

RECEIVED  
OCT 12 2023  
CITY OF ST. HELENS

RE: APPEAL AP. 2. 23

BRIEF REGARDING POLICE STATION SITE IMPERMISSIBLE AT  
OLD PORTLAND ROAD AND KASTER ROAD

Presenter: Steve Toschi, on behalf of himself and all those with interests aligned with his, to preserve the record and oppose the location of the Police Station at the current proposed site.

**Purpose:** St. Helens complies with its own laws for the protection of human life.

**Objections:**

- 1) Objection to Mayor Scholl participating in this decision. Basis: Mayor Scholl has stated that he is “accountable” for the Police Station being at the current site (January 4, 2023 Council Meeting.) This was in response to the City had lost \$1.5 million to date regarding the creation of architectural drawings for a 22,000 square foot facility at the site. Rick Scholl approved of and encouraged site construction before the subject conditional use permit was issued. Rick Scholl was in charge of “Administration,” the branch of St. Helens government that went forward with site selection without checking to see if it was legal to build at this site. Rick Scholl voted for a “gag law,” resolution 1986, restricting free speech in St. Helens. In short, Rick Scholl has already made up his mind before this hearing takes place. He has personal and political motivation to make a decision contrary to law, and the health and safety of the public.
- 2) Objection to Councilor Jessica Chilton participating in this decision. Basis: Councilor Chilton has stated that she is “accountable” for the Police Station being at the current site (January 4, 2023 Council Meeting.) This was in response to the City had lost \$1.5 million to date regarding the creation of architectural drawings for a 22,000 square foot facility at the site. Jessica Chilton approved of and encouraged site construction before the subject conditional use permit was issued. Jessica Chilton voted for a “gag law,” resolution 1986, restricting free speech in St. Helens. In short, Jessica Chilton has already made up her mind before this hearing takes place. Jessica Chilton has personal and political motivation to make a decision contrary to law, and the health and safety of the public.

**Legal Analysis**

Certain Criteria must be met in order for the City to approve a conditional use permit for the construction of a Police Station, a “critical facility,” at the site. This must fail because other sites exist.

Listed Criteria: 17.46.050(6):

**(6) Critical Facility. Construction of new critical facilities shall be, *to the extent possible*, located outside the limits of the special flood hazard area (SFHA). Construction of new critical facilities shall be permissible within the SFHA only if no feasible alternative site is available. Critical facilities construction within the SFHA shall have the lowest floor elevated at least three feet above the base flood elevation (BFE) or to the height of the 500-year flood, whichever is higher. Access to and from the critical facility shall also be protected to the height utilized above. Floodproofing and sealing**

**measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters.**

Question: Can the City skirt the requirements of 17.46.050(6) because the “building” is located outside the 100 year flood zone? Answer: No. Reason: St. Helens Municipal Code 13.30 is the enabling statute for the payment of the “Public safety facility.” St. Helens Municipal Code 13.30.030(3) defines “Public Safety Facility”: “(3) ‘Public safety facility’ means site improvements, parking lots, green space, sidewalks and buildings associated with a new or existing public safety building.” The drawings of the site clearly show that sidewalks, landscaping, site improvements, and green space are all projected to be under water in the event of a 100 year flood. Even building a new access road will not remove the Public Safety Facility from the 100 year flood zone. Furthermore, as the site exists now, the Public Safety Facility will be cut off by a 5’ flowing torrent of water from all access. But, the City is not free to “define” the “facility” as only the “building” against its own laws.

Question: Do other sites exist within St. Helens where this critical facility can be located that are outside of the 100 year flood zone? Answer: Yes. The Planning Department report, presented at the Planning Commission meeting, and incorporated herein, listed many sites within St. Helens that are reasonable suitable for the Public Safety Facility. In fact this subject site is one of the only sites within St. Helens that has this problem.

Who has the burden of Proof? The City the burden of proof that “no feasible alternate site is available.” (Criteria 17.40.050(6).)

What is the correct decision: Since the City cannot carry its burden of proof that no other site within the City is reasonably available this site must be rejected for a conditional use permit.

Is this the Right Decision, to deny the Conditional Use Permit?: Answer: Yes. 17.46.010(3) states that the purpose of the limitations in 17.46.050(6) are:

”17.46.010(3) Purpose. It is the purpose of this chapter to **promote the public health, safety, and general welfare**, and to **minimize public and private losses due to flooding in flood hazard areas** by provisions designed:

**(a) To protect human life and health;**

(b) To minimize expenditure of public money and costly flood control projects;

(c) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

**(e) To minimize damage to public facilities...”**

Does building a new access road solve the problem? No, But. Since the Public Safety Facility is located within the flood zone, building a new access road does not allow the site to qualify since there are other sites available. The application should be denied if the City wants to foreclose legal challenges to the site and to comply with its laws. However, building a new access road, a full public road with sidewalks, outside the 100 year flood zone satisfies to lower the risk of loss of human life. Agreeing to build the road first, and then the building, will satisfy a concern that the building will be built, but the access road never built. Once the access road is built, then the legal arguments against the site are greatly reduced to technical arguments that the “green areas and sidewalks” are within the 100 year flood zone. If the access road is not built, or if the road is locked and gated, the risk of loss of human life remains, since the risk of no access to the site will remain. If the access road is built, a full two lane road with sidewalks, then the concern regarding loss of human life is greatly reduced. The City’s defense to a suit: that an overly restrictive reading of the law is inappropriate, would gain traction, and may succeed.

My concern is loss of life and protecting human life, according to our laws. If the access road is built, a full road, with sidewalks, I will not file suit against the City for the selection of this site that technically does not qualify for a conditional use permit. This does not guarantee that others will not file suit. But I will not and I will not participate in such a suit. My main concern, again, is protection of human life. We should not try to re-analyze the reason for the laws at this point.

Incidentally, building the access road, in my opinion, will enhance the long term plans for the site for other government buildings/facilities, that will also enjoy public access in the event of a 100 year flood.