

City of Springfield  
Work Session Meeting

MINUTES OF THE WORK SESSION MEETING OF  
THE SPRINGFIELD CITY COUNCIL HELD  
MONDAY, NOVEMBER 22, 2004.

The City of Springfield council met in a work session in the Jesse Maine Meeting Room, 225 Fifth Street, Springfield, Oregon, on Monday, November 22, 2004 at 5:31 p.m., with Mayor Leiken presiding.

ATTENDANCE

Present were Mayor Leiken (5:34pm) and Councilors Ballew, Fitch, Lundberg, Ralston, Woodrow and Pishioneri. Also present were City Manager Mike Kelly, Assistant City Manager Cynthia Pappas, City Attorney Joe Leahy, City Recorder Amy Sowa and members of the staff.

1. Ballot Measure 37 Discussion.

City Attorney Joe Leahy presented the staff report on this item. The City of Springfield, like Eugene, Lane County and other cities and counties throughout Oregon is considering whether to enact an ordinance to implement Ballot Measure 37 (BM37) which would require under certain specific circumstances payment of compensation to present owners of real property if government land use regulations reduce the fair market value of their property. The City Attorney's office, together with representatives of the Development Services Department and the Public Works Department, has prepared a draft ordinance for council discussion and consideration. BM 37 contains some very specific requirements, however, it does not specify the process, the funding, and leaves open a number of other questions. In the absence of any interpretation by the Oregon legislature or case law, the proposed ordinance attempts to address issues of process, funding and other unanswered questions. There is no guarantee that any approach enacted will withstand judicial scrutiny or be consistent with any enactment of the Oregon legislature. Undoubtedly there will be further revisions and tweaking required.

Identified financial impacts include but are not limited to processing the Ballot Measure 37 Demand, paying Ballot Measure 37 claims, impact of property values/real property taxes, if any, on properties which are the basis of Ballot Measure 37 Demands and neighboring properties, and potential attorney fees and court costs.

Development Services Director Bill Grile said this is to determine what Ballot Measure 37 means to the City of Springfield. Mr. Grile said City Attorney Joe Leahy and city staff have done a lot of work on this issue. During the League of Oregon Cities (LOC) Conference in Portland, cities were told not to be in a panic about BM37. That is the status at the staff levels, but there are serious things to look at and pay attention to. Mr. Grile turned the discussion to Mr. Leahy.

Mr. Leahy said he sent letters to council and encouraged them to call him at work or at home if they had questions and he would be happy to discuss this issue. BM37 was passed by the voters and cities need to determine how to implement this measure. Legislature may have some impact on this draft ordinance and some refinement. Case laws will be made that will have some impact and some refinement on the proposed ordinance. In the meantime, cities have a mandate from the voters to implement something which implements BM37 and that is what the ordinance is designed for. There are a lot of approaches to this measure. Some cities are doing nothing, but the City Attorney and city staff felt something should be in place as cases arise. There is no guarantee this

is the right approach or the wrong approach. There is no guarantee that everything within the ordinance will be found to be legal by a court. It is their best effort to blend the mandate of BM37 with the requirements for processing applications in the City of Springfield.

Mr. Leahy discussed the issues listed in the agenda packet. The first issue is whether or not to adopt an ordinance. Staff and the City Attorney recommend council does adopt such an ordinance. The second issue is whether or not to require a demand application and staff recommendation is that they do require a demand application. There is no authority in the statute which specifically says the city can have an application and no authority in the statute that says the city cannot have an application. The argument for an application is that in order to process a claim, the city needs to have some idea of what the claim is regarding. The argument against having an application is that the voters have determined that people whose property has diminished in value shouldn't have to take any further action to bring their claims to the city that has sponsored the regulation or the governmental agency that has sponsored the regulation and it is the city's responsibility to do that for these people. Some feel the property owner should not have to take additional action when the state has put forth this requirement.

Councilor Ballew said anyone who files a claim with the city, must fill out an application and this is not different. The city needs to have a valid claim that is justified showing the applicant is entitled to compensation.

Mr. Grile said if the requirement standard is waived without knowing if it is a qualifying claim, it opens this up to challenges by third parties, such as neighbors that are aggrieved by the action.

Mr. Leahy said the third issue is the fee to be charged. One approach is to require a fee based on an evaluation of the city's costs. A second approach would be to compute the city's costs and bill the property owner afterwards. If it is not paid, an assessment could be levied. One possibility with that option is to waive the fee if it is determined that the claim is valid. The City Attorney and staff suggested blending the two by charging a fee, but if the fee were unpaid or paid, the city would do a computation. If the computation proved that the applicant owed more than the city billed them, the city would bill for the additional amount. If the computation proved that the applicant owed less than the city bill them, the applicant would receive a refund. If the applicant refused to pay the fee, the city would have a computation and could attempt to place a lien on the property to get paid. The third possibility in that option is that if it is determined that the claim is valid, the city would waive the fee. In the draft ordinance before council, the fee waiver is not listed in the event the claim is proved valid. Consensus by staff is that the city waives the fee if the claim is determined to be valid, but the choices are up to the council.

Councilor Woodrow asked Mr. Leahy if the court would award the fee cost to an applicant who filed a demand which was found to be valid in court.

Mr. Leahy said they might as an element of their cost. The statute specifically provides for attorney's fees and expert witness fees. It could also include appraisal fees.

Councilor Woodrow said if someone has a legitimate claim, they shouldn't have to pay a fee. If they do not have a valid claim, they should pay the fee.

Councilor Ballew asked if there was something that was parallel to this issue.

Mr. Leahy said torte claims; however, we do not charge a fee, but send them to the insurance company. Talking with the attorneys of this measure, the cases filed against cities for demand will contain some basic information. An analogist situation was the torte claim. In a torte claim situation, information is given to the city so the city can research the matter to know if they have a potential problem and this is similar.

Councilor Ballew said she was having difficulty understanding why the city would charge a fee. If the claim is valid, there would be a refund, but if it is invalid, they would have to pay.

Mr. Grile said the city does not know how many claims we may receive or if we will receive any frivolous claims. If we received a number of frivolous claims, it would have an impact on staff.

Mr. Leahy said the city may have to pay for an appraisal. The ordinance is designed to give as much public notice as possible notifying neighbors and holding a public hearing.

Councilor Ballew discussed up front court fees and how that is similar to what staff is proposing in the ordinance. If a person's claim is valid, they would be refunded.

Mr. Leahy said some citizens may choose not to pay the fee, but the process will continue. Staff will compute the time and expenses and be prepared to file a lien. In the event it is proven to be a nonvalid claim, the city will be in a position to charge if the court or legislature allows it.

Councilor Ralston said there should be cost recovery.

Mr. Leahy asked if he was suggesting cost recovery and doing away with the up front fee.

Councilor Ralston said that is his position.

Mr. Leahy said that is what staff will need direction on this evening.

Councilor Pishioneri said the torte claim also goes to another entity and the city does not have to process it.

Mr. Leahy said staff still processes it with the help of the insurance company, or the attorney of the insurance company.

Councilor Pishioneri said if someone files a claim on the basis of BM37, we have upfront personnel costs and immediate costs to prepare a response. He would support recovering those costs by charging a fee. If the claimant prevails, they would not bear all of the cost. It could be considered a security on the claim that is refundable on prevalence.

Mr. Leahy said he is hearing that Councilors Pishioneri and Ballew would approve a process claim fee and Councilor Ralston using the computation. All three would agree to a refund.

Councilor Lundberg said she is not clear what the citizen would file against the city on this demand. She asked for a couple of examples and the spirit of the measure, which is that people would not lose value. If they have to pay to file their claim, they would be losing more if they failed.

Mr. Grile gave an example of an unimproved piece of property owned by the same family for years. Years ago a factory was allowed on the property, but now it is zoned residential. That is the type of situation that Measure 37 in its simplest form would address. He gave another example that was much more complicated. There are many things to evaluate and to consider, such as compatibility and neighborhood impacts. Springfield does not have money budgeted for this.

Councilor Ballew said the city could have a nominal filing fee that is not refundable for clerical and receiving. As costs go up, the citizen may or may not be charged. This would make people think before coming in with a frivolous claim. Beyond that, the city should accumulate costs for staff time for extraordinary expenses. Sort the expenses and determine beyond the basic filing fee what should be chargeable and what should be absorbed.

Mr. Kelly said Bill VanVactor, Lane County Administrator, indicated to Mr. Kelly in an informal meeting that the county would not consider any claim unless there was a complete application with platting and review. He gave an example. The review would determine what things the person can and cannot do on that property. They would also go back to reestablish the rights and regulations the person had 50 years ago to assess the true value of that property.

Mr. Leahy said there doesn't appear to be any specific language in BM37 that allows that and it is one step closer to onerous requirements than where the city is. The application by the city according to Page 5 of the ordinance requires a statement specifically identifying all of the sections in the code or other land use regulation that allegedly restricts the use of the property. That is not provided for by BM37. We are using them as a basis for the claim. Mr. Leahy read from Section (6) of the proposed ordinance. It did not make sense to the City Attorney and staff to require someone to go through a development application because they will get there at some point. Staff believes some people will file applications and will be denied because of certain regulations. Rather than negotiating from a firm position, staff may have to ask the applicant what the minimum relief is needed to make this work. Some may be able to be handled in the way staff has traditionally handled them. He discussed what Lane County is doing regarding this measure.

Mr. Grile said whether someone can do something on their property or how they can do it are two different things.

Mayor Leiken said BM37 does not eliminate SP100, the Metro Plan or other planning areas of our community. The Lane County Commissioners need to be careful with their position. The city needs to be careful and not go with a hard line, but work with citizens who may have a valid or invalid claim. This community has done well by being above the fray.

Councilor Ralston said he is comfortable with the ordinance.

Councilor Woodrow said he likes the pre-meeting because a lot can be resolved at that time. If the city does their job right, there will be a limited amount of claims. He discussed the costs to the property owner for an appraisal.

Mr. Grile said the property owner does not have to cooperate with the requirements of this ordinance to meet the statute, but simply submit a demand letter explaining how they are aggrieved by the regulatory action and what kind of relief they want. It would help their position if they produced the information called for in the ordinance.

Mr. Leahy said once the demand letter is submitted the 180 days begins. It is a question of whether or not the city is confident that the judge would say that the landowner would have to comply with the requirements of the city's ordinance or if the landowner is confident that the judge would say they did not have to comply. Mr. Leahy said he believes the city will get information to make it work, but if not the city would still have to evaluate the claim to determine what could be done before the 180 days passed. If the city were to go past the 180 days, they could have to go to court and pay attorney fees which could be higher than the claim.

Councilor Ralston said he is not sure why council is debating all of this. He read from page 4 in the ordinance. Nothing is stated anywhere about how anyone should go about doing this, so the ordinance is very reasonable.

Councilor Ballew said we have a fiduciary duty to be sure we are paying a valid claim. That is a higher duty than making sure someone is compensated. There has to be some type of determination. She suggested that the language of the ordinance should specify calendar or business days when referring to days. She discussed classification of property for taxation and assessed value.

Mr. Leahy said he would specify the 'days' and would check into the assessed value.

Mr. Grile said there are thousands of acres of rural residentially zoned property in Oregon getting a designated Forest Lands tax deferral.

Councilor Ballew asked who would track property ownership in cases where there are first trustees, etc.

Mr. Leahy said that question is unanswered in the statute. The city will require a title report issued within the last 30 days, and will notify everyone listed on the title report, the occupant of the property, and the neighbors within 300 feet. In terms of signing the application and handing the check over, that will be done only to the owners of the property.

Mr. Grile said only by council's decision.

Discussion was held regarding change of ownership and trusts.

Discussion was held regarding non-conforming uses, abatements and the City of Eugene's position on this issue.

Councilor Fitch said she is likening it to a game of chess. Whatever we do is preliminary and will be changed in the future. Once there are court cases and it is determined what will be upheld and what will be struck down, changes can be made in our ordinance. She said she hoped the application forms would be available online to reduce staff time. To act on this, it needs to be complete. She agreed with Councilor Fitch that the council has a fiduciary responsibility and must not give money without the obligation. She discussed the benefits of the pre-demand conferences. She said she appreciates that the city is doing something so staff can continue conducting regular business as of December 2 when this measure takes affect. The county will likely see more demands than the city.

Councilor Pishioneri said the LOC document indicates that cities can impose a fee in the ordinance and encourage more complete claims by charging back the time needed to complete the claim. If the city needs to spend additional time to complete the claim, the city could charge for that additional time. The city can help the applicant with those services if they don't have the resources to do that. This would encourage the applicant to have a more complete application.

Mr. Leahy said that is included in the ordinance.

Councilor Ballew asked about the involvement of the council on each claim.

Mr. Leahy said their involvement would be on the recommendation of the City Manager. Council makes the decision regarding the public funds that are spent. That is one of the areas that has been left to the City Council by the courts. If the council states the city cannot afford to pay, the judge will not substitute his or her judgment for the collective wisdom of the City Council regarding whether or not the city can afford to pay or not. That is in the ordinance. Council must also review the case because if the council chooses not to pay compensation, council can modify, remove or change the regulation in question. Hopefully, through the voluntary conference and staff working with the citizen, most of these can be resolved.

Councilor Ballew asked if there was compensation for each of the regulations that have been placed on a property that has been held for a long time.

Mr. Leahy said they do not know the answer. It would relate to all laws prior to when the property was acquired. For later council consideration under Section 10 in the ordinance, council could consider deferring enactment of any new land use regulations.

Councilor Ralston said if the city does their job right, there should not be a lot of consequences. The worst thing that could happen is the city allowing a property owner to do what they want to do with their property which would be added development, adding money to the tax roles. If the use the property owner proposes is in direct conflict with some Federal mandate, which is not the city's responsibility it would be exempt. If we do it right, it could make people happier and encourage them to do it soon.

Mayor Leiken encouraged an ordinance to be put in place and passed. If someone is going to process a claim, it may go to court. He referred to Highway 126 as an expressway and the limited access that has caused for certain properties. He asked Mr. Leahy if the state would have a compensation plan or process in place. Springfield has a number of state highway systems through our community.

Mr. Grile said they will have a process in place.

Mr. Leahy said the circumstances referred to by Mayor Leiken are exempt under public health and safety. That will be a matter that is determined in court.

Mayor Leiken said the state imposes a lot of these.

Mr. Grile said that if the state argues there is an exemption because of a public health and safety issue, they should have something in place to show it is a safety issue. It is difficult to determine how this measure might apply to the city and property inside city limits. The counties have a big

problem ahead because so many of them have high amounts of rural property. Properties in the city limits are different. There are still issues that are unsettled, such as the urban growth boundary (UGB). The question is whether or not a property just outside an UGB is the county's problem or a decision of the Metro Plan. The City of Springfield could be named on an UGB decision that is challenged in West Eugene. There is also the issue of who would be the recipient of claims in the UGB area. In the measure it states that the government that proposes the regulation gets the claim. He discussed property in Glenwood. There are many questions.

Mayor Leiken said the property in Glenwood would most likely not go down in value.

Mr. Grile said new regulations the city is looking into may devalue property, such as the Willamette Valley Greenway. These things need to be thought through.

Mr. Leahy said the area between the city limits and the UGB will be discussed more in the future. The county's initial position is that the city would process those claims and pay them. If there is a waiver, they would have to go to the county for the waiver. This is something city and county staff will need to work out together.

Mayor Leiken said this measure was approved by the voters of Oregon, so it is something the city must deal with.

Mr. Leahy confirmed that council would like a nominal fee based on reality, a charge based on a computation of time spent and a waiver for that if the applicant is successful.

Councilor Ballew asked about a situation regarding duplexes and possible claims.

Mr. Leahy said there might be some claims that occur regarding that issue. There are many opportunities for speculation about how things are going to occur regarding ownership.

Councilor Fitch asked if our insurance coverage would cover these claims.

Mr. Leahy said he did not know and did not want to speculate.

Mr. Kelly said in the simplest form, the city would allow the property owner to do what they want to do with their property or they are compensated. He discussed the value of properties at the time certain uses were allowed compared to the value now.

Mr. Leahy said it is based on the before and after value of the property fixed now.

Mr. Grile said when there was no zoning, the city limits went to 20<sup>th</sup> Street.

Councilor Fitch said Mr. Leahy is available to answer questions or hear comments this week and weekend.

## 2. Annual Community Goal Setting.

City Manager Mike Kelly presented the staff report on this item. Each year the City Council conducts an annual goal setting session to discuss both community goals/actions as well as city goals/actions. The city's goal setting session will take place in January, 2005. The November 22,

2004 work session has been scheduled to discuss community goals that are jointly adopted with our TEAM Springfield partners, as well as the 2005 TEAM Springfield Action Plan and Budget. The Action Plan describes what is planned for the upcoming year. Targets support the accomplishment of the 5 year goals. Both the 5 year goals and the annual targets have been used to prepare the FY 05 TEAM Springfield budget which will be reviewed at an all elected TEAM Springfield goal session in February, 2005.

One of the action items that council may wish to suggest at the February TEAM Springfield goal session is an update of Springfield Tomorrow. It has been five years since completion of Springfield Tomorrow – Third Edition. Updating the community's collaborative vision is past due. The process would involve summarizing community accomplishments, identify pending issues and trends, discussing opportunities and then developing an updated, comprehensive vision statement for the Springfield community. This could be a three month focused process where each agency appoints three to five elected people, citizens or people from their committees to update this document. A citizen survey or analysis could be conducted followed by a public hearing on the updated document.

The 2005 Proposed Targets (Attachment I included in the agenda packet) presents the staff's proposed listing of major activities that should take place in 2005 in order to move the community toward the accomplishment of the 5 Year Goals that have been established by TEAM Springfield.

Mr. Kelly said the City Council goal setting session has been set for January 24, 2005 to discuss council goals.

Councilor Ballew said the Springfield Tomorrow report is not very remarkable. She said we need to raise our horizons and give more of a pictured vision. It is a good report, but lacks something.

Mr. Kelly said he has heard that comment in the past. Council could talk about what types of things to include if they want to become more bold as a community.

Councilor Ralston asked about the current plan.

Mr. Kelly said this is a chance to get input on what council would like to see in this report.

Councilor Ralston said there are some things that have changed over the years. One of those is public safety. Now that the city has passed the new public safety/jail measure, it may be time to look at ways to fund the jail. The issue of addressing public safety has been addressed. He asked what would be the next step. He also asked how the city could expand on the economic development that is occurring in Springfield. He asked if it is stated strong enough in this document that Springfield is a great place to live and if not should that be addressed.

Mr. Kelly said the reason they do the goal setting as group, is to set the broad community goals for the next five to ten years.

Councilor Ralston said we could capitalize that we have a great education system and that Springfield is a great place to raise kids, get a job and live.

Councilor Lundberg said we are looking at TEAM Springfield, rather than city goals. She discussed the accomplishments of the city. Those are large accomplishments, but don't fit inside

the box of TEAM Springfield. Within that framework, the goals become so broad they are watered down because each entity has their own individual goals. It needs to be determined what everyone, or at least two agencies, could participate in within that goal structure. It needs to be determined who will take on certain goals within that structure and who the TEAM Springfield agencies will support. Many of this revolves around elections and which measures will be on the ballot in the future years.

Mr. Kelly said these are not Springfield Tomorrow findings. Springfield Tomorrow was done in 1991 and 1999 and they should be updated. TEAM Springfield has used the results of Springfield Tomorrow to determine what citizens want for their collective future. The Springfield Tomorrow document is a thick document with findings, conclusions and action items. The meeting in February would be the TEAM Springfield agencies getting together with the Springfield Tomorrow scenario in mind to decide what TEAM Springfield could do together over the next two to five years. Council can decide if they want expansion of these goals and bring forward to the other agencies the suggestion to do an update of Springfield Tomorrow. This could then set a new destiny of the future of Springfield. The City Council and the other three agencies set the community's standards. He discussed examples of the goals and how they affect the community. Staff is looking for direction on how to prepare for the meeting in February.

Councilor Fitch said the blue ribbon panel approach to updating this document would be beneficial. Such a panel would have a specific time period and sunset date. TEAM Springfield should look at the Gateway area. There are a number of great commercial properties moving into that area and that area is not currently in the Springfield School District. There is a similar situation in Glenwood. There might be an opportunity to bring those areas into the school district. There is potential in Glenwood for setbacks that could be in public ownership for a pathway maintained by Willamalane. Another key issue in Glenwood is undergrounding the power lines which is something SUB could consider. There is the new plan that includes areas in Gateway and Glenwood. There are bigger issues to consider. It may be the time to make the bold statement for higher end housing to create a better mix of meeting the needs of lower income up to getting higher income housing to pay more in taxes. All entities would benefit. The citizens would benefit more if all agencies work together.

Councilor Woodrow said some of the one year targets have already been implemented. He asked if new one year targets should be suggested.

Mr. Kelly said that is correct. This is a living document and should be changed as time goes on.

Councilor Woodrow said he agrees that a blue ribbon panel would be the best idea.

Councilor Lundberg approved of updating the plan, but was not interested in a blue ribbon panel unless a survey was done. The survey would show the trends of the community.

Councilor Pishioneri asked for criteria of the Opportunity Fund.

Mr. Kelly said staff could provide that for him.

Councilor Ballew said the charts outline the three biggest issues. The document is something we could live with. She asked if we would be better served to find something that would increase the

assessed value of property in Springfield. Each entity could look at what they could do to reach that goal.

Mayor Leiken said each agency in TEAM Springfield is responsible for separate things, yet the city has responsibility to the community as a whole. When the skatepark was being proposed, Councilor Lundberg was very involved. City Council has been involved in many aspects of the community. The goals in the TEAM Springfield document need to remain broad. He gave examples of council being involved in other agencies' issues. He said that Mr. Kelly has chosen to be in the background and provided the Mayor and Councilor with information to speak for the community. The blue ribbon panel is a good idea, but the survey information is especially important. Town hall forums are depleting because people are busy. The community does respond to telephone polling and that is one of the best ways to communicate with our citizens and obtain good information.

Mr. Kelly said if anything comes to mind, let him know. During the January 24, 2005 council goal setting session, he will ask councilors for additional TEAM Springfield goal suggestions. He will check in with council in later January for other ideas. Every other month the Chief Elected Officials get together with the Chief Administrative Officers for TEAM Springfield discussions. The Chief Administrative Officers of the TEAM Springfield agencies get together every month. Mayor Leiken will attend the December TEAM Springfield meeting and can test the issue of whether or not the other agencies are supportive of the idea of updating Springfield Tomorrow. There is a certain sensitivity to the community setting priorities.

Councilor Ballew said another survey and panel may not be affective. She would prefer having something for people to react to, instead of something so open. It is not focused enough. She discussed Booth Kelly as a great community resource that has not been used as it could be.

Councilor Fitch agreed. It is time to take what has been learned from the survey and paint a bold statement for reaction. She discussed PeaceHealth, University of Oregon and Oregon Health Sciences University (OHSU) and looking at how they could impact our community as a whole.

Mr. Kelly said he is suggesting the update would be set according to community emphasis and looking at the environmental scan. Take the information and paint a picture of Springfield's future. He discussed the difference between predicted future and preferred future. It is Springfield's job to look forward and look how to make the preferred future rather than predicted future. That could be threatening to some agencies.

#### ADJOURNMENT

The meeting was adjourned at 7:02 pm.

Minutes Recorder – Amy Sowa

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Sidney W. Leiken  
Mayor

Attest:

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Amy Sowa  
City Recorder