

GARIBLDI CITY COUNCIL SPECIAL MEETING MINUTES
107 6th Street, Garibaldi, OR 97118 – Meeting Hall
Wednesday, June 16, 2021 – 6:30 p.m.

- I. PLEDGE OF ALLEGIANCE
- II. CALL TO ORDER

Mayor Hall called to order the Special City Council meeting at 6:30 p.m. Present were Council members Tim Hall, Judy Riggs, Whitey Forsman, Laurie Wandell and Katie Findling. City staff present was Assistant City Manager (“ACM”) Lori Longfellow, City Attorney Carrie Connelly (“City Attorney”), and Third-Party Contract Planner Walt Wendolowski (“Wendolowski”). Citizens present included Paul Daniels, Carl Kopacek, Helen Wright, George Hastings, Terri Southwick, Ronald Halter, Linda Bade and Juliet Hyams.

- III. LIMITED “ON THE RECORD” REMAND PUBLIC HEARING
CU-2020-01, COASTAL HOUSING SOLUTIONS, LLC.

- A. Remand Public Hearing

- 1. Open hearing

Mayor Hall called opened the hearing at 6:32 p.m.

- 2. Ex parte, bias, conflicts

Cn. Wandell read her written statement out loud and expressed that she was entering into the hearing with an open mind and was confident she could be impartial and make decisions based only on facts.

- 3. Required statements

Mayor Hall read the required statements.

- 4. Staff Report / Findings

Contract Planner Wendolowski asked if it was acceptable to the Council for him to provide a brief summary of the findings as opposed to reading 30+ pages.

Mayor Hall asked if there was any new information and Wendolowski declined and noted there was no new material in the report, everything written had been incorporated from the original staff report and minutes. Mayor Hall declined his request and stated that the document should have been submitted to the council in writing so they could have read and reviewed that information. City Attorney clarified what

was being requested and noted that everyone had at least 7 days to review the report. Mayor Hall stated that they did have it and there were questions that council had. City Attorney asked if he wanted the 30+ pages of the staff report read. Mayor Hall stated no, but if councilors had questions about certain information in the document to raise it with Wendolowski at that time. City Attorney stated that was a good use of their time. Mayor Hall stated he wanted to start with a number of concerns he had related to page 4 of the application summary.

Mayor Hall stated concerns regarding wetlands and Wendolowski explained as with any development in the State it will have to go through the Department of State Lands to address wetlands issues.

Mayor Hall stated his concern that a burden will be placed on the residents of Garibaldi to upgrade the water and wastewater systems in order to accommodate the apartment complex. Wendolowski stated that it is incumbent upon the developer, not the city to install the necessary pipes and sewer, etc. Wendolowski noted that he was not an engineer and would not speak as one with regard to capacity issues. The main point he wanted to stress, was that if the developer cannot meet the facility needs, the project simply cannot go forward.

Mayor Hall noted he wanted to have an independent review done because he has some issues related to the city engineer and the planner, which he has laid out to the city attorneys and he wouldn't go into it for certain reasons.

Cn. Wandell stated she had questions about the findings on pages six and seven regarding the Geotech report and specifically landslides. Wendolowski noted that was an engineering question and he can only rely on the expertise that was submitted. He stated he believed it was in the City code to request the Applicant to pay for an independent Geotech to go through the analysis. He questions if at this juncture, was there enough evidence that it could not be built in conformance with the current building code requirements. He stated that his conclusion is based on the preponderance of evidence that was presented to him and that construction can proceed that meets the requirements of the city development code.

City Attorney emphasized that Wendolowski was charged with drafting findings based on evidence in the record and the record is closed. She stated that slightly modified the comment that the city can request the applicant to provide geotechnical materials at his expense. Wendolowski clarifies that the City can require it when it gets down to the building aspect of it. When looking at the

evidence, it appears to say they can proceed, but during construction the foundation building official and the city engineer can say they need additional evidence.

City Attorney wanted to make the point that council saying they agree staff recommendation and issue an approval that doesn't mean substandard construction is going to happen. There are second and third looks at all of these basic materials before them. This was just a start, not the end of the story.

Mayor Hall discusses his concerns regarding the traffic study. Wendolowski noted the traffic study was based on historical information and the date of the study does not refer to the actual date the study was conducted. No further traffic impact study needs to be done they have met the requirement of the development code, the only thing they need to do is get their access permit from ODOT.

Mayor Hall expresses his concerns regarding Goal 10.

City Attorney clarified to what extent Goal 10 was used as criteria for this application. The existing Comp Plan and Code were adopted to comply with and that is what governs this decision. She noted it provides a framework for the decision before you. Unfortunately, even if the Comp Plan is outdated or no longer applicable to the community, until something is duly adopted and acknowledged by the DLDC, it is what the decision must be based on even if it makes no sense at all.

Cn. Findling stated she was confused with what was in the comp plan and the statement, "council finds this project is consistent with the plans' housing policies as the project adds to the existing housing stock to meet the needs of the community".

City Attorney noted that the council's job is to listen to the testimony, evaluate the evidence, if there are pieces of the draft decision that they disagree with they can talk about it and direct changes at the end of the hearing assuming the changes are based on the record.

Mayor Hall stated a critical issue for him under Goal 10 was the topic of affordable housing. He wants to have security in knowing that the Applicant is building homes that people can afford.

City Attorney reminded them the Applicant would testify later in the hearing and that may be a good opportunity to get an answer, unless Wendolowski can direct them to something in record and explained that they cannot look at anything outside the record.

Wendolowski made a comment regarding affordability and stated

that it was not part of the decision criteria. Mayor Hall responded that it was not, but he wanted the Applicant to understand his concern as Mayor is that the apartment complex(es) become tenements over time. He stated again that he knew it was not part of the criteria.

City Attorney noted it was hard to be a decision maker and have a lot of priorities but stated they were quasi-judicial, they are a judge and they are only focusing on applicable criteria. She went on to say they can change the criteria prospectively, just not now.

Audience member questioned who made the rule that you can't go back into the record. Mayor Hall stated the council made the decision during executive session that they would not accept any new testimony or new evidence related to this particular project. He began to explain they had three options, but City Attorney advised him not to go there as they were in the on the record hearing.

Cn. Findling asked if she wanted clarification on all the sections that she struggled with that said "the council finds that" would she bring that up at this time or wait for the later testimony. Mayor Hall stated she could go ahead and then stated that he had a problem with the document because it was not something that he had instructed the contract planner to prepare for the City of Garibaldi. He expressed that he felt the report almost mirrored some of what was in the applicant's documents and previous documents by the former city manager. He stated he was not happy to read that the council approved it and that he had expressed his concern to the City Attorney. He also stated he was not happy that the document basically spells out that the council has already approved it based on information that's been provided but not substantiated to the council directly.

City Attorney explained that code requires there to be a staff report available to the public seven days in advance. She further explained just as they have draft ordinances come to them, they are not effective until they have been adopted. It is the same with this report, it is staff's recommendation and they are required to have that draft decision but noted that they did not direct those specific findings. It is staff's evaluation of the evidence in the record and what was given was the most legally sufficient and challenge-proof decision. City Attorney went on to say council gets to weigh the evidence and direct changes as long as they are based on evidence in the record. City Attorney explained that they already had an approval that went to LUBA and LUBA sent it back and said fix the problems. Therefore, what they had in front of them was the decision that went to LUBA with the problem fixed, and it had nothing to do with the Mayor directing them and the public shouldn't assume that this is a council decision.

Mayor Hall stated he wanted to go on record that he felt as the Mayor of Garibaldi he should have been notified that this document was being drafted. He asked if any of the council members had any more questions of the staff report. Cn. Findling stated she disagreed with something and Mayor Hall stated there was a lot in the document that he also disagreed with.

5. Applicant's arguments (no new evidence)

The applicant gave his argument by stating that this went in front of LUBA and LUBA said they met all the requirements of the GMC to build this project, but there was an administrative procedure that wasn't done correctly, but as far as meeting the requirements of the project they met those requirements.

He wanted to take a few minutes to respond to a few of the questions that were raised and acknowledged the requirements from DSL, ODOT, the City, erosion control/DEQ. He noted those were all beyond the scope of what was happening at the hearing. He went on to say there are several professional requirements to be met including civil engineer, structural engineer, licensed landscaper, and all of this will be put into a set of plans that will go to the county for review. In that plan review they will make sure they have met all the requirements of the city, county, and state to make the project move forward.

Applicant stated that he was told several times that the city has adequate capacity for sewer and water and that the city is actually underutilized. His project would add additional revenue to the City.

Applicant discussed the geotechnical reports and noted if there was a soil problem at the time of construction it will be addressed then, and they will take care of whatever the engineering requirements are.

An unknown citizen interrupted and questioned who would enforces all this. Applicant asked if he had the floor. Mayor Hall stated he could continue, but first stated that a valid point had been raised given the DEQ issue that has been happening on the Applicant's property.

Applicant continues on to discuss the traffic study and stated it was done by professional traffic engineers per the regular requirements in ORS 734-051-3020. Mayor Hall asked if the Applicant could provide a list of those resources in terms of those who did the traffic study. He continue on by stating these are issues he wants to make sure that when ODOT is brought into this project that they know that the persons hired to do the traffic study, conducted the study within the parameters that ODOT

approves of so that it's not just some traffic engineer who is hired by the Applicant to get an answer that he wants.

Applicant responded by stating it was done by a professional organization that works for ODOT all the time. Their information is located on the document the council has and the original documents they received. He noted the companies name was DKS Traffic Engineers out of Portland, the number is 503-243-3500 and the website is also listed on the document too. Applicant stated they should call them and verify for themselves exactly how the process took place.

City Attorney interjected by stating they could not gather new evidence.

Applicant discussed Goal 10 and affordable housing.

Applicant responded to the Mayor's previous statement, on how he didn't like the documents produced because they mirrored other documents. Applicant stated there was conformity because all requirements of the Garibaldi Municipal Code have been met and that was the conclusion of the professionals. Applicant went on to say that even Planning Chairman Findling stated they have met all the requirements of the Garibaldi Municipal Code, but it was not the right time for it and he just didn't like it. Applicant highlighted that is not a requirement for a no vote.

Mayor Hall discussed Tillamook County minimum wage and affordability of the apartments. Applicant clarified and discussion was had regarding section 8 housing. Ron Halter noted that they cannot refuse a section 8 housing voucher if all other screening requirements have been met.

Mayor Hall requested that if the facility is built, he would like to know there is a commitment in writing or something that it will be maintained over time.

Applicant responded to the Mayor and stated that what he feels personally about the future of the apartments are not a part of the discussion.

Cn. Wandell stated she had a few questions. Discussion was had regarding environmental assessments regarding soil tests and landslides. Discussion was also had regarding the Comprehensive Plan.

Cn. Findling mentioned the 40% rule and noted she didn't quite know how to word a question, but it was of concern to hers as it was brought up by the LUBA remand. Discussion was had regarding this issue.

City Attorney clarified that all LUBA said was that it did not resolve the issue at all and it's incumbent on the city to look at the evidence and decide and then tell the public and LUBA that the criteria was not satisfied.

Applicant's council commented that in the LUBA remand it was clear, as the City's attorney has stated, the issue with the standard was the findings that were adopted by the city. She directed them to page 31 of the draft condition that is being proposed in the staff report that addresses the issue. She noted in the draft report there's a condition that the developer shall have the option of removing two spaces or submit new calculations indicating that the site's not exceeding the 40%. She stated the issue was not whether or not the project met that, but that LUBA could not connect the dots when it was reading through the findings. It does not mean that there was not sufficient evidence in the record, it simply means that the decision itself did not connect those dots and that is what the board remanded back.

Cn. Findling was still confused on how it became part of the record if LUBA couldn't find it.

Applicant's council commented that she pointed them to these conditions because of the questions that came up earlier. She explained that once this goes through the land use process, it is not the end of the process. She noted that if the applicant becomes the permittee, and does not comply with these conditions, the city has enforcement authority to enforce these conditions. She gave the example that under this condition if the developer or the applicant were to not comply with the 40%, and didn't demonstrate that they wouldn't have their engineering plans approved in the first place, and even if they if they did, and they did not adhere to those approved plans, the city would have the authority to enforce some of that.

Paula Tucker commented that she was told the record was closed and there was no new information provided. She stated she was upset after reading the report online, she felt that it was telling her that the decision was already made. She then questioned why there was a discussion regarding the 40% if it wasn't covered prior to LUBA.

Mayor Hall replied by stated, as the city attorney knew, he was angry the document was posted online.

Carolee North began to give comment and stated that she had served on the Planning Commission for many years and in the past, they had an attorney or a city planner at these types of meetings. After being informed they were present, Ms. North

stated that they were not helping them to get through this process. They are not saying that is evidence that was not included in the original document.

City Attorney noted that it was hard for her to hear. She stated what is not in the record should not be discussed. She noted it was hard to know when she can't hear what's being said, whether something's being referred to that is in the record or not in the record.

Mayor Hall questioned why the second staff report was being accepted, because it was new information.

City Attorney reminded council they were in the middle of a hearing and it should be progressing and currently the applicant is testifying. Therefore, no one should be talking except for the Applicant or council members who have questions for the Applicant.

Mayor Hall stated the Applicant had completed his statement.

Mayor Hall raised concerns about the the second report submitted by Walt Wendolowski and referred to it as new evidence.

City Attorney stated it should not be referred to as a report. She explained they got direction from LUBA that what the Council decided was legally insufficient. What staff provided them was a legally sufficient draft decision; not a report and it was not new evidence, it drew from evidence in the record and put it together a different way that would be legally acceptable to LUBA. She stated based on what's been submitted so far, they may need to revise the findings to address testimony argument that's been received so far. She noted from what she had heard there hadn't been any new evidence submitted.

Mayor Hall stated that Cn. Findling had pointed out that documents were not posted online. City Attorney stated the full 38-page draft decision of findings was available online. Mayor Hall was referring to the 1200-page documents that council had reviewed and kept referencing. City Attorney noted that it is available for public review if the public wants to come in and look at it or if a public records request is provided. She continued by stating the entire land use record is not something that is posted online.

Mayor Hall stated he was going to move forward with the agenda.

6. Proponents' arguments (no new evidence) – None

7. Opponents' arguments (no new evidence)

Carl Kopacek questioned the City Attorney if referencing the LUBA remand was considered new evidence. City Attorney responded that was the direction they were operating under. Mr. Kopacek stated there were two pages he sent to city council and he was curious why it was not on the website. It was noted they were part of the packet. Mr. Kopacek stated there was a letter from the Applicants attorney on the website that was posted at 5pm. Assistant City Manager Longfellow responded that she was instructed for any documentation that was given to include it in the packet, if it was received in time. So that's why it was in the packet. She noted she had only received Carl Kopacek's and Nathan Finding's before the packet was created. The other two documents were received after the packet was created, posted, and distributed, so that was why they were posted separately online as they were received.

Mr. Kopacek asked if he could state what he said in his letter and stated he copied verbatim from LUBA's remand stating why this didn't meet the code or the Comp Plan and he noted they did not even rule on the Comp Plan, but they did cite exactly what happened at the Planning Commission. He asked to read what LUBA stated in their remand and Mayor Hall read it out loud and then asked if Mr. Kopacek had anything else to add. Mr. Kopacek's said they support single family homes. Applicant interjected and stated that was new evidence. Mayor Hall stated he was making a statement.

Linda Bade stated that her comments were not in opposition as they have been, but she had concerns about several aspects of the project. She discussed landslides, retaining wall, stormwater, Planning Commission's role. She stated if you have to put 15 conditions on something, there's got to be something wrong with the project. She expressed concern for the process for permitting and noted it had adversely affected a previous investment of hers.

Helen Wright made comments and began to personally attack the Applicant and the Mayor stepped in to address it.

Cn. Findling referred to the comments made by Linda Bade and acknowledge that everything she said was verbatim to the letter that was provided in the packet and she wanted it noted for the record.

8. Applicant Rebuttal (response to prior arguments)

Ron Halter gave comment expressing they know how to be good landlords and addressed concerns about Garibaldi growing and

changing because of the apartments. He noted the City needs the density the apartments provide. He also noted the current apartments are filled with good people. He stated they don't want to hurt the city and their project will not, it will make it better with good people, young families and workers for the City's service industry and customers for businesses. He requested the council judge them on the basis of their existing record with the current apartments and not of the dark imaginings of what might be from the new 66 apartments.

9. Final Council Questions (for clarification, not new evidence/testimony)

Cn. Riggs stated she wanted to correct the record on pg. 45 and stated that what she told Commissioner at that time was if they did not approve it, that they needed to cite the code, where it did not meet the criteria. So now almost a year later, she got the codes and the things that we the council should have had last year and the same goes with Judith Parker's 20-page letter that she received a few hours earlier. She also stated that these two pieces of information would have been very helpful to the council back last summer when it was remanded to them.

Mayor Hall noted when he had asked for the final report from the Planning Commission he was told the document was being edited and therefore he never saw it and it was not included in the council packet for that particular month and he wanted it on the record it was something Cm. Parker, Cm. Findling, Cm. Cooper and Cm. Inman did provide.

Cn. Findling asked if they were comfortable saying they would be eliminating this staff report and only utilizing the original staff report.

Mayor Hall stated his understand from the City Attorney was that the report is going to have to be revised given the discussion tonight.

City Attorney responded by stating that staff is going to want some time to look through the testimony that came in today, clearly rejecting any evidence that may have been submitted accidentally, and responding to any argument that may not already be addressed in the findings. She noted that was really a question for Wendolowski.

Wendolowski stated he did not have anything that he would need to revise.

Mayor Hall replied by stating that he thought that staff needed to consider the issues that were raised, specifically about the capacity of the water, the issues related to the traffic study, and landslides.

10. Close Hearing and Record

City Attorney stated that the testimony portion was over, and they could close the hearing and the record, so they could move into deliberations.

Mayor Hall responded that they would not be going into deliberations and closed the hearing and the record at 8:39 p.m. He noted there was too much information presented and he wanted council to have time to discuss everything that was heard and said during the hearing. He reiterated that he had a problem with the staff report that was written without his knowledge or the knowledge of the council and only given to them a few days before this hearing. He then adjourned the meeting.

B. Council deliberation and possible decision

None.

IV. ADJOURNMENT

Mayor Hall adjourned the special council meeting at 8:40 p.m.

Tim Hall, Mayor

ATTEST:

Lori Longfellow, Assistant City Manager