

# Apartment project envisioned as Bayside centerpiece appears dead

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By Randy Billings

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A view of Somerset Street in the Bayside neighborhood of Portland, the proposed building site for the Midtown project. *Staff photo by Derek Davis*

The ambitious Midtown project – once seen as a transformational development for Portland’s struggling Bayside neighborhood – appears to be dead after missing a key deadline Saturday and losing city approvals.

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And the project now may be headed back to court over who is responsible for the millions of dollars invested in the long-delayed development.

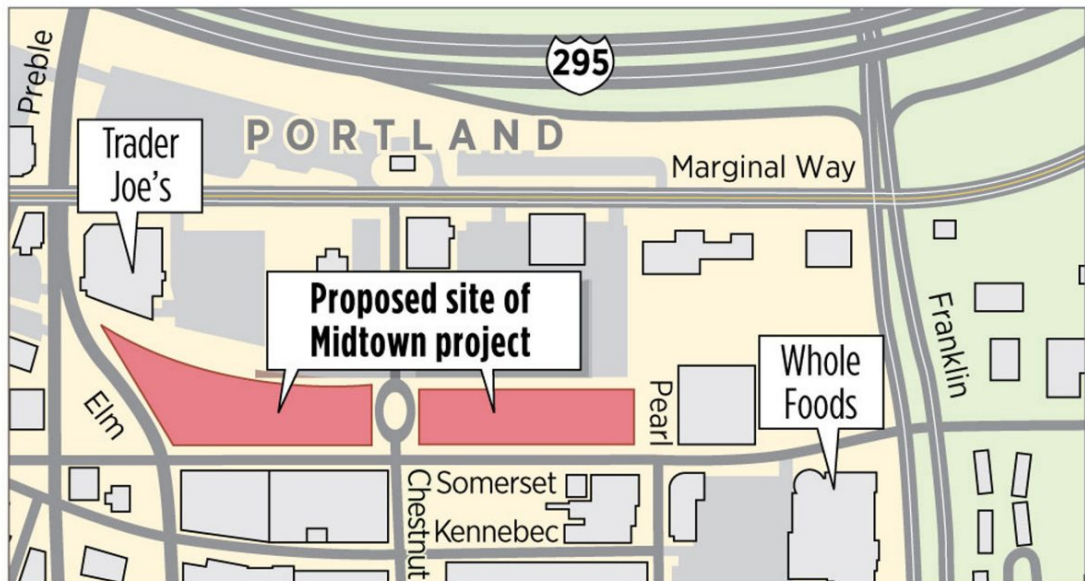
Midtown’s developer, Federated Cos., had promised to build hundreds of housing units on a site once occupied by industrial scrap yards along Somerset Street. The \$85 million project was delayed for years by local opposition and a lawsuit before being scaled down and winning

city approvals three years ago.

Federated, however, did not officially file for a building permit until last month to begin the first phase of construction – an 840-vehicle parking garage. And it failed to secure the permit before Saturday, triggering the expiration of city approvals for the entire project, including 445 apartments in three buildings with retail storefronts on the ground floor.

City officials said Monday that they denied the building permit application because Federated failed to pay more than \$80,000 in traffic mitigation and other costs and did not post a required performance guarantee, which is a standard condition of all developments in Portland. Federated Cos. contends the city had waived the performance guarantee requirement, and that it was prepared to pay the fees.

Federated could appeal the city’s denial or reapply for its approvals, but the developer said in a written statement Friday that it plans to sue the city, alleging a breach of contract and seeking financial damages. On Monday, the company put the city on notice to preserve records related to the dispute.



STAFF GRAPHIC | MICHAEL FISHER

Portland has taken “numerous steps to impede the progress of the project,” Patrick Venne, who represents the Florida-based developer in Portland, said in a written statement Friday. “We are very disappointed with how this process has concluded, and are left with no option but to commence litigation against the City to enforce our rights and protect the significant expenditures associated with our commitment to this project.” On Monday, Venne said that Federated will not appeal the denial.

Both Federated and the city have invested in the project.

Federated Cos. paid \$2.2 million to the city for 3.5 acres of vacant industrial land on Somerset Street in 2016. Company Chairman Jonathan Cox has said the company invested another \$2 million or more into the project during the planning and review process.

Portland, meanwhile, received \$8.2 million in federal loans to help finance the project. The city has so far transferred nearly \$1 million of those funds to Federated to cover permitting and design costs, and has paid more than \$252,000 in interest on loans. Portland could be forced to repay the loan if the land is not developed in a way that creates jobs.

City Manager Jon Jennings and other city staff pushed back Monday against the accusation that they are to blame for the expiration of the approvals. As Midtown has languished over the last seven years, millions of square feet of new development have been built in the city, Jennings said.

**January 2014:** The original 'midtown' proposal would have built up to 850 new apartments in Bayside.



**March 2015:** In response to a drawn-out court challenge, developers eliminated hundreds of apartments, but as of May 2016, construction had yet to begin.



“There’s this narrative that’s been created that is completely untrue,” Jennings said. “And frankly, it angers me to no end that this developer tries to paint city staff as the culprit for the reason why we don’t have a Midtown project. There’s a hundred other developers that could have pulled this off by working cooperatively with us and following the rules and regulations.”

The city began working with Federated Cos. in February 2011. Its initial site plan, which included about 800 units of housing in four 165-foot towers, was approved in January 2014, but challenged in court by a group called Keep Portland Livable.

Federated Cos. scaled down the project to settle the lawsuit and received its site plan approvals in March 2015 to build three, four-story apartment buildings and a parking garage at 59 Somerset St.

In 2015, Federated floated the idea of converting some of the housing units into a hotel. That prompted the city to declare their contract as void and Federated threatened to sue. The impasse was resolved and Federated closed on the property in June 2016.

The developer had three years from receiving its site plan approvals to apply for and obtain building permits before that approval expired.

Federated submitted its application for a building permit on Jan. 30. But Planning Director Stuart “Tuck” O’Brien said they did not pay the nearly \$173,000 application fee to begin the review process until Feb. 16, giving staff about a month to review the application.

As the March 24 deadline loomed, Federated and city officials continued to dispute the requirement of a so-called performance guarantee, which ensures that there is money to finish a project in the event a developer quits midway through.

Venne provided emails from June 2016 between himself and O'Brien, who lays out the remaining conditions that needed to be met for a permit to be issued. In his two emails, O'Brien does not mention the guarantee, leading Federated to contend that the city waived that provision.

"The city has taken numerous steps to impede the progress of this project and today refused to issue a building permit on the basis of our alleged failure to meet a single condition with heavily disputed applicability," Venne said in Friday's written statement. "This condition was previously waived and multiple attempts to meet with the city manager to discuss this and other time sensitive issues over the last few months were entirely ignored."

O'Brien said he did not mention the guarantee in his emails because he was only discussing the 100-plus additional conditions placed on the project by the Planning Board. He said that such guarantees are a standard condition for all projects and must be provided before a permit can be issued. The city cannot waive those fees, he said.

Planning and Urban Development Director Jeff Levine stressed the importance of performance guarantees. Without them, developers could quit midway through a project and leave roads, sidewalks and other public infrastructure unsafe or impassible.

Jennings said the dispute over the guarantee is just one example of Federated trying to sidestep city rules.

"This has been their act from the very beginning – that they have felt as though they should be treated special and therefore we would not hold them accountable the way we do every single other project in the city," Jennings said.

Jennings said he began to doubt the company's financial capacity to carry out the project after receiving requests to draw down funds from the federal loan. The most recent request was to cover \$11,444 in property taxes and nearly \$270 to cover fees associated with incorporating the holding company for the land, neither of which are allowable uses of the money, Jennings said. City officials say Federated is currently up-to-date on all taxes. And Jennings said Federated has yet to provide a letter from a bank showing it has financing for the project.

Venne, however, said the company has followed the financing rules and met its obligations, and that the city failed to keep up its end of the arrangement by providing financing when it was requested.

In a Jan. 31 email to city officials, Venne said that the city's refusal to provide a \$164,000 disbursement, as requested in September, had "significantly impaired and complicated our efforts to move this project forward in a timely manner." Failure to provide that payment put the city in default of its contract, Venne said.

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