

Planning & Development Committee
Minutes of October 23, 2006
Room 2200 – 6:00 p.m.
Evanston Civic Center

Alderman Present: S. Bernstein, A. Hansen, D. Holmes, L. Jean-Baptiste, E. Moran, A. Rainey, E. Tisdahl, C. Wollin, M. Wynne

Staff Present: J. Wolinski, J. Carroll, K. Cox, H. Hill, C. Ruiz, D. Spicuzza, J. Brownlee

Presiding Official: Alderman Jean-Baptiste

DECLARATION OF QUORUM

Chair Jean-Baptiste called the meeting to order at 6:12 p.m.

APPROVAL OF THE MEETING MINUTES OF OCTOBER 9, 2006

The minutes were approved with no changes or corrections unanimously with a vote of 7-0 (Bernstein and Wynne not yet present).

ITEMS FOR CONSIDERATION

Chair Jean-Baptiste changed the order of the agenda to accommodate the Alderman not yet present with items on the agenda in their wards.

(P5) Building Permit Fee Waiver Request – 736-38 Dobson

Mr. Wolinski acknowledged the applicant Mr. Keith Banks, Executive Director of Evanston Community Development Association (ECDA), being present. He gave a brief overview of this request, recalling that the P&D Committee provided \$360,000 in HOME funds for the rehab of these affordable units in 2005. The ECDA Organization is now asking for a waiver of building permit fees in the amount of approximately \$10,000. He noted that permit fees go into and would come out of the City's General Funds. Therefore, staff has made a recommendation in disagreement for this request and subsequent denial of this request.

Mr. Keith Banks stated that at this time, ECDA would like to ask that this request be postponed. He explained that the request was made because their soft cost is going to substantially increase basically due to the water service line that will be required to put in to accommodate a larger water service for the sprinkler system that is required by code. He said that the increase in cost would raise their estimated cost by approximately 50%. He stated that they are right at budget now with the building permit fees for construction at approximately \$6,700; which they budgeted for at \$7,000. This cost included the fees for a normal water service line, however they could be required to put in a much larger line to support the sprinkler system that will substantially increase the permit fees as well as the overall cost that was not originally budgeted for. Mr. Banks concluded that ECDA will need more time to determine exactly what the City is going to require for the water service at this location.

Ald. Holmes asked what the estimated time line is to determine the actual code requirements and cost. Mr. Banks responded that they are to meet with City Building and Engineering staff within the next couple of weeks and he should have a more definite cost amount then. Mr. Mr. Wolinski

agreed with Mr. Banks statement and informed the P&D Committee that under the current Building Code requirements, the building has to be sprinkled and the upcoming meeting between ECDA and City staff is to determine if the current water line can accommodate the needed sprinkler system. Mr. Banks added that their sprinkler system contractor, F.E. Moran, believes a 2-inch line would be sufficient with a pump; anything higher would result in a substantial increase in construction and permit fee costs.

Ald. Rainey motioned to remove this item from the agenda until the applicant has met with City Officials and is ready to come back with accurate cost data. Ald. Tisdahl seconded the motion and the vote was 7-0 in favor (Bernstein & Wynne not yet present).

(P2) Ordinance 105-O-06 – Special Use Request for a Convenience Store at 817 Davis

Chair Jean-Baptiste noted that the P&D Committee introduced this item on October 9th and referred to it back to Committee to meet with the Franchise Director of 7-11 who is here this evening.

(Ald. Bernstein arrived at 6:20 p.m.)

The attorney representing 7-11 introduced himself and Ms. Susan Corral, Division Franchise Sales Manager. He recalled at the last P&D meeting the question was asked in terms of what 7-11's procedures were for identifying and selecting a franchisee for operation of a store location. He reiterated from the last meeting that they still currently have not identified a franchisee for this particular location however they do fully acknowledge, recognize and agree to all the request of this Committee to forward all requirements for operation of a convenience store in this location to the future chosen franchisee to abide by all the special use rules. Ms. Susan Corral informed the Committee of the strenuous background check and qualifications that they look for and require of their chosen franchisee. She elaborated in detail on their background check and application requirements. Ald. Rainey asked if a liquor license will be applied for this store location. Ms. Corral responded that she is unaware of any future plans for this store at this time.

Chair Jean-Baptiste noted that this particular location is a prime location which would require the utmost management/supervision requirements. Ald. Rainey asked if the Franchise management would consider allowing this store to be operated by someone that is currently a franchisee with multiple locations. Ms. Corral responded that could be possible, however the requirements for application acceptance would be higher and franchise management would also require more oversee of store operations than single owned franchisee locations; especially in prime locations such as this. She noted that the franchisee would be responsible for hiring and training their own sales clerks, etc., however, she reiterated the franchisee's obligation to make sure operation management of the store is at top expectation at all times due to the franchise management requirements that must be met. Ald. Rainey asked what kind of investment is required of the franchisee. Ms. Corral responded the investment per store location runs approximately \$150,000 - \$200,000.

Ald. Bernstein recalled discussion regarding making the lessee subject to the covenants, which he did not see in the ordinance; mandating that the landlord (franchisor) make the covenants included as part of their lease. The attorney for 7-11 responded that the applicant has no objection to this requirement and agree that the franchisee should be obligated to this. He also stated that because of the special use requirements as stated in the ordinance that he believes it should run with the land. Ald. Bernstein agreed and added that he wants the person who signs the lease to be well aware going in of their obligations under the ordinance. Ms. Corral and the

attorney agreed and also suggested that all agreed as discussed at this meeting, be included in the lease to the franchisee and therefore subject to compliance by directives of the ordinance.

Ald. Bernstein moved approval of Ordinance 105-O-06 with the inclusion of having the covenants of the ordinance included in the lease for the franchisee as discussed and agreed to at this meeting. Ald. Tisdahl seconded the motion and the vote was 8-0 in favor (Ald. Wynne not yet present).

Mr. Wolinski stated to the members that the impact of the franchisee on how they run their business should come from this Committee, therefore he suggested that when the franchisee is selected, that it would be advisable for them to appear before the P&D Committee to discuss the responsibilities of the special use and the P&D Committee's expectations. The Committee members agreed that would be a good idea.

(P1) APPEALS HEARING

Appeal of the Preservation Commission Denial – 115 Dempster Street

This case was withdrawn by the applicant at this time via letter received by staff and forwarded to the P&D Committee.

(P4) Major Variation Request for Open Off-Street Parking at 1236 Forest

Chair Jean-Baptiste asked if any members knew what Ald. Wynne's position is on this matter since she was not yet present. Ald. Bernstein said that he believes she does have some comment on this case. However, Ald. Tisdahl was pretty sure that Ald. Wynne is in support of the applicant.

Mr. Wolinski explained that under the Zoning Ordinance a driveway must eventually end and either a parking garage or a parking pad. In this case, the garage in question actually the entrance and exit is through the alley. He said at one time perhaps there may have been a garage that faced the property with the entrance and exit off of Forest Avenue going through a driveway to the house, which was perfectly legal. However, with the driveway now not really serving any purpose, it is considered a front yard obstruction and the applicant has requested that they be allowed to keep the driveway up to the front of the house as an open parking space. He further explained that open parking spaces are not allowed under the Zoning Ordinance more than 30 feet from the rear lot line and this is beyond that point.

Ms. Kathleen Shepard, Landscape Designer, informed the Committee that she is the applicant and not the homeowner who will be arriving shortly.

(Ald. Wynne arrived at 6:30 p.m.)

Ald. Rainey said that although maybe the legality is the case that Mr. Wolinski set forth, she believes this case is a little more involved in that the applicant and homeowner operated on an assumption that their cutting off the rear of this driveway was not going to be an issue and therefore the improvements were made around that fact. She really believes through an oversight there became the need to request a major variation and ultimately the classic case left holding the bag. Ald. Rainey said in support of the ZBA that they probably voted negatively in all fairness and she noted several hints in the transcript where that referred to when the P&D Committee receives this they can make changes in the ordinance and overturn their decision. She stated her support in favor of the applicant in this case. Ald. Bernstein agreed and noted that the applicant justifiable relied on a statement by a staff member and subsequently changed their position by

markedly by going out and having an expensive landscape plan done. He is also moved by the fact that there are no opponents that came to speak against this project and he also has no problems in voting to overturn the ZBA's recommendation. Ald. Tisdahl also agreed with Ald. Rainey and Bernstein's comments and it seems to her for all those reasons and one more reason being that the Preservation Commission is going to want that driveway to stay the way it is and has always been. She is also in support of the applicant. Ald. Wynne stated that when you read the transcript you can see that the ZBA was very apprehensive on their decision. She is very much in favor of the applicant's position and does not want to cause the homeowner any more additional expense.

Ald. Wynne moved to deny the ZBA's recommendation and to approve the major variation requested. Ald. Bernstein seconded the motion and the vote was 9-0 in favor.

(P3) Ordinance 27-O-06 – Inclusionary Housing Ordinance

Chair Jean-Baptiste noted that the Housing Commission recommends that the City Council adopt the Inclusionary Housing Ordinance, which was introduced and referred back to Committee on September 25th and subsequently held in Committee on October 9th for legal research and amendments. The amended ordinance and staff memorandum is before the Committee this evening for consideration. He asked Legal Staff for an overview of the legal research and amendments made. Mr. Wolinski informed the Committee that he has met with Mr. Hill who will go over the legal ramifications and He and Ms. Spicuzza will go through the amendments to the ordinance. Chair Jean-Baptiste acknowledged Ms. Robin Snyderman-Pratt as the only one signed up for citizen comment on this item.

Ald. Rainey expressed her objection to this ordinance for many reasons, but primarily she objects to it replacing the ordinance that they have been dealing with over the last two years. In her opinion this is a new ordinance and she feels the Committee has no business voting on it at this time because it is so different that it should require introduction all over again. Mr. Hill replied that the only sections that are entirely new are Sections 5-7-9 and 5-7-10. Ald. Rainey thinks those to particular sections are the most important. Mr. Hill noted that he brought those questions to the Committee two weeks ago when he referred the Committee to the analysis done by the City of Napa and Tallahassee. Both of these provisions deal with "taking" from a legal standpoint and are associated with giving the developer alternatives, reductions and waiver incentives reduce the possibility that a court may interpret the Ordinance as an uncompensated taking, contrary to the 5th Amendment to the U.S. Constitution and Article I, Section 15 of the Illinois Constitution. He Mr. Hill assured that the new sections deal with a legal standpoint and does not change the basic ordinance that has been before the Committee up to date. He referred to page 2 of Legal Staff's memorandum dated October 5, 2006 where it states that it is the conclusion of the Law Department that the Ordinance should include either (1) specific benefits from the Toolbox, as listed in the Ordinance, to developers, (2) some form of administrative relief, such as an alternative means to fulfill the Ordinance requirements, reduction in requirement, or outright waiver, or (3) both.

Mr. Wolinski went through the amendments in the ordinance that are underlined, section by section. Ald. Wynne noted that all of Section 5-7-13 is also all new and appears to add back in the toolbox that was originally omitted. Mr. Hill explained that this section covers the incentives for a developer that complies with the requirements of this ordinance. He would recommend that incentives 1, 2, and 3 be considered; 4, 5, and 6 are not as essential.

Ms. Robin Snyderman-Pratt, Chair of the Housing Commission, stated that four year ago, when they first had the opportunity to initiate the Inclusionary Housing Task Force to develop an Inclusionary housing ordinance, they were adamant in stating its commitment to affordable housing and its appetite for a sound policy that advances city housing goals around preserving and expanding the housing options needed to maintain the character of our community, to embrace its diversity, to make sure this is a place that our teachers, our parents, our kids can afford to live.

Since then, first through the Task Force and then through the Housing Commission and the P&D Committee, we've worked to respond to that request and all the important and tough questions you've raised. She felt the ordinance the Committee reviewed at the September meeting reflects both their goals and the compromises they have all made along the way. Of course, it also reflected the input of other City Commissioners, developers and advocates as well. The question raised by the attorney at the more recent meeting then resulted in the proposed additions of cost offsets which, though no one suggests they are absolutely essential, do provide some safeguards against lawsuits. Ms. Pratt said that she hopes the Committee is able to reach a consensus that the offsets not related to density are fine, and that the first four are palatable. She said to keep in mind that even Mayor Daley's latest proposal in Chicago which was announced two weeks ago, requires a 10% affordable set-aside from any development asking anything of the City such as zoning relief, PUD, land, or money. She stressed the point that there are no cost offsets there in Chicago.

Ms. Pratt said that she also hopes the Committee will stick with the fee in lieu proposal that's based on the cost to build; as she fears the \$3,000 per unit will result a near total loss of affordable housing in Evanston. The cost to renovate or build is so much more than that, therefore the fee will thus be an incentive for developers to pay their way out of creating anything affordable, leaving the City with inadequate resources to compensate. Ms. Pratt expressed her hope for tonight is that this Committee will make some history on this proposal; voting on its passage and sending out a message that the City does have a policy governing how to advance its housing goals through larger scale development and tapping private sector activity while building on its long history investing public dollars on affordable housing.

Ms. Pratt pointed out to the Committee the samplings around the room of the public support for this ordinance, as evidenced by the many letters written to the local papers. She said that this does not even reflect the hundreds of petitions gathered by Ms. Sue Carlson and other activists in Evanston's Affordable Housing Futures Group. She noted that the Housing Commission was pleased to see the Council take further leadership on housing by putting the RETT on the referendum, as it can supplement the resources created through the IH.

Ms. Pratt concluded that she hopes the discussion during the P&D Committee's September meeting closed the door to the notion of holding off on this Inclusionary vote until after the referendum; as such a decision would be an injustice both to the Inclusionary issue and to your leadership/commitment to the City's stated housing goals. She stated that the City has already lost hundreds of opportunities for attainable affordable housing by waiting to move forward on this issue. She pleaded to the Committee to get something on the record tonight to show the voters that the Council backs innovate housing solutions, and to ensure that should the RETT pass in November, we'll have a stock of homes for sale that are actually affordable, so that RETT dollars can be used for homebuyer education, rental rehab and other expenses. Ms. Pratt said that they have a lot of aggressive goals as a City when it comes to housing and hopes tonight they will

make a big leap forward in advancing those goals. She thanked the Committee for their commitment on this issue.

Ald. Wollin motioned for approval to accept this Inclusionary housing ordinance for consideration of planned developments of 25 units or more, seconded by Ald. Moran. Upon following discussion, Ald. Wollin suggested leaving both options under Section 5-7-8 in the ordinance as “either/or” intuitively. Ald. Hansen added that she feels all planned developments should make some type of contribution to the affordable housing attempt regardless of the requirement set forth in this ordinance to provide the obligatory set-aside affordable housing units or the compensatory fee-in-lieu-of per unit not provided under the regulations specified in compliance of this ordinance. In conclusion, she stressed that every planned development above the 25 unit or more project be mandated to comply by supplying the required set-aside affordable units or ultimately paying the fee to the affordable housing fund of equivalent value to the HOME Funds account for provision to contribute towards providing affordable housing units or assisting in any affordable housing support efforts.

The Committee discussed several different alternatives for payment fee-in-lieu-of as listed in the “Fee in Lieu Scenario” (see attached). Ald. Moran suggested having at least a 50% on site requirement plus \$3,000 per total units of the project for Planned Developments of 25 units or more. He suggested this as an alternative to having the 10% set-aside requirement. Ald. Rainey reminded the Committee that they still have not yet voted on the original motion made by Ald. Wollin regarding the Planned Developments of 25 units or more.

The vote was 9-0 in favor of the motion.

The Committee moved forward to consider the required set-aside number and a fee-in-lieu-of number that they can agree on. **Ald. Moran moved to require a 10% set-aside for affordable housing units. Ald. Tisdahl suggested a mandatory 5% on-site requirement. Ald. Hansen seconded the motion.** Chair Jean-Baptiste suggested that the two options for set-aside number and the fee-in-lieu of providing the required set-aside units be combined for consideration. Discussion followed regarding an agreeable amount or fee per unit for consideration. **Ald. Moran repeated and motioned his suggestion of a fee of \$3,000 per unit for entire project, Ald. Hansen seconded the motion.** Ald. Rainey argued against the motion and said that they need to simplify the ordinance. She said a perfect ordinance in her mind would be a mandatory 5% affordable housing set aside and have no fee-in-lieu-of option. She proposes this option because if the Real Estate Referendum passes they will have a steady stream of revenue; therefore the main purpose of this ordinance is for Inclusionary housing so let’s get affordable housing in the buildings.

Ald. Wynne asked staff where the number of \$3,000 came about. Mr. Wolinski said that the recommendation originally came from the City Manager. Ms. Carroll explained that the original proposal was for \$1,500 per condominium and \$3,000 per single-family home based on the voluntary contributions received to date.

Mr. Wolinski noted to the Committee that staff is asking for \$63,000 per affordable unit required simply because that is the average subsidy for new affordable housing. Discussion followed regarding the cost to build new construction affordable housing. The Committee and staff contemplated over what the average cost to build which could be the difference between the actual estimated value of what the property could sell for versus the affordable selling price.

This difference is not really the actual cost to build but the amount of the difference on the average would be approximately \$100,000 - \$125,000. The Committee was very interested in what the actual cost to build an affordable housing unit per square foot is and tried to reach clarification to understand the difference between the actual cost to construct an affordable unit and the affordable price. Mr. Wolinski said that he did not have that figure off hand but he could provide some more definite numbers if the Committee wishes.

Chair Jean-Baptiste asked the Committee if they wished to go with the 5% or the 10% set-aside requirement. Ald. Moran even suggested that some communities are looking as high as requiring 15% set-aside. Chair Jean-Baptiste requested to go back and take each option separately suggesting that they vote on the 10% set aside as originally motioned. **Ald. Moran agreed and repeated his motion for the 10% set aside. Ald. Hansen seconded the motion and the vote was 6 in favor and 3 voting nay (Rainey, Wynne, and Tisdahl).**

Ald. Moran moved that at least 50% of the 10% set aside be provided on site, seconded by Ald. Hansen. Discussion followed regarding fee per unit if only 50% of the required on-site units are provided. One option that has been suggested is the fee of \$4,000 per unit for entire project, possibly go up to \$4,000 per unit. Ald. Moran looked at the estimated cost to build affordable units as mentioned previously being approximately \$125,000, which he suggested could be a number to consider that the developer should pay per required set-aside unit. Ald. Wynne disagreed stating that this would be too much of an economic burden on the developer. Ald. Moran then suggested that they consider at least the average subsidy amount per unit of \$63,000. Chair Jean-Baptiste compromised further and arrived at \$50,000. Ald. Wollin questioned why they are so involved in making compromises for a fee to allow the developer to buy out of providing affordable housing units and not accomplishing what this ordinance is set out to do. Ald. Bernstein raised a point of concern that has been discussed before amongst the Commission regarding on-site affordable housing units in the planned development condominium buildings and the cost of monthly assessment fees anticipated for each residential unit regardless of their purchased selling price. He recapped the economic burden that monthly assessment fees could affect the qualifying affordable housing purchaser and is very concerned with how this particular homeowner would be able to manage paying that fee over the cost of standard monthly mortgage payment obligations. He stated that there would have to be included some type of subsidy to the affordable homeowner for their share in the monthly assessment fees, which would further obscure their comfort in residency as the minority proprietor amongst those paying market price for their units. Ald. Rainey agreed; as she has always had major concern for the consolation in the living arrangements that the affordable homeowner would have in a typical condominium lifestyle arrangement. She reiterated her opinion that for the typical family characteristics of the qualifying affordable housing purchaser, the condominium living style would not be appropriate. Ald. Bernstein reminded that this ordinance does not just assist income qualifying family homeowners, but also includes senior citizens and certain disable challenged populations as well, that could blend in comfortably in the condominium living environment.

At this point, Chair Jean-Baptiste expressed his desire to move forward on this ordinance with what the Committee has discussed, agreed upon, and voted on thus far. He proposed going forward with the Committee voting on the agreement of having a 10% set-aside and suggested having a fee of \$30,000 per unit for fee-in-lieu-of for each unit not fulfilled upon the requirement. The Committee contemplated briefly over this amount. **Chair Jean-Baptiste counter-motioned charging the fee amount of \$50,000 per unit for fee-in-lieu-of, seconded by Ald. Moran. The vote was 8 in favor of the motion and 1 voting nay (Ald. Tisdahl).**

Chair Jean-Baptiste suggested that the Committee move forward at this point with the options they have voted on with this ordinance and consider the administrative aspects for further consideration at their next scheduled meeting so as to move forward with this matter. He noted that the options voted on this evening are the major topics of consideration that have been in this ordinance from the commencement and foundation of the original ordinance from the Housing Commission and he would like to move forward at this point with something for introduction and action. He asked Mr. Hill if legally they can move forward with what has been voted on this evening and consider it as a "part A" of the ordinance and then consider the administrative part of the ordinance as a "part B" to be voted on imminently. . Ald. Holmes expressed her support for such an alternative at this time if it is legally possible so as the P&D Committee can move forward with something that reflects their position in support of having an Inclusionary Housing Ordinance in place. Mr. Hill responded that legally it can be done to pass the ordinance on the issues that have been voted on this evening and leave the remaining sections to be voted on subsequently or the option of leaving those remaining sections out and amending the ordinance to reflect only those items voted on.

Ald. Bernstein expressed his frustration with this whole process. He feels the Council has so diminished themselves as a legislative body these last several weeks over this ordinance. He reminded that this is an ordinance that has been on the table for almost 3 years and within the last week they receive an ordinance in Council packet that adds matters that they have excluded. Therefore, in the last 2 hours this Committee has tried to renegotiate this ordinance that they should have resolved a long time ago. He feels the only urgency is to tell the community if in fact this Council is in favor of affordable housing, which they obviously are. However, he does not like the appearance of looking as if this issue was forced upon this Committee at this time to immediately consider and be voted upon. He said the concepts they are discussing this evening are being done in the abstract and he strongly feels that is no way to do business. Ald. Bernstein recalled this is reminiscence of the Council that debated the ordinance with respect to elm trees for 3 ½ years and within a few minutes under consideration, the Council changed the whole ordinance without any discussion. This is what he is feeling is happening now and he does not like it and does not want to be a part of such a rapid and abrupt decision made. He stated that in part it is the Council's fault and communication with staff and for the lack there of, however he feels this amended information should have been received much sooner. Ald. Bernstein reiterated that what is driving the urgency is the referendum and the feeling that if the Council does not show good faith then the community is not going to show good faith. He again expressed his disappointment by this process tonight. Chair Jean-Baptiste responded to Ald. Bernstein that he understands his position, however this ordinance has been stagnant for too long and it is time to move forward with something that substantiates the Council's position on supporting the affordable housing effort in Evanston. Ald. Bernstein agreed but feels this is such an important issue that whatever it takes to come to a consensus to pass something that is acceptable and accommodating and being in compliance to supplying adequate affordable housing instead of pacifying a hasty vote that has not fully been meticulously thought out before passing. He anticipates citizen support by vote in favor of the real estate referendum to accommodate a flow of revenue for the affordable housing effort and may supply a pot of funds to which the City can do some good things, however that may not be attained. In his mind, Inclusionary Housing is beneficial however he has his reservations on the concept of putting poor people with rich people and the effects of the outcome of such a situation. Ald. Bernstein reiterated that Inclusionary housing does not just mean family status income qualified households but includes such households as elder care and handicapped accessibility housing. He also noted that this does not necessarily mean and require on-site housing to accommodate needed Inclusionary affordable housing.

Chair Jean-Baptiste acknowledged the consensus of the entire P&D Committee to be in favor and support of the efforts in supplying affordable housing and the authority by way of this ordinance and what has thus far been discussed and voted on to be passed and considered to move forward at this point. It has been established as approval by the City Legal Staff that what has been voted on and approved can be moved forward on at this point. He asked for a motion to be declared from a Committee member in acceptance of this acknowledgement in agreement that the remaining items, including administrative matters, be considered as a separate part of this ordinance at this point in order to move forward with the specified points of important consideration as proposed in the original ordinance presented before this Committee from the Housing Commission for consideration. Upon further deliberation amongst the Committee members, **Ald. Moran motioned to pass Ordinance 27-O-06 with what has been discussed and voted on by this Committee that is unbiased to this ordinance to move forward. He noted that there is a 90-day effective provision involved in this, therefore if the P&D Committee does not have the other taking aspects in, no one can challenge the ordinance based on what they do tonight because it won't be effective. He stated that if the Committee decides to come back and consider all the alternative proposals left un-considered and voted upon, they can add this to the ordinance as an amendment. Ald. Hansen seconded the motion and the vote was 5 in favor of the motion and 4 voting nay (Tisdahl, Bernstein, Rainey, Wynne).**

ADJOURNMENT

The meeting was adjourned at 9:25 p.m.

Respectfully submitted,

Jacqueline E. Brownlee