

Summary of the filed appeal on the decision to approve the site plan for the 170-unit apartment project between the Pavilion Ice Rink and McKay Park.

1. The first section of the appeal states a City Council vote to decline to hear the appeal would fail two tests stipulated by the code which the Council should consider when deciding whether to hear an appeal. (The Council's agenda was made public prior to the filing of the appeal). This one error by Council could lead to LUBA to remanding the decision back to the City.

Test #1: Does the hearing officer decisions have "significant public policy or community-wide implications"? The appeal lists two findings that have "significant public policy and/or community-wide implications.

- a. The hearing officer found that the city code (BDC 4.700) requiring mitigation to the transportation system impacts caused by an application is "inapplicable."
- b. The hearing officer found that the Shevlin Riverfront Master Plan cannot be applied as an approval criterion.

Test #2: Why is it necessary for the City Council review these issues? The appeal states the City Council needed to review these two issues to determine if it agrees with the hearing officer decision to eliminate key provisions of the City Council's code.

[In addition, there was considerable public testimony the "community impacts" this application would have on the two adjacent community parks and the regional transportation system.]

At the March 20th Council meeting, the council voted 5 to 1 to accept staff's recommendation to decline to hear the appeal. In the limited Council discussion, the majority felt fulfilled their responsibility to the public by changing the application from type II to type III requires a hearing. Only Councilor Mosely felt there were "community-wide implications" needed addressing.

2. The second section of the appeal lists seven reasons for why William Smith Properties, Inc. has appealed the hearing officer's decision.
 - a. Violates the clear and objective requirements of the Shevlin Riverfront Master Plan.
 - b. Failure to assure compliance with BDC 4.700 which requires mitigation to traffic impacts.
 - c. Authorizes an unsafe parking garage access.
 - d. Failure to provide plans that show an adequate storm drainage plan is achievable.
 - e. Failure to calculate the building height correctly.
 - f. Failure to comply with the parking requirements of the CCR's, an element of the city approved Shevlin Riverfront Master Plan.
3. The third section lists forty-six specific errors by the hearing officer. While many of these errors could have been resolved by requiring additional submittals by the applicant prior to approving the application, requiring the application to comply (as required by BDC 2.3.600) with the master plan's building envelope, grading plan, access points and building size would require a major redesign.