



## Legislation Details (With Text)

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Agenda Date: 02/07/2017

**Subject:**  
Littleton Crossing Project - council discussion and consideration of future public meeting

Presented By: Mark Relph, Acting City Manager

### POLICY QUESTION:

Does city council support any future action with the proposed Littleton Crossing development project?

### BACKGROUND:

In 2013, Littleton City Council approved the rezoning of 5591 South Nevada Street from R-5/PDO to PD-R increasing the density to allow the development of 72 multi-family residential units. Previously, the property was zoned for density up to 37 units per a Planned Development Overlay (PDO). The property was the former site of St. Mary's School which was broken into an east parcel (5592 South Nevada), and west parcel (5591 South Nevada) by Camelback Development, who purchased the property from St. Mary's. In 2007, Camelback obtained PDO approval to develop both parcels into three-story multifamily residential buildings. Phase I (the east parcel) was developed with 31 units. Phase II (the west parcel) was never completed.

In 2012, Camelback sought to rezone the remaining property to allow for higher density. Camelback requested a rezoning to allow for 72 multiple family one-bedroom units which it planned to market to "young professionals." The Planning Board (the "Board") reviewed the proposed rezoning and planned development plan and voted 5-2 to recommend council deny the project. The Board cited concerns related to parking and lack of two-bedroom units as reasons for the unfavorable recommendation.

In contrast, Planning Staff recommended approval of the rezoning stating that "[the] proposal will provide housing for a younger population who desire smaller housing units and closer proximity to transit." Staff asserted that the rezoning supported a diverse mix of housing options for residents of all ages, incomes, and family structures, and the size and density of the project was consistent with "the desired character of the

Mixed-Use District.” Staff recommended as a condition of approval that the developer conduct a parking study to evaluate the project’s impact on “on-street parking in the R-5 zoned area” before a building permit could be granted. Under that condition, the City of Littleton will be required to implement a residential permit parking district if the impact on the “Old Downtown Neighborhood” exceeds 30 additional cars during the peak parking period. In 2013, council approved the rezoning 6-1 with the condition recommended by staff.

The west parcel was never developed, but recently Summit Housing LLC, purchased the land from Camelback to develop the parcel. The proposed Littleton Crossing project meets all of the zoning criteria from the 2013 rezoning. Only two aspects of the Project have changed from the 2013 presentation to council: the addition of two bedroom units and the targeted demographic is now mixed income with some units eligible for Section 8 housing vouchers.

With formal council approval in 2013, the development moves to an administrative process for the Site Development Plan (SDP) and the building permit. Per city code, the city is required to approve the SDP and the building permit once all of the conditions are met. Once approved, the project could proceed to construction.

During this administrative process, the city received considerable public comment questioning several aspects of the project. Council also raised questions; most notably in the January 24, 2017 council study session when the 2013 council action was questioned relative to the parcel meeting minimum size requirements for a rezone.

Staff has taken this opportunity to make a technical review of the 2013 process and identified three issues. These include the minimum lot size required to proceed with a rezone, what types of space are included in the calculation of “Open Space,” and the number of parking spaces required per residential unit.

The city’s development code requires a minimum lot size of four acres when considering a rezone request, but allows surrounding areas to be included in that calculation depending upon zoning classifications. It is staff’s interpretation today that 5591 South Nevada Street, now the Littleton Crossing Project, did not meet that requirement for rezoning and therefore, could be considered non-compliant with the code.

It is important to note the staff today was not with the city in 2013 and therefore, recreating the record from past documentation has been incomplete. Today’s staff does not have a thorough understanding of the 2013 methodology that used when the rezoning went forward. This is important because that prior methodology was apparently used in multiple locations throughout the city over the course of several years. Staff are in the process of creating an inventory of such properties, and attempting to seek additional information from former staff that may shed more light on the prior analyses of rezoning applications during that time period.

The second issue involves the calculation of open space that is required for this Project. It appears the 2013 approval allowed the square footage of each unit’s deck to be included in the required calculation. The previously developed east parcel was also allowed to include individual unit deck area as part of its open space calculation. It is staff’s interpretation today that despite previously being allowed for both the Littleton Crossing project and the already developed east parcel, a better interpretation of the code will not allow such inclusion on applications in the future.

The third issue has to do with the required amount of on-site parking for the Project. It is staff’s interpretation of the code applicable to a rezone requires the number parking spaces be calculated based upon a ratio of 1.5 spaces per unit. However, in 2013 Council approved PD-R that explicitly allows for a ratio of 1.07 spaces per Unit. The project as proposed complies with this aspect of the approved PD-R. As stated with the other two issues, the rationale for approving such an approach is not apparent in the written record.

Council has received a large amount of correspondence from the public, many suggesting, among other recommendations, that the council not act based upon threats of litigation. It should be noted that to date, the only threats of litigation have come from an attorney claiming to represent some citizens (yet unnamed) that are opposed to the project. The council is receiving a separate, confidential and privileged memo from the Acting City Attorney, which outlines a variety of potential legal claims and liability exposure to the city based upon various actions that might be taken. While the substance of that legal advice is privileged, it can be stated that in cordial communications with the owner's attorney, there have been discussions about possible legal actions that might be taken if the city takes action that interferes with staff's administrative obligations with respect to the project at this point in time. Council has also recently received a letter from an attorney who claims to represent unnamed citizens and business persons which likewise expresses these unnamed clients exploring potential actions that may be taken against the city if the project is not halted. The city may be subject to legal action regardless of how it proceeds, and the confidential memo will address these legal issues in more detail.

#### **STAFF ANALYSIS:**

The staff has proposed at a minimum three options for council consideration and action. Those options include;

- 1) Allow the project to proceed as originally approved by city council in 2013
- 2) Consider immediate action to address any or all of the identified code issues appearing to be non-compliant with today's interpretation of the city code
- 3) Direct staff to engage in negotiations with the developer in an effort to achieve an outcome that addresses the 2013 code issues; set a public meeting allowing for public comment, sets a date certain for a council decision on possible actions.

#### **FISCAL IMPACTS:**

See the Acting City Attorney's confidential memo to council.

#### **STAFF RECOMMENDATION:**

It is staff's recommendation to proceed with option three and set a date for March 7, 2017 for council to provide final direction. This allows for some level of negotiation regarding the three identified issues and other possible options. Under this option, the SDP process would pause until at least the March 7 council meeting, at which time staff could present the outcome of the negotiation.

Setting a March 7<sup>th</sup> council meeting for the purpose of providing direction to staff would also allow more time for staff to complete three tasks; 1) provide a more thorough review of the 2013 council action and how that contrasts with staff's current interpretation of the code, 2) complete an inventory of other rezoning actions that may also have been taken pursuant to a an interpretation of the code different from that held by the staff today, 3) prepare additional legal analysis based upon the results of 1 and 2, plus the outcome of the negotiations.

Staff is also recommending a public meeting prior to the March 7 council direction, to provide input on this topic. While the public meeting could occur at the March 7 council meeting, it is staff's recommendation to hold the meeting one week prior to March 7 (TBD) for several reasons. This public meeting would have an evening dedicated for public comment on this topic. The meeting would be advertised, recorded and televised. It would be staff's intention to invite the developer to the meeting.

The record of the public comment prior to council providing direction on March 7 would allow a more thorough staff review (i.e. technical and legal). The record of the meeting would be included in the formal agenda for March 7 and would be accessible to the public.

#### **PROPOSED MOTION:**

I move to direct staff to attempt negotiations with Summit Housing in an effort to seek resolution of outstanding issues, set a date certain of March 7, 2017 for council direction on possible actions, and direct the city manager to conduct a public meeting approximately one week prior to March 7 to obtain public comment on the Littleton Crossing project.