

**CITY OF ISSAQUAH
Development Commission**

7:00 PM
June 16, 2021

Virtual Meeting

MINUTES

COMMISSION AND ADMINISTRATIVE PERSONNEL PRESENT

Alternate Meeting Format: On March 6, 2020 the Mayor declared a civil emergency due to the outbreak of novel coronavirus (COVID-19). On March 24, 2020 the Governor issued Proclamation 20-28 relating to the COVID-19 emergency and open public meetings. The proclamation has been extended. Due to these factors, the meeting was held using a remote meeting platform.

Commissioners Present:

Michael Brennan, Chair
Kevin Price, Vice Chair
Brooke Shore
Patty Dillon
Richard Sanford
Arthur Schulte
Richard Sowa
Jon Ikeda, Alternate
Mel Morgan, Alternate

Administration/Staff/Others:

Lucy Sloman, Land Dev. Manager
Tina Eggers, City Clerk
Jim Haney, City Attorney
Minnie Dhaliwal, CP&D Director

CALL TO ORDER

BRENNAN, Chair, called the meeting to order at 7:30 PM.

APPROVAL OF MINUTES

- a) BRENNAN asked for any corrections or objections to minutes of the November 18, 2020 meeting, and there were none. Minutes are approved.
- b) BRENNAN asked for any corrections or objections to minutes of the May 19, 2021 meeting, and there were none. Minutes are approved.

AGENDA ITEMS

a) **Open Government Training Act and Other Essential Training, (I)**

- Public Records
- Open Public Meetings
- Role of Members
- Effective Meetings
- Records/Notes
- Ethics Policy
- Public Hearings
- Quasi-Judicial Issues

Presented by:

*Tina Eggers, City Clerk
Jim Haney, City Attorney*

Eggers and Haney introduced themselves. Eggers made a presentation that included state laws relevant to the service provided by the Commission and information pertaining to the specific processes for the Commission's work.

She explained the purpose of the applicable state laws, particularly the Open Public Meetings Act (OPMA), public records, and records management, called "the Sunshine Laws." She

explained the purpose of the regulations and gave highlights of how they apply to the Commission and how it conducts its meetings, including the use of email. Haney used an example, specifically the Battleground School District, where the court ruled that violations of the OPMA had occurred. Eggers and Haney spoke to the penalties, both for individuals and for the City, that could be incurred for violations of OPMA.

Eggers continued her presentation on the Public Records Act (PRA), including how Commissioners should handle their own records. Haney suggested that Commissioners use a dedicated, separate email address for doing City business, and avoid using text messages.

Eggers continued her presentation on the City's Code of Ethics; Haney spoke to the state's ethics law, particularly conflict of interest. Eggers next addressed the role of PPC members, including attendance, the role of alternates, meeting agendas, meeting procedures, making motions and amendments, debate, conflicts, and the process for public hearings.

Haney provided information on public hearings, both legislative and quasi-judicial, and legislative decisions. He gave details about the differences between legislative (findings can be based on judgment) and quasi-judicial decisions (findings based on evidence at a public hearing). Quasi-judicial decisions, unlike legislative decisions, must both be fair and appear fair to a reasonable, disinterested person, and the focus is on the decision makers' relationship with the persons affected by the decision. He reiterated the appearance of fairness questions that are presented at every quasi-judicial hearing, and explained how to cure an appearance of fairness problem. He continued with additional details about quasi-judicial deliberations and decision making.

Sloman noted some Commissioners have asked whether visit sites where projects are being proposed are acceptable. Haney replied yes, Commissioners can visit sites; however, they cannot bring in new information as a result of their visit because it is not part of the official record. DILLON asked so if a Commissioner walks a site and sees something about which they have a question, can they ask for clarification at the hearing. Haney replied yes, they can ask for clarification at the hearing, and then use the information given at the hearing to inform their decision.

Haney continued his presentation on potential legal challenges with respect to the Growth Management Act (GMA), as well as to procedural due process and substantive due process. He continued his explanation of legal challenges by explaining the Land Use Petition Act (LUPA), and how LUPA could be used to have a court review a decision made by the Commission.

Eggers asked for any questions and offered her office as a resource.

SANFORD asked about notes and records, specifically notes a Commissioner makes on the agenda packets supplied to Commissioners. Is there any guidance about how long to keep those notes, he asked. Eggers replied notes can be kept at the discretion of a Commissioner and dispose of them when they are no longer of value to the Commissioner. However, as long as they are in the Commissioner's possession, they are subject to any request for public information that comes to the City. Haney added generally speaking, Commissioners should keep their notes and records through the decision process and also through the appeal process, which lasts 21 days after the decision has been made.

b) Resources, Codes, and Permit Types, (I)

Presented by:

Lucy Sloman, Land Development Manager

Sloman gave a presentation that included information on the organizational structure of decision making (Judge, Administration, Mayor, City Administrator, Community Development and Planning Department, and City Council). She continued with a discussion of the upcoming permit types and thresholds, specifically Site Development Permits (Level 3); Master Site Plan (Level 5); and Administrative Adjustment of Standards (Level 0 and 2). She explained the circumstances under which a permit might be consolidated and/or forwarded to a higher level of review.

She continued with a matrix of the land use review process, especially the Development Commission's role.

BRENNAN asked is the public given notification of when a permit application has been submitted, not just a notification of a public hearing. Sloman replied yes, although the public notification regulations may change as a result of the Title 18 update. A Notice of Application goes to property owners within a certain distance of the proposed project, then the site is posted for general awareness. An advertisement is published in the "newspaper of record," and any parties of record are notified. The City also maintains an active project map and list on its website; when staff receives a pre-application meeting packet, they start posting information about the application on the City's website so people can be aware of what's happening during the land use process and provide feedback.

Sloman described the upcoming work envisioned for the Commission on the Title 18 update. She noted that the anticipated time frame for the Commission's discussions on the gap analysis being developed now is September through November 2021. She also explained the permits expected to come before the Commission in September and October 2021. She noted the agendas now contain information on meetings outside regular Commission meetings in which Commissioners might be interested. Staff will also send regular emails if no Commission meetings are scheduled for its regular meeting dates. BRENNAN spoke in favor of the emails received about the meeting schedule; they are helpful.

Dhaliwal added details about the schedule for Title 18 work, and said staff will be sending meeting invites to those meetings when the schedule has been finalized. She added on the question about public notification, the City has heard from the community that notification has not been made until too close to the public hearing in the past, so that will be reviewed and likely change in the Title 18 update. She noted the Commission will be involved in all three meetings for issues in the Title 18 update process---meetings on the gaps analysis, discussion draft, and hearing draft. Some of those meetings will be joint meetings with the Planning Policy Commission, although the PPC will be holding the public hearings.

DILLON asked so is staff not anticipating scheduling any Development Commission meetings during the summer months. Sloman replied that is correct; the next meeting date we are anticipating for the Commission is September 1, which we will confirm.

Sloman concluded her presentation on resources available to Commissioners: the City's website, Notify Me signup, search function, active projects map, Issaquah Municipal Code, Document Center, archive center for agendas, etc.

REPORTS

- a) Updates: None.

PUBLIC COMMENT

Connie Marsh, Issaquah resident, spoke to her experience of negotiating the process during which the Commission is making decisions. She said her understanding is that quasi-judicial decisions should not be discussed even after a decision has been made, and she heard something different tonight. She gave her experience filing an appeal, and said the record is not as seamless as one might expect. She continued she would like to ensure that the record is very clear, and would ask the Development Commission to look at what is in the staff reports and clarify what is part of the record and what isn't.

She continued the information you provide is what is used to implement the project, not just for appeals. She gave examples. She noted you might wonder why the development doesn't end up looking like the photos presented to the Commission; that's because there is no reference to the actual permits in the photos displayed during the Commission's deliberations. So there is an expectation of what the development will look like, but is it not implementable by staff because there is not a direct reference to the photos viewed by the Commission.

She continued consolidated permits are used by staff de facto if an applicant asks for it. The City doesn't need to just automatically provide that, but rather should follow a process that allows for more conscious choice. She also spoke of the difficulties the active project list and map on the City's website pose for the public; it is incomprehensible when viewed on a phone, for example. She concluded her observation is that the intent of the Development Commission doesn't end up actually getting built and urged the Commission to ensure that what you approve actually gets built.

OTHER BUSINESS / ANNOUNCEMENTS

None.

ADJOURNMENT

With no further business to discuss, BRENNAN adjourned the meeting at 9:02 PM.

Respectfully submitted,

Susan Lowe
Recording Secretary