

Development Commission—Special Meeting
11-29-18

CITY OF ISSAQUAH
Development Commission—Special Meeting
MINUTES
November 29, 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 6:35 PM.

2. PUBLIC HEARINGS—Continued from 10/24/2018

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; PRJ17-00028

Preliminary Matters

Lell, City Attorney's Office, said he will begin by continuing his questioning of Niven and Sloman at tonight's meeting. He noted on November 27, 2018, the Hearing Examiner ruled that he does not have jurisdiction to review the IHIF-C vesting issue, as requested by the applicant, and as a consequence the Development Commission will continue with the public hearing dates as scheduled. He also noted that the City's legal team will introduce exhibits tonight, and proposed to mark them as C-2, C-3, C-4, and so on, noting that C-1 is the staff report distributed at the September 26, 2018 meeting.

Staff Presentation/Witnesses

Lell asked Niven whether he agrees that he continues to be under oath. Niven replied yes. Lell continued his questioning about allegations by IHIF-C about communications with the City with regard to IHIF-C's vesting status. He introduced exhibits and asked questions of Niven, including the following:

- C-2. Email exchange between Tia Heim (Shelter Holdings) and Niven. Lell asked Niven for details about his response to vesting under the City moratorium then in place.

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- *C-3. Email exchange on November 21 and 22, 2017 between Niven and Heim. Lell asked Niven to describe his response to an inquiry from Shelter Holdings about its application that is vested to the Highlands Development Agreement.*
- *C-4. Email exchange on November 22, 2017 between Niven and Sloman. Niven said Sloman can better respond to this exchange. Lell asked whether the City was in the process of promulgating replacement regulations during this general time period; Niven replied yes.*
- *C-5, interested party email dated November 17, 2017, and carried forward from a November 14, 2017 email. Lell noted that page 7, part IV, of that email speaks to vesting, and was sent to interested landowners and parties in the Issaquah Highlands, including Shelter Holdings.*
- *C-6, memorandum dated November 16, 2017 and entitled “Regarding End of Development Applications—Vesting, Attachment 4.” Niven described the purpose of the memorandum and described the City Council’s recommendation on what the regulations should provide. He summarized the memo’s contents and explained the alternatives staff provided to Council for its deliberation.*
- *C-7, interested party email dated December 14, 2017, a memorandum from Niven specifically addressed to Tia [Heim], Ken [Bellamy], Susan [Wilson] and Sarah [Hoey]. Lell asked Niven to describe the purpose of the memorandum as it relates to vesting, including activities anticipated to be taken by the City leading to adoption of replacement regulations in March 2018. Lell also referred to a table of pending parcels in the memorandum that showed parcels that were not built out in both the Highlands and Talus at the time the memorandum was written. He asked Niven to identify where those parcels were in the vesting process at that time and to give more details about the table.*

Schneider suggested that exhibits introduced by the applicant, including seven exhibits introduced at the October 24 public hearing, be labeled “S-1,” “S-2,” and so on, for consistency. Lell agreed with the suggestion.

Lell continued his questioning of Niven on Exhibits S-1 and S-2, including staff’s expected timeline for when IHIF-C’s permits would be reviewed and Niven’s role in helping develop the replacement regulations. Lell asked Niven for his thoughts on why staff thought final decisions on the permits would be issued in June/July 2017, why they were not processed as quickly as anticipated, and why no final solution has yet been reached. He also asked Niven to describe discussions with Sloman during July 2017 about sending the permit applications and staff reports to the Development Commission as staff recommendations for the Commission’s review. Lell continued his questions about the plat application, referred to Schneider’s questioning and Niven’s responses at the October 24 public hearing, and referred to page 60 (pages 4-5 of Attachment 10).

- *C-8, including a depiction of the parcels in the Highlands Development Agreement that were subject to vesting regulations, including Polygon. Lell asked Niven to describe the applications submitted by Polygon and their current status, and the affordable housing agreement that allowed Polygon’s applications to continue under the Development Agreement.*

Schneider asked to cross-examine Niven. After a short break to set up an overhead display of the “S” exhibits, the Commission reconvened at 7:25 PM. SOWA laid out the ground rules; namely that only new information would be addressed during re-direct session(s). Both parties agreed.

Schneider referred to C-3, the email exchange on November 22, 2017 between Niven and Heim, and asked Niven questions about his authority and role, the role of the City Council, and the general timeline for ending vested rights in the Highlands Development Agreement. Schneider continued his questioning of Niven and introduced new exhibits, including the following:

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- *S-8, email exchange between Niven and Hoey in June 2017. Schneider asked Niven questions about C-6, “Regarding End of Development Applications—Vesting, Attachment 4,” specifically page 2, “Evaluation” and the City’s permit application process.*
- *S-9, from the City’s website, an application checklist that sets out commercial and multi-family building permit requirements. Schneider asked Niven for his understanding of *West Main v. Bellevue*, and asked him to clarify discrepancies in the City Code and what applicants would find on the City’s website. Schneider asked Niven why it took so long to send these applications to the Development Commission for review. Niven explained there were various reasons, a primary one being staffing challenges.*
- *S-9, transcript from public hearing on October 24, 2018, pages 39-40.*

Schneider asked to receive a copy of Polygon’s affordable housing agreement with the City.

Lell asked follow-up questions of Niven, including whether the City would follow the procedure specified in its municipal code (18.010.50) or information on its website. He asked whether Niven knew of other places in the code that address the *West Main v. Bellevue* issue in a similar way.

Schneider objected to introducing new topics and requested an opportunity to redirect. Lell objected. SOWA said in the interests of efficiency and time, he would suggest that the questioning move ahead. The participants took a short break and reconvened at 8:01 PM. Sloman was sworn in by the court reporter.

Lell asked Sloman to describe her role, responsibilities, and experience working for the City, and her familiarity with the Highlands Development Agreement and IHIF-C land use applications. He introduced additional exhibits, as follows:

- *C-9, application materials for the preliminary plat for IHIF-C property, dated August 1, 2017. Lell asked questions of Sloman about the permit review process used by staff, and clarification of the notation “out for corrections.”*
- *C-10, original plat submittal, first page, note #7 (“planning comment”).*
- *C-11, examples of what is generated by an applicant submitting a permit application via “mybuildingpermit.com.”*
- *C-12, portions of the submittal components, specifically the plat narrative, received by the City in August 2017 (dated July 15, 2017) with the preliminary plat.*
- *C-13, the “complete application determination” form used by City staff. Lell asked Sloman to explain the purpose of the document.*
- *C-14, page one of the same cover sheet as C-11, mybuildingpermit.com, specifically the second page. Lell noted this is the revised site plan received on December 14, 2017 and not part of the original submittal.*
- *C-15, a sheet from the preliminary plat dated December 15, 2017.*

Lell asked Sloman to explain her participation in the preparation of the replacement regulations, and asked her to provide the zoning or land use category for property owned by IHIF-C under both the Development Agreement and current City code. Lell asked Sloman to explain whether IHIF-C could fully develop its property under the replacement regulations, and whether that was consistent with the proposed uses under the replacement regulations. Sloman described the three land use permit applications and when the applications were filed with the City; the complexity of the permit applications; and communications of which she was aware between the City and IHIF-C about permanent vesting.

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- *C-16 to C-26, letters from the Development Services Department to the applicant dated December 1, 2017; December 27, 2017 (2 letters); January 26, 2018, February 9, 2018, February 23, 2018; and March 9, 2018. The participants took a short break to distribute the exhibits, and reconvened at 8:44 PM. Lell asked Sloman to generally summarize the issues contained in the sufficiency determination letters, specifically some of the reported deficiencies. He continued his questions about the letter of agreement dated March 15, 2018 appended to the staff report (C-1) as Attachment 5, which was the final completeness determination letter. He asked Sloman to explain historical staffing levels in the Department of Development Services since 2012, including the availability of outside funding sources for planning staff, and the Department's current staffing status.*
- *C-27, a chart prepared by staff in preparation for this hearing that provides time-tracking analysis for processing and reviewing permit applications.*
- *C-28, a page from the Issaquah Highlands Development Agreement, Appendix L (Processing), that shows how all the processes and steps for land use permits work. Lell asked Sloman to expound on the review and deliberations by the City Council, several boards and commissions, including the Planning Policy Commission and Land & Shore Committee, and staff to prepare the replacement regulations; and public outreach activities held for interested parties, including opportunities for participation by interested parties at meetings.*
- *C-29, email to interested parties on December 14, 2017, to update the City's email list of interested parties about replacement regulations and anticipated Council action.*
- *C-30, memo from Niven and Sloman to the Council to assist the Council in its conversations about vesting (page two). Sloman noted the memo included information about which properties in the Highlands Development Agreement were not yet developed, their status, and whether they would be vested in accordance with state regulations.*
- *C-31, a PowerPoint presentation staff made to the Land and Shore Committee on November 21, 2017, specifically about vesting. Lell asked Sloman to speak to the number of meetings, written communications, and other contacts the City had with IHIF-C since IHIF-C acquired the Highlands property, and the number of staff hours the City spent on IHIF-C's applications.*
- *C-32, an email to interested parties dated February 22, 2018 announcing an upcoming Land & Shore Committee meeting on February 28, 2018, and identifying key changes in terms of items that were being distributed in preparation for that meeting.*

3. ADJOURNMENT

The participants agreed to delay Schneider's opportunity to question Sloman until the next public hearing on Wednesday, December 5, 2018 at 6:30 PM in the Council Chambers.

Schneider asked that a meeting in addition to the scheduled meetings on December 5 and, presumably, the Commission's next regular meeting on January 16 be scheduled for these public hearings, possibly December 19. Staff will check on the availability of Commission members and advise.

With no more business to conduct, SOWA adjourned the meeting at 9:30 PM.

Respectfully submitted,

Susan Lowe
Recording Secretary