

City of Salem, Massachusetts



**"Know Your Rights Under the Open Meeting Law, M.G.L. c. 30A ss. 18-25 and
City Ordinance Sections 2-2028 through 2-2033."**

The City Council Committee on Ordinances, Licenses and Legal Affairs co-posted with Comm. of the Whole
met remotely via zoom on Thursday, January 26th, 2022 at 7:00 P.M.
for the purpose of discussing the matters(s) listed below. Notice of this meeting was posted on
January 24th 2022 at 8:19 am

(This meeting is being recorded)

ATTENDANCE

ABSENT WERE: None

ALSO IN ATTENDANCE: COW: C McCarthy, C Watson-Felt, C Morsillo, C McClain, C Merkl, C Hapworth, City of Salem: Tom Daniel, Planning, B Rennard, City Solicitor; Other: Fmr W5 Councillor Josh Turiel

SUBJECT(S)

- Waterfront Industrial Overlay District Zoning Ordinance Amendment
- Zoning Ordinance Amending buffer zones relative to marijuana establishments

C McCarthy suggested that the agenda be taken out of order; C Cohen moved that the agenda be taken out of order, seconded by C Varela; Chair Riccardi stated that the Zoning Ordinance Amending buffer zones relative to marijuana establishments can be taken up first.

Zoning Ordinance Amending buffer zones relative to marijuana establishments

C Riccardi noted that this matter was brought to OLLA to provide time for members of the council to ask questions regarding the Zoning Ordinance Amending buffer zones relative to marijuana establishments submitted at the Jan 13th council meeting by the Mayor. Members of the council were able to speak with the city solicitor, and the matter needs to be sent back to council for the Public Hearing vote by next Thursday. If any other changes are needed they can be discussed at the JPH.

C Cohen moved that the matter be referred to the full council with the recommendation for a public hearing with the planning board. Seconded by C Varela.

C Cohen - Yes C Dominguez - Yes C Prosniewski - Yes C Varela - Yes C Riccardi - Yes

5/0 Passed to refer back to council with the recommendation to refer to the planning board for a public hearing

Waterfront Zoning Overlay District Amendment:

C Riccardi noted a brief background to the matter in the committee -

C Turiel provided background to how his zoning amendment was drafted – the owners of Shetland properties in Spring 2021 filed with the state plans to develop approx 1,500 residential units on the property. The plans were withdrawn, but this worried many. C Turiel feels that the only tool to stop this many units is to remove the PUD by-right in the zone.

Tom Daniel provided some additional background around the history of the ownerships attempt to engage with the community, which started early in the summer in 2021 after Turiel submitted the amendment to council. The idea for the city to lead the process was agreed to by the owners of Shetland, and this past fall the scope development was worked though with a consultant and the Shetland owners. It was slightly revised as there was a lot of background research already completed. There will be a robust Community engagement process, probably 6-7 months; Work will be led and managed by the city utilizing a consultant company, which will be paid for by Shetland owners. There will be additional studies and work done by the owners. Meetings have begun between the owners, the city, and the consultant. The work has started to form.

C Morsillo noted she is concerned that this is a reactionary zoning change. She understands that this was a way to get people to the table though. She asked if the PUD was removed could the owners move forward with a friendly 40B? Tom Daniel noted it would need to be a friendly 40B and it would have to be done with the help of the city. Under the 40B process, the Zoning Board is the permitting authority (not the planning board, as if it was a PUD) Procedurally it would look different, but we would work with them.

C Cohen stated that this is a misconception that if a PUD was removed, it is not fully removing the option for housing. A friendly 40B for example may not be the worst case.

C Merkl asked if there are any limits with a PUD for units ,etc? T Daniel noted a PUD is permitted via the Planning Board; there are no specific limitations and it is site driven – there is specific criteria the planning board looks at. The one item is height that the standard of 45 feet for the industrial zone could not be changed by the planning board.

C McCarthy noted he is encouraged that the owners want to come to the table and have meetings. When they filed with the state for up to 1,400 units, after a call from the Mayor, and by noon they withdrew the application. The city has lots of tools for development. He asked Tom Daniel what those conversations with the owners have been like. We need to understand that they are willing to work with us; what kind of commitments we have received. T Daniel noted that the owners see the value and the need to go through the community process to build the trust that is needed. T Daniel could not speak to great detail what their plans are as we have not gotten to that point yet – but he believes they are looking at a mixture of uses. They also understand the vulnerability of the site, and he feels they are committed to the process.

C Hapworth noted that this is reactionary, but that is how we have been planning for the past 40 years. Just because this is reactive, that doesn't mean it is not good to change. C Hapworth asked if this could be considered spot zoning?

B Rennard noted that back in September 2021 she sent out a memo to Council addressing question this with some facts around spot zoning. Spot zoning is when you single out certain parcels for the benefit of the owner. Reverse spot zoning is when you are taking away a right that they have now. Cases were noted in her memo. Some included research and rational. What is the reason and justification for what you are doing? That needs to be answered before she can provide an answer.

C Varela noted that he is encouraged that the owner is interested in working with the community. He noted some past behavior from the owner that makes him nervous about what will happen in the future.

C McClain noted he has not received any communication from the owners of Shetland Park and that they need to earn the trust of the community. He asked what other Properties were considered similar to Shetland Property? Or does this WIOD and PUD just cover Shetland? B Rennard noted other sites: Footprint, New England Power, the MBTA property, and a few other industrial sites that could adopt the WIOD. T Daniel noted the WIOD is currently only adopted by the Shetland property site.

C Morsillo asked if we don't make this change, will the owners immediately file tomorrow again for 1,400 residential units? What other permits are needed? Is this PUD item our only control that we have, or are there other items?

T Daniel noted there are a few different triggers and controls; MEPA needs to be filed with the state; Chapter 91 needs to also be filed; Infrastructure (Engineering reviews) needs will also need to be permitted and approved by the city; T Daniel did not note the specific permits, but those are at the top of his mind.

C Watson Felt comments that she feels this is a loophole in the ordinance that needs to be changed, and we need to take a long-term approach to this. We don't know that the owners will commit to the work on the site, and the engagement with the neighbors. 1,400 units at this site will be detrimental to the area. If we don't remove the PUD, what do we sacrifice on the approval and permitting level? B Rennard noted that this removes the tool of Planned Unit Development. T Daniel noted there

are additional commercial uses that will not be allowed if the PUD was removed. C Watson Felt noted that it sounds like if the PUD was removed, then housing is not entirely off the table.

C Cohen noted the resiliency of the project is very important. A letter from the lawyer is not the same as reaching out to the city about working together. He feels the PUD and other items needed through the state are not enough. He does not feel we have enough options.

C Riccardi noted that if the tool is not working; it should be the tool that is corrected. She does not feel we would be put in a good position by changing zoning reactionary and we need to put research into changes. The community engagement process for the future of this property is critical.

PUBLIC COMMENT:

Harrison Schell: 170 North Street, Salem; Does not feel that housing is needed in Salem and wants to close the loophole. Notes that the former owner of Shetland was Mr Lappin; Mr Schnell does not want more luxury apartments at Shetland, or a Wholefoods. Or a hotel. He pays \$1,400 for a one-bedroom apt. He also feels the city just approves projects without input. He also feels North Street could use more Development; a laundry mat, a restaurant, etc is needed. He thinks Shetland Park should be mixed use. Cummings Center has 47 residential units.

Christine Madore: 28 Federal St, #8, Salem: Wanted the council to think if we are setting precedent of changing zoning based solely on a concept or idea. Has this ever been done before? Have we ever immediately zoned a use out because we don't like a project? The conversation tonight has been focused on a project, and not the neighborhood. If you really want to disallow the PUD then be very careful that you may be opening yourself to a lawsuit. Also, if you no longer have the PUD process, you are removing the tools that the PUD provide. If you don't like the tool, fix the tool ; Do not focus on the intent of the specific developer.

Geoff Millar; 29 Boardman St, Salem; Echoed what C Madore said. We are only here because of a ridiculous proposal by the property owner. There is no way this would have been approved by the city boards. This is reactionary and can be setting us up for a lawsuit. The Shetland property is hard to get to and eliminating housing doesn't make any sense as some housing would make sense.

Steve Kapantis; 23 Wisteria Street, Salem; The addition of saying no to PUD does not eliminate housing. We do gain that if there are conflicts Chapter 91 remains. He also states this is not reactionary as this has been in front of the council for 9 months. He stated the owners have not been amenable and willing to work with the public. He hopes this is removed from committee for a full vote from the council

C Turiel noted that the Cummings Center is similar. There are only 72 residential units on the site there, on the perimeter of the complex. These were additive to the commercial usage; no commercial use was removed. He would rather see the owners be forced into working with the city, then be granted anything by right.

C Riccardi asked Tom Daniel where the project at Shetland Park stood today – has anything been submitted? T Daniel noted that he has seen plans, but nothing has been filed; we are talking about starting fresh with the owner, starting the process to engage with the community and discuss what they want, to do research and collect data for a vision that can be supported. Mixed use has been discussed, but the details have not been refined at this point and will come out of this process.

C Dominguez noted that the conversation needs to continue and the process needs to include major community conversation as the neighborhood nearby will be greatly impacted. He does not want the neighborhood destroyed as it is the most vulnerable in the city. He is glad to see that the conversations will begin and wants them to be very transparent.

C Cohen asked about the plans that have been shown around that included 900 residential units – were they rental units or condos? T Daniel noted that that level of detail has not been discussed yet.

C Prosniewski asked about the Planning Board vote (8-0 to *not* adopt the amendment). T Daniel was not in the meeting, but spoke with some members and the summary is that they felt this is not how a zoning amendment is typically enacted; they also had confidence in managing the PUD process. C Prosniewski asked if the city has more or less control if the PUD is removed? T Daniel noted that if the PUD was removed, there are fewer uses that the property owner could consider.

B Rennard noted what the process is; 90 days after the close of the Public Hearing a vote by council would be needed. If this goes past the 90 days (No vote taken by the council) , the process could just start again (a new filing, notice, public hearing, etc). IF this is adopted by council with two passages, it is adopted. IF this is NOT adopted by council (voted down) then the same amendment cannot be brought back for two years per MGL.

C Watson Felt feels that this is not a reactionary response as this has been in front of council for almost a year and the blanket PUD is a problem and needs to be fixed. She asked if we were to move forward with removing the PUDs, are we covered? Is there something that could provide protection for the city? B Rennard noted that the three options noted above are all possible.

C Cohen asked for confirmation that if this fails at council, we cannot vote on this again for 2 years. B Rennard confirmed. If the council does not take a vote, the dialogue can open again.

Attorney Bill Quinn (represents Shetland Property owners) Spoke: he stated that the details of the project are not known. Once his client saw the reaction of the community, they pulled back. The engagement process has died out the past few months as they are working on what the details on community engagement will be going forward. They want to be working with the city to fashion a project that works for everyone. He believes this is spot zoning if this is enacted. We are open to discussions.

C Morsillo noted that this was originally filed as a way to bring the developer to the table for discussions, and that has been accomplished. But the additional work needed to change zoning – the planning process itself to support this change – has not been done.

C Merkl is looking for a more formal agreement with the property owner. C Hapworth is concerned that we need to get this correct right now – this is not one project, as the owners will change again at some point. He is open to resubmitting something similar with well thought out language. He requested confirmation of when the clock runs out. B Rennard confirmed Feb 14th. C Turiel showed plans from a Nov 2021 neighborhood meeting.

Motion: To keep the matter in committee. Made by C Varela Seconded by C Dominguez

Discussion included possible next steps: Leaving in committee with have the matter expire; something new can be submitted, or the process can be started again on the same.

RVC: C Cohen Yes C Dominguez Yes C Prosniewski Yes C Varela Yes C Riccardi Yes – Passed 5/0 to keep the matter in committee.

On the motion of C. Cohen Seconded by C Varela the meeting adjourned at 9:20 P.M.

RVC for adjournment C Cohen Yes C Dominguez Yes C Prosniewski Yes C Varela Yes C Riccardi Yes



(Chairperson)