are an overlay, similar to zoning, and not subject to EO 21-02. EO 21-02 was submitted to the Commission on April 14, 2021, with a letter asserting that DSHS was required to comply with EO 21-02 when submitting its Petition for Reconsideration. *Index 94; SPS Opening Brief and Reply; Argument of SPS; DSHS Response Brief, Argument of DSHS; Testimony of Landmarks Commission.*

B. CONCLUSIONS

Based on the above Findings of Fact, the City Council finds and concludes the following:

Issue 1 – The Shoreline Landmarks Commission did not err when it granted DSHS’s Petition for Reconsideration.

Commission Rule IX(B) establishes the threshold for reconsideration. It requires a party seeking reconsideration demonstrate that the decision was based on errors or omissions of fact or that there is new information not previously available. DSHS’s Petition for Reconsideration claimed there was an error of fact. The error asserted by DSHS was the boundary designation shown in the February 2, 2021, Decision was erroneous in that it did not reflect the deliberations of the Commission during the January Public Hearing. While SPS cites to Commissioner Earley’s statement that she believed the Commission was not confused by the time of the vote, the deliberations of the Commission do not expressly support this statement. The Record shows that the Commission performed due diligence as to the boundary through the March Reconsideration Hearing, utilizing new information provided by DSHS and a site visit by some of the Commissioners prior the March Reconsideration Hearing.

The City Council finds and concludes that the Shoreline Landmarks Commission properly granted DSHS’s Petition for Reconsideration consistent with the Commission’s Rules.

Issue 2 – The Shoreline Landmarks Commission did not err when it concluded that modifying the boundary would not have an impact on the integrity and character of the Chapel setting.

The Record reflects that the forest surrounding the actual Chapel building was intended to provide a sanctuary for those individuals convalescing on the Fircrest School Campus during the 1940s and 1950s. In its February 2, 2021, Decision, the Commission expressly found that the forest setting was integral to the historic character of the site. With DSHS’s Petition for Reconsideration, the question was which part and how much of the forest setting should be included in the designation in order to preserve the historic integrity and character of the Chapel setting.

The Record demonstrates that at the March Reconsideration Hearing, as well as the two (2) prior public hearings, the issue of the extent of the forest setting was before the Commission. At the November Public Hearing, DSHS first presented its request to revise the eastern boundary and the reason the Commission continued the hearing was to allow it to further consider the boundary issue. At the January Public Hearing, there was extensive testimony and Commission deliberations regarding the appropriate boundary in relationship to the forest setting. And, given the fact that the sole issue before the Commission at the March Reconsideration Hearing was the location of the boundary, again, extensive testimony was presented on the boundary and the Commission deliberated fully on the issue.

The Record is clear that the Commission found the Chapel possessed historic integrity, in part, because of its forested setting and how this forested setting created a sanctuary around the Chapel. Public comment spoke to how loss of the forested setting could change the experience for those

visiting the Chapel. However, the Record also reflects that the Commission considered how excluding the area north of the parking lot would impact the Chapel's historic integrity during the March Reconsideration Hearing. The Record reveals that there were multiple proposals for the boundary and that the Commission's deliberations demonstrate that it properly delineated an appropriate boundary for the landmark designation. The City Council, in reviewing the Record, found the "forested feel" was integral to the integrity and character of the Chapel, but a majority of the City Council found that the modified boundary maintained the historical nature of the Chapel setting, in part, because of historical and current photographs, topography, and the Commission's deliberations.

Four (4) members of the City Council concluded that the Commission did not err, and two (2) members of the City Council concluded the Commission did err. Based on a vote of 4 to 2, the City Council finds and concludes that the Shoreline Landmarks Commission did not err when it concluded the boundary modification would not impact the integrity and character of the Chapel setting.

Issue 3 – SPS provides no evidence that the Shoreline Landmarks Commission failed to give due consideration to the findings set forth in the February 2, 2021 Decision.

The Commission's February 2, 2021, Decision, along with the information compiled in reaching that Decision, was in the Record and available to the Commission at the March Reconsideration Hearing. The Record shows that the Commissioners were advised that review of DSHS's Petition for Reconsideration was to be based on evidence from previous hearings and a review of prior deliberations concerning the boundary and impact assessment of a boundary revision on the feeling and integrity of the Chapel building. Pursuant to Commission Rule IX(B)(2)(B), when considering a Petition for Reconsideration the Commission is expressly permitted to modify or reverse its prior decision and render a revised decision. Therefore, under their own rules, the Commission is not bound by the findings contained in the February 2, 2021, Decision. Issuance of a revised decision does not mean the Commissioners did not consider all evidence that had been presented to it during all hearings.

The City Council finds and concludes that, even if required, SPS did not provide evidence to support a finding that the Commission failed to give due consideration to its previous findings or to any other evidence in the Record when making its decision to modify the boundary. All information, starting with the nomination application, was available to the Commission when considering reconsideration.

Issue 4 – The Shoreline Landmarks Commission did accept testimony and arguments on environmental harm.

It is clear from the Record of the March Reconsideration Hearing, that the Commission did not prohibit testimony by SPS or any member of the public on the boundary issue or any other subject matter. At the Reconsideration Hearing, the Record shows that SPS and other members of the public testified on various subjects, including environmental harm. The Record reflects that SPS actually presented expert testimony that, according to SPS, provided a technical scientific opinion on the potential environmental harm of the boundary revision. Richard Ellison testified to edge

effects and the buffering function the forested area was providing to existing the trees and landscape closer to the Chapel and altering it could impact the overall setting of the Chapel.

In their briefing, SPS attempts to transform this issue statement to an error based on an allegation that the Commission did not consider this testimony or arguments. SPS bases this allegation on Commissioner Blue's statement that the Commission didn't have the authority to consider habitat or environmental issues when considering the boundary change but only whether the change would compromise the forest setting of the Chapel. KCC 20.62.040 Designation Criteria, which is incorporated by reference in SMC 15.20.025(B), lists eight (8) basic criterion for designating a landmark. Noticeably absent from the criteria is any express reference to the environmental issues. Despite this, the City Council recognizes the health of the forest is an important aspect to consider for the preservation of the Chapel.

Given the extensive written documentation and oral testimony permitted by the Commission, it is evident that the Commission was aware of potential environmental harms when considering the boundary revision. Therefore, the Commission was equipped to understand how the revision could impact the Chapel that is being protected under the landmark regulations. The Record, however, is not clear as to whether the Commission actually considered the environmental harms in coming to their decision, but, given the forest setting, the City Council believes environmental impacts could have been considered.

The City Council finds and concludes that the Commission did accept testimony and arguments on environmental harms. The City Council further finds and concludes that the Commission is not explicitly charged with designating a landmark based on environmental values.

Issue 5 – SPS does not demonstrate the Shoreline Landmarks Commission modified the boundary based on DSHS's intent to use and develop the Fircrest property in the future.

The Record does contain information about DSHS's proposed plans for the Fircrest Campus in its entirety and that there is a possibility of future development around the Chapel. The purpose of the landmark designation process is to protect a historic site from future development. Accordingly, to some degree, the Commission, for all designations, considers future plans to some extent. SPS cites to nothing in the Record that the Commission approved the boundary change solely to accommodate future development plans of DSHS.

The City Council finds and concludes that the Shoreline Landmarks Commission did not err to the extent it considered evidence of DSHS's intent to use and develop the Fircrest property.

Issue 6 – There is nothing in the Record that demonstrates the Shoreline Landmarks Commission decision to revise the boundary was in response to a threat of litigation by DSHS.

While the City Council agrees the statements made by the DSHS representative and the Assistant Attorney General at the March 25 Reconsideration Hearing are upsetting and reflect a lack of professionalism and decorum, SPS has cited to nothing in the Record that the Commission was intimidated or based its decision to modify the boundary on threats of future litigation. The

boundary revision passed by a vote of 4 to 2, therefore, even assuming Commissioner Alsobrook was impacted, had he not abstained and otherwise would have voted against the modification, it still would not have changed the Commission's final decision.

The City Council finds and concludes that SPS has not demonstrated the Commission revised its previous decision based on a threat of litigation.

Issue 7 – The Shoreline Landmarks Commission failed to give reasonable notice of the public hearing on DSHS's Petition for Reconsideration.

Within the King County Code provisions incorporated by Chapter 15.20 SMC, there is no express reference to a time period for providing notice of a Petition for Reconsideration, nor is there a general notice requirement for public hearings. Absent a regulatory requirement, the agency's own rules apply. Commission Rule IX(2)(B) gives the Commission discretion on whether to hold a public hearing for a Petition for Reconsideration. The Commission decided to hold a public hearing on DSHS's Petition, therefore subjecting itself to the Commission's Rules on public hearings. Rule III(C) states that notice for all public hearings is to be published no more than twenty (20) days nor less than ten (10) days before the hearing. Having decided that a public hearing was appropriate, the Commission was then required to follow its public hearing notice. By the Commission's own testimony, it is indisputable that Rule III(C) was not satisfied. Notice was provided only six (6) days in advance of the hearing.

The purpose of specific requirements for public notice is to ensure that interested individuals have sufficient time to prepare for the hearing so that their comments can provide the decisionmakers with the information necessary to make an informed, intelligent decision. DSHS contended that even if notice was defective, SPS did not suffer substantial harm as they were able to present information, both orally and in writing, at and prior to the hearing. While this may be true, based on the Record the City Council could not determine the untimely notice was nevertheless harmless to SPS

Given this failure, the City Council finds and concludes that the Commission failed to give notice of the March Reconsideration Hearing pursuant to the Commission's Rules. Accordingly, the City Council remands this matter to the Commission to consider DSHS's Petition for Reconsideration consistent with its prior finding that a public hearing be required for the matter and to have the hearing comply with all of the Commission's Rules, including timely notice, to the nomination applicant and interested parties.

Issue 8 – Shoreline Preservation Society did not have a legal right to rebut DSHS's closing argument.

While the Commission's Rules do not state how a reconsideration hearing should be organized and there was some confusion in this regard, the format utilized by the Commission is within its discretion and notably is consistent with the format a court would utilize. Since DSHS was the party seeking reconsideration, they should have the last word regardless of who was the original applicant for the landmark nomination.

The City Council finds and concludes that the hearing process was not unlawful or unfair when SPS was not given the opportunity to rebut DSHS's closing arguments.

Issue 9 – Executive Order 21-02 did not require DSHS to notify the Washington State Department of Archaeology and Historic Preservation or tribal groups of its Petition for Reconsideration.

EO 21-02 requires consultation with the Washington State Department of Archaeology and Historic Preservation (DAHP) and affected tribes on state-funded construction and acquisition projects. It must first be noted that the Governor's Executive Order that serves as a basis for this issue was not submitted to the Commission until after the March Reconsideration Hearing. More importantly, Executive Order 21-02 was not signed by the Governor until April 7, 2021, several months after DSHS filed its Petition for Reconsideration with the Commission. Thus, this EO did not exist either at the time of DSHS's Petition for Reconsideration nor when the Reconsideration Hearing was conducted. A plain read of EO also denotes that it applies to "state-funded construction or acquisition projects," nothing in the EO can be read as applying to a Petition for Reconsideration.

The City Council finds and concludes that DSHS's Petition for Reconsideration was not subject to EO 21-02 and, therefore, was not required to notify DAHP or tribal groups.