

Key, Lisa

From: Dietzman, John
Sent: Wednesday, August 31, 2016 2:37 PM
To: Key, Lisa; dadellwo@comcast.net; dadellwo@comcast.net
Subject: Dietzman Recusal, Morningside Z1500084COMP
Attachments: MorningsideDietzmanLetter.pdf

Lisa Key, Dennis Dellwo:

Following receipt of the attached letter from the Attorney for the proponent of the proposed Morningside Comp Plan Amendment Z1500084 COMP, I have decided to voluntarily recuse myself from any further involvement in this issue.

John Dietzman
Spokane City Plan Commission

LAW OFFICES
OF
STEVEN J. HASSING

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August 26, 2016

John Dietzman
Spokane City Planning Commission
Spokane City Hall
808 W. Spokane Falls Blvd
Spokane, WA 99201

RE: FILE NUMBER Z1500084COMP
MORNINGSIDE INVESTMENTS, LLC
APPEARANCE OF CONFLICT & ACTUAL BIAS

Dear Mr. Dietzman,

In beginning to prepare for the September 21 hearing on Morningside's application for amendment of the City of Spokane's Comprehensive Land Use Plan, I came across the Disclosure Statement authored by you on June 5, 2016. I inquired of Morningside regarding the Disclosure and was advised that you had made reference to it at a June 8 workshop. I have now reviewed a copy of the recording made at that hearing. Having reviewed the disclosure and listened to the comments made at the June 8 workshop, and based upon RCW 42.36.010, RCW 42.36.110, SMC 01.04A.030(A) and Rule 10.11 of City of Spokane Plan Commission Rules of Procedure, I request that you voluntarily recuse yourself from participation at the upcoming hearings.

Your disclosure acknowledges the following;

1. You have been a resident of the North Indian Trail Neighborhood for 16 years.
2. You served two terms as Co-Chairman of the North Indian Trial Neighborhood Council with your last term ending in 2011.
3. Even after your last term as Co-Chairman ended you remained an Officer of the Council until 2013 at which time you resigned to become a member of the Plan Commission.
4. Even after becoming a member of the Plan Commission you continued to regularly attend Neighborhood Council meetings right up until December of 2015 when you first learned of Morningside's Comp Plan Amendment Application.

5. On December 8, 2015, you received an email from Terry Deno, Neighborhood Council Chairman regarding Morningside's Application. Rather than immediately notifying Mr. Deno that you could not engage in any ex parte communications pertaining to Morningside's Application you;

went to the City website and extracted posted information about the proposal, and then replied with a short summary of the possible range of increased number of housing units [that] could be involved. [You] recommended that the Neighborhood Council leadership diligently study the documents on the website...¹

6. The North Indian Trail Neighborhood Council is strongly opposed to Morningside's proposal and when contacted by numerous "friends and neighbors" you have;

asked them to submit written comments to Tirrell Black or give oral testimony at the upcoming hearing.

7. You freely acknowledge that it may appear to some that [your] previous involvement in the NITNC, which is strongly opposing this proposal, might make [you] incapable of making an objective evaluation of the pros and cons of this proposal.

Your long term intimate involvement and leadership in the management and operation of the NITNC, the fact that you remained an officer even after your last term as co-chairman ended, and your decision to continue to attend meetings even after you became a member of the Plan Commission are all facts which create, at the least, an appearance of bias in favor of the NITNC which you acknowledge is strongly opposed to Morningside's Application.

Disseminating information about the application with a short summary of the possible range of increased number of housing units that could be involved was an indisputable ethical lapse which, by itself, mandates recusal.

In listening to your comments recorded at the June 8 workshop I was shocked to hear someone comment that your "disclosure" was mailed to Morningside the previous Friday, (June 3) when it is evident from the disclosure itself that you hadn't authored it until the following Sunday, (June 5), which means that it could not have even been mailed until Monday, (June 6), at the earliest. While knowing that you had not even authored the disclosure until two days after it was alleged to have been mailed to Morningside, you commented that "the proponent has had ample time to comment". I'm informed that no one from Morningside had received the

¹ I find no record of that "short summary" having been disclosed as required.

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disclosure or had any idea what you were talking about on June 8. While the Plan Commission did not request that you recuse yourself you are now formally asked to do so. This request comes more than three weeks prior to the hearing on Morningside's Application and no quasi-judicial action has yet been taken by the Commission.

Rule 10.11 of City of Spokane Plan Commission Rules of Procedure requires that a Commission member recuse himself from participating in a hearing whenever bias will prevent him from exercising fair-minded, independent judgment on the facts and established policy. Disqualifying influences include prejudgment on the issues as well as a bias for a party. In my opinion, you have an obvious bias toward the NITNC which, as you acknowledge, is strongly opposed to the Morningside Application. It is also my opinion that bias will prevent you from exercising fair-minded judgment regarding Morningside's Application and I am surprised at your insistence on remaining a decision maker in this matter. I'm even more surprised that none of the other plan members seemed to recognize your continued participation as a potential problem for the city.

RCW 42.36.010 requires the appearance of fairness. RCW 42.36.110 allows challenges to local land use decisions where actual violations of an individual's right to a fair hearing can be demonstrated. Your strong ties to the NITNC, your having provided NITNC leadership with the "short summary" advising of the "increased number of housing units", your recommendation to "diligently study" the documents and your instruction and encouragement to "submit written comments" have created the type of conflict of interest prohibited by Section 01.04A.030 (A) of the Spokane Municipal Code and, at least, the appearance of bias.

On behalf of Morningside, I ask that you recuse yourself from participation in the upcoming hearing.

Sincerely,


Steven J Hassing
Attorney for Morningside

cc Jay Bonnett, P.E., Morningside's Engineer.
Lisa Key, Planning Director
James Richman, Attorney at Law