

MINUTES

Eugene City Council
•McNutt Room—City Hall
777 Pearl Street—Eugene, Oregon

May 9, 2012
Noon

COUNCILORS PRESENT: George Brown, Pat Farr, Betty Taylor, Andrea Ortiz, George Poling,
Mike Clark, Chris Pryor, Alan Zelenka.

Her Honor Mayor Kitty Piercy called the May 9, 2012, work session of the Eugene City Council to order.

A. WORK SESSION:
Capstone Collegiate Communities Student Housing Development Proposal

Ms. Ortiz declared a potential conflict of interest due to her employment with PeaceHealth.

City Attorney Emily Jerome asked the council to address the street vacation prior to discussing the Multi-Unit Property Tax Exemption (MUPTE) application, noting the alley vacation was a quasi-judicial land use decision that included a discrete record (now closed) and any contacts specific to the vacation could be part of the council decision if not disclosed in the existing record. She reported that the applicant had waived the time allowed under Oregon statute for rebuttal so the council could act on the vacation that day.

Associate Planner Becky Taylor reviewed the four public comment periods that occurred in regard to the application and said staff responded to testimony received in a memorandum to the council dated May 8, 2012.

Ms. Taylor reported that prior to the close of the record on May 1 the applicant withdrew a portion of Willamette Alley from the right-of-way vacation request. It would continue to provide full public access and would remain as is. West 12th Avenue would be vacated as proposed. She reminded the council that the criterion for approval of the vacation was that the council determine it was in the public interest (Eugene Section 9.8725). Staff had prepared findings supporting the conclusion that the vacation was in the public interest. The applicant had met the consent requirements and the City had provided public notice consistent with State statute and local code.

Ms. Taylor recommended approval of the right-of-way vacation.

Mr. Brown wished to offer the body a motion regarding the MUPTE. He said if the council failed to approve the MUPTE there was no reason to consider the vacation. Noting that the MUPTE had an open record and the council could discuss it at any time, City Attorney Jerome confirmed the council could address the MUPTE first. She pointed out that the vacation ordinance was written so it would not take place unless the development process proceeded to the building permit stage. Mr. Brown found his preferred order more logical.

Mr. Brown, seconded by Ms. Taylor, moved to adopt the revised resolution as presented in the document in front of councilors, which approves a MUPTE for property located in the vicinity of Olive Street and 13th Avenue.

Mr. Brown distributed copies of a revised resolution and contrasted his proposed resolution to the resolution provided to the council in the meeting packet.

Ms. Taylor, seconded by Mr. Brown, moved to amend Section 1.6 of the resolution to add the following subsection: The MOU shall require compliance with the standards for construction noise and air quality, tenant noise, parking and apartment management as described in the May 8, 2012, letter from the Olive Plaza management and resident representative, except that the word "should" is replaced with the word "shall" for all standards.

Mr. Clark, seconded by Mr. Poling, moved to table the motion. The motion passed, 5:3; Ms. Taylor, Mr. Zelenka, and Mr. Brown voting no.

Mr. Clark, seconded by Mr. Poling, moved to address the alley vacation first and to adopt Council Bill 5070, an ordinance vacating West 12th Avenue, located between Olive Street and Willamette Street. The motion passed, 6:2; Ms. Taylor and Mr. Brown voting no.

Mr. Brown, seconded by Ms. Taylor, moved to bring the tabled motion back to the table. The motion passed unanimously, 8:0.

Senior Planner Nan Laurence and Urban Services Manager Denny Braud of the Planning and Development Department led the council through a PowerPoint presentation that responded to earlier council questions, outlined the project benefits and impacts, and overviewed the conditions incorporated into the City's agreements with the project developer. Councilors were provided with copies of a triple bottom line analysis of the project.

Councilors asked questions clarifying the details of the presentation.

The council then considered the tabled amendment:

I move to amend Section 1.6 of the resolution to add the following subsections: the MOU shall require compliance with the standards for construction noise and air quality, tenant noise, parking, and apartment management as described in the May 8, 2012, letter from the Olive Plaza management and resident representative, except that the word "should" is replaced with the word "shall" for all standards.

Mr. Zelenka asked questions clarifying the distinctions between what was called for in the letter from Olive Plaza management and what was mandated by City Code and observed that the amendment seemed to establish a new air quality standard. In addition, it proposed that Capstone Collegiate Communities provided a separate parking at below-marking rates for Olive Plaza, which had been constructed without its own parking. Mr. Zelenka suggested that an ordinance that mandated on-site management for such development would address many of the concerns expressed by Olive Plaza management.

Mr. Clark said if the code was deficient the council should address those deficiencies. He was unclear on the implications of the amendment and could not support it because it was presented so late in the process.

Mr. Brown pointed out to Mr. Clark that the council received the Olive Plaza management letter three days earlier. He did not think the code provided sufficient protections for Olive Plaza residents, who were very worried about the project's impact. He wanted to provide those protections. He also pointed out the many people who came downtown or passed by every day that might be affected by construction. Mr. Brown questioned how Capstone Collegiate Communities environmental analysis could be considered proprietary. He believed the council should have access to that information or it would not be doing its job.

Speaking to the issue of parking, Mr. Brown said the parking was for the caregivers as well as residents. Olive Plaza was offering to pay for the spaces at rates greater than those charged to occupants.

Mr. Farr suggested the council avoid dissecting individual projects on an *ad hoc* basis. He agreed with Mr. Clark that if code deficiencies existed, they should be addressed by the council.

Ms. Ortiz did not support the motion, although she thought the concerns raised by Olive Plaza management were valid. She concurred with Mr. Clark about the appropriate approach to existing code deficiencies.

Mr. Brown questioned the staff conclusion that no lead paint was present, maintaining the substrate "has got to contain lead in there somewhere." Ms. Laurence said with the exception of the lead found in the x-ray facilities no lead was found. Mr. Brown asked who performed the analysis. Ms. Laurence did not know and said she could follow-up. Mr. Brown emphasized the dangers of lead and the importance of appropriate construction methods to contain it.

Mr. Poling said he could not support the amendment, which he interpreted as moving the goal posts in the middle of the process. He also objected that the amendment had been presented without prior notice to the council.

Mr. Farr, seconded by Mr. Clark, moved to call the question. The motion failed, 5:3; Mr. Poling, Mr. Clark, and Mr. Farr voting yes.

Mr. Zelenka agreed with Ms. Ortiz that the concerns expressed by Olive Plaza management were valid but he also questioned the last-minute nature of the amendment and the lack of time for staff analysis of its implications. He suggested the council address the concerns on a broader basis as suggested by Mr. Clark. He believed it was inappropriate to require Capstone Collegiate Communities to comply with rules that other developers were not required to follow.

Mr. Zelenka pointed out to Mr. Brown that the City did not require other proposed construction projects to supply an environmental analysis but it did require them to comply with all applicable laws related to demolition and the health and safety of citizens. If those rules were inadequate, the council should change them.

Ms. Taylor believed the project deserved more time for review due to its scope and location.

Mr. Brown said he would have preferred to have provided the resolution to the council earlier but had been attempting to respond to the many people who wanted to like the project but still had concerns. He said that a project in Baltimore had been delayed for two years to allow that city to address every concern expressed by residents.

The motion failed, 6:2; Ms. Taylor and Mr. Brown voting yes.

The council then considered the tabled motion:

I move to adopt the revised resolution as presented in the document in front of councilors which approves a MUPTE for property located in the vicinity of Olive Street and 13th Avenue.

Speaking to the failed amendment, Ms. Ortiz anticipated that the Lane Regional Air Protection Agency would be consulted in the demolition process and encouraged that BRING be involved in the materials disposal and recycling process.

Mr. Brown again reviewed the differences between his and the staff-proposed resolution and asked why the council would not wish to modify the resolution in such a way. City Attorney Glenn Klein said that the addition of text calling for consistency with the Eugene-Springfield Metropolitan General Area Plan increased the likelihood the council's decision and any subsequent building permits would be appealable to the Land Use Board of Appeals (LUBA) as discretionary decisions.

While Mr. Pryor appreciated Mr. Brown's effort to develop a compromise more broadly acceptable to more people, he agreed that the council had not had time to examine its implications. In addition to the issue raised by City Attorney Klein, Mr. Pryor was concerned about reducing the MUPTE time frame from ten to seven years as he perceived that would kill the project.

Mr. Pryor, seconded by Mr. Clark, moved to amend the original motion to adopt Resolution 5057 approving a MUPTE for property located in the vicinity of Olive Street and 13th Avenue as presented by staff.

Mr. Zelenka said the question of whether the council wanted MUPTE and any associated building permits to serve as appealable land use decisions was significant and deserved more than eleventh hour discussion. He shared Mr. Pryor's concerns about the reduced time frame and its impact on the project's financial viability.

Ms. Taylor questioned why the City would subsidize the risk for a development that was not clearly needed. She also questioned why the City Council would not want to enable an appeal.

Mr. Brown agreed with Ms. Taylor. He questioned the actual impact of removing the last three years from the MUPTE because of the anticipated rate of return. He pointed out that local governments were experiencing budgetary shortfalls and would benefit from the tax revenues the project would produce.

The amendment to the motion passed, 6:2; Ms. Taylor and Mr. Brown voting no.

Ms. Taylor, seconded by Mr. Brown, moved to have the MUPTE apply only to Capstone and end when and if it is sold.

At the request of Mayor Piercy, Mr. Braud explained the implications of the motion, which could result in lower rates of return for investors, making the project less attractive.

Ms. Ortiz preferred the proposal embodied in Mr. Pryor's motion. She pointed out the property in question had been vacant for five years. She did not think the council would be discussing a new development project at the site in the absence of the MUPTE.

Mr. Clark appreciated the intent of Ms. Taylor's motion but did not think the project would go forward if it passed. He pointed out that no government entity lost tax revenue that was not collected in the first place.

Mr. Zelenka highlighted the greater financial risk of projects constructed in downtown. He believed that the property in question would continue to be vacant in the absence of an incentive.

The motion failed, 6:2; Ms. Taylor and Mr. Brown voting yes.

Mr. Brown did not think anyone had made a successful argument that the proposal was the highest and best use of the property. He preferred to see it developed for mixed-use residential rather than dedicated to a transient student monoculture. He repeated his concerns about the environmental assessment and questioned the adequacy of the triple bottom line analysis. No one had demonstrated that there was a shortage of student housing. He did not think projected enrollment demonstrated a future shortage. Tenants who occupied the development would come from other existing rental units and disadvantage current landlords. He did not find the development to be in the public interest.

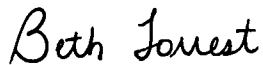
Ms. Taylor agreed with Mr. Brown's remarks. She suggested that the site could be developed in a manner more in the public interest. She did not think the council had taken sufficient time to review the project.

Ms. Taylor, seconded by Mr. Brown, moved to postpone action. The motion failed, 6:2; Ms. Taylor and Mr. Brown voting yes.

The amended motion passed, 6:2; Ms. Taylor and Mr. Brown voting no.

Mayor Piercy adjourned the meeting at 1:30 p.m.

Respectfully submitted,



Beth Forrest
City Recorder

(Recorded by Kimberly Young)