

Development Commission—Special Meeting  
12-5-18

**CITY OF ISSAQUAH**  
**Development Commission—Special Meeting**  
**MINUTES**  
**December 5, 2018**

City Hall South  
Council Chambers

135 E. Sunset Way  
Issaquah, WA 98027

<b><i>Commission Members Present</i></b>	<b><i>Administration/Staff Present</i></b>
Richard Sowa, Chair	Lucy Sloman, Land Development Mgr.
Mel Morgan, Jr., Vice Chair	Keith Niven, Economic and Dev. Services Dir.
Michael Brennan	
Kevin Price	<b><i>Others Present</i></b>
Richard Sanford	Ray Liaw, Van Ness Feldman LLP
<b><i>Members Not Present/Excused</i></b>	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 6:39 PM.

**2. PUBLIC HEARINGS—Continued from 11/29/2018**

**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 noted that after the last meeting, Schneider asked for copies of the City's agreement(s) with Polygon for development in the Highlands, which were provided. He noted the two agreements are being entered into the record as Exhibits C-33 and C-34.

**Applicant and Staff Presentations/Witnesses**

Lell asked Sloman to confirm that she agrees to continue under oath. Sloman replied yes.

Schneider continued his questioning of Sloman. He noted that Exhibit C-33 is the same document as S-5, and C-34 is a signed version of the Development Agreement that is part of Exhibit C-33, which is also already in the record. Schneider asked Sloman to identify vesting information in the two exhibits and to explain her understanding of the two documents. He displayed Exhibits S-6 and C-27, two timelines prepared by the City showing timelines for receiving and reviewing the Shelter applications. Schneider asked Sloman about the source of the numbers and dates on the charts, and Sloman explained how and why the charts were developed and how they were subsequently used.

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Schneider asked Sloman to explain how she identified the time frames, specifically “117 days” as the correct time frame in Appendix L, Part One, City Processing of Land Use Permits Chart (Exhibits C-27 and C-28). He asked for Sloman’s understanding of why the Shelter permit applications were not processed as accounted for in the timelines given in Exhibit C-27. Sloman described the submittal requirements that were not met in the applications and referred to the time frames in the charts as conceptual.

Schneider continued with Exhibit S-6, a timeline prepared by staff for presentation to City Council. Schneider also referred to Exhibit S-1, Notice of Application submitted by Shelter, and asked Sloman to describe whether the timeline matches up with Shelter’s application. Sloman indicated that the City is still waiting for information on the preliminary plat in Shelter’s application.

Schneider entered new Exhibit S-11, a series of email exchanges between City staff and Heim, beginning April 13, 2018 with a request from Heim for follow-up information after a meeting between the City and Shelter on March 29, 2018. He asked Sloman to read from the string of emails that began in April and took place over the next four months. He asked Sloman to comment on the delay in providing Heim with the information she requested. Sloman described the complexities of the research required to respond to the initial and subsequent requests for information. Schneider asked Sloman to describe where the process now stands, what information Shelter needs to submit, and what communication has been given to Shelter outlining what needs to be submitted so the City can continue to process Shelter’s application. Sloman referred to documents and attachments prepared by staff and included in the City’s email responses to Heim.

Schneider referred to Exhibit C-27 about timelines, and noted that another application, Westridge Townhomes (Polygon) was approved in July 2018. He noted that Polygon’s single-family plat application was submitted in October 2017, after the end of the build-out period, and was processed under the procedures in the Highlands Development Agreement and received approval in July 2018. He asked whether the City treated the Polygon application and the Shelter application in the same fair and reasonable manner. Sloman referred to the affordable housing and TDR (transit-related development rights) provisions that exist in Polygon’s application (Exhibit C-33 and C-34) and do not exist in Shelter’s application.

Schneider asked questions of Sloman about her familiarity with the section, “After Build-out,” Section C-23 of the Highlands Development Agreement. He introduced Exhibit S-12, a PowerPoint presentation prepared by staff dated February 7, 2018, “Ending the Development Agreement,” specifically the page entitled “Vesting.” He asked clarifying questions about the content of that presentation, including what “permanent vesting” means, and whether staff ever told his client that they would be vested under the Development Agreement after it terminated. He introduced a letter (Exhibit S-13) dated March 27, 2017 from Niven to Nick Abdelnour, Highlands Investment Fund, LLC, Polygon, about the vesting status and requirements for the Westridge Townhomes Projects.

Schneider introduced Exhibit S-14, a memo from Sloman to Nick Abdelnour (Polygon Homes) and Gary Young (Shelter) on December 1, 2016. He questioned Sloman about her understanding of *West Main v. Bellevue* and her representation of that case to Council in her presentations to them. At Schneider’s suggestion, the Commission agreed to hear the videotape of the meeting at which Sloman made her remarks (Land and Shore Committee, November 21, 2017) but asked Schneider to refrain from asking Sloman to make a legal conclusion.

Schneider continued with the introduction of Exhibit S-15, a PowerPoint presentation to the Land and Shore Committee also dated November 21, 2017, specifically the page entitled “Vesting: Topic 4.” Schneider asked questions of Sloman about when and how the City informed his client that they were not required to go through the typical pre-application process.

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The participants took a short break and resumed at 8:21 PM. Schneider referred to Exhibit S-1, the Notice of Application, specifically the map on page two. He questioned why and when the map was included in the application process. He asked when and how staff decided the client's application was not vested to the plat application. Sloman referred to changes in the application made by Shelter, and also referred to Exhibit C-10.

Schneider introduced Exhibit S-17, one of a series of letters between the City and Heim asking for compliance with the replacement regulations, dated May 25 and May 31, 2018, and asked what the City has done to process the application since then. He asked when a decision was made to send these applications to the Development Commission, and for clarification of the process and timeline staff used in preparing the staff reports.

The participants took a short break and resumed at 9:03 PM. Lell questioned Sloman. He referred to Exhibits C-16 through C-24, introduced at the last meeting, that contain "sufficiency determination" information. He asked Sloman to describe the impact the contents of those letters had on the City's processing of Shelter's applications. He asked Sloman to describe conversations staff had with the applicant about missing information and how to resolve that situation so the process could move forward.

Lell referred to the email exchange in Exhibit S-11, specifically the email from Ken Shipley on the last page. He asked is it typical that an applicant would ask as many questions as Shelter has in the application process. Sloman replied no. Lell asked has that impacted the time frame for the City in reaching a decision on the preliminary plat application. Sloman replied yes. Lell asked Sloman whether Polygon also received any "sufficiency determination" letters.

Lell introduced new exhibits, including Exhibit C-35, an email from Sloman to Niven; Exhibit C-36, an email to Development Services Department staff on December 18, 2018 updating the entire department on the replacement regulations; Exhibit C-37, an email from Craig Ramey, Regency Centers; Exhibit C-38, an email from Niven to Tisha Geiser (City Clerk's Office) requesting that a meeting be facilitated between interested parties; Exhibit C-39, an email from Sloman to Abdelnour in response to a request for clarification on the status of Polygon's projects; and Exhibit C-40, an email from Sloman to Richard Rawlings (Polygon), Abdelnour, and others about vesting under the Highlands Development Agreement.

Lell asked Sloman whether the information in Exhibit S-9 would serve as a checklist that staff would use with clients, but that in the case of any conflict with provisions in the City's code, the code would prevail. Sloman replied yes. He referred to Exhibit S-12 and S-15, the PowerPoint presentations developed by staff for use in presentations to Council, and asked her to clarify how and when that information would be used.

He asked Sloman whether she had anything to add to the testimony she gave earlier. Sloman responded with additional information about pre-application contacts between staff and Shelter, specifically how it was determined that a pre-application meeting was optional and not required.

Schneider noted that the ten new exhibits just introduced go way beyond the scope of his questioning. He asked to continue his questioning of Niven. Niven was asked whether he understands that he continues to be under oath, and he replied yes. Lell asked Niven to describe Exhibit C-33, the City's Development Agreement with Polygon, which contains an affordable housing component, including the context and purpose of that agreement. Niven explained how the City's TDR program allowed Polygon to plan for an additional 100 housing units, and why the City allowed Polygon to continue its agreement under the Highlands Development Agreement

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regulations. Niven explained that Attachments 2 and 3 to Exhibit C-35 create a construct by which Polygon could actualize the 100 TDRs and the City would receive a number of TDRs in return. Lell concluded with the introduction of Exhibit C-41.

Schneider began his cross-examination of Niven by referring to the letter dated November 22, 2017 (Exhibit S-13), which was supplementary to correspondence in March 2017, and that was sent under Niven's signature to Abdelnour. He said he would assert that this letter was prepared by Abdelnour and sent under Niven's signature. He questioned Niven as to whether Exhibit C-33, the City's development agreement with Polygon, would be defined as a development agreement under state statute, and whether it was executed pursuant to state law in the same way that the Highlands Development Agreement was. Schneider clarified how Exhibits C-33 and C-34 are connected, and questioned where either speaks to vesting to the Highlands Development Agreement. Niven referred to the section in Exhibit C-33 entitled "Vesting," which would allow Polygon to provide affordable housing units under the terms of the Highlands Development Agreement.

#### **ADJOURNMENT**

SOWA noted this public hearing will be continued to Tuesday, January 15, 2019 at 6:30 PM, and noted another public hearing has been scheduled for Wednesday, January 16, 2019 at 6:30 PM. Schneider said he would like the City to schedule as many meeting dates as possible, and as quickly as possible. With no more business to conduct, SOWA adjourned the public hearing at 10:08 PM.

Respectfully submitted,

Susan Lowe  
Recording Secretary