

# SMILE SPECIAL BOARD MEETING

WEDNESDAY, OCTOBER 9, 2013

SMILE Station [basement meeting room]

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procedural

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**OFFICERS PRESENT:** Gail Hoffnagle, President; Pat Hainley, Treasurer; Mat Millenbach, V.P., Eric Norberg, Secretary  
**BOARD MEMBERS PRESENT:** Bradley Heintz, Nancy Walsh, Ellen Burr, Brian Posewitz, John Fyre, Bob Burkholder, Gerri Sue Lent

SMILE President Gail Hoffnagle called the meeting to order at 7:30 pm. This Special Board Meeting, called in accordance with the SMILE Bylaws, was to consider whether to appeal to the Oregon Court of Appeals the rejection of SMILE's appeal to LUBA, the Land Use Board of Appeals. Our appeal contested a density transfer and related issues concerning developer Joe Bradford's "Moreland Station" development on S.E. 23rd between Tacoma and Tenino Streets. Since the intention to file any further appeal would have to be filed with the Court of Appeals tomorrow, this meeting was called on an emergency basis to consider doing so.

Ellen Burr began the meeting by reading a statement from Mr. Bradford, sent to the Board this afternoon, which is incorporated into these minutes by reference. Gail Hoffnagle next read a brief statement on the matter by the one Board member not present -- he had a conflict and could not attend -- Michael Hayes, who opposed any further appeal, suggesting that a more collaborative attitude could advance neighborhood goals better than getting an reputation for being adversarial.

SMILE's land use attorney Andrew Stamp explained the LUBA appeal issues and the subsequent decision against SMILE's appeal, for the several neighbors in attendance. A woman present asked about density transfers, and Stamp explained the city code and what our argument had been -- unique to this specific location.

Mat Millenbach asked for details of the proposed appeal to the Court of Appeals, notice of which must be filed by the end of the day tomorrow; a brief would have to be filed within threeweeks, and a decision would follow in due course -- usually within a month of oral argument. Stamp said that there is a minimal filing fee -- about \$200. [This does not include attorney fees, of course.] The appeal can only be on the points raised in the LUBA appeal. If SMILE chooses not to appeal, the neighbors were a party to the LUBA appeal and could themselves appeal the LUBA decision to the Oregon Court of Appeals.

--- AT 7:55 PM, THE ROOM WAS CLEARED OF SPECTATORS, AND IN EXECUTIVE SESSION THE SMILE BOARD CONFERRED WITH ATTY. STAMP ---

EXECUTIVE SESSION CONCLUDED AT 8:40 PM; THE DOORS WERE OPENED,  
AND ANY SPECTATORS STILL OUTSIDE WERE INVITED BACK IN FOR THE  
CONCLUSION OF THE SPECIAL BOARD MEETING

Only one member of the public was outside and returned to the meeting -- a man who self-identified as a H.U.D. representative.

Bradley Heintz said that we have many different things pulling at SMILE, and other needs in the community; he said he felt this LUBA appeal was our duty, and we have been thoughtful and hung in there -- but pursuing a further appeal could siphon off our money at the expense of other things in the neighborhood.

Mat Millenbach commented that Andrew did a good job presenting our case, but he agreed with Bradley's points. "We have wider responsibilities."

Brian Posewitz remarked that development can be good or bad. We must try to balance interests. We have fulfilled our obligation up to now, but we should not drag it out. What is SMILE's role in filing and bankrolling appeals, vs. the neighbors' role?

Pat Hainley and Nancy Walsh expressed less sympathy for development than Brian had expressed. Gail Hoffnagle said, "I'm glad we appealed, but we need now to pay more attention to the Comprehensive Plan." Ellen Burr commented that she is not willing to do more in this case, but found it a huge learning experience. As a result of it, she will not contemplate appealing again to the Design Commission. She does not expect lot division and other such issues to be addressed in the city's Comprehensive Plan; change will come through the zoning code.

Attorney Andrew Stamp remarked that the city, if it has 20 Comprehensive Plan policies at issue, tends to balance issues -- if a project meets as few as 11 of the 20, it's balanced.

John Fyre said he agreed with Bradley's statement. Gerri Sue Lent commented that she would like SMILE to appeal anyway, since density transfer is bad for the neighborhood. Bradley wondered if SMILE should urge others to appeal if we don't; Eric Norberg said that a vote here should only be about SMILE's intentions.

Brian Posewitz moved that SMILE not further pursue the appeal, and Mat Millenbach seconded the motion. There were 8 yes votes, 1 no vote, 1 abstention, and 1 Board member had left the room. The motion carried. Attorney Andrew Stamp remarked, "I apologize for not winning; I thought we had a good case."

The man who said he was a H.U.D. representative said our appeal was a complication on a H.U.D.-backed project; our decision will be reported back to H.U.D.

Gail Hoffnagle declared the meeting adjourned at 9:12 pm.