



July 16, 2021

Mr. Mark C. Scheibmeir
Hillier, Scheibmeir & Kelly, P.S.
299 N.W. Center Street
P. O. Box 939
Chehalis, Washington 98532

Mr. Scheibmeir:

We are writing, on behalf of the City Council, to request your response to a complaint filed with Olympia City Council regarding potential issues around your decision as Olympia's Hearings Examiner in the matter of Wellington Heights Subdivision in December of 2018. (No. 18-1315).

We have attached the complaint from Mr. Daniel Leahy. Mr. Leahy alleges that there were unreported conflicts of interest which may have compromised the impartiality of your decision regarding Wellington Heights.

Would you kindly inform us as to when we might expect a response?

Sincerely,

Cheryl Selby
Mayor

Clark Gilman
Mayor Pro-Tem

cc: Jay Burney, City Manager
Mark Barber, City Attorney

Enclosure

July 13, 2021

Mayor Selby and Olympia Council Members,

I have two requests:

Remove your Hearing Examiner, Mark C. Scheibmeir, from any further land use decisions with regard to the opening of Decatur SW at the Public Pathway to automobile traffic.

Replace him as your Hearing Examiner due to his actions described below.

On December 10, 2018 Mr. Scheibmeir opened a hearing (No. 18-1315) with regard to the Wellington Heights Subdivision in the southwest section of Olympia's Westside. On February 19, 2019 he issued a decision approving the subdivision. His decision led to the clear cutting of 9.4 acres of woodland and the construction of fifty-seven single family houses.

In his decision, Mr. Scheibmeir repeatedly references the possibility that a Public Pathway linking Decatur St. SW to Caton Way and Cooper Point Road SW could be opened to automobile traffic. Mr. Scheibmeir has a business relationship with property owners on Cooper Point Road immediately to the south of Decatur St. SW. This property would be directly accessible from Decatur Street SW if it were opened to automobile traffic. Mr. Schbeimeier failed to disclose his relationship with property owners Robert and Heidi Pehl.

Mr. Scheibmeir is a Registered Agent for fourteen (14) Limited Liability Corporations (LLCs).

Ten of these LLCs have as their Governors Robert Pehl and Heidi Pehl.

Two of the ten LLCs, SSRE Investments LLC and SSRE2 Investments LLC , own property on Cooper Point Road SW

SSRE2 Investments LLC owns the property at 2015 Cooper Point Rd where the Pre-Owned Super Store and Awesome RV dealership is located. Robert and Heidi Pehl purchased this property on December 11, 2018, *one day after Mr. Scheibmeir opened this hearing*. It's reasonable to assume Mr. Scheibmeir was aware of this purchase at a site immediately south of the currently unconnected Decatur Street SW.

SSRE Investments LLC owns the property at 2107 Cooper Point Rd where Olympia Volkswagen is located. This property was purchased on February 2, 2014 by Robert and Heidi Pehl. It's reasonable to assume Mr. Scheibmeir (who was hired as Hearing Examiner in 2013) was aware of this purchase at a site two tenths of a mile south of the currently unconnected Decatur Street SW.

Mr. Scheibmeir addresses the opening of Decatur SW to automobile traffic several times in his decision.

On page three of his decision he cites one of the causes of the “firestorm of public hostility” to this proposed land use was the possible “conversion of Decatur into a major arterial, allowing access south to Cooper Point Road.”

Again, on page 7 of his decision, Mr. Scheibmeir observes that the Public Pathway (which he erroneously refers to as a “small park”) “serves to disconnect Decatur Street from Caton Way. This park (sic) prevents traffic on Cooper Point Road from using Caton Way/Decatur Street to gain access to Harrison Avenue, etc.”

Again, on page 9, he references “a possible future connection between Caton Way and Decatur Street.”

As an official required to be an expert on the Comprehensive Plan, we must assume that Mr. Scheibmeir knew that the possible automobile connection of Decatur to Caton Way and Cooper Point was no longer in Olympia’s Comprehensive Plan.

It is impossible to avoid the conclusion that he avoided mentioning this fact due to his business relationship with the property owners on Cooper Point Road SW.

The Council appointed Mr. Scheibmeir in April, 2013. The Planning Commission submitted their final draft to the Council in 2013. Their draft included the Decatur Connection. This was met with widespread public opposition, the source of one of the largest number of public comments.

The Council deleted from its 2014 Comprehensive Plan all five paragraphs describing the Decatur Connection. There is no word about a Decatur connection in the current plan’s “Westside Transportation Issues” section. (pp.178-181) We can only assume that Mr. Schbeimier, charged with interpreting the Comprehensive Plan, knew of this deletion.

Mr. Scheibmier makes numerous references to the Transportation Map of 2030 which is part of the 2014 Comprehensive Plan. (P.213). Mr. Scheibmeir must have known that this Map shows there is no automobile connection, nor a planned one from Decatur SW to Cooper Point Rd.

In response to the “firestorm of public hostility” one would expect Mr. Scheibmeir to point out that the Comprehensive Plan does not allow such a connection. He did not. Even in his discussion entitled, “Findings Related to the Comprehensive Plan,” he fails to mention that the Decatur automobile connection had been deleted by the City Council.

Before Mr. Scheibmeir opened his hearing on December 10, 2018, he should have revealed the relationship he has with the property owners on Cooper Point Road and recused himself. He did not.

Consequently, Mr. Scheibmeir failed to meet the appearance of fairness standard required in any adjudicated proceeding. Instead Mr. Scheibmeir made a decision to keep this relationship from the parties of record and the public.

While the Council cannot remedy the damage to our neighborhood that resulted from his approval of a development that clear cut 9.4 acres of woodland and is building inordinately expensive single family homes in the midst of an affordable housing crisis, you should not allow Mr. Scheibmeir to preside

over any further proceedings that involve decisions on opening Decatur St SW to automobile traffic at the Public Pathway.

The Council must also direct Mr. Scheibmeir to inform Councilmembers, Parties of Record and the general public as to the full extent of his relationship with the Pehls. It is reasonable to imagine, among other things, that Mr. Scheibmeir discussed the Wellington Heights project and its potential impact on Decatur SW with the Pehls. He must also be instructed to reveal any other business relationships he -- or any member of his firm -- has in the City of Olympia.

The City Council has the authority and responsibility to hire the City's Hearing Examiner. Because Mr. Scheibmeir had a business relationship with the Pehls that he failed to disclose, his decision in the Wellington Heights matter cannot be seen as fair and impartial -- the fundamental core of the Fairness Doctrine.

Given this fact, the City Council should replace Mr. Scheibmeir as the City's Hearing Examiner. You should exercise your authority in the name of the public welfare and standard of conduct that Mr. Scheibmeir failed to uphold.

Sincerely,

Dan Leahy, Party of Record
1415 6th Avenue SW
Olympia, Washington 98502

cc: Parties of Record