

SMILE SPECIAL BOARD MEETING

MONDAY, JUNE 3, 2013

SMILE Station

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OFFICERS PRESENT: Gail Hoffnagle, President; Pat Hainley, Treasurer; Eric Norberg, Secretary

BOARD MEMBERS PRESENT: John Fyre; Michael Hayes, Nancy Walsh; Brian Posewitz; Bob Burkholder; Bradley Heintz

Newly-elected SMILE President Gail Hoffnagle called the meeting to order at 7:01 pm. The Special Board Meeting, called in accordance with the SMILE Bylaws, was necessitated by an impending deadline for appeal, was well-publicised in advance, and was restricted to the one subject announced in advance. It was expected to include an Executive Session for conferring with counsel on the possible legal appeal, with the public excluded, but any vote would occur after leaving Executive Session.

President Hoffnagle announced to the Board members present, and to the ten members of the public present (joined by two more later) that the meeting would be devoted entirely to the matter of the residential development on S.E. 23rd between Tacoma and Tenino Streets, and whether to file a LUBA appeal of a Portland Design Commission decision in favor of the development, for which only a limited window exists. She then asked for all present to introduce themselves, and they did so.

Since Land Use Committee Chair Ellen Burr could not be present due to illness, Mat Millenbach provided an update on the issue. He recounted that Joe Bradford, a developer, has gained city permission to build a 68-unit apartment building on the site where a few small houses are located. Original zoning permitted 17 units; the city in 2008 granted a zoning change which permitted 34 units on the site. Bradford, a year ago, then purchased a transfer of unused development rights from Tenino Terrace Apartments on the same block, which increased the permitted size of his development to 68 units. SMILE appealed aspects of the design of the project to the Design Commission, which consequently required some modifications to make it more in line with the requests of the SMILE Land Use Committee, and then did approve the project.

Mat summarized, "We can let the development stand there, and remove ourselves from the issue, or we can appeal this decision to the Oregon Land Use Board of Appeals at SMILE expense." He finished by pointing out that Andrew Stamp, the attorney we retained [earlier in the process, to advise in the appeal to the Design Commission], was present in the room for this meeting.

Michael Hayes observed that the new design approved by the Design Commission is considerably different, and that the

Commission had answered some of SMILE's concerns.

Lisa Brown, an attorney and a leader of the resident concern group, was then invited to comment to the Board. She said she had "three categories of issues": (1) the design review by the Design Commission, finding the design acceptable; (2) the earlier zoning change -- the city analysis of that change reflected 34 units, not 68, even though city policy would have potentially permitted up to 51 units for the site; and (3) the density transfer -- which she found concerning, since both the source and the purchaser of the transfer are in the Johnson Creek Basin, requiring an overlay. (Through questioning of Andrew Stamp, Brian Posewitz established, however, that the density transfer had occurred legally; subsequently, Posewitz explained that he believes Stamp meant, "legally according to the city", although Stamp did not explicitly say that.) Ms. Brown concluded by saying that in addition, she thinks this development is ugly and is inappropriate for the site.

Land Use Attorney Andrew Stamp next briefly discussed aspects of density transfers in Portland, and answered Board questions. The potential bases of an appeal were discussed. President Hoffnagle then invited any other concerns from those attending. One woman said she was concerned about parking, and that 23rd in this block is a narrow one-way street. Mat Millenbach pointed out that parking for 45 vehicles under and behind the building(s) is part of the development as planned. A man said he was concerned that the city may not be adhering to its own code.

Another man commented that if 68 units were nixed the developer could still build 51, with the same size building and larger rooms, and it would still be monolithic. Michael Hayes observed that five feet have been cut off the height of the buildings to accommodate the neighborhood, shrinking the floor to ceiling space of all the apartments, perhaps to their detriment.

There followed more questions and answers involving the Board and attorney Stamp. It was confirmed that if the 68 unit size were rejected on appeal, the developer apparently could construct 51 units by taking advantage of an "amenities bonus" in the city code. Hoffnagle wondered whether reducing the project to 51 units would be considered a victory. One man present said that he thought it would. Another said he hoped court action could cut it back to 34 units. Regarding an argument that the zone change was approved under false pretenses, Attorney Stamp remarked, "I wouldn't want to give you odds on how this could turn out. But LUBA loves this stuff."

Brian Posewitz asked the attendees whether the resident group would pursue their own appeal, even if SMILE chose not to? The answer seemed to be "maybe", but there was no commitment.

EXECUTIVE SESSION CALLED TO CONFER WITH ATTORNEY; ROOM CLEARED

EXECUTIVE SESSION LASTED FROM 8:00 pm TO 9:16 pm; ENDED BY
PRESIDENT GAIL HOFFNAGLE TO PREPARE FOR A BOARD VOTE.

John Fyre, with the assistance of Pat Hainley, made a motion that SMILE move forward with the appeals process, and retain Andrew Stamp for an appeal to the Land Use Appeals Board (LUBA), with an initial budget limit of \$10,000. Nancy Walsh seconded the motion.

In the discussion period that followed, Michael Hayes asked if we should, as a Board, provide any guidance on what we are appealing? "The density transfer, absolutely," said Pat Hainley, about the focus of the appeal -- although he added that there were issues in the rezoning as well. Attorney Stamp said that the next step would be to file an "intent to appeal" notice with LUBA, which has to be done within 21 days of the May 21st ruling from the Portland Design Review Commission. He said there would be some cost to do that, but that it is a pretty simple process; it will require \$400, plus up to another \$400 in fees. Eric Norberg called the question, and the final vote was 8 in favor and 2 opposed, by count of hands. Motion carried.

Brian Posewitz then made a motion that "the particular issues to be raised on appeal be determined by Board action, based upon the advice of counsel". Mat Millenbach seconded the motion, which then carried -- by count of hands, 9 in favor and 1 abstaining. Motion carried.

Pat Hainley then moved adjournment, seconded simultaneously by Nancy Walsh and Mat Millenbach. The motion carried with evident unanimity at 9:33 pm.