

**CITY OF ISSAQUAH
Development Commission
SPECIAL MEETING**

6:30 PM
May 7, 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):

Ben Rush
Brooke Shore
Mark Rigos, Alternate
Arthur Schulte, 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]

CALL TO ORDER

SOWA called the meeting to order at 6:31 PM.

PUBLIC HEARING(S) - Continued from 4/30/19

- 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 said later tonight he will need to excuse himself to participate temporarily in a short phone call, and Mr. Dunbar will continue during that time as the City's attorney. SOWA agreed. Lell noted the applicant's attorney filed a letter concerning findings and conclusions from this proceeding which was received yesterday. He said this letter is still under review and his office

requests a reasonable amount of time to respond to the letter. He suggested by next Monday, May 13. SOWA agreed.

Lell confirmed that Sloman remains under oath, and continued the rebuttal questioning he began at the last meeting. He introduced new Exhibit C-54, a January 12, 2018 exchange between Sloman and Patrick Mullaney, Foster Pepper, and asked Sloman to comment on its contents. He introduced new Exhibit C-55, a document entitled "Action Memo" dated September 28, 2004, and asked Sloman to put the document in context. She identified the contents of the Action Memo.

Lell asked Sloman about testimony given earlier in these proceedings about perceptions of discrimination by the City against Shelter Holdings. He asked Sloman to clarify the procedure used by the City to process the Polygon plat application, and she explained the procedure followed by the City. He asked clarifying questions of the role of the Urban Village Development Commission (UVDC) in the City's Polygon application review and approval process.

Lell introduced new Exhibit C-56, email messages from David Avenell, Nick Abdelnour, and others at Polygon to Jean Lin, Senior Planner and others at the City; and new Exhibit C-57, an email from Alaina Robertson, Polygon, to Mike Martin, Issaquah City Planner, about the time frame required for the City to process Polygon's preliminary plat application. Lell asked Sloman to speak to Polygon's short-plat application in early 2016 and how the City processed it. He also asked Sloman to comment on the City's processing of an application for the proposed City Surf project, and introduced new Exhibit C-58, a September 22, 2017 email exchange between Sloman and John Hoss, City Surf owner. He introduced new Exhibit C-59, a chart prepared by Sloman in preparation for rebuttal regarding exhibits referenced in previous testimony at this hearing. Sloman explained the contents of the chart, which provided dates and details about the City's processing of permits over the last five years.

Lell asked Sloman to comment on the City's use of the Development Commission process for processing Shelter's SDP and ASDP applications, including communications among appropriate staff about processing Shelter's applications. Lell asked clarifying questions about staff's actions regarding Council adoption of the replacement regulations in 2016-2017 and early 2018.

Lell referred to Exhibit S-9, the Commercial and Multi-Family Building Permit Submittal Requirements form available online, and asked Sloman questions about its applicability to Shelter's applications. He referred to Exhibit S-118, meeting minutes prepared by Clark Design Group, Section 2.5, which was introduced at the last meeting, and asked Sloman to respond to its contents. Lell asked Sloman to comment on the City's review and approval process for the Vale Apartments project.

SOWA called for a break at 7:30 PM, and reconvened the meeting at 7:40 PM.

Lell asked Sloman to comment on the purpose and nature of pre-application conferences and whether pre-application conferences were held on Shelter's applications. Lell introduced new Exhibit C-60, a chart prepared by Sloman in preparation for rebuttal regarding Shelter's communications about a pre-application conference for its applications. He referred to Exhibits C-16 to C-26, referred to as the "insufficiency" letters in these proceedings, and asked Sloman to comment on the letters and previous testimony about them. He referred to Exhibit S-25, Appendix L, Section L-5 that addresses "sufficiency," and asked Sloman to comment on the sufficiency and general nature of Shelter's initial application submittals as well as its supplemental submission. He asked Sloman questions about Heim's previous testimony about

actions the City took, including staff, the Council, and the Mayor, in processing Shelter's application.

Lell introduced new Exhibit C-61, an email exchange from October-November 2017 from Niven to Heim, Young, and others, and asked Sloman to describe its contents. He asked Sloman to describe how the Central Issaquah Standards applied to the Highlands Development Agreement, particularly a structured parking requirement. He asked Sloman to describe staff's vesting option recommendation presented to the Council as the Highlands Development Agreement neared expiration. He continued his questions to Sloman about Heim's previous testimony and Niven's previous responses to questions by Schneider.

Lell introduced new Exhibits C-62 and C-63, excerpts from the July 2016 and February 2017 issues of *Connections*, published by the Issaquah Highlands Council. He asked Sloman to comment on the description of Shelter's proposals in those publications, particularly references to Shelter's potential residential development at the Highlands.

Lell continued his questioning of Sloman about Shelter's and the City's actions as the Issaquah Highlands Development Agreement neared expiration. Lell referred to Exhibit S-25, excerpts from the Highlands Development Agreement and asked Sloman to comment on whether it was the latest version. He introduced new Exhibit C-64, the Development Agreement that is currently available on the City's web site.

Schneider began his questioning of Sloman on the document just introduced as Exhibit C-64 and asked her to comment. He asked her to compare Exhibit S-25 and Exhibit C-64, including any updates and changes that have been referenced in these proceedings. Schneider continued his questioning about previous testimony given by Sloman on the Vale Apartments project.

SOWA called for a short break at 8:33 PM. The meeting reconvened at 8:42 PM.

Schneider introduced new Exhibit S-120, a copy of the City's moratorium ordinance, and asked additional questions of Sloman about the moratorium; new Exhibit S-121, a copy of the Vale Apartments project land use application dated April 19, 2016; new Exhibit S-122, a Notice of Decision for that land use application dated October 25, 2016; and new Exhibit S-123, a building permit application for the Vale Apartments submitted in 2017. He asked clarifying questions about the chronology of submitted documents for the Vale Apartments. Schneider introduced new Exhibit S-124, a building permit application for the Vale Apartments submitted October 24, 2016, and asked Sloman about its status.

He asked Sloman questions about her previous testimony about vesting, including Polygon's application. He referred to Exhibit S-112, a letter from Sloman on April 5, 2019 informing Shelter that its application was not vested, and compared how Polygon's and Shelter's applications were processed by the City. He referred to Exhibit S-113, communications between Heim and Sloman on the applicant's vested rights under the Development Agreement, and to Niven's testimony at the October 24, 2018 meeting (page 23 in the transcript) on vesting. He asked Sloman about whether she consulted with Niven and/or the City Attorney before sending the letter in Exhibit S-112. He referred to Niven's transcript from the April 30, 2019 meeting (page 110). He continued to ask Sloman questions about the letter in Exhibit S-112.

Schneider referred to Sloman's April 15, 2019 letter that is part of Exhibit S-113, and asked Sloman to comment on the cases cited in that letter. Lell objected on the basis of attorney-client privileged communications. Schneider requested that he be allowed to ask Sloman questions

about the letter and that the City Attorney can offer an objection, to which SOWA agreed. Schneider continued his questioning of Sloman about her understanding of Shelter's vesting to parts of the Development Agreement and vesting to procedures, including the case law cited in her April 15, 2019 letter.

Schneider continued questioning Sloman about the contents of the April 15, 2019 letter, specifically the practicality of involving the UVDC in reviewing Shelter's applications. [9:30 PM: Lell temporarily left the room at this time.] He asked clarifying questions about UVDC's March 26, 2019 public meeting at which Polygon's High Street plat application was reviewed, and about the timing between that meeting and Exhibit S-112, a letter from Sloman on April 5, 2019 informing Shelter that its application was not vested. He asked Sloman to comment on that timing and when she made the decision that she had been in error in processing Polygon's applications under the Development Agreement.

Schneider introduced new Exhibit S-125, an excerpt from the City's code (18.03.045) about the UVDC's duties and asked Sloman to comment on her understanding of why UVDC was not asked to review the applications submitted by Shelter. Schneider asked clarifying questions about any updates that the City has made to the Notice of Application issued on Shelter's preliminary plat application, and the City's plans to schedule a community conference. He asked Sloman to explain why the City is not proceeding with processing Shelter's application and her understanding of when it will move forward. [9:58 PM: Lell returned at this time.]

ADJOURNMENT

SOWA adjourned the meeting at 10:01 PM. The next meeting is scheduled to be continued to Wednesday, May 15, 2019, at 6:30 PM in the Council Chambers.

Respectfully submitted,

Susan Lowe
Recording Secretary

EXHIBITS

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