

**CITY OF ISSAQUAH
Development Commission
SPECIAL MEETING**

6:30 PM
April 30, 2019

MINUTES

Council Chambers
135 E. Sunset Way

*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):

Randy 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.

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 6:31 PM.

2. APPROVAL OF MINUTES

a) MOVED BY MORGAN, SECONDED BY BRENNAN that minutes of the Development Commission meeting on April 16, 2019 be approved as presented. MOTION CARRIED UNANIMOUSLY, 5-0.

3. PUBLIC HEARING(S) - Continued from 4/16/19

- 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

Schneider confirmed that Niven remains under oath, and continued his questioning, beginning with Exhibit S-112, a letter from Sloman to Shelter re: the applicant's vested rights under the Development Agreement. He introduced new Exhibit S-113, communications between Heim and Sloman on that issue. The first part of the new exhibit is a communication from Heim; the second part is Sloman's response on behalf of the City. Schneider asked questions of Niven about the second part, which is a letter dated April 15, 2019 to Heim from Sloman, and asked Niven questions about an application submitted by Polygon. He introduced new Exhibit S-114, emails about Polygon's vested status between Sloman and Nick Abdelnour (Polygon), and new Exhibit S-115, specifically the concluding email to Jean Lin, Senior Planner, from David Avenell (Polygon). He referred to Exhibit S-4, the formal recommendation from the Urban Village Development Commission (UVDC) to the City Council dated May 10, 2018.

Schneider referred to Exhibit S-113. He asked questions of Niven about the timing of processing, and the treatment of, Polygon's and Shelter's plat applications. He referred to Exhibit C-4, email exchanges between Niven and Heim, and between Niven and Sloman, about whether Shelter's applications were complete and/or vested. The attorneys briefly discussed how the attorney-client privilege applies to Niven's testimony. Schneider continued questioning Niven about his communications in the exhibits previously referenced, particularly his email communications with Heim about Shelter's vesting status.

Schneider continued his questioning of Niven, and introduced new Exhibit S-116, the AICP (American Institute of Certified Planners) Code of Ethics, B: Our Rules of Conduct, Rules 1 and 20. He asked Niven clarifying questions about his understanding and use of the term "vesting."

Schneider referred to Exhibit C-6, an attachment to Exhibit C-5, which is a staff memo from Niven and Sloman to the City Council Land and Shore Committee dated November 2017, dealing with issues being discussed by the Council about replacement regulations. Schneider asked specifically about page 7, IV. Vesting (Exhibit C-6), which makes reference to the West Main v. City of Bellevue issue. He referred to the City's checklist for Commercial and Multi-Family Building Permit Submittal requirements (Exhibit S-9).

SOWA called for a short break at 7:32 PM, and called the meeting back to order at 7:40 PM.

Schneider introduced new Exhibit S-117, two sections in the City's Land Use Code, and referred to the West Main v. City of Bellevue issue. Schneider followed up Niven's answer with questions about how the City processed the application for the Vale Apartments project. Schneider introduced new Exhibit S-118, meeting minutes prepared by Clark Design Group, LLC reflecting communications from the City on the issue of submitting a land use application to the City.

Schneider continued his questioning of Niven about the City's checklist for the public's use in preparing and submitting a building permit application. He asked Niven to comment on Niven's conversations with Heim about the pre-application process, and about Niven's and Sloman's presentation on February 7, 2018 to the Council about vesting and the replacement regulations, including the West Main issue (Exhibit S-12).

Schneider asked Niven about projects subject to development agreements in the City with FAR (floor to area ratio) greater than 1.0, as discussed in previous testimony. He asked Niven about the parcels the City owns in Talus, including how the City came to own those properties. Schneider introduced new Exhibit S-119, a Notice of Decision issued to Intracorp, specifically Attachment 3, a Memorandum of Understanding with the City, and Attachment 4, a Quit Claim

dated 2013 giving the property to the City. He asked Niven clarifying questions about other parcels the City owns in Talus and whether they are subject to the 1.0 FAR requirement. He referred to Niven's previous testimony at the April 16, 2019 meeting, and asked Niven about his understanding of the School District's intention to purchase property in Talus for a new middle school.

SOWA called for a break at 8:31 PM. The meeting resumed at 8:43 PM.

Lell asked Niven questions about Exhibits S-112, S-113, and S-115, all of which were previously introduced. He referred to Exhibit S-4, the UVDC's recommendation to the Council on May 10, 2018; and Exhibit C-4, an email dated November 22, 2017 between Niven and Heim, with a copy to Sloman, in which Sloman indicated confusion about an answer Niven had communicated to Heim. He referred to Exhibit S-116, the AICP Code of Ethics, and asked Niven whether he had knowingly or intentionally breached any provisions in that code. Lell continued his questioning about whether an April 4, 2018 letter from Niven contained a new understanding by Niven about vesting.

Lell referred to Exhibit S-36, a Letter of Agreement for Shelter's SDP Applications, addressed to Sloman and signed by Gary Young, Patrick Maloney, and Niven, and asked Niven to read from and give his understanding of several provisions in that Letter of Agreement with respect to Shelter's SDP and ASDP applications.

Lell referred to Exhibit S-9, the City's checklist for Commercial and Multi-Family Building Permit Submittal requirements. Niven gave his understanding of the intent of the checklist and how it is used by the public with City staff. Lell asked Niven for his understanding of how the checklist was used by Shelter. Lell referred to the vesting provision in the City's Municipal Code, 18.01.050, and asked whether Niven believes that the City's code supersedes a checklist on the City's web site. Lell referred to Exhibit S-117, and asked Niven to comment on how the two code sections are intended to be used and how any conflicts between them would be resolved. He asked Niven to expand on his previous testimony about the Vale Apartments project.

Lell referred to Exhibit S-118, meeting minutes prepared by Clark Design Group, paragraph 2.5, and asked Niven to comment on what was reflected in the notes; and to S-119, a Notice of Decision issued to Intracorp, specifically Attachment 3, a Memorandum of Understanding with the City, and asked Niven to describe the nature and extent of his involvement with the document. Niven gave his recollection about the property in question, which was owned by Intracorp, and how the City came to own it.

Lell continued his questions about Niven's earlier testimony about the 1.0 FAR requirement that would apply to non-residential, commercial, and City-owned property at Talus. He asked Niven to comment on whether the 1.0 FAR requirement would apply to Grand Ridge Plaza at the Highlands, were it to redevelop. Lell asked Niven whether Shelter's ASDP applications were submitted after the build-out period ended for the Highlands Development Agreement.

Schneider continued his questioning of Niven about the significance of vesting to the end of the build-out period vs. the end of the development agreement period. He referred to the two sections of the City's Municipal Code that refer to vesting discussed earlier, and asked Niven to comment on where he believes there is a conflict. Schneider continued his questions about Niven's previous testimony, including testimony about Exhibit S-4, the UVDC's recommendation

to the City Council. He asked Niven for the basis of his earlier assertions about vesting for Polygon's and Shelter's applications, respectively.

Lell asked Sloman to confirm that she is under oath, and asked her questions about previous testimony given by Heim, specifically about Heim's comments about inconsistencies expressed by staff about vesting for Shelter's applications. He asked Sloman whether she was aware that Heim was taking notes at meetings with City staff; whether vesting is a commonly discussed issue between City staff and project applicants; and her understanding of how the term "vesting" was used by City staff in meetings with Shelter representatives and others. He referred to Exhibits C-3 and C-5, specifically to an email exchange in November 2017 between Sloman and Niven about communication between the City and the applicant. Lell referred to Exhibit C-7, a memo dated December 12, 2017 to the Council from Sloman/Niven of all pending permits at that time, including Shelter's applications at the Highlands. Lell asked Sloman whether she thinks the information in Exhibit C-7 is inconsistent with information given to Shelter at that time about its vesting status; the time frame of discussions by the City about vesting and the replacement regulations; and Shelter's actions during that general time frame about their understanding of how decisions by the Council on replacement regulations would affect them.

5. ADJOURNMENT

SOWA noted that tonight's public hearing will be continued to May 7, 2019 at 6:30 PM in the Council Chambers. In addition, May 15, 2019 at 6:30 PM was briefly discussed as a possible meeting date. With no further business to conduct, SOWA adjourned the meeting at 10:05 PM.

Respectfully submitted,

Susan Lowe
Recording Secretary

EXHIBITS

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