

The Portland Tribune

Judge rules City Council misspent \$17 million in water and sewer funds

By Jim Redden

June 22, 2017

Multnomah County Circuit Court Judge Stephen Bushong rules city must repay water and sewer bureaus for spending not authorized by the City Charter

Multnomah County Circuit Court Judge Stephen Bushong has ordered the City Council to repay Portland's water and sewer bureaus more than \$17 million for ratepayer funds spent on projects in violation of the City Charter.

Bushong issued his ruling Thursday, five years after lawyers representing ratepayers filed a lawsuit that charged the council had spent utility money on projects not authorized by the charter. Although Bushong ruled the majority of the challenged spending was justified, the amounts covered in Thursday's ruling are the vast majority of those still in contention at the end of the lengthy suit.

The largest amount was over \$5.5 million spend on a reservoir project in Powell Butte not related to the reservoir itself. It included over \$1.2 million spent on a visitors center.

Other notable expenditures include a little more than \$2.5 million in pass-through funds for Portland Parks & Recreation, over \$2 million spent renovating Dodge Park in Clackamas County, and nearly \$1.3 million spent on the public toilets known as Portland Loos.

Bushong also awarded bureau overhead charges for the disputed projects and 4 percent interest.

The council will now decide whether to appeal the ruling. The City Attorney's Office had argued the council has wide discretion to determine how ratepayer funds are spent. The ratepayer attorneys had said the spending must support the primary purposes of the bureaus. Bushong ruled early in the proceedings the spending must be "reasonably related" to the missions of the bureaus.

Ratepayer attorney John DiLorenzo characterized the ruling as "great news." He said the total would have been even higher if Bushong had adopted his standard.

The City Attorneys Office issued a statement that was more restrained:

"The City is extremely appreciative of the efforts of the court over the past five years. The court has given close and careful attention to the issues presented. We are gratified that the judge has upheld almost 90% of the expenditures at issue, including those relating to the Portland Harbor Superfund Site. There are also important questions raised in this case about the authority of the elected City Council to decide how best to operate the City's water and sewer systems. We are reviewing the judge's decision with our clients and will advise Council as to whether there are important legal issues that should be reviewed by the appellate courts."

DiLorenzo said if the city appeals the ruling, he will, too, arguing for the stricter primary purpose standard.

The Daily Journal of Commerce

OP-ED: Pay equity law will impact Oregon workplaces

By Amy Angel

June 22, 2017

On June 1, Gov. Kate Brown signed into law Oregon's Equal Pay Act of 2017. The act requires employers to compensate employees based on their current skill, responsibilities, knowledge and working conditions. Specifically, the act prohibits differences in pay because an employee is a woman, a minority or a member of certain other protected classes. It also seeks to disrupt the cycle of pay inequity based on past discriminatory pay practices by prohibiting employers from seeking or using past pay history as a factor in setting compensation.

Equal pay requirements

The Equal Pay Act makes it an unlawful employment practice for an Oregon employer to discriminate between employees on the basis of race, color, religion, gender, sex, sexual orientation, national origin, marital status, veteran status, disability or age in the payment of wages or other compensation for work of comparable character. Work of comparable character means work that requires substantially similar knowledge, skill, effort, responsibility and working conditions (including work environment, hours, time of day, physical surroundings and potential hazards encountered by an employee) in the performance of work, regardless of the job description or job title. Compensation includes wages, salary, bonuses, benefits, fringe benefits and equity-based compensation.

Despite these restrictions, an employer may pay employees for work of comparable character at different compensation levels if the difference in compensation is based entirely on a seniority system, a merit system, a system that measures earnings by quantity or quality of production (including piece-rate work), workplace locations, travel (if travel is necessary and regular for the employee), education, training, experience, or any combination of these factors. However, these factors must account for the entire compensation differential.

Employees who believe they have been discriminated against in violation of these equal pay restrictions will have a private right of action beginning Jan. 1, 2019. Employees may recover up to two years of back pay and may seek additional compensatory and punitive damages.

However, an employer may assert a limited affirmative defense to avoid compensatory and punitive damages. To prevail in the affirmative defense, the employer must prove that, in the three years before the employee files a lawsuit, it completed an equal pay analysis of its pay practices in good faith that was reasonable in detail and scope in light of the size of the employer, related to the protected class asserted by the plaintiff in the lawsuit, and eliminated the wage differentials for the plaintiff and has made reasonable and substantial progress toward eliminating wage differentials for the protected class asserted by the plaintiff. If the employer prevails in asserting the affirmative defense, the employee may only recover back pay for the two-year period immediately preceding the filing of the lawsuit and his or her costs and reasonable attorney fees.

Salary history restrictions

The Equal Pay Act also prohibits employers from screening job applicants based on current or past compensation, to determine compensation for a position based on current or past compensation of a prospective employee, or seek the salary history of an applicant or employee.

However, an employer may consider the compensation of a current employee during a transfer, move or hire of the employee to a new position with the same employer. An employer also may confirm prior compensation after the employer makes an offer of employment to a prospective employee that includes an amount of compensation. The restriction on seeking salary history goes into effect on the 91st day after the Legislature adjourns – so by Sept. 9, 2017. BOLI will have authority to enforce this provision and issue civil fines for violations. On Jan. 1, 2024, employees will have their own private right of action if employers seek pay history information.

Both the equal pay requirements and restrictions on relying on salary history apply to all employees who perform work in whole or in part in Oregon. When work is performed by the employee only partly in Oregon, these restrictions apply if there is an employment contract entered into in Oregon or if payment is ordinarily made (or will be made) within Oregon.

Time to act

Employers should immediately cease seeking pay history from applicants so that no inquiries are made about pay history beginning Sept. 1, 2017. Because the rest of the law does not go into effect until Jan. 1, 2019, employers have time to review and adjust current pay practices to comply with the act. Employers should strongly consider performing an equal pay analysis and correcting any practices that are not in compliance with the act. Should an employer find that it needs to make adjustments in compensation for current employees to comply with the act, the employer may not reduce the compensation of a higher-paid employee but instead must increase the compensation of the lower-paid employee.

The Equal Pay Act and practical steps for employers will be specifically addressed at Barran Liebman's breakfast seminar on July 11. Anthony Kuchulis will discuss this and other key employment laws from Oregon's 2017 legislative session. Space is limited and people interested in attending should visit www.barran.com to learn more and register.

Ankeny Apartments still in limbo despite mediation, revised plans

*By Kent Hohlfeld
June 22, 2017*

The Ankeny Apartments project's tortured path through the Portland City Council took another turn Wednesday that left developer Landon Crowell's proposal still in limbo.

The council extended Crowell's appeal of the Portland Design Commission's denial of project plans to Aug. 9.

"I am speechless," Crowell said directly after the hearing.

Crowell and Yost Grube Hall Architecture presented to the City Council revised plans that would reduce the height of the L-shaped building on Southeast 12th Avenue to 58 feet from 75 feet, increase setbacks from neighboring property lines and eliminate two residential units. Also, the building's lobby would move to Southeast Ankeny Street from 1th Avenue.

The revised plans ran into two major hurdles. The first was that the project team had not presented the Bureau of Development Services with detailed documentation for review. Without that documentation, the new design could not be evaluated in regard to issues such as city code, zoning and design guidelines.

Another issue concerned whether an 18-inch setback on the north elevation was sufficient.

The new design was a result of mediation with the neighborhood association and neighboring homeowners.

“We thought we did what was asked and more,” Crowell stated via email Thursday morning. “However, council was using a moving target.”

The changes were enough to satisfy the Buckman Community Association and neighbors south of the project site.

“During mediation, the neighbors were offered the opportunity to redesign the building,” Crowell stated in the email. “They asked for cedar finishes, which we complied. We made attempts to conciliate with the neighbors to the north, but they were unresponsive.”

However, neighbors with properties in the elbow of the L-shaped development were still unhappy with its design.

“The building still doesn’t meet the guidelines,” Priscilla Sturges said during the meeting. She has owned the house at 112 S.E. 12th Ave. for 40 years and has consistently criticized the project. “We have no privacy, no guarantees about who will pay for possible damage to our property. Destabilizing neighborhoods like this is a blight on Portland.”

While commissioners expressed generally that the changes were a step in the right direction, Commissioner Amanda Fritz said the setback of the north elevation should be greater.

“For me it doesn’t go far enough,” she said. “There has been some good movement. It is in everyone’s interest to get to yes.”

That is one area that the City Council and Crowell agree. If his project is rejected, he said, a bigger project would likely surface next year when height limits in the area increase.

“My development partners and I will either be forced to resubmit next year or another developer will submit by next year should we sell,” Crowell said. “Either way, the neighbors will end up with a bigger development next to them and net zero (energy use) is a fantasy.”

Commissioner Chloe Eudaly summed up many of the commissioners’ opinions.

“The appellant has made a good faith effort with the neighbors,” she said. “I think some of the neighbors wish this whole thing would go away, and that isn’t going to happen.”

Another concern was raised by Commissioner Nick Fish.

“Are we setting a precedent where a developer could refuse to work with Design Commission, come to us, opt out in effect and create a second process through a community negotiation and have the council make the findings?” he said.

The City Council looked at several options, including approving the design with conditions, denying the appeal or continuing the hearing to allow city staff to evaluate revisions.

In the end, the council decided to continue the hearing to Aug. 9 and await the staff’s evaluation as to whether the new design meets the guidelines. That leaves the project’s ultimate fate largely in the hands of the Bureau of Development Services.

“I almost feel like I am at a Design Commission hearing,” senior planner Tim Heron said.

Ankeny Blocks project could be a rejuvenator

*By Garrett Andrews
June 22, 2017*

GBD Architects thinks a mixed-use project awaiting its building permit could blaze a trail for other residential projects in Portland's Old Town.

"The most exciting thing is, Skidmore/Old Town, it has this great nightlife, lots to do at night," GBD principal Agustin Enriquez said. "But no one really lives there. In an era where every other area in Portland is absolutely on fire in terms of development, Old Town really hasn't seen much new development."

230 Ash, formerly known as "3rd and Ash," is the first of the Goodman family's proposed **Ankeny Blocks** projects – 11 buildings with the potential to reshape a 30-block area in downtown. This month, the family's **Downtown Development Group** received approval for 230 Ash from the city's **Historic Landmarks Commission**. Construction is scheduled to start in November.

The site is a half block along Southwest Ash Street between Southwest Second and Third avenues. Enriquez said the new building will fit well amid the vibrant scene on Second Avenue, next door to Kells Irish Restaurant and Pub and 1-year-old Pine Street Market.

The building will be six stories with 133 apartments – a 50-50 mix of studios and one-bedroom units. There will be a rooftop tenant amenity, underground parking for 63 vehicles and 8,600 square feet for restaurants.

Designing a building for a nationally recognized historic district like Skidmore/Old Town was interesting, Enriquez said. This type of district is relatively uncommon, he said, and the firm's architectural approach was a bit different for this project than those in areas where GBD predominates, such as the West End or Northwest Portland.

"The hope for this project is it will usher in the next chapter for Old Town with a density of residential use that doesn't yet exist much," Enriquez said. "So understanding the historic context, the design effort was tuned to finding a solution that is visually compatible with the existing buildings, but doesn't trivialize the reality that it is being built in contemporary times."

GBD has its hands full at the moment with a number of high-profile projects in development, including the Oregon Square superblock in the Lloyd District.

230 Ash

Owner: Downtown Development Group

Architect: GBD Architects

Contractor: Lease Crutcher Lewis