

CITY OF ISSAQUAH
Development Commission
SPECIAL MEETING

6:30 PM
 April 16, 2019

Council Chambers
 135 E. Sunset Way

MINUTES

*These minutes are provided as a written record pursuant to IMC18.03.100(C).
 A video recording of the meeting and a full transcript of the proceedings also exist.*

COMMISSION AND ADMINISTRATIVE PERSONNEL PRESENT

Commissioners Present:

Richard Sowa, Chair
 Mel Morgan, Vice Chair
 Michael Brennan
 Kevin Price
 Richard Sanford

Commissioners Not Present (Excused):

Randolph Harrison
 Jasmina Mihova
 Mark Rigos, Alternate
 Ryan Roeter, Alternate
 Nischitha Venkatesh, Alternate

Administration/Staff:

Keith Niven, Econ. & Dev. SrCs. Dir.
 Lucy Sloman, Land Development Mgr.
 Jean Lin, Senior Planner

Others Present:

Jeffrey Dunbar, City Attorney's Office
 Tia Heim, Shelter Holdings
 Zachary Lell, City Attorney's Office
 Ray Liaw, Van Ness Feldman, LLP
 Jackie Quarré, Foster Pepper PLLC
 Patrick Schneider, Foster Pepper PLLC
 Gary Young, Shelter Holdings [audience]

1. CALL TO ORDER

SOWA called the meeting to order at 6:30 PM.

2. APPROVAL OF MINUTES

a) MOVED BY MORGAN, SECONDED BY BRENNAN that minutes of the Development Commission meeting on March 19, 2019 be approved as presented. MOTION CARRIED UNANIMOUSLY.

b) MOVED BY MORGAN, SECONDED BY BRENNAN that minutes of the Development Commission meeting on March 20, 2019 be approved as presented. MOTION CARRIED UNANIMOUSLY.

3. PUBLIC HEARING(S) - Continued from 3/20/19

- a) **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 [completed]

- ~~Staff Presentation/Witnesses [completed]~~
- ~~Applicant Presentation/Witnesses [completed]~~
- ~~Public Testimony [completed]~~
- Rebuttal Witnesses
- Discussion/Decision

Lell began his questioning of rebuttal witnesses with Jean Lin, Senior Planner, who was sworn in by the court reporter. He asked her to answer questions about her professional background; role with the City as a Senior Planner; and her familiarity with the applications submitted in August 2017 by Shelter Holdings. He referred to Exhibits C-11 and C-14, and asked her to identify and describe those documents. He asked Lin to explain how the City's *mybuildingpermit.com* online mechanism works when applicants submit documents to the City, and her role in processing documents submitted via that mechanism, including the application submitted by Shelter Holdings.

Lell referred to Exhibit C-10, and asked Lin to describe it and read sections from it; and Exhibit S-1, dated December 27, 2017, Notice of Application authored by Lin, and asked her to explain its contents and the timing of its issuance.

Schneider asked Lin some follow-up questions, including Lin's familiarity with Washington State's vesting law; statements authored by Lin included in Exhibit S-1; and her role in reviewing and processing Shelter's application submittal and supplemental application submittal. He referred to Exhibit S-47, notes authored by Lin on May 27, 2017. He asked about her understanding of the processing of Shelter's application, specifically the City's actions and the applicant's actions between August 2017 and March 2018. He asked her questions about the materials the applicant uploaded on *mybuildingpermit.com* and her involvement in the applicant's Site Development Permit applications during August-September 2017 and in the plat application submittal since December 2017.

Lell asked Lin some follow-up questions about her responses to questions about Exhibit S-47, Lin's notes dated May 27, 2017.

SOWA called for a short break at 7:21 PM. The meeting was called back to order at 7:28 PM.

Lell recalled Niven and confirmed that he continues to be under oath. Lell asked Niven about his understanding and views on Lin's testimony, including her actions in reviewing the plat application and the comment she authored in Note 7, Exhibit C-10. Lell asked Niven about his professional experience reviewing plats generally and for the City specifically, including his experience with vesting. Lell asked Niven for his opinion and understanding of the vesting provisions in the Highlands Development Agreement. Lell referred to Exhibit C-3, an email exchange on November 21-22, 2017 between Heim and Niven; Exhibit C-4, a continuation of that email exchange between Niven and Sloman on the subject of Shelter's vesting; Exhibit C-30, a memo from Niven/Sloman to the City Council dated December 12, 2017 re: End of Development Agreements and FAR, and the City Council's subsequent meeting at which the topic was discussed; and Exhibit C-44, Heim's notes dated March 21, 2017 about Shelter's vesting options.

He asked Niven to comment on Heim's previous testimony on the content of meetings between Heim, Young, and other Shelter representatives and Niven and other City staff on Shelter's

applications, and asked him to provide his recollection of what was discussed at those meetings. Lell asked additional questions of Niven about the parties' meetings and discussions on the possibility of negotiating a college campus as part of the City's agreement with Polygon's/Shelter's proposed development plans.

Lell referred to Exhibit S-111, an email string between Polygon and the City in 2013 about extending the term of the Highlands Development Agreement, and asked Niven to describe its contents. Lell referred to and asked Niven to respond to comments made during public comment at the March 20, 2019 meeting" and to comments made by Heim during her testimony about Niven's opinion of Shelter's proposed application. Lell referred to Exhibits C-5 and C-6 and asked Niven to describe their contents, which Niven characterized as a description of three options for vesting provided to the City Council in November 2017 for their consideration. Lell asked Niven to clarify his understanding of deliberations and actions taken in October-December 2017 by staff and the City Council re: the Talus Development Agreement and Highlands Development Agreement replacement regulations, including staff's recommendation and the Council's decision.

Lell referred to Exhibit S-9, Commercial and Building Permit Submittal Requirements, and asked Niven to comment on his understanding of the City's communications with Shelter about submitting a building permit application. He asked Niven to comment on the vesting provisions in IMC 18.050.01(C).

SOWA called for a short break at 8:34 PM. He called the meeting back into session at 8:43 PM.

Lell continued his questioning about Niven's understanding of portions of Heim's previous testimony, including about the impacts of the replacement regulations on Shelter's ability to develop its property at the Highlands. Niven gave more information on the structured parking and FAR requirements in the replacement regulations, including the policy direction given by City Council to staff for developing replacement regulations on which Council would deliberate and make a decision.

Lell also asked Niven to comment on the difficulties the City encountered in meeting the timeline for processing Shelter's applications, and the regulations for a remedy that would apply under the Development Agreement if the City failed to meet the processing deadline. Lell introduced new Exhibit C-50, an email string between Heim and representatives of Shelter and Niven, Sloman, and other City representatives between October 26, 2017 and November 1, 2017 about the City's obligation to return permit fees under the remedy section of the Highlands Development Agreement. Niven gave his understanding of the discussions between the City Attorney and Shelter's attorney on returned permit fees. Lell asked Niven to characterize his discussions with Gary Young, Shelter, on the substance of the replacement regulations.

Lell referred to Exhibit S-2, which contains Niven's estimated timeline for processing Shelter's permits, and asked Niven clarifying questions about what he anticipated at that time in terms of processing Shelter's applications. He asked Niven to describe developments in the City now under way under the replacement regulations.

Lell introduced new Exhibit C-51, a decision by the City Hearing Examiner on an appeal submitted by Shelter to dismiss a decision on its applications from the purview of the Development Commission, which was ultimately dismissed; new Exhibit C-52, a motion for reconsideration submitted by Shelter to the Hearing Examiner to dismiss a decision from the

purview of the Development Commission, which was denied; and new Exhibit C-53, a Superior Court order to strike a writ of prohibition and review by the Development Commission submitted by Shelter, which was denied. Lell also asked questions of Niven about the notes taken by Heim during meetings she attended with the City and to which she referred during her testimony.

Schneider questioned Niven about the presence of any notes Niven may have taken in meetings with Shelter, and specifically referred to highlighted areas in Niven's copy of the Highlands Development Agreement. Schneider asked Niven clarifying questions about whether or not the City denied the applicant's vested rights under the Development Agreement. Schneider introduced new Exhibit S-112, a letter from Sloman to Shelter informing Shelter that its plat application is not vested to the procedures of the Development Agreement and is subject to the replacement regulations, and asked Niven to give his opinion on its contents.

Schneider referred to Niven's testimony at the October 24, 2018 Development Commission meeting and to Exhibit S-101, three public notices including Polygon's applications dated December 27, 2017. He asked Niven for his understanding of what "vesting" means, and to comment on the use of the term "vesting" by staff. Schneider continued questioning Niven about when Niven communicated in writing the opinion that rights vested to the Development Agreement would cease when the replacement regulations were adopted by the City Council.

5. OTHER

The participants briefly discussed the estimated time required to conclude rebuttal questioning. SOWA continued the public hearing until a special Development Commission meeting at 6:30 PM on Tuesday, April 30, 2019 in the Council Chambers, with a tentative meeting set for 6:30 PM on Tuesday, May 7, 2019.

6. ADJOURNMENT

With no further business to conduct, SOWA adjourned the meeting at 9:58 PM.

Respectfully submitted,

Susan Lowe
Recording Secretary

EXHIBITS

Please contact City staff Carla Zabriskie at 425-837-3100 for exhibits related to these permits.