

## PUBLIC COMMENT

AGENDA DATE: 01/25/17

SUPPLEMENTAL # 1

**From:** Chris Monack [<mailto:mohillres@gmail.com>]

**Sent:** Sunday, January 22, 2017 7:27 PM

**To:** Steve Tate; Larry Carr; Rich Constantine; Rene Spring; Michelle Wilson

**Subject:** Public Comment for January 25 City Council Meeting

Mayor and Council Members,

This is an objection to the process employed during the City Council meeting on January 18 with respect to Ordinance #2228, approved on December 14 and adopted on January 18, for the extension of Dunne-Busk development.

On December 14, the City Council voted 3-1 (Tate, Carr, Constantine for, Spring against) to grant a development extension for seven allotments of the 12-allotment Dunne-Busk residential project. The extension was approved even though it was remarkably evident the developer did not meet the qualifications for it. I questioned this in a comment letter to the Council prior to the decision being made, asking why there are rules for extensions if the rules aren't going to be followed.

Included with that question was my request that the Council be very cautious and deliberate in their reasoning if the extension was granted. The justification by some members of the Council was that if no extension was granted, it could result in a partially developed project for up to three years. While I was not in favor of the extension in principle, given the impact to the surrounding neighborhood, I understood and accepted that rationale as being best for the community.

The Council's decision on December 14 was to draft an ordinance (#2228) approving the Dunne-Busk development extension. Requirements were added to the ordinance that stipulated the developer must comply with what were described as "hard deadlines," and that failure to meet any deadline would result in the loss of the entire 12-allotment project. These compliance requirements were accepted by Mayor Tate, Council Member Carr and Council Member Constantine, with Council Member Spring opposed. The developer did not object to the terms.

The vote for adoption of the ordinance was placed on the January 18 City Council agenda. Everything for the agenda item – the attached ordinance and the staff report – was consistent with what was agreed upon at the December 14 Council meeting. As such, I saw no reason to be concerned with any changes to the ordinance by the Council.

Needless to say, I was not pleased to watch video of this portion of the Council meeting the following morning and see the developer come before the Council with a request to reconsider terms of the ordinance – essentially asking for extensions to "hard deadlines" within an ordinance already favorably granting him an unqualified extension. I was further angered to learn that after the dates stipulated in the ordinance were made and agreed to in public on December 14, the developer immediately met with City staff in private to discuss changing the deadline dates. City staff recommended to the developer that he make his new requests at the January 18 Council meeting.

I reviewed the January 18 agenda item and reconfirmed that a) there was no notation in the staff report indicating any issues with the agreed upon dates, b) there were no changes made to the ordinance between December 14 and January 18, and c) there was no public notice or attachment to the agenda that the developer was going to request changes to a publicly

amended development agreement. Therefore, the information provided to the public did not include what was known to potentially change this ordinance.

I have to question why this was allowed to occur. The City Attorney's response that the date changes were "not substantive" was ridiculously weak. The position the City Council took in setting "hard deadlines" in an all-or-nothing agreement is most certainly substantive as it removed the flexibility of timelines considered "suggestive" under normal circumstances. The changes were substantive enough to the developer that he went to the effort to have the agreement amended yet again. Changing an erroneous date, like the February 30 listed in the ordinance, is not a substantive change. Changing "hard deadlines," however, changes the imposed requirements that were agreed upon, and challenges the integrity of the document presented to the public and the integrity of the action taken by the Council.

I would also point out that the dates were not made "on the fly at the podium" on December 14 as the developer stated. The dates were established prior to the December 14 meeting and were available at least five days before the hearing as part of the posted public notice. Not only did the developer have plenty of time to review those dates before they were presented, he practically admitted he knew of his inability to meet those dates by stating he met with staff "in the hallway after the (Dec 14) meeting" to discuss his issues with the deadlines. That City staff recommended the developer return on January 18 means they knew of the possibility of a change to the ordinance a full month in advance.

Nothing justifies omitting information from the January 18 agenda or from the Staff Report that had been known weeks ahead of time by staff and the developer. Even if this action by the Council can be explained away as being legal, I find nothing to support it being ethical. Any changes or the suggestion of possible changes to this ordinance should have been disclosed to the public, especially in light of the fact that a resident (me) had demonstrated interest in the item through previous comment. This oversight needs to be explained by one of the three members of the Council who voted in favor of the ordinance changes, along with an explanation why this item was re-opened to the developer for additional input, but not re-opened for additional public comment. Those members need to explain why a resident they represent was not allowed the opportunity to participate in what had been a public process until they decided it wasn't one.

The City Council has repeatedly and publicly claimed transparency and community engagement are important aspects of the Council's ethics and integrity. Therefore, along with the above explanations, the Council as a whole should also reaffirm their commitment to the community that these qualities are valued and will be critical components of future Council actions.

Chris Monack