

City Council Meeting Minutes

**February 19, 2019
City Hall, Council Chambers
749 Main Street
7:00 PM**

Call to Order – Mayor Muckle called the meeting to order at 7:00 p.m.

Roll Call was taken and the following members were present:

City Council: *Mayor Robert Muckle
Mayor Pro Tem Jeff Lipton
Councilmember Jay Keany
Councilmember Chris Leh
Councilmember Susan Loo
Councilmember Dennis Maloney
Councilmember Ashley Stolzmann*

Staff Present: *Heather Balsler, City Manager
Megan Davis, Deputy City Manager
Nathan Mosely, Parks, Recreation, & Open Space Director
Rob Zuccaro, Planning & Building Safety Director
Dave Hayes, Police Chief
Felicity Solveski, Planner I
Meredyth Muth, City Clerk*

Others Present: *Kathleen Kelly, City Attorney*

PLEDGE OF ALLEGIANCE

All rose for the pledge of allegiance.

APPROVAL OF AGENDA

Mayor Muckle called for changes to the agenda and hearing none, moved to approve the agenda, seconded by Councilmember Keany. All in favor.

PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA

Lyla Hamilton, 2005 West Centennial Drive, on behalf of the Early Childhood Literacy Campaign, stated she is concerned the City is not serving the library's mission to involve,

inform, and inspire. Fines on children's print materials are in opposition to these goals. The library staff brought to Council recommendations to eliminate these fines based on empirical information. Fines on children's books send a message that money to the General Fund is more important than children's access to books. Louisville should not wait for others in the library consortium to do this but should do it now.

APPROVAL OF THE CONSENT AGENDA

MOTION: Mayor Muckle moved to approve the consent agenda. He noted the earlier agenda noted an appointment to the Business Retention and Development Committee but rather it should have read Board of Adjustment. Seconded by Councilmember Stolzmann seconded. All in favor.

- A. *Approval of Bills***
- B. *Approval of Minutes: January 29, 2019; February 5, 2019***
- C. *Approval of February 26 as a Special Meeting***
- D. *Approval of Appointments to the Board of Adjustment and the Recreation Advisory Board***
- E. *Approval of a Contract Between the City of Louisville and CGRS, Inc. for the Construction of the Pipeline Control Vault Project and the Approval of the Design and Construction Management Service Addendum***
- F. *Approval of Scope of Services for Aviation Consultant Agreement***

COUNCIL INFORMATIONAL COMMENTS ON PERTINENT ITEMS NOT ON THE AGENDA

None.

CITY MANAGER'S REPORT

City Manager Balser stated the Finance Committee has been reviewing year-end 2018 revenue information. Councilmember Maloney noted that in general, numbers are flattening or weakening. He added the Finance Committee is likely to recommend the Council ask voters to retain the excess TABOR funds.

REGULAR BUSINESS

RESOLUTION NO. 5, SERIES 2019 – A RESOLUTION APPROVING A FINAL PUD TO ALLOW FOR A 22,020 SQUARE-FOOT COMMERCIAL BUILDING WITH A 5,802 SQUARE-FOOT PARKING GARAGE ON TWO LOTS TOTALING 14, 114 SQUARE FEET ZONED CC; A FINAL PLAT TO VACATE THE LOT LINE BETWEEN LOTS 8 & 9, BLOCK 3, TOWN OF LOUISVILLE; AND A SPECIAL REVIEW USE TO ALLOW FOR RETAIL GOODS AND EATING AND DRINKING ESTABLISHMENTS –
applicant requests continuance to 3/19/19

Director Zuccaro noted the applicants' request a continuance to March 19. It was noticed for this evening but the applicants had scheduling conflicts.

Mayor Muckle moved to continue Resolution No. 5 to March 19; Councilmember Keany seconded. All in favor.

RESOLUTION NO. 6, SERIES 2019 – A RESOLUTION APPROVING AN AMENDMENT TO THE FOUNDRY PLANNED UNIT DEVELOPMENT (PUD) PHASING PLAN TO MODIFY THE REQUIREMENT THAT BOTH APPROVED COMMERCIAL BUILDINGS BE CONSTRUCTED CONCURRENT WITH THE RESIDENTIAL DEVELOPMENT

Mayor Muckle introduced the item and opened the public hearing.

Director Zuccaro stated Council first reviewed this item in 2016; it is for a mixed-use development on the property. He reviewed the site plan for four residential buildings on the west of the development with 32 units (24 age-restricted) and two commercial buildings on the east side of the development. The original approval required concurrent development of the commercial and residential buildings.

He noted the PUD is now over three-years old and the applicant will need to request an extension before receiving building permits.

The applicant is proposing phasing to obtain a building permit for one of the two commercial buildings concurrently with the building permits for the residential buildings. They would provide letters of interest from 30% the tenants of the commercial space for first the commercial building prior to receiving the last residential certificate of occupancy.

Staff thinks that by assuring that level of investment they are more likely to finish the commercial building. Director Zuccaro reviewed the fiscal analysis with three different scenarios with varying time lines for the commercial buildings and absorption. All scenarios are positive to the City but if the second building is not developed it would be lower.

Director Zuccaro stated the PUD criterion that is most relevant says the development will be done in accordance with the adopted elements of the Comp Plan. The Comp Plan policy states that for this area the land use mix must provide positive fiscal benefit to the City. Staff feels this is met even if the second commercial building is not built.

The Planning Commission recommended approval with slight changes to the conditions:

1. Residential building permits for the condominiums shall be obtained concurrent with or subsequently with the building permit for one of the two commercial buildings, and
2. Residential and commercial development shall be constructed concurrently, and

3. In no case, shall the certificate of occupancy for the last of the residential 8-plex buildings be issued unless: ~~The last certificate of occupancy for one of the residential 8-plex buildings shall be withheld until:~~ 1) start of construction of the first commercial building commences, as defined by the 2018 International Building Code, which includes the first placement of permanent construction of a building, such as pouring of a slab or footings, installation of pilings or construction of columns; and 2) 30% of the net leasable space has identified tenants with proof being as an executed Letter of Intent coupled with a security deposit.

Staff recommends approval with either the originally proposed staff conditions or the proposed Planning Commission conditions.

Councilmember Maloney asked how the retail sales per square foot number was calculated. Director Zuccaro stated the number was consistent with the 2016 model when it was originally approved; it is likely a conservative number based on recent information.

Applicant presentation

Justin McClure, 1002 Griffith Street, stated nothing substantive has changed from 2016. He stated it was always the company's intent to build the Foundry building concurrently with the condominiums but he feels the approval resolution lacked clarity.

Councilmember Maloney asked what was not clear in the resolution. McClure stated the resolution can be interpreted that both buildings should be built concurrently but that was not the intent in the conversations he had with staff at that time. He added the retail market on Highway 42 has proven to be somewhat soft.

Councilmember Stolzmann asked what percentage of DELO commercial is tenanted. McClure stated DELO Station is almost 65% tenanted. He stated they are using incentives to get office space filled. He stated signalization at Short Street and Hwy 42 would help to get DELO plaza built out.

Public Comments

Gary Larson, 2189 Park Lane, stated he lives adjacent to the proposed development. In 2015 and 2016 a coalition of the homes in the Highway 42 are had great support for this project. He stated he would like to see the Foundry Building developed as it would be an upscale addition to the community. He supports the request.

John Leary, 1116 LaFarge, stated he does not agree with the methodology for the fiscal review. He stated the fiscal analysis at the time of approval was within the margin of breaking even. By using the lower square footage number he feels the current analysis is concealing a negative fiscal impact that does not meet the Comp Plan requirement.

Mayor Pro Tem Lipton asked how the Planning Commission recommendation lines up with the staff recommendation. Director Zuccaro stated the Commission added the second condition and added language defining specifically what concurrent means and what is required. It notes the triggers that are required to get certificates of occupancy.

Mayor Pro Tem Lipton stated the requirement of a letter of intent for 30% of tenants may be too low a bar and asked if requiring a lease would be a better idea. Director Zuccaro stated this was offered by the applicant, it was not a staff request. Staff is comfortable with just the first requirement.

Mayor Pro Tem Lipton asked the applicant if they would agree to that. McClure stated they prefer as much flexibility as possible. He would prefer not to have it be that stringent, but if that is what happens they would accept it.

Councilmember Stolzmann stated the fiscal analysis is important so the City has enough income from development to provide services. In Steel Ranch, the City has multiple projects that need to be paid for including underpasses and traffic signals; the commercial development was to offset some of these costs. She stated she felt the fiscal analysis should have included all of Steele Ranch not just this site. We already gave concessions that were supposed to lead to retail development in this area and it hasn't.

Councilmember Stolzmann stated the original approval was not ambiguous. She does not want to allow an option in which the second commercial building might never be built or it be changed to residential. She wondered are we willing to forego the construction of the second building. She would prefer to continue this discussion to a time when the PUD extension is also ready for discussion. It would be beneficial to discuss the amendment and the extension at the same time so we know how long this PUD may be open.

Councilmember Maloney stated people in the area like this concept and it would be good to move forward. He stated the original language was clear that the two commercial buildings be built at least concurrently or before the residential. That is still important along that corridor. If we approve this it should be very clear what the intention is.

Mayor Muckle stated he can support it with the proposed Planning Commission language. He agreed the fiscal analysis should have included the entire area but that was decided when the Council shrank the commercial area in previous approvals. This approval will get this building completed which is good for the community; it a good next step.

Councilmember Loo stated she understands Councilmember Stolzmann's concerns. We have shrunk the commercial numbers in the area. She stated she is sure in 2016 it was clear the residential had to go up with the commercial. However, she feels we can approve this without assuming the second commercial site won't be built. Future decisions are up to future Councils; this does not foreclose the possibility it will be built down the road. She is concerned there is the potential that 24 residential units go up before the Foundry building is even started; she would like to see the Foundry done first

as a selling point for the residential. She stated “concurrent” to her means at the same time, but if it needs more definition the third condition should be included.

Councilmember Leh stated the language is clear. Our goal is to get both commercial buildings built with the development. He wondered if we are sacrificing the certainty of the second building. We are facing a practical problem that if we don’t agree to this change it might mean nothing is built. It is a gamble.

Mayor Muckle closed the public hearing.

Mayor Muckle moved to approved Resolution No. 6 with the conditions recommended by the Planning Commission. Councilmember Loo seconded.

Councilmember Stolzmann offered a friendly amendment that there are maintenance standards for the undeveloped lot; that it be graded, flat, and seeded, the perimeter landscaping be installed, that the sidewalk on Hwy 42 be completed and that no fill dirt or construction equipment be stored on the lot.

Mayor Muckle accepted. Councilmember Loo asked about timing. Councilmember Stolzmann stated this would protect the neighborhood if it is vacant for a long time. If it is vacant it should not be a distraction to the neighbors if it is there for a long time.

Councilmember Loo stated her concern was there was no time frame attached to it and how it would be applied. She asked staff for suggestions. Director Zuccaro stated a condition could be added that once the other five buildings are complete or the permits expire then that condition would have to be met. That gives them the ability to stage on that lot for those five building until they are complete. Councilmember Loo agreed to that. Mayor Muckle agreed.

Councilmember Stolzmann stated it was clear with the first resolution. The intent at the time was to allow for some flexibility in the zoning to get the project going and we would get some commercial development out of it. That has not happened. If we say we are ok with this not being built now we likely won’t get the building. It is important the phasing plan be honored as it was originally worded. This should be considered with the necessary extension so we know how long we are talking about. She does not support this as presented.

Vote: Motion passed 6-1; Councilmember Stolzmann voting no.

**RESOLUTION NO. 7, SERIES 2019 – A RESOLUTION APPROVING A
PRESERVATION AND RESTORATION LOAN FOR THE LOUISVILLE HOSPITAL
LOCATED AT 721 GRANT AVENUE**

Planner Solveski stated this is a request for a preservation and restoration loan from the Historic Preservation Fund (HPF) of \$69,000 for approved work on a landmarked

property. She reviewed the history of the property; it is now a private residence. She noted the applicant has received grants from the HPF previously. The applicant has completed the structural assessment and the alteration certificate has been approved. She reviewed the fees and costs associated with the loan. The end result would be an additional \$40,000 in interest returned to the HPF at the end of the project. Currently, the HPF has about \$2.1 million in it.

Staff recommends approval of the \$69,000 request.

Councilmember Loo asked what happens if the loan is not paid back. Director Zuccaro stated the agreement includes a lien on the property if the loan is not repaid. The City will contract with a loan administrator and underwriter that will collect payments and reimburse the city similar to a home equity loan.

Applicant Presentation

Caleb Dickinson, stated the current work includes full restoration of some sections of the house. They are working to rehabilitate the building as much as possible and restore what they can. It has turned out to be much more work than anticipated. He stated they are trying to finish the project, and do it right, and be historic.

Public Comments – None.

Mayor Muckle stated he is happy to see someone take advantage of the loan program.

Councilmember Stolzmann moved to approved Resolution No. 7; Councilmember Keany seconded the motion.

Vote: Motion carried by unanimous roll call vote.

DISCUSSION/DIRECTION – CITY COUNCIL CONSIDERATION OF CHANGES TO LIQUOR REGULATIONS AND OPTIONS IN CITY PARKS AND FACILITIES

Muth stated the State legislature changed the rules in the last session to give municipalities the option to allow the consumption of alcohol in specific public places. This change gives the City the option of allowing consumption in parks and other facilities. She noted the City previously allowed up to five hours of alcohol consumption for private parties when renting parks. Staff is aware people are consuming during events, parties, and other park uses. It may be preferable for the City to allow use within certain parameters rather than have a total ban. The Parks Board supports such a change; the Police Department is concerned about enforcement issues.

Muth stated the options are to keep the existing rules with the ban, amend the Code to allow use with conditions, or allow consumption in the parks at all times. If Council would like to make changes staff will bring back an ordinance for consideration at a later date.

Councilmember Loo asked Chief Hayes what his concerns might be about enforcement as the sheet provided this evening shows a lot of enforcement. Chief Hayes the Police Department enforces but he is concerned what the additional expectations would be if there are no restrictions on alcohol use in the parks. He stated he likes option two for allowance within some parameters.

Mayor Pro Tem Lipton asked what other enforcement tools the Police Department has. Chief Hayes stated the Police Department enforces the State open container law. It is not a crime to be intoxicated, but the Police Department will address it if a people are unable to care for themselves. Public drunkenness is not a crime in itself, disorderly conduct is.

Mayor Pro Tem Lipton noted people bring drinks to the Thursday night concerts. He asked if that is permitted. Muth stated it is not a part of the special event permit; the only permits for liquor are for sales and service. Those are only available to non-profit groups.

Mayor Pro Tem Lipton stated it would be nice to have a way to allow it for such events as right now we are turning a blind eye to illegal behavior.

Councilmember Keany stated he favors option two for some allowance with parameters, perhaps limit the hours it is allowed or limits on the types of alcohol.

Councilmember Loo stated she would like to see something from review that allows some options. Councilmember Maloney agreed.

Councilmember Stolzmann stated we should decipher between bad behavior and its causes. We all seem to know people are doing this and we are not enforcing it. If we just want feedback from people we can enforce and learn people want to drink in the parks.

Councilmember Leh asked if we have a problem at all. No one seems to want option three but now we have rules which are not being enforced. He asked if we really need to make a change; probably not.

Mayor Pro Tem Lipton stated given limited staff time this should not be a huge project, but if we can address things like the Thursday night concerts without too much work we should do it. Mayor Muckle agreed it would be nice to decriminalize this for certain events.

Councilmember Keany would like to include allowing alcohol for park rentals with restrictions. People are doing it now without permission. He would prefer an atmosphere where things are allowed rather than where we are ignoring the law and not enforcing it.

City Manager Balsler stated any work that is done on this issue is not likely to be completed in time for this summer season.

Public Comments

John Leary, 1116 LaFarge, stated it is not fair to those not drinking to allow others to do so. He noted the Street Faire is likely creating more issues than drinking in parks. There should be a ban on the use in open space areas without a shelter. This is not fair to those who don't want to break the laws.

Caleb Dickinson, 721 Grant Avenue, asked what the possibility would be to allow for one year with no rule as we know most people don't even know there is a rule to begin with. If it is allowed, it doesn't mean there are suddenly going to be big parties. Most people don't know they are breaking the law and a new law won't change behavior. Let it be open, see how it goes, identify the problems, and make adjustments as needed.

Angie Layton, 619 West Juniper Court, stated most people don't know it is illegal; it would be better to have a policy so people know what the rules are and we know the terms; we can charge rules if we need to. It is not likely to create a huge new problem, most people are responsible.

Deb Fahey, 1118 West Enclave Circle, noted she too did not know it is illegal and has hosted parties with alcohol in the parks; she agreed most people don't know the rules. If there haven't been serious issues we don't need to make it illegal.

Mayor Muckle confirmed the direction is for staff to bring back an ordinance to allow liquor at some events and for park rentals within parameters.

CITY ATTORNEY'S REPORT

None.

COUNCIL COMMENTS, COMMITTEE REPORTS, AND IDENTIFICATION OF FUTURE AGENDA ITEMS

Mayor Muckle asked if Council is interested in reexamining the library fines issue at a future meeting. There was no consensus on this issue.

ADJOURN

Members adjourned at 9:00 pm.

Robert P. Muckle, Mayor

Meredyth Muth, City Clerk