

CITY OF SHORELINE
SHORELINE CITY COUNCIL
SUMMARY MINUTES OF REGULAR MEETING

Monday, July 26, 2021
7:00 p.m.

Held Remotely via Zoom

PRESENT: Mayor Hall, Deputy Mayor Scully, Councilmembers McConnell, McGlashan, Chang, and Roberts

ABSENT: Councilmember Robertson

1. CALL TO ORDER

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

2. ROLL CALL

Upon roll call by the City Clerk, all Councilmembers were present except for Councilmember Robertson.

Councilmember McConnell moved to excuse Councilmember Robertson for personal reasons. The motion was seconded by Deputy Mayor Scully and approved by unanimous consent.

3. APPROVAL OF THE AGENDA

The agenda was approved by unanimous consent.

4. REPORT OF CITY MANAGER

Debbie Tarry, City Manager, provided an update on COVID-19 and reported on various City meetings, projects, and events.

5. COUNCIL REPORTS

Councilmember McGlashan stated that he testified at the Sound Transit Board Meeting on behalf of the 522/523 Bus Rapid Transit. He reported that it is likely that the plan will be modified, and that the project has been put in the Tier 1 category.

6. PUBLIC COMMENT

Bill Turner, Shoreline resident, spoke to the importance of established trees and shared examples of environmentally conscious planning and development. He urged revision of the tree protection code to protect mature trees while fulfilling multifamily housing goals.

Nancy Morris, Shoreline resident, spoke to the value of trees in lowering urban temperatures. She said the destruction of significant trees impacts bird populations and suggested delaying the cutting of trees on North 160th Street until the nesting season is past.

Kathleen Russell, Shoreline resident, spoke on behalf of Save Shoreline Trees. She voiced concern over the upcoming scheduled removal of significant trees on North 160th Street as part of the Washington State Department of Transportation (WSDOT) frontage improvement project. She asked that WSDOT be encouraged to protect bird life by delaying cutting down the trees until the end of August.

Jackie Kurle, Shoreline resident, spoke regarding the Enhanced Shelter and asked for continued maximum oversight and reporting on shelter operations.

7. CONSENT CALENDAR

Upon motion by Deputy Mayor Scully and seconded by Councilmember McGlashan and unanimously carried, 6-0, the following Consent Calendar items were approved:

(a) Approval of Expenses and Payroll as of July 9, 2021 in the Amount of \$10,528,420.95

***Payroll and Benefits:**

Payroll Period	Payment Date	EFT Numbers (EF)	Payroll Checks (PR)	Benefit Checks (AP)	Amount Paid
05/30/21-06/12/21	6/18/2021	97371-97605	17386-17424	82764-82770	\$824,968.39
05/30/21-06/12/21	6/24/2021			WT1191-WT1192	\$135,202.62
06/13/21-06/26/21	7/2/2021	97606-97837	17425-17463	82843-82846	\$617,383.95
06/13/21-06/26/21	7/9/2021			WT1193-WT1194	\$134,010.34
					<u>\$1,711,565.30</u>

***Wire Transfers:**

Expense Register Dated	Wire Transfer Number	Amount Paid
6/24/2021	1190	\$41,437.63
		<u>\$41,437.63</u>

***Accounts Payable Claims:**

Expense Register Dated	Check Number (Begin)	Check Number (End)	Amount Paid
6/16/2021	82436	82436	(\$784.86)

6/16/2021	82631	82647	\$393,183.20
6/16/2021	82648	82663	\$69,914.83
6/16/2021	82664	82671	\$60,562.95
6/16/2021	82672	82691	\$976,733.24
6/16/2021	82692	82707	\$72,276.30
6/22/2021	82708	82708	\$1,038.17
6/22/2021	82709	82710	\$90,839.37
6/24/2021	82711	82726	\$105,911.41
6/24/2021	82727	82743	\$220,576.89
6/24/2021	82744	82748	\$2,922.08
6/24/2021	82749	82763	\$97,471.56
6/30/2021	82771	82791	\$135,913.98
6/30/2021	82792	82799	\$27,371.90
6/30/2021	82800	82814	\$4,746,599.38
7/7/2021	82815	82827	\$689,084.03
7/7/2021	82828	82833	\$10,258.01
7/7/2021	82834	82842	\$1,075,745.58
7/7/2021	73112	73112	(\$200.00)
			<u>\$8,775,418.02</u>

- (b) Authorize the City Manager to Execute Supplement No. 2 to Contract 8463 with H.W. Lochner in the Amount of \$2,471,183 for Design and Environmental Services for the SR-523 & Interstate-5 Interchange Project**
- (c) Authorize the City Manager to Execute Contract Documents with the Washington State Department of Commerce to Obligate \$403,760 of Grant Funding for the Shoreline Parks Restrooms Project**
- (d) Authorize the City Manager to Execute Contract Documents with the Washington State Department of Commerce to Obligate \$353,780 of Grant Funding for the Shoreline Park Public Pavilion Project**
- (e) Authorize the City Manager to Execute a Contract with AVI-SPL in the Amount of \$370,039.05 for City Hall Video Conferencing Upgrade**

8. ACTION ITEMS

- (a) QUASI-JUDICIAL: Closed-Record Appeal Hearing - Shoreline Preservation Society, Regarding Naval Hospital Chapel Landmark Designation**

Margaret King, City Attorney, reviewed the process for the Hearing. She summarized that the appeal filed by the Shoreline Preservation Society (SPS) is to consider the Landmark Commission's granting of the Department of Social and Health Services' (DSHS) request for a reconsideration and a subsequent modification of the Commission's landmark boundary of the Naval Chapel on the Fircrest Campus and that Council's decision will be based on the Record and the arguments presented tonight. She said while the Council is in the position of acting as a

quasi-judicial body, the Appearance of Fairness Doctrine applies to the decision to be made and explained the criteria for impartiality.

Ms. King listed the questions presented to Councilmembers to confirm this and said Mayor Hall and Councilmembers Roberts, McConnell, Chang, and McGlashan stated that they have had no contact with any of the parties and believe that they can hear the matter in a fair and impartial manner and each Councilmember confirmed this. Ms. King continued that Councilmember Robertson and Deputy Mayor Scully stated that they have had some contact with the Parties of Record, but since Councilmember Robertson is absent, her disclosure does not need to be recorded. Ms. King reviewed and confirmed Deputy Mayor Scully's disclosure of a conversation with Janet Way. Deputy Mayor Scully said Ms. Way called him with procedural questions, and he directed her to City staff, and he does not feel he is biased because of his conversation. Ms. King said she does not see a need to ask any Councilmember to recuse themselves and opened it to the Parties of Record to respond. There were no objections.

Mayor Hall introduced this appeal of the Shoreline Landmarks Commission's decision which granted reconsideration and then adopted a different boundary for the landmark designation for the Naval Chapel at Fircrest. He summarized the process for tonight's hearing, which includes arguments from all parties, rebuttals, clarifying questions from Council, a closed session for Council, and deliberations. There were general clarifying questions about the procedures for presentations for this remote meeting.

Janet Way, Lance Young, Wendy DiPeso, and Tom Hazelhurst were introduced as the Shoreline Preservation Society's participants. Joe Christy was introduced as the representative for DSHS and DNR, and Bob Hubenthal was in attendance for DSHS. Sarah Steen was introduced as the Shoreline Landmarks Commission representative and said she will cede five minutes of her time to DSHS/DNR.

The Shoreline Presentation Society's argument opened with Ms. Way describing the Naval Chapel historical landmark and its significance. She said after the successful landmarking of the Chapel and its forest, the decision was challenged by the action of DSHS and a missed step by the Shoreline Landmarks Commission, which resulted in sacrificing a portion of the landmarked forest. She stated that this challenge is not supported by the law and the legal burden has not been met. She described the dimensions of the segment under consideration and said SPS will demonstrate that DSHS's claim that the Commissioners made errors on the original landmark was incorrect. To emphasize the significance of the setting, Ms. Way played a video tour of the Chapel and vicinity and recordings of testimony by Victoria Stiles, Executive Director of the Shoreline Historical Museum, Senator Marilyn Chase, and Captain Joel T. Boone. Ms. DiPeso said that SPS is trying to preserve a nationally significant landmark and asserted that DSHS cares more about reducing bureaucratic overhead for future development.

In response to the Issue Statements, SPS first shared a distillation of the key evidence and several key excerpts of Landmarks Commission Meetings and exhibits in the Record supporting their position. This included evidence that the Commission was aware of what they were voting on in January; testimony emphasizing the value of the historic significance of the setting; exhibits indicating that the decision to review the boundary was in response to a threat of litigation by

DSHS; that environmental issues should be considered; and that the Shoreline Landmarks Commission improperly noticed the reconsideration hearing, impacting SPS's ability to build a case.

Mr. Young summarized that based on the testimony provided it is clear that the revised landmark boundary is a significant loss to the integrity of the landmark itself, and the testimony and deliberations from the Commissioners who voted on the original landmark boundary follow Captain Boone's vision and the significance of the northeast corner of the Chapel setting. He said this is a rare opportunity to preserve intact the integrity of one of the most historical landmarks that exists in Shoreline. He concluded by stating that the Council should vacate the revision to the original landmark voted on by the Shoreline Landmarks Commission and listed the reasons why. He said the SPS urges the Council to reverse the Shoreline Landmark Commission's reconsideration decision and maintain the original landmark. He added that important protocols were violated when the Shoreline Landmarks Commission revised their original decision and Findings of Fact.

Mayor Hall opened the floor for clarifying questions from the Council. Councilmember Roberts asked questions regarding legal standards for appeals and public noticing, and responses were given by Ms. Way, Ms. DiPeso, and Mr. Christy.

The DSHS/DNR argument was delivered by Joe Christy, Assistant Attorney General, who responded to each of the Issue Statements. He said there is no dispute that the Commission knew what they were doing in the initial Hearing, nonetheless, the ultimate Order was based on a determination that the prior determination included an error of fact. His argument included reference to the Landmarks Commission Rules and explained how they directed the action for reconsideration. He stated that it is ultimately a decision on the part of the Landmarks Commission as to what extent the boundary, or the environs of the boundary, impact the Chapel site, and in the end the decision was that inclusion of the revision area did not need to be part of the landmark designation. He stated that SPS's original application did not provide specific evidence that the revision area is integral to the site, and the video shown did not include the revision area, and DSHS provided evidence that the revision area is not integral to the site. He recognized the public comment and testimony received regarding the ecological importance of the site and described portions of it as speculative, stating that there is nothing in the Record that suggests DSHS/DNR will not continue to be good stewards of the land. Mr. Christy said there is no indication that the Commission considered DSHS's intent in their decision making. He said the Commission's process was consistent with the law, and it is not their duty to preserve environmental qualities, but to preserve historical landmarks and the features that are integral to the historic landmark experience. He added that SPS requested additional forest restoration requirements, but DSHS and DNR believe that any such requirements are unnecessary. He said that there is no evidence that the Landmarks Commission decision was based on a threat of litigation by DSHS. He stated that DSHS/DNR do not contest that SPS's notice was not consistent with the Landmark Commission's Rules of Procedure but stated that SPS did a formidable job in providing a substantial response and said DSHS/DNR cannot say whether SPS having ability to demonstrate the importance of the area as a buffer would have had an impact. He said the Landmark Commission properly followed its hearing process, SPS did not have a right to a rebuttal because DSHS was the applicant and added that during the hearing SPS did

have opportunity to present arguments and closing remarks. He said that DSHS was not required to notify the Washington State Department of Archaeology and Historic Preservation or tribal groups of its motion for reconsideration because Landmark Commission Rules do not require it.

Mayor Hall opened the floor for clarifying questions from the Council. Deputy Mayor Scully asked questions regarding the standard of review, which Mr. Christy addressed. Councilmember Roberts asked if DSHS believes a public hearing was required for the Reconsideration hearing, and Mr. Christy responded in the negative.

The Landmarks Commission was represented by Sarah Steen, who addressed Councilmember Roberts' questions about public hearings, stating that there is no requirement for a public hearing for a Reconsideration. Ms. Steen shared the Landmarks Commission response to each of the Issue Statements under consideration. She stated that the Landmarks Commission determined that their final decision was not based on confusion during deliberation, and the granting of the motion for reconsideration was valid and said it was within the Landmarks Commission's discretionary authority to issue a decision to revise the boundary based on an evaluated impact and she described the criteria used. She said the Landmarks Commission disagreed with the SPS on the scope of the forested area necessary to maintain historic setting and the omission would not significantly harm the setting of the historic Chapel. Ms. Steen emphasized that the due consideration was given to all prior testimony and deliberations in the March Hearing. She explained the way landmark boundaries are assessed and said habitat protection and environmental conservation, in and of themselves, are not within the remit of the Landmarks Commission. The Commission's final determination was based on their evaluation of the impact to resource. She stated that there is no evidence that any appeal threats were weighed in the Commission's consideration. Ms. Steen recognized and described the error in the public noticing. She reviewed the order of the hearing process and said the Landmarks Commission did not err procedurally. She concluded by stating that the DSHS was not required to notify the Washington State Department of Archaeology and Historic Preservation or tribal groups of its motion for reconsideration.

Mayor Hall opened the floor for clarifying questions from the Council but there were none.

The Shoreline Preservation Society's rebuttal included describing their interpretation of the proper legal standard to apply for a Motion for Reconsideration and asserting that DSHS has confused three concepts addressed by the Rules. Ms. DiPeso described SPS's rationale for the selection of portion of property to include in the application and how the setting impacts the landmark. She said because of the short notice for the hearing SPS did not have adequate time to provide better evidence to show how the geology that supports the building may eventually be impacted. Ms. Way added that there have been two of the Issue Statements that have been conceded to by DSHS and one by the Landmarks Commission. She said the forest and historic Chapel are assets to the City and the Council should be cognizant of that. She said there are plenty of reasons for the Council to consider the points made by SPS and she hopes the Council agrees that the bar was not met.

Mayor Hall opened the floor for clarifying questions from the Council. Councilmember Roberts said SPS's brief includes a mention of being denied process in the hearing and asked if the

Shoreline Landmarks Commission has a specified procedure for how a reconsideration motion is considered by the Commission. Mr. Young said the Rule 15.20(3)(8) specifically states that a Reconsideration is handled in the same way that an open meeting is held. Ms. DiPeso agreed with Ms. Steen that there was confusion about how the meeting was supposed to unfold, explaining that SPS was under the perception that they were the Applicants in the reconsideration, when in reality DSHS was.

Mayor Hall asked if SPS believes that a hearing is required for the Landmarks Commission to reconsider a decision. Ms. Way said it is reasonable to require a hearing for such an important site. Ms. Steen quoted the Rules of Procedure for Appeals and Reconsiderations for the Shoreline Landmarks Commission, which state that a public hearing is optional.

Mayor Hall stated that pursuant to RCW 42.30.140(2) the Council would recess into a closed session, and he expected it to last approximately thirty minutes.

Councilmember Roberts moved to suspend Council rules and extend the meeting until 11:00 p.m. The motion was seconded by Deputy Mayor Scully. The motion passed by unanimous consent.

The Closed Session ended at 10:20 p.m.

Mayor Hall confirmed that the Council had no objections to accepting the two documents that were emailed to the Clerk by Ms. Way yesterday. Seeing no objections, the Clerk distributed the documents via email to Council and all the parties.

Mayor Hall reviewed the procedural process to follow. The Council agreed that if consensus was reached on any one issue statement, a vote would not be necessary, but only if they were divided.

The discussion of the Issue Statements continued as follows:

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?

After discussion, the majority of the Councilmembers agreed that the Landmarks Commission did properly consider the Motion for Reconsideration.

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?

Councilmembers expressed differing opinions on this issue. Councilmember McGlashan said he does not believe there was an error and explained why, adding that he does not think excluding the northern area would change the feel of the area surrounding the Chapel. Deputy Mayor Scully said he came to a different conclusion, and he does not see any way that it could be determined that the character of the forest is not important to the integrity of the historical

structure, so it is important to preserve the section. He said the Council should vote to revise the decision of the Board to include the land, and Councilmember Roberts agreed, expanding that what struck him was the importance of the pathways to the Chapel, and the section in consideration includes a pathway, so it does not seem logical to exclude this path.

Councilmember Chang agreed with the boundary in the reconsideration decision because of the topography. Mayor Hall said looking at the historical documents, there is no question that the forested setting was integral to the site, and the deliberations the Commission went through are evidence to him that there is no single perfect boundary. He said he does not see that an error in judgement was made by the Commission in their decision. Deputy Mayor Scully said not just current, but future, land use needs should be considered, and the current delineation does not make sense to him. Mayor Hall recognized that land uses change, but he feels there is an adequate buffer. He noted that there was a similarly arbitrary line in an earlier decision, so he does not feel that argument is compelling. Councilmember McConnell said the lines do not bother her and reflected on the peacefulness of the setting.

Councilmember Roberts moved to extend the meeting until midnight. The motion was seconded by Councilmember Chang and passed by unanimous consent.

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?

It was generally agreed that there was 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?

Several Councilmembers expressed the opinion that there was no error. Councilmember Roberts agreed that the forest is part of why the Chapel was built there but while he sympathizes with the issue, he does not think the Commission has the authority to consider environmental influences. Mayor Hall said he believes the Record indicates that the Commission did accept all testimony and arguments received and agreed with Councilmember Roberts that they are not explicitly charged with landmarking for environmental values, but he did not see anything in the record that showed that the degradation of the forest would impact the Chapel. Councilmember McConnell said she does not see an error in this issue. Deputy Mayor Scully said he is torn on this one, since some comments raised concern for him that the health of the forest was not considered. He recognized that while separate environmental values are not issues to consider in this situation, the integrity of the forest should be considered.

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?

The Council generally agreed that there was no error evident. Mayor Hall said it is clear that the Commission was trying to find a way to satisfy the landowner with the designation but observed that to some extent that may be a part of any landmarking process. He does not see evidence in the Record that the decision to revise the boundary was based on any specific plan to develop or

not develop in the area. Councilmember Chang said while there was speculation about what could happen there potentially, there was no evidence.

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?

Varying opinions were expressed by Councilmembers. Deputy Mayor Scully said he was astonished by those sections of record, and he feels the attorney tried to intimidate the Commission, and there was a lot of anger apparent. He is not convinced that the attorney's actions did not have an impact on the decision and is halfway inclined to remand this. Mayor Hall agreed with the appearance of a breakdown in decorum but said he does not think the approach influenced the outcome. Councilmember McGlashan agreed with Mayor Hall's comments but said he did not take it as a threat, more as stating a fact. Councilmember Roberts said in thinking about this more, the fact that a Commissioner recused himself in frustration means it does not seem harmless. Councilmember McConnell said this does not bother her enough to send it back based on this issue.

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?

The importance of adhering to public process was recognized by the Council. Councilmember Roberts said if this situation had happened on their Council, they would have stopped the process and redone it. Deputy Mayor Scully said he agrees with the need for fair notice and the appropriate remedy is a remand. Councilmember Chang said the issue of 'causing substantial harm' is what she is considering, but said she is not sure that the decision would have been different. Councilmember McGlashan agreed that a rule is a rule, and therefore it should be redone, although he does not think the outcome will change. Mayor Hall said he struggles with defining a harmless error and recognized the procedural defect and noted the importance of following the established process.

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?

A majority of Councilmembers expressed that it appears the Rules were followed.

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

It was agreed that no error was noted in this issue.

At the conclusion of the discussion, Deputy Mayor Scully said he would like to be able to vote on Issue 2.

The next procedural steps were discussed prior to future action on an Ordinance formalizing the decision.

Deputy Mayor Scully moved to direct staff to prepare Findings and Conclusions that tracks the majority of the Council's comments tonight and finds in favor of the Appellant and directs remand to the Landmarks Commission on Issue 7 and in favor of the Respondent on the remaining Issues and present that to Council at the next available meeting. The motion was seconded by Councilmember Roberts.

The motion passed unanimously, 6-0.

9. ADJOURNMENT

At 11:33 p.m., Mayor Hall declared the meeting adjourned.

Jessica Simulcik Smith, City Clerk