

Development Commission—Special Meeting
10-24-18

CITY OF ISSAQUAH
Development Commission—Special Meeting
MINUTES
October 24, 2018

City Hall South
Council Chambers

135 E. Sunset Way
Issaquah, WA 98027

Commission Members Present	Administration/Staff Present
Richard Sowa, Chair	Lucy Sloman, Land Development Mgr.
Mel Morgan, Jr., Vice Chair	Keith Niven, Economic and Dev. Services Dir.
Michael Brennan	
Kevin Price	Others Present
Richard Sanford	Ray Liaw, Van Ness Feldman LLP
Members Not Present/Excused	Zachary Lell, City Attorney's Office
Randy Harrison	Patrick Schneider, Foster Pepper PLLC
Jasmina Milhova	Tia Heim, Shelter Holdings
Mark Rigos, Alt.	Jeffrey Dunbar, City Attorney's Office
Ryan Roeter, Alt.	
Nischitha Venkatesh, Alt.	

1. CALL TO ORDER

SOWA, Chair, called the meeting to order at 7:00 PM.

2. PUBLIC HEARINGS—Continued from 9/26/2018

ISSAQUAH HIGHLANDS RETAIL (HIGH STREET COLLECTION) SITE DEVELOPMENT PERMIT, (Q), Application No. SDP18-00001; PRJ17-00027

ISSAQUAH HIGHLANDS MEDICAL OFFICE ADMINISTRATIVE SITE DEVELOPMENT PERMIT, (Q), Application No. ASDP18-00007; PRJ17-00023

ISSAQUAH HIGHLANDS SELF-STORAGE ADMINISTRATIVE SITE DEVELOPMENT PERMIT, (Q), Application No. ASDP18-00006; PRJ-00028

Preliminary Matters

SOWA recessed the meeting for an executive session at 7:01 PM. He called the meeting back to order at 7:19 PM.

SOWA asked the applicant's attorney to verify the statement made in the applicant's letter dated October 16, 2018 that they are withdrawing their request to stay the hearing. Schneider confirmed that is correct, and noted the applicant is proceeding with this public hearing under protest.

Staff Presentation/Witnesses

SOWA said at the end of the September 26, 2018 public hearing, the meeting concluded with the City in the process of making its presentation, so tonight's meeting will continue from that ending point. Lell referred to the communications from both the City and the applicant since the last meeting. He said the City would like to strike the declaration of the applicant dated October 16, 2018 because the letter (plus exhibits) exceeds the page limitation of five total pages agreed to at the September 26 meeting. Liaw said as a practical matter, the page limitation does normally refer to the brief itself and not the brief plus the attachments, however, the City can ask that it be excluded. After a brief discussion, it was the consensus of Commissioners to accept the applicant's October 16 submittal as is.

Lell recalled Keith Niven as a witness. Niven confirmed he continues to be under oath. Lell asked Niven questions that included the following:

- Whether Niven feels ready now to answer a question asked at the September 26 meeting about Niven's understanding of the City's code with regard to vesting;
- The number of direct meetings and phone conversations Niven had with IHIF-C since they acquired their Highlands property;
- The nature of written communications he had with IHIF-C;
- Whether he answered all questions from the applicant and interacted with them honestly and in good faith, or conversely discriminated against IHIF-C in any way;
- Whether he ever informed IHIF-C that their applications were permanently vested and would not be subject to replacement regulations;
- Niven's understanding of whether IHIF-C is vested under the terms of the Highlands Development Agreement, to the best of his understanding;
- The nature and value of mitigation payments previously made by IHIF-C to the City;
- Whether IHIF-C contended that the value of those payments exceeded \$24 million;
- How the City typically treats previously installed mitigation measures for a particular property when the City evaluates a new project application;
- Whether Niven ever informed IHIF-C that their project applications would receive absolutely no credit for previous mitigation measures, and the applicant's response to the City's communication on that issue;
- At what stage any credit would appear in the review process, and whether the City has communicated with the applicant on that issue for the IHIF-C applications;
- Whether the credit issue would be appealable by the applicant as part of the application process.

Applicant Presentation/Witnesses

Schneider asked Niven questions including the following:

- Explain the difference between permanent vs. temporary vesting, and the distinction between the two;
- Whether Niven told the applicant that the property owner was permanently vested;
- Whether, in Niven's opinion, the City Council can take away vesting rights retroactively by a subsequently enacted ordinance;
- Whether vested rights expire when the agreement they were vested to expires, and are subject to replacement regulations;
- Specifics about the nature of the Highlands Development Agreement in terms of it being a contract;
- Whether the applicant is vested to the Highlands Development Agreement;
- How City staff handled an application from Polygon and other applications under the expiring Development Agreement (Exhibit L);
- When the subdivision application submitted by the applicant was deemed complete by the City.

Schneider distributed Exhibits 1 and 2 to SOWA, Lell, and the witness (those exhibits and all subsequent exhibits were entered into the record). He continued his questions of Niven, which included the following:

- The nature of the exhibits, including their date, and the timeline that IHIF-Cs application was submitted and reviewed by the City;
- Why staff review of the applications submitted by IHIF-C has taken 14 months;
- The nature of the "active administrative review" that took place from May 2018 to the present, and whether the permits were "active" or "inactive" in terms of staff's work on them;

Development Commission—Special Meeting
10-24-18

- Whether Niven, as the City's designated administrator, thinks the applicant is vested pursuant to the plat application.

In response to a comment from Niven about the relevancy of the plat application, Schneider explained how the plat application is relevant to the three applications that are the subject of tonight's public hearing.

Schneider's questioning of Niven continued, and included the following:

- In the event that staff and the applicant disagree about IHIF-C's vesting rights, what Niven's understanding is of the course of action the City would take;
- When a decision will be made that can be appealed by the applicant;
- The nature of information that staff still needs to complete its review of the applications;
- Niven's understanding of the permit applications for Polygon, specifically the timeline for Polygon's submittals and the City's review of the applications;
- Niven's understanding of the details about the Westridge development at the Highlands (Exhibit 3), specifically the time frame for the City's review of the application;
- Niven's understanding of the recommendation from the Urban Village Development Commission (UVDC) on Polygon's Westridge Townhomes development application (Exhibit 4), the role of the UVDC in reviewing applications under the Highlands Development Agreement, and the City's timeline for approving the Westridge Townhomes application;
- Whether Niven thinks Resolution 2017-10 gives additional vesting provisions to Polygon (Developer Sales for Affordable Units—Westridge, Exhibit 5), thereby making Polygon not subject to the replacement regulations;
- Niven's understanding of the purpose of the Highlands Development Agreement, the procedures in Appendix L, and the nature of the City's pre-application meetings with IHIF-C;
- Niven's understanding of the notice of application for the plat (Exhibit 1, page 2), when the public comment period ended for the application, and what the City has done to expedite processing of this application;
- Whether the City tried to have any conversations with the applicant about the mitigation measures the application had taken, including when those conversations took place;
- Whether IHIF-C has developed any other projects in the Highlands of which Niven is aware;
- How the City would assess any additional mitigation fees in addition to fees already paid on the property in question;
- If hypothetically the applicant had to develop under the replacement regulations, how the City would assess any mitigation or impact fees in addition to any already paid;
- Niven's interpretation of how a development agreement provides "predictability" and "certainty" for both the City and potential developers;
- How Niven interprets the "50 [staff] days" stipulated in a memo from Sloman (Exhibit 6) as the time required by the City for review of plat applications in the Highlands Development Agreement;
- Niven's understanding of the City's expectation in May 2018 about the date a final decision on the applications would be made and what the review process would be, including review by the Development Commission.

The participants took a short break (8:42-8:48 PM).

Schneider continued his questions of Niven, which included the following:

- Niven's understanding of whether the Westridge Block 4, affordable housing application dated April 27, 2018 (Exhibit 7) was approved under the Development Agreement, and whether Polygon was vested to the Development Agreement even though the applications were dated after the Development Agreement's expiration date;

Development Commission—Special Meeting
10-24-18

- Niven's recollection about written and other communications Niven had with the applicant about the mitigation payment issue;
- Whether Niven thinks he has the authority to make a vesting decision under the City's regulations in this instance, including determining which code applies, and whether he has the discretion to make a decision on a code interpretation that could then be appealed to the Hearing Examiner;
- Niven's reasoning for sending the applications to the Development Commission in September 2018 in terms of interpreting the code;
- Staff's work between March and September 2018 in terms of reviewing the applications, and why it took from April to September to make a decision to draft the staff reports for denial of the applications;
- Whether Niven has ever made a vesting decision on behalf of the City for any other property owner, including under the Highlands Development Agreement;
- Whether the Mayor directed Niven to change the City's position on vesting for the applicant.

Lell asked that the public hearing be continued to a future date, given that the Exhibits presented have just been received tonight and the City's attorneys have not had an opportunity to review them. Schneider expressed frustration that the hearing is taking place at a pace of about two hours a month, and that the length time between meetings is costing his client a great deal of money. Lell said the City has just as much interest as the applicant in getting this matter resolved.

3. ADJOURNMENT

SOWA proposed the public hearing be continued to November 29, 2018 and December 5, 2018, from 6:30 PM to 10:00 PM, in these Council Chambers. The dates, times, and location were agreed to by the Commissioners, the applicant and applicant's attorneys, and City staff and attorneys. SOWA adjourned the meeting at 9:05 PM.

Respectfully submitted,

Susan Lowe
Recording Secretary