



Land Use, Transportation & Infrastructure Committee Summary Minutes

Tuesday, January 10, 2012 10:30 AM City & County Building, Room 391

Members Present: Lehmann, Lopez, Montero, Robb, Shepherd, Susman
Members Absent: None
Other Council Present: Kniech, Ortega, Nevitt

Committee Staff: Gretchen Williams

Bill Request

BR11-0908 Approves the Marycrest Urban Redevelopment Plan authorizing the creation of property and sales tax increment area at 2851 W. 52nd Ave. (at Federal) in Council District 1.
Tracy Huggins, DURA; Beth Truby, Office of Economic Development

Tracy Huggins, Executive Director of the Denver Urban Renewal Authority (DURA), presented an overview of the proposed redevelopment of a portion of the Marycrest campus at Federal and W. 52nd Ave. This was a review of the presentation to the Committee on Dec. 6, 2011. At that time, the only action requested was a resolution setting the public hearing on the urban redevelopment plan for Jan. 30, 2012. The related actions requested of Council today are: 1) approval of the plan; 2) a cooperation agreement between DURA and the City; and 3) a loan agreement regarding Denver's Office of Economic Development (OED) loan to the developers.

The developers, who have been working on this project for several years, are Perry Rose (Chuck Perry) and Urban Ventures (Susan Powers).

Ms. Huggins said the redevelopment plan will include about 20 acres of the 26 acre campus; the actual redevelopment will encompass about 17.5 acres. The project includes approximately 360 new residential units and a wide variety of housing types as well as some retail. Housing types include many along the continuum, starting with retention of the existing homeless-transition units of Warren Village; low-income, tax-credit apartments; workforce apartments; and for-sale condos and townhomes.

The site meets six of the conditions of blight required for designation as an urban redevelopment

area, including inadequate infrastructure, old buildings, and challenging topography.

The Planning Board found the proposed urban redevelopment plan to be in conformance with the Denver Comprehensive Plan 2000, as required by the statute.

Beth Truby, OED, outlined the proposed loan terms and the community benefits of the project. OED is prepared to provide about \$4.9 million in loans from the Skyline Fund and the Neighborhood Stabilization Program 2. The loans will be repaid from the tax increment at 2% interest. DURA estimates the tax increment funds about \$11 million, more than sufficient to repay the loan.

Security on the loan will be the TIF and the land itself. The City will hold the deeds of trust on the full parcel and releasing them as redevelopment occurs.

All of the loan proceeds will go into the first phase, but the first phase is not expected to generate enough revenue to pay off the loan. That is why the deeds of trust will continue to be held. Before Phase IV is complete, the revenue will be adequate to pay off the loans.

Councilman Lopez asked about inclusion of First Source Hiring and other programs to provide training and jobs. Ms. Huggins replied that as with any DURA project, the development agreement includes several opportunities for low-income Denver residents. The developer must have a plan for outreach and to meet the Small Business Administration's requirements.

The developer is anticipating starting later this year with build-out in 2017-2018, but the absorption schedule is dependent on the market.

Councilwoman Ortega asked if Denver Public Schools had agreed to the TIF. Ms. Huggins replied that property tax will be generated almost immediately since the property is currently tax exempt. Denver Public Schools has been involved in the planning and is aware of the tax revenue implications.

The project provides several benefits to the City and residents. Additionally, the project is shovel-ready.

A motion offered by Councilmember Susman, duly seconded by Councilmember Lopez to file a bill to carried by the following vote:

AYES: Nevitt, Lehmann, Lopez, Montero, Robb, Shepherd, Susman(7)
NAYS: (None)
ABSENT: (None)
ABSTAIN: (None)

BR11-0907 Approves a Cooperation Agreement with the Denver Urban Renewal Authority for the Marycrest Urban Redevelopment Area to establish parameters for tax increment financing

with incremental property and sales taxes in Council District 1.

Tracy Huggins, DURA; Beth Truby, Office of Economic Development

See discussion above.

A motion offered by Councilmember Susman, duly seconded by Councilmember Lopez to file a bill to carried by the following vote:

AYES: Nevitt, Lehmann, Lopez, Montero, Robb, Shepherd, Susman(7)
NAYS: (None)
ABSENT: (None)
ABSTAIN: (None)

BR11-0966 Approves a loan agreement with Denver Urban Renewal Authority for purchase of property known as the Marycrest Campus at 2851 West 52nd Ave. (at Federal) in Council District 1.

Tracy Huggins, DURA; Beth Truby, Office of Economic Development

See discussion above.

A motion offered by Councilmember Susman, duly seconded by Councilmember Lopez to file a bill to carried by the following vote:

AYES: Nevitt, Lehmann, Lopez, Montero, Robb, Shepherd, Susman(7)
NAYS: (None)
ABSENT: (None)
ABSTAIN: (None)

Presentation

Parks Asset Study

Gordon Robertson, David Marquardt & Joe Lovell, Parks & Recreation

Scott Gilmore, Deputy Manager of Parks, and Gordon Robertson, Director of Park Planning, Design & Construction, introduced the presentation on the asset planning effort. The intent is to collect the data necessary to develop a strategic fiscal plan to advance a sustainable capital maintenance program and fully understand the magnitude of the needs in our urban parks and parkways. Denver Mountain Parks and the recreation centers will not be included in this initial assessment.

Joe Lovell, DenverGIS, built this asset management system specifically for Parks. He started with the Infor System already being used by Facilities Management to assess conditions of the City's vertical assets (buildings). Developing the system cost the City about \$35,000, which is relatively inexpensive. It will take Parks 3 to 5 years to do a complete analysis, but data on 16,000 assets are already loaded into the system. By the end of 2012, a good set of data will be

available for the 2013 budget cycle.

The process includes inventorying of all asset components; evaluation of the condition of each asset; prioritize reconstruction or replacement of assets; and developing capital requests. The reporting capacity of the system is very specific and will greatly enhance the capital requests. While the new system will not change the annual Capital Improvement Plan and budget process, it will make it much more efficient and effective.

Bill Request

BR12-0043 Amends Ordinance 333, Series of 2010, enacting the new Zoning Code, regarding permits issued during the 6-month transition period.

Councilman Nevitt; David Broadwell and Kerry Buckey, Assistant City Attorneys

Councilman Nevitt introduced his proposed amendment to the enacting ordinance for the new Denver Zoning Code. This amendment would correct an ambiguity, or an excess of specificity, in the language of that ordinance. Council provided a 6-month "transition" period after adoption of the new code during which time an applicant could use either the old or the new code. This was to provide for projects in progress at the time of adoption to be finished under the code under which they were conceived and designed.

The ordinance states that until Dec. 20, 2010, "any person may apply for a zoning permit as required by Section 59-26(d) under the Former Chapter 59 or under the Denver Zoning Code [the new zoning code]".

Councilman Nevitt said that by citing "Section 59-26(d)" we failed to capture all of the various types of zoning permits that exist. The citation including the "(d)" is only for "zoning permits to erect or alter structures". Separate types of zoning permits must be obtained for other activities:

Sec. 59-26(e) to use or occupy structures;

Sec. 59-26(f) to change the use of a structure;

Sec. 59-26(g) to install signage; and

Sec. 59-26(h) to create or expand parking areas.

Councilman Nevitt maintains that Council did not intend to limit the types of zoning permits available under either new or old code to just those needed to "erect or alter structures". In support of this position, he cited Resolution No. 146, Series of 2009, which states the intention of Council to adopt a new zoning code and provide for a 6-month transition period. Section 3 states:

A. The new code and map shall be effective upon final publication of the ordinance

adopting the new zoning code and map. However, during a 6-month transition period, persons may continue to apply for development review or zoning permits under the old code and map or, alternatively, may elect to apply for development review or zoning permits under the new code and map.

Community Planning & Development (CPD) data indicates that roughly 1200 zoning use permits were issued under subsections (e) and (f) during the 6-month transition period. However, it is not known how many were issued under the new and old codes. A sample infers that a substantial number (about half) were pulled under the old code, presumably because the applicants' intended uses were not permitted under the new code. By a strict reading of the language of Ordinance 333, a large number of these use permits should not have been issued. The proposed amendment seeks to solve the problem in two ways:

1. Clarify that property owners could in fact seek the (e) and (f) zoning permits as well as the (d) permits during the transition; and
2. Make it clear that while use permits could be pulled under the old code during the transition period, a) the use had to be legally established (which might require a (d) zoning permit to erect or alter the structure); and b) the status of the use (conforming, compliant or non-conforming) is not governed by the old code but by the new code.

Kerry Buckey, Assistant City Attorney, said "legally establishing a use" means operating that use, and, if you need a building permit, getting that permit. Under the new code, the use must be legally established within six months. Under the old code, an applicant had six months to utilize a zoning permit to erect or alter structures (the d permit). The old code had no time period for establishing a use with a use permit.

Councilwoman Robb said all permits issued during the transition period (July through Dec. 2010) would have to have been established by the end of June 2011. Noting that all of the uses issued permits "in error" (the 300-600 permits) have either been legally established by now or their permit has expired, she questioned why the language needs to be changed now.

David Broadwell, Assistant City Attorney, said he and City Attorney Friednash agree that it is important to make this change so that the law reflects the City's actual practices. This will eliminate any possible argument that any of those use permits were granted illegally. Someone could argue *void ab initio* ("you never should have gotten the permit to begin with"). The conversation all along was for the transition period to cover all zoning permits, going back to the resolution of intent, and the enacting ordinance should also reflect this.

Councilman Nevitt said the unknown land mines are where an (e) or (f) permit was pulled no (d) permit was necessary in order to perfect the use. In other words, no structural alteration was required. Now the applicant may be out there operating that use. Years from now, when institutional memory erodes, someone could challenge the use because it is not legal in the new zone district. If the use permit was pulled during that transition period in 2010, it could be argued that the use is illegally operating.

Councilwoman Robb said whole thing hinges on the intent of Council. Councilman Nevitt argues it was to keep the old code in place for 6 months. On other hand, there is an argument that we were doing a form based code and we were talking about the form, not use. For example, in the single-family vs. duplex zoning issue that led to area-wide down-zoning in Council District 1, we had a transition period in which you could build a duplex or alter a single family structure into a duplex. Again, when we changed B-2 to MS, we did not worry about being sure that a pawn shop (allowed under B-2 but not under MS) would still be able to come in to that area. We were interested in building form, so that is how the ordinance was written.

Councilwoman Robb said it is outstanding that out of 300-600 presumed zoning permits that might fall into this grey area, there may be only two cases that have been challenged. The letter from the AIA member involved in development of the new code says that the intent of the transition period was to allow building projects already in the pipeline to be completed under the code under which they started. Another letter opposing the change argues that if people thought the transition period was only for altering a structure and they did not seek a different type of permit, they were left out. We may need to talk about this issue in Executive Session.

Kerry Buckey, Assistant City Attorney, said that after much discussion in the Zoning Office after the ordinance passed, it was determined that it did not make sense to issue a permit to someone to alter a structure to use as a duplex if they could not use it as a duplex in the new SU (single unit) zone district. As such, the office issued the other types of permits necessary to perfect the use.

Councilwoman Montero asked if there are any cases before the Board of Adjustment related to this issue. Mr. Buckey said four cases came before the BOA related to the transition period. The cases were either challenges to issued permits that the appellant said were not 59-26(d) permits OR one case where the City terminated a permit because the applicant did not comply within the six month period to either start doing the use or get a building permit.

Councilwoman Montero said she would like to hear about the last case in executive session.

Mr. Broadwell stated that regardless of proposed amendment, it is the position of the City Attorney's office that all permits issued during the transition period had to be perfected by establishing the use within six months, even though the six month rule was new under the new zoning code. The point of the proposed amendment is to remove any cloud from any use permit issued and perfected within the six months but that would not be conforming under the new zoning code. We are confident that applying the new 6-month rule to permits issued during the transition period is legal. There are lots of clever ways to make an argument. But the Nevitt bill here today does not solve for all of these issues.

Councilwoman Ortega asked if any of the permits issued during the transition period have an annual or bi-annual renewal provision, such as for shelters, and if so, is the renewal handled under the old or the new code. Mr. Buckey replied that everything is under the new code now (except for PUDs and zoning with waivers and conditions).

Councilwoman Robb said the proposal should be held in Committee. This is not a zoning code

text amendment so it does not require a public hearing and it did not go to Planning Board, which concerns her. She suggested bringing it back to Committee on January 24.

Councilwoman Montero said she would wait for two weeks for the executive session.