

DAVID C. NOREN
Attorney at Law
217 E. Main P.O. Box 586
Hillsboro, Oregon 97123-0586
Telephone: (503) 640-2661 Fax: (503) 648-7216
e-mail: david@norenlaw.com

February 12, 2014

HAND DELIVERED

Council Clerk Karla Moore-Love
1221 SW Fourth Avenue, Room 130
Portland, OR 97204

Re: Park Avenue West Casefile LU 13-214772 DZ/MS/AD
De Novo Hearing February 12, 2014

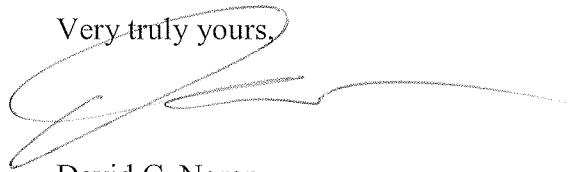
Dear Ms. Moore-Love:

Enclosed for distribution to the council and inclusion in the record are seven bound copies of "Materials in Support of the Appeal." Most of the material was submitted to you electronically yesterday (my letter with attachments totaling 32 pages) or this morning (letter from Housing Land Advocates board member Ellen Johnson). In addition there are copies of written testimony by two union members, Adela Maza and Gricelda Tellez, who are expected to testify orally this afternoon.

Please distribute the bound packet to the mayor and commissioners so they will have hard copies available for the hearing.

Thank you for your assistance and courtesies.

Very truly yours,

A handwritten signature in black ink, appearing to be 'David C. Noren', with a long horizontal flourish extending to the right.

David C. Noren

Enclosure

ORIGINAL

BEFORE THE CITY COUNCIL OF THE CITY OF PORTLAND

Casefile LU 13-214772 DZ/MS/AD (Park Avenue West Tower)

De Novo Hearing February 12, 2014

Appeal by SEIU Local 49

Materials in Support of the Appeal

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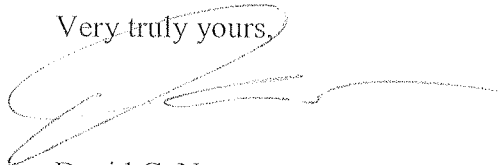
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David C. Noren

Enclosure



February 11, 2014

Portland City Council
c/o Council Clerk
1221 SW Fourth Avenue, Room 130
Portland, OR 97204

Re: Park Avenue West Casefile LU 13-214772 DZ/MS/AD
De Novo Hearing February 12, 2014

Dear Mayor and Commissioners:

Housing Land Advocates (HLA), a non-profit organization, advocates for land use policy and practices that support the development of affordable housing in sustainable communities. HLA supports the appeal in this case. The master plan proposal to transfer density, in the form of FAR credits owned by the City, should not be approved unless the new development includes some level of affordable housing in compliance with the policies adopted by the City for this area, the Central City Plan and the 2011 Analysis of Impediments

The City's use of its FAR credits for other city programs, such as the development of new parks, may support laudable goals but results in a lack of compliance with prior enacted policies that support and require the development of affordable housing in the Central City District. Density transfers of city-owned property should be limited to the achievement of policy goals involving housing and not treated as a fungible asset to be used in achieving any goal. In the absence of a formal plan implementing the policies within the Central District, including those addressing affordable housing, the City Council should review all developments for compliance with those policies.

STANDING

HLA has standing to participate in this hearing because it may be adversely affected or aggrieved by the city's decision. HLA is a 501(c) (3) organization comprised of land use planners, attorneys, housing advocates and practitioners that advocates for land use policies and practices that ensure an adequate supply of safe, decent and affordable housing for all Oregonians. Because the city has both a regulatory role in deciding whether to approve the master plan and a proprietary role as owner of the development rights that would be transferred, this case presents a rare opportunity for the City of Portland to take affirmative action to increase the supply of affordable housing in the downtown core. The city's failure to capitalize on this opportunity would adversely affect HLA's efforts to provide more affordable housing.

NEED FOR AFFORDABLE HOUSING

The Portland downtown core is especially underserved by affordable housing. Both residential sale prices and rents are higher than in the city at large. This forces lower wage workers who



work downtown to live farther from work. As a result, the lower wage workers experience higher transportation costs, are segregated into areas of lower opportunity and do not experience the benefit of public investment in an equitable manner. The lack of affordable housing has a disproportionate impact on racial minorities and the disabled. (2011 Analysis of Impediments p. 144-148)

THE RATIONALE FOR AFFORDABLE HOUSING IN THIS CASE

The transfer of floor-area ratio (FAR) across a right of way in the Downtown district is only allowed as part of an approved master plan. This application is therefore subject to the approval standards for master plans in 33.510.255.E, which require the applicant to show that “the proposed plan is consistent with the policy objectives of the Central City Plan.” Those Plan policies include Housing Policy 3.C, *“Encourage the development of housing in a wide range of types and prices and rent levels.”*

When it approved the application, the Design Commission adopted a finding that this housing policy was “aspirational,” stating that “these aspirational statements using wording such as ‘encourage’, ‘promote’ and ‘foster’ are not meant for each and every development project and every City regulation to fully meet.” Notwithstanding the Design Commission’s finding, even if the policies are “aspirational”, the policies clearly define the City’s goal for the district—a wide range of types and prices and rent levels. As such, all developers are on notice of this goal. The legal issue appears to be whether and when the City may require a developer to include affordable housing in project.

The applicant has sought and apparently received a significant public benefit from the City, a density transfer. The granting of the density transfer, a benefit that is solely within the City’s control, is rationally related to promoting the housing policies within this district. In the absence of any specific administrative rule governing the use density transfers, the City is required to use them to achieve the housing policies it has adopted for the district. It is required to do so because the use of the City’s property and assets should only be used to achieve a public goal or benefit. Use of the density transfer for any use other than housing actually defeats the Housing Policies and would therefore be contrary to the public benefit or goal identified in the Central City Plan.

THE IMPACT OF NOT REQUIRING AFFORDABLE HOUSING

The city is the recipient of millions of dollars annually in federal block grants and other funds that require compliance with the federal Fair Housing Act. As a recipient, the city must certify that it is working to affirmatively further fair housing, promote integration and reduce segregation, not just in its public housing programs but in all its programs that affect housing, including planning and zoning.

The lack of an equitable distribution of affordable housing in Portland is acknowledged as an impediment to fair housing. (2011 Analysis of Impediments p. 144-148) The City is legally



obligated to act, when it can act, to affirmatively further fair housing. In this specific instance, the granting of a density transfer for a residential development, in an area of the City that lacks affordable housing, presents an opportunity to address proactively an impediment to fair housing. In the absence of any significant barrier to doing so, the City must require some level of affordable housing in the applicant's project or risk violating its obligation to affirmatively further fair housing.

The City lacks a comprehensive policy that would guide its staff in the use of density transfers to promote actions that would comply with its obligation to affirmatively further fair housing. HLA recommends the City adopt such a policy for use in the future.

CONCLUSION

This application should be denied because it is not consistent with the City's policies addressing affordable housing. In the alternative, any approval should require an affordable housing component.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ellen J. Plummer".

Board Member

cc: David Noren



Portland City Council
1221 SW 4th Avenue, Room 130
Portland, OR 97204

RE: Park Avenue West Tower, LU #13-214772 DZ/MS/AD
Council Hearing, February 12, 2014

Buenas tardes miembros del Consejo de la ciudad de Portland y el alcalde, mi nombre es Griselda Téllez . Yo trabajo como janitor en un edificio de oficinas en el Centro de Portland. Trabajo para la compañía Township United. Yo vivo en Beaverton y tengo que manejar todas las tardes al centro de portland para limpiar las oficinas igual mis compañeros de trabajo. Tengo dos hijos, de 16 y 17. He vivido en Oregon durante 13 años y me mude a Oregon para en busaca de mejor trabajo y sueldo y su familia vivía aquí.

Soy miembro de SEIU Local 49 . Mis compañeros de trabajo y yo estamos aquí hoy porque creemos en buenos empleos y viviendas accesible para todos los trabajadores. Creemos que este edificio no se puede construir sin vivienda accesible para que los trabajadores con salarios más bajos que trabajan en el centro de Portland puedan vivir cerca de su trabajo.

Muchos de mis compañeros de trabajo asistieron a la reunión de la Comisión de Diseño de Portland el 21 de noviembre. Solicité tiempo libre de mi segundo trabajo como trabajadora de limpieza en un hotel, y me dirigí al centro para asistir a la reunión. Nuestro entendimiento era que la reunión sería donde pudiéramos entender por qué la Ciudad de Portland permitiría un edificio de este tamaño que se construirá sin vivienda accesible. También queríamos apoyar a nuestro sindicato que estaba hablando acerca de nuestras preocupaciones. Al asistir a la reunión esperábamos poder enviar un mensaje a los comisionados que nos importa este tema y para que nuestras voces fueran escuchadas.

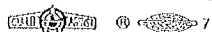
Cuando llegamos a la reunión a las 1:30 nos dijeron que el proyecto que estábamos allí para hablar no se iba tratar hasta de dentro de 2 horas. Nos enteramos de que no hablaran sobre el proyecto hasta casi las 8pm de la noche, 6 horas más tarde. Nosotros no pudimos quedarnos en la reunión de ese día ya que teníamos que volver a nuestras familias e ir a trabajar esa noche.

El proceso con la comisión de diseño limita injustamente la capacidad de los trabajadores para participar. Si no fuera por el trabajo con mi sindicato en esto yo no tengo ni idea de cómo mi voz, y la voz de otros trabajadores con salarios bajos, fueran escuchadas. Si la Ciudad va a aprobar proyectos que afectan las opciones de vivienda para los trabajadores de bajos salarios en Portland, entonces el proceso para aprobar esos proyectos se deben de establecer de una manera que los afectados, especialmente aquellos que puedan verse afectados negativamente por la falta de vivienda accesible cerca de donde trabajamos, y puedan participar. Le pedimos que se incluya la vivienda accesible en este proyecto. Gracias

Gricelda Tellez
2020 SW 196th Ave.
Beaverton, Oregon 97006

SERVICE EMPLOYEES
INTERNATIONAL UNION
LOCAL 49

3536 SE 26th Avenue
Portland, OR 97202-2901
503.236.4949
Fax 503.238.6692
Toll Free 800.955.3352
Toll Free Fax 888.595.7979
www.seiu49.org





Portland City Council
1221 SW 4th Avenue, Room 130
Portland, OR 97204

RE: Park Avenue West Tower, LU #13-214772 DZ/MS/AD
Council Hearing, February 12, 2014

Buenas tardes Consejo de la Ciudad de Portland y alcalde Charlie Hales. Me llamo Adela Maza. Soy miembro de SEIU Local 49. Yo soy una inmigrante de Guatemala. Hace más de 30 años que me mudé a Portland en busca de una vida mejor.

Yo trabajo dos trabajos en el Centro de Portland. En la mañana, trabajo en un hotel en el centro, ayudo con el desayuno. En la noche, soy janitor de ABM, limpiando edificios.

Vivo en Gresham. Vivía en la 15 y Hawthorne, pero aun que trabajaba dos trabajos, no podía pagar la renta para seguir viviendo allí. Me mudé a Gresham porque es un lugar más barato. Yo sé que la mayoría de mis compañeros de trabajo en el hotel y de janitors tampoco pueden vivir en el centro de Portland – ellos tienen que vivir afuera, viajando desde lugares como Gresham, Hillsboro, y Aloha.

Yo gano para mi misma, mi hija y mis nietos. Basado en mi sueldo, tengo que tomar decisiones difíciles pagando la renta, comida y comprando materiales de escuela para mis nietos.

Trabajando de noche en el centro significa que yo salgo a las 2 am. Y para esa hora no hay transportación. Vivo afuera de la ciudad, si no me lleva un compañero de trabajo, tengo que esperar hasta las 4 de la mañana para tomar el primer tren que sale. Tengo que esperar en lugares como Subway porque no hay otros lugares que estan abiertos. Cada noche hay trabajadores como yo que salen del trabajo y no hay transporte. Yo veo a ellos sufriendo en el frio.

En algunas ocasiones he estado en situaciones aterradoras mientras espero el comienzo del servicio de autobuses. Si la gente trabajadora como yo pudiera vivir en el centro, tendría un impacto enorme para nosotros y nuestras familias.

Necesitamos una ciudad justa y equitativa para todos – no solamente los afortunados. Buscamos apoyo del Consejo de la Ciudad para ayudarnos a construir una Ciudad donde la gente tenga acceso a trabajos buenos, seguro médico y vivienda accesible.

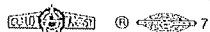
La gente trabajadora y trabajadores de sueldos bajos merecen vivir cerca donde trabajamos. El Centro de Portland no debe ser solamente para los ricos. Yo pido en nombre de las familias trabajadoras a través de Portland que la Ciudad de Portland asegure que este edificio y otros similares tenga viviendas accesibles.

Adela Maza
4725 W Powell Blvd, #107
Gresham, OR 97030

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LOCAL 49

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Fax 503.238.6692
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February 11, 2014

DELIVERED ELECTRONICALLY

Portland City Council
c/o Council Clerk Karla Moore-Love
1221 SW Fourth Avenue, Room 130
Portland, OR 97204

Re: Park Avenue West Casefile LU 13-214772 DZ/MS/AD
De Novo Hearing February 12, 2014

Dear Mayor Hales and Commissioners:

I represent SEIU Local 49. This case concerns a proposed master plan to transfer density, in the form of Floor Area Ratio or FAR credits owned by the City of Portland, from Park Block 5 to Park Block 4, to allow an additional four stories on a previously approved 26-story building. We urge you to deny the application. For purposes of this de novo appeal hearing we are emphasizing four reasons you should deny the application, but we continue to assert all the reasons for denial set out in detail in our three letters to the Design Commission, copies of which are attached.

1. **The application is not consistent with the Central City Plan Policy 3.C to “encourage the development of housing in a wide range of types and prices and rent levels.”**

The applicant, BDS staff, and the Design Commission have all taken the position that this policy is merely “aspirational” and that this individual project does not need to provide a “wide range of types and prices and rent levels.” Instead, they claim this policy is intended to be a general guide for planning the downtown area as a whole. But their position ignores two important facts about this case.

First, this application is for a master plan, which allows flexibility by overriding the specific requirements of the development code, but only if the master plan is consistent with the broader Central City Plan policies. To get the extraordinary benefit of the master plan and FAR transfers, the applicant must show how the master plan is consistent

with even the so-called aspirational elements of the Central City Plan. The application makes clear that the 10 stories of housing will be “high end” and makes no effort to provide for a range of prices and rents. If this were not a master plan project, high-end might be enough. But with a master plan, the project should include the range of rents and prices called for in the Central City Plan.

Second, and of critical importance, is the fact that the FAR credits to be transferred belong to the city. Because the transfer proposed in the master plan uses city property to achieve the additional height, the city is party to the transfer and has an obligation to see that its property is used in a way that is consistent with Housing Policy 3.C. It can and should do so by denying this application and negotiating with the applicant to require that the project include a range of rents and prices as part of the consideration the city receives for the FAR credits.

2. There is no evidence that the owner will transfer the FAR credits; without the credits the proposed building is not allowed at this location.

The city’s ownership of the FAR credits was not addressed until the appellant raised it at the Design Commission hearing on November 21. The only evidence on the issue is an e-mail, dated November 27, from Parks Director Abbaté that states that Portland Parks and Recreation “has no objection to the proposed Central City Master Plan Amendment” but makes clear that “the bonus FAR on Park Block 5 – 0.5 bonus FAR through the ‘water feature/public fountain bonus option’ and 2.5 bonus FAR through the ‘locker room bonus’ is owned by Portland Parks and Recreation.” Mr. Abbaté does say that “PP&R previously has expressed its willingness to discuss with the owner of Park Block 5 and/or Park Block 4 the possible transfer of its remaining FAR, and remains open to that possibility.” But this is not evidence that the transfer *will* occur. There is no evidence that the City Council has delegated its authority to dispose of real property interests to the Director of PP&R. There is not any evidence that the City Council (which does have the authority, within limits, to dispose of real property such as FAR credits) has or will agree to the transfer, or under what circumstances it may do so.

The applicant has the burden of proving that the application meets the standards of the development code, including the FAR limits that would restrict the building to the approved 26 stories. Because there is no evidence that the FAR will be transferred, the applicant has failed to meet that burden and the application should be denied.

3. Approving this application without requiring some element of affordable housing may be inconsistent with the federal Fair Housing Act’s requirement to remove impediments to fair housing, potentially exposing the city to liability concerning its use of HUD funds.

The city is the recipient of millions of dollars annually in federal block grants and other funds that require compliance with the federal Fair Housing Act. As a recipient, the city must certify that it is working to affirmatively further fair housing and reduce segregation, not just in its public housing programs but in all its programs that affect housing, including planning and zoning. While the city may reasonably say that it cannot require affordable housing in every land use case that comes before it, can it fail to require some element of affordable housing under the circumstances of this case and still certify that it is working to remove impediments to fair housing?

This case presents an unusually strong basis for requiring affordable housing. The downtown area has particular high rents and prices that have a disproportionate effect on racial minorities, the disabled, and families with children. If the city fails to take this opportunity, it may have difficulty later demonstrating its commitment to fair housing in all its programs, as required by federal law.

While the Fair Housing Act's requirements are not directly applicable as review criteria, they do provide context for the city's Central City Plan policies on housing, and should be considered in deciding whether this application is consistent with those policies.

4. The City erred in processing this application before the Design Commission rather than the city hearings officer.

33.720.020.B assigns "*all land use reviews subject to a Type III proceeding*" to the hearings officer, with limited exceptions that do not apply in this case. One exception provides that the Design Commission may hear a Type III application for "*reviews in the Central City plan district for height and FAR bonuses and transfers.*" 33.720.202.C.4. However, transfers in excess of 3:1 FAR, or transfers of FAR across rights of way, are allowed (if allowed at all in this subarea) only as part of a master plan. Nothing in the code authorizes the Design Commission, rather than the Hearings Officer, to review Type III Central City master plans. The Design Commission findings indicate that this is a Type II amendment to a master plan, but the application itself states that it is a Type III Master Plan request.

Master plans should be reviewed by either a hearings officer or a planning commission that meets the requirements of state law. Having a specialist body of industry insiders decide whether a proposal complies with the broad planning policies of the Central City Plan is contrary to both the city code and state law.

The Design Commission's failure to follow its own rules of procedure in the two cases preceding this case at the November 21 hearing led to a delay of nearly seven hours between the time for which the hearing was noticed and the time it occurred. SEIU's working members who attended the hearing were unable to wait while the Design

Commission dithered for seven hours over just two other cases. A hearings officer would have followed the rules and the hearing would have occurred in a timely manner.

CONCLUSION

This application should be denied because it is not consistent with the policy to encourage housing in a wide range of types and prices and rent levels, and because there is no evidence that the proposed transfer of the city's FAR credits will occur. SEIU Local 49 is prepared to work with the city attorney to develop appropriate findings in support of denial. The finding interpreting the applicability of the housing policy in this case should emphasize that the transferred property is city property, which requires the city as well as the applicant to act consistently with the plan policies on housing. Such an interpretation is legally sound and would be subject to great deference by any review body, should the applicant decide to appeal a denial.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'David C. Noren', with a long horizontal flourish extending to the right.

David C. Noren

ATTACHMENTS:

1. November 21 Letter from SEIU Local 49
2. November 21 Letter from Noren
3. November 27 Letter from Noren
4. December 5 Letter from Noren
5. November 27 e-mail from Director Abbaté



November 21, 2013

Portland Design Commission
Portland Bureau of Development Services
1900 SW Fourth Avenue, Suite 1500
Portland, OR 97201

Re: Park Avenue West, Casefile LU 13-214772 DZ/MS/AD

Dear Chair and Commissioners:

SEIU Local 49 is a private sector union with close to 10,000 members. Almost a quarter of our members work providing important yet often overlooked services cleaning and protecting downtown office buildings. The core mission of SEIU Local 49 is to improve the lives of working people. Our focus on this mission takes us beyond the four walls of a workplace and encompasses a drive to improve the livability and sustainability of the communities in which our members live.

Livability for our members means access to good jobs, access to affordable transportation, access to healthcare, and, most relevant to the issue at hand today, access to affordable housing.

Janitors, security officers, and their allies are proud of the work they have done to raise standards for themselves and their families. Yet despite that hard work and hard-won industry improvements, the increased cost of living and Portland's ultra-competitive housing market force many of our members to seek housing far from their places of work. Ms. Maza's story, of leaving the city center to be able to put a roof over her head while continuing to perform her service job in the heart of the city, is typical. Adela used to live in inner Southeast Portland, near 15th and Hawthorne; she now lives past 175th and SE Powell. Workers are forced to travel longer distances, often by bus and late at night, to get from home to work. This disparity between affordable housing and job quality forces many of our members to travel upwards of 1.5 hours on public transportation to reach their jobs. Adding insult to injury, the price of bus fare has steadily increased.

The lack of affordable and accessible housing presents a hardship for our membership and all service workers. A project of this size in our central core that seeks the special benefit of density transfers should provide some lower cost housing in return for that benefit. The city should capitalize on this opportunity to require more affordable housing. Failure to do so adversely impacts our members.

SEIU has a long track record related to affordable and accessible housing for all. For many years SEIU has partnered with various social and environmental justice allies focused on making Portland sustainable and equitable. Access to affordable housing is an important piece of that work.

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Fax 503.238.6692
Toll Free 800.955.3352
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Our past efforts have included participation in a diverse coalition of housing and transportation advocates in the Legislature regarding the lifting of a ban on inclusionary zoning that would enable the inclusion of more affordable housing in public projects. Additionally, we have worked with the Community Alliance of Tenants and the Portland Housing Alliance. As part of our broader effort to promote a truly sustainable and equitable Portland, we have been actively involved with the Coalition for a Livable Future and OPAL.

As an organization we are committed to ensuring that Portland is a city that works for everyone. We want to see an inclusive city where all workers can live close to where they work. The working class cannot be segregated out of the sustainable attributes of our city. The city's failure to require elements of affordable housing in this project will therefore adversely affect or aggrieve the members of SEIU Local 49 and Ms. Maza

Sincerely,

Maggie Long
Director of Property Services
Service Employees International Union, Local 49
(503) 236-4949 x 256
maggie1@seiu49.org

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INTERNATIONAL UNION
LOCAL 49

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November 21, 2013

HAND DELIVERED

Portland Design Commission
Portland Bureau of Development Services
1900 SW Fourth Avenue, Suite 1500
Portland, OR 97201

Re: Park Avenue West Casefile LU 13-214772 DZ/MS/AD

Dear Chair and Commissioners:

I represent SEIU Local 49 and Adelaida Maza. This project presents an important opportunity to increase affordable housing in downtown Portland, but the application is being rushed through without participation by the appropriate decision makers and without adequately addressing affordable housing policies. The master plan should not be approved unless it includes some affordable housing.

STANDING

SEIU 49 and Adelaida Maza have standing to participate in this hearing because they may be adversely affected or aggrieved by the city's decision. As described below, the decision to allow transfer of floor-area ratio (FAR) across a right of way in the Downtown district is allowed, if at all, only as part of an approved master plan. The decision is therefore subject to the approval criteria for central city master plans in 33.510.255.E, which require the applicant to show that "the proposed plan is consistent with the policy objectives of the Central City Plan." Those policies include Housing Policy 3.C, "*Encourage the development of housing in a wide range of types and prices and rent levels.*" The application narrative makes clear that the proposed residential use will be for "high end" units, not for a wide range of rent levels. The union's membership, folks like Ms. Maza, increasingly must relocate a distance from the city center in order to find affordable housing, yet the service jobs they perform---as janitors, security guards and similar lower-wage workers --- are often located in the central city, forcing them to

travel longer distances, often by bus and late at night, to get from home to work. The city's failure to require elements of affordable housing will therefore adversely affect or aggrieve the members of SEIU Local 49 and Ms. Maza.

We are including in the record a video disk about Ms. Maza, a union member who works downtown, lives in east county where housing is more affordable, and struggles with public transportation to get to and from her work. Folks like Ms. Maza deserve more opportunities for housing near their jobs.

PROCEDURAL HISTORY

This project was first reviewed and approved in 2007 as a central city master plan under 33.510.255, with related design review under Chapter 33.825 (Casefile LU 07-140633 MS DZM AD). That matter was processed as a Type III review by the Design Commission and went to the City Council on appeal. The project as approved included transfer of 11.7:1 FAR from Park Block 5 to Park Block 4, nearly doubling the FAR for the project site. It also included ten floors of residential use with 84 condominium units. Blocks 4 and 5 were at that time owned by closely related entities, TMT and the Marilyn Moyer Charitable Trust. Block 5 had been acquired for seven million dollars in 2006 but was subject to a deed restriction requiring surface development be limited to use as park, with possible one-story structures on 30% of the area. The transfer of 11.7 FAR authorized by the master plan granted an extraordinary bonus to TMT, since it could not have used the surface of Block 5 for development anyway.

In 2008, Portland Park Block 5 was deeded to the City of Portland.

In 2009 the applicant requested a change to the Master Plan to reduce the project to 26 stories, eliminate the residential use, and transfer some of the FAR (2.6:1) back to Park Block 5. That central city master plan (Casefile LU 09-136017 MS DZ), with only 9.1 FAR transferred from Block 5 to Block 4, was approved by a Type III review by the Design Commission; it was not appealed to the City Council, and remains the approved master plan for the site.

The applicant is now, in 2013, seeking to transfer FAR yet again, back from Block 5 to Block 4, to increase the height to 30 floors, and to again include housing, now 15 floors of rental units. Initially, the applicant did not apply for a master plan review. Its application, submitted on July 19, 2013, was only for design review. The application was deemed complete on the day it was submitted and the matter was promptly processed as a Type II Design Review. SEIU Local 49 submitted written comments requesting that affordable housing be addressed as part of the decision. The application was approved without any review of master plan standards. SEIU Local 49 and Adelaida Maza timely filed an appeal, identifying incorrect processing of the application as one ground for

appeal. The matter was promptly scheduled for an appeal hearing before this Design Commission, but the applicant withdrew the application the day before the hearing.

On the same day, October 9, the applicant submitted the application in this case, seeking a Type III proceeding for both design review and a central city master plan. The signed application form does not identify Park Block 5 as being part of the application, and neither the application form nor the narrative identifies the City of Portland as the owner of Block 5; instead the narrative states that Block 5 is owned by the Marilyn Moyer Memorial Trust. There is no indication in the file that the applicant obtained the consent of the owner of Block 5 to apply for this master plan. The application was deemed complete on October 14, but on October 22 the applicant submitted a revised application form, still not identifying Block 5 as part of the application and not identifying any owners; this form added a Type II adjustment request. The notice of hearing was sent on November 1. A revised narrative was submitted on November 8 addressing the adjustment criteria.

PROCEDURAL ERRORS

1. Type III review of Central City master plans must be by a hearing before the Hearings Officer, not before the Design Commission.

33.720.020.B assigns *all land use reviews subject to a Type III proceeding* to the Hearings Officer, with limited exceptions that do not apply in this case. One exception provides that the Design Commission may hear a Type III application for *"reviews in the Central City plan district for height and FAR bonuses and transfers."* 33.720.202.C.4. However, transfers in excess of 3:1 FAR, or transfers of FAR across rights of way, are allowed (if allowed at all in this subarea) only as part of a master plan. Nothing in the code authorizes the Design Commission, rather than the Hearings Officer, to review Type III Central City master plans. The proper procedure for hearing both a Type III design review by the Design Commission and a Type III master plan by the Hearings Officer is a *"joint hearing before the applicable review bodies"* as set forth in 33.720.020.G.3. The earlier master plan approvals in 2007 and 2009 were approved by the Design Commission rather than the Hearings Officer, but this master plan must now go through the proper procedure, before the Hearings Officer, rather than be reviewed by the Design Commission, which had no authority to approve master plans in the first place. Therefore the application review procedure being used in this case violates the city code, and this Design Commission lacks authority to approve this application.

ORS 227.175 governs how cities may process applications for permits and zone changes. ORS 227.175(3) provides: *"Except as provided in subsection (10) of this section, the hearings officer shall hold at least one public hearing on the application."* ORS 227.175(1)(a)(A) provides generally that *"the hearings officer or such other person as the governing body designates may approve or deny an application for a permit without*

a hearing if the hearings officer or other designated person” provides notice and an opportunity to appeal; this exception to the requirement for a hearing before a hearings officer is commonly referred to as a Type II procedure. The statute does *not* provide that an “other person authorized by the governing body” may conduct the hearing on a permit. Therefore the application review procedure for this matter established by the city violates state law, and this Design Commission lacks authority to approve this application.

The procedural error of reviewing the master plan application by a hearing before the Design Commission prejudices the parties’ substantial rights. ORS 227.175(10)(a)(D) provides that an appeal from a decision, other than a decision by a hearings officer after a hearing, “*shall be to a hearings officer, the planning commission or the governing body.*” ORS 227.030(4) provides that “*no more than two members [of a city planning commission] shall be engaged in the same kind of occupation, business, trade or profession.*” Three members of this Design Commission are architects, two are landscape architects, and one is an urban designer. Arguably all six are “engaged in the same kind of occupation, business, trade or profession,” but certainly at least three are in the same profession. This Design Commission does not meet the requirements for a planning commission under state law, and is therefore not authorized to conduct hearings on appeals of Type II decisions, as a planning commission would be. Its lack of experience and familiarity with the broader planning issues addressed by the Planning and Sustainability Commission (which does meet the state requirements for a planning commission, with the city code limitation on membership a verbatim copy of the state requirement) prejudices the parties’ substantial rights to a review body more familiar with the comprehensive planning process, and in particular with the housing policies of the Central City Plan, than this Design Commission composed of design professionals charged with reviewing design issues.

2. The signed application form does not identify Block 5 as part of the application and does not identify the owner of Block 5.

33.730.060.C requires that the signed application form include an “*accurate legal description, tax account numbers and location of the property...and the name and addresses of all property owners.*” Portland Park Block 5 is not identified on the signed application form, so it may not be considered as part of the application, and the application must therefore be denied. Block 5 is now owned by the City of Portland, yet the City is not identified as the owner in any of the application or file materials, including in the staff report. The application narrative is apparently a hurried reworking of the 2007 and 2009 applications; it states that Block 5 is owned by the Marilyn Moyer Charitable Trust and that Block 4 is owned by Fox Tower LLC. In fact (as the signed application form states) Block 4 is owned by West Park Avenue LLC. Block 5, which is not identified at all on the signed two-page application form, is owned by the City of Portland, and there is no indication whether anyone at the City of Portland has agreed to this proposed FAR transfer. The city should certainly have been identified in the

application and the notice as the owner of one of the properties that is the subject of the central city master plan. Failure to so identify the owner prejudices the parties' substantial right to engage the owner concerning the proposed use. Only by searching property records were we able to determine that in fact the City of Portland, and not TMT or any related entity, owned Block 5; the application narrative is very misleading. The applicant who signed the application form, architect Robert Thompson, gave assurance in the Responsibility Statement that the information on ownership was accurate and that he had gained the permission of the property owners identified in the application. Because the signed application failed to identify Block 5 as part of the development site and failed to identify the City of Portland as the owner of Block 5, and because the applicant apparently did not confer with the owner of Block 5 or secure the owner's permission to submit the application, Block 5 may not be considered as part of this application, and the requested FAR transfer from Block 5 must be denied.

The city should only be processing permit applications from owners, pursuant to ORS 227.175(1), not from "applicants" who are not owners; approving this application without proof that the City has consented to the application is therefore a violation of state law.

3. The revisions to the application were made less than 10 days before the notice of the request was mailed.

33.730.060 requires that any changes to an application that substantially alter the request must be made at least 10 days before the notice of the request is mailed. The applicant submitted a revised signed application dated October 22, but there is no indication on the form or in the file when it was actually received or determined to be complete. See Exhibit G.3. The application for an adjustment is therefore not timely and may not be considered as part of this hearing, nor may the revised application narrative submitted on November 8. The submittal of the revised narrative significantly delayed the city's response to our request for a copy of the narrative; it was not made available until late last Friday, six days before the hearing. All of this is indicative of the haste with which this application is being rushed through the process.

SUBSTANTIVE REVIEW CRITERIA

1. Housing Policy 3.C is a compelling reason to require affordable housing as part of this master plan.

The first master plan approval criterion is "*The proposed plan is consistent with the policy objectives of the Central City Plan.*" 33.510.255.E.1 The application has not adequately addressed the policy objectives of the Central City Plan. As the purpose description of the Central City Master Plan provides, at 33.510.255.A, "*the additional development potential and flexibility is possible because the plan is used to demonstrate*

that the policy objectives of the Central City Plan and the public service needs of the area are addressed."

In addressing the Central City Plan policies, the application narrative mentions only the first element of Policy 3 (Housing). The application narrative does not address Plan Policy 3 as a whole. In particular it does not address the Policy 3.C objective to *"encourage the development of housing in a wide range of types and prices and rent levels."* This policy objective allows the city to require affordable housing as part of the trade-off for the additional development potential that would be authorized by this new master plan.

If this project is to get the extraordinary benefit of the requested FAR transfers it should provide at least some affordable housing, so that that lower-income working folks like SEIU's members who work downtown can afford to live near their work. We request that you either deny the application as inconsistent with the policies of the Central City Plan, or that you impose a condition of approval to require a substantial affordable housing component as part of your approval of residential use and building expansion.

2. Floor area ratio transfers are not allowed to cross rights of way in this subarea, even as part of a master plan.

The relevant approval criteria for FAR transfers are as follows: 33.510.200.B: *"Floor area ratios greater than that shown on Map 510-2 [ie. 9.0:1] are prohibited unless allowed by Subsections C. through G., below, or by 33.510.210 [i.e. bonuses]."* 33.510.200.C.1: *"Except as provided by C.2 through C.5 [not relevant to this case], below, increases in FAR, whether by transfers of floor area or bonus floor area options, of more than 3 to 1 are prohibited."* 33.510.200.D .1: *"Floor area transfers across rights-of-way are prohibited in the Downtown subdistrict."* 33.510.255.B: A central city master plan can allow flexibility where it *"allocates allowed floor area to individual development sites that will not remain in the same ownership."* Taken together, these provisions prohibit any transfer of FAR greater than 3:1, and prohibit any transfers across rights of way in the Downtown subarea. The master plan flexibility is to *"allocate floor area to individual sites that will not remain in the same ownership."* It does not authorize floor area ratio transfers across rights of way in the Downtown subarea or otherwise trump the limitations in 33.510.200.C.1 and D.1.

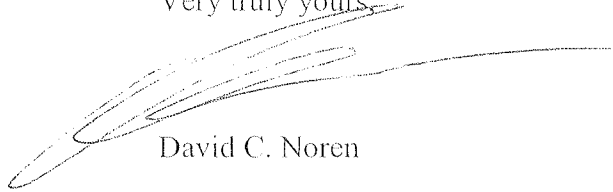
CONCLUSION

This application should be denied because the Design Commission lacks authority to approve it. It should also be denied because it is not consistent with the policy to encourage housing in a wide range of types and prices and rent levels, and because the proposed FAR transfers are prohibited in this subarea. In the alternative, any approval

should require an affordable housing component for some of the additional floors being approved for residential use.

If this matter is not continued, please leave the record open for additional testimony.

Very truly yours,

A handwritten signature in dark ink, consisting of several overlapping, sweeping strokes that form a stylized, elongated shape.

David C. Noren

DAVID C. NOREN
Attorney at Law
217 E. Main P.O. Box 586
Hillsboro, Oregon 97123-0586
Telephone: (503) 640-2661 Fax: (503) 648-7216
e-mail: david@norenlaw.com

November 27, 2013

SENT ELECTRONICALLY

Portland Design Commission
Portland Bureau of Development Services
1900 SW Fourth Avenue, Suite 1500
Portland, OR 97201

Re: Park Avenue West Casefile LU 13-214772 DZ/MS/AD

Dear Chair and Commissioners:

I represent SEIU Local 49 and Adelaida Maza. This additional material is in response to the oral comments of the applicant's attorney, Steven Pfeiffer, at the hearing on November 21.

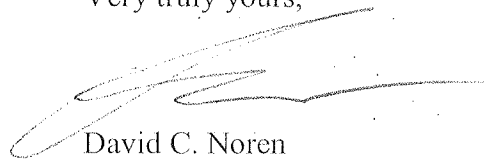
Mr. Pfeiffer argued that the city's comprehensive plan policies, in particular the Central City Plan policy concerning housing, were not applicable to a permit application such as this. Mr. Pfeiffer contended that only land use regulations apply here, and that the comprehensive plan policies only apply to plan amendments. However, the land use regulations themselves, specifically the central city master plan criteria, make the Central City Plan policies applicable to master plans. The application narrative and staff report both recognize this, identifying Policy 3, "Housing," as an applicable review criterion, but failing to address the "further statements" of the policy, including the Policy 3.C objective, "*encourage the development of housing in a wide range of types and prices and rent levels.*" The "Plan Organization" section at page 7 of the Central City Plan makes clear that "the policies include 'further statements' which provide explicit target accomplishments for the community." Copies of the Central City Plan Organization section and of Policy 3 are attached.

Mr. Pfeiffer also argued that the restrictive covenant that severely limits surface development of Block 5 is not relevant. It may be that the private covenant limiting development (and thus limiting floor-area ratio that could be developed on Block 5) does not of itself prevent transfer of FAR to Block 4. However, the restrictive covenant is relevant in considering whether to approve a master plan, because compliance with the Housing Policy 3.C objective should consider whether requiring affordable housing is

appropriate in a particular instance. Because this applicant is getting the extraordinary benefit of the FAR transfer from a block that could not be developed in any case, it is more appropriate to consider, and impose, an affordable housing requirement than if the applicant were actually giving something up to get the FAR transfer.

The application should be denied because it is not consistent with the policy to encourage housing in a wide range of types and prices and rent levels, and because the proposed FAR transfers are prohibited in this subarea. In the alternative, any approval should require an affordable housing component for some of the additional floors being approved for residential use.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'David C. Noren', with a large, sweeping initial 'D'.

David C. Noren

Attachment (2 pages)

cc Steven Pfeiffer

Plan Organization

The Adopted Central City Plan consists of several parts. The Plan Map and Land Use Designations, Vision Statement, and the Goal and Policies make up the Plan that was adopted by ordinance by the City Council. Also adopted by resolution were the action charts, maps, and district urban design plans which accompany the policies.

A color fold-out Plan Map, showing land use designations and some of the major thematic elements of the Plan, is included as part of the Plan. On the reverse side, there is a map of the predominant land uses in the Central City. The supplemental maps included in this Plan also reflect the land use information and plan elements on the fold-out Plan Map.

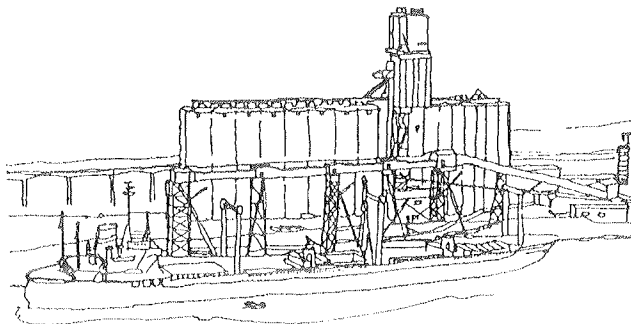
The Vision statement guides the adoption and future implementation of the Plan. The Vision illustrates where the Plan is leading us and provides a standard by which to measure the Plan's success. Following the Vision is the Plan Goal. This Goal ties the Central City Plan to Portland's adopted Comprehensive Plan, making the Plan and its 21 policies a part of the Comprehensive Plan. The Vision and the Goal set the stage for the body of the Plan.

The Plan is built around 21 policies for the Central City. The first 12 policies reflect the areas of functional study covered by the Steering Committee and Functional Advisory Committees. The next policy addresses future review and monitoring of the Plan. Policies 14 through 21 address the districts that make up the Central City, with one policy for each district. The policies include "further statements" which provide explicit target accomplishments for the community.

The charts and maps illustrate the ideas for implementing each of the Central City Plan policies. The proposals are assigned a time-frame for action (immediate, short, or long-range), and a possible lead implementing agency or agencies is identified. The proposal, in some cases, is indexed to a fuller discussion and explanation in the Description of Selected Actions and Strategies, Plan and Supplemental Maps, and the Code Amendments sections of this report. All actions and strategies listed on the action charts were adopted by resolution, those which specify changes in zoning designations or in the zoning code were implemented with the Plan at the time of its adoption through an ordinance that amended the City's Comprehensive Plan and Zoning Code. Programs and projects formally approved by the Council by resolution are approved on a policy basis but without the binding force of law.

Functional and district maps accompany the policies and illustrate further the proposals listed on the action charts and provide a geographic context for actions that are site specific. The maps which accompany the functional topic policies are of the whole Central City study area and present area-wide relationships. The maps which accompany the district policies are detailed urban design plans for the districts. Each urban design plan illustrates the proposals contained in the district action chart. They also present more specific details for the location of such elements as district gateways.

Illustrations of the Portland of the future as envisioned by this Plan are presented throughout this report. Generally, these are an artist's concept of what a specific new development or improvement might look like. The illustrations are not intended as images of how things will look, or even should look, but how they might look. As development occurs, those working on the implementation of the idea will produce a final design of the projects. The illustrations in this document are a starting place for the creative individuals to build on.



Policy 3: HOUSING

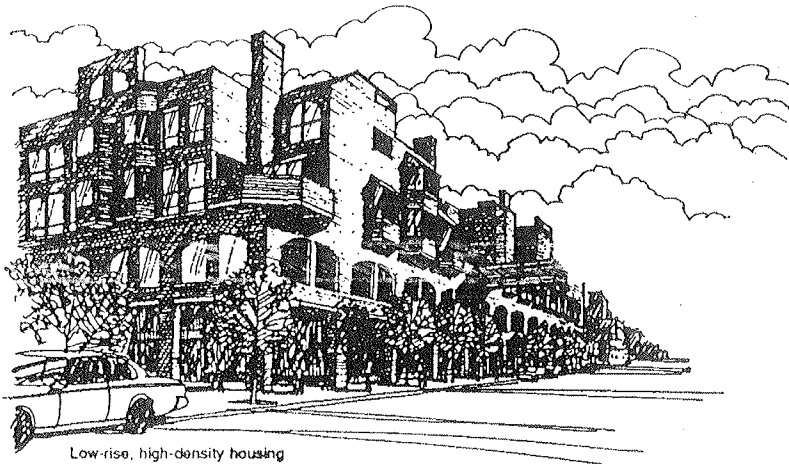
Maintain the Central City's status as Oregon's principal high density housing area by keeping housing production in pace with new job creation.

FURTHER:

- A. Promote the construction of at least 5,000 new housing units in the Central City by the year 2010.
- B. Preserve and encourage rehabilitation of existing housing.
- C. Encourage the development of housing in a wide range of types and prices and rent levels.
- D. Foster the growth of housing to help reinforce the Central City as a lively urban area, especially during evenings.
- E. Secure greater regional participation in addressing the housing needs of the homeless, low-income and other special needs populations.
- F. Where residential development is required, assure that when development of the housing is deferred to the future the housing site is designated and zoned residential.



Loft Housing. Conversion of obsolete industrial and commercial buildings into housing.



Low-rise, high-density housing

ACTION CHART

#	PROPOSALS FOR ACTION	TIMING			POSSIBLE IMPLEMENTING AGENCY	INDEX TO ACTION DETAIL
		ADOPT WITH PLAN	NEXT FIVE YEARS	SIX TO 20 YEARS		
	PROJECTS					
H1	Study and make recommendations on building code amendments needed to allow safe/cost-effective creation of loft housing.		++++		Planning/BOB	
H2	Expand eligibility for property tax abatement for housing, in targeted areas, to include the entire Central City.		++++		State Legislature/Planning	
H3	Provide year-round shelter for the homeless.		++++		HRB/Mult. County	
	PROGRAMS					
H4	Use urban renewal and tax increment financing programs to foster the development and preservation of housing in urban renewal districts, (particularly preservation of SRO housing).		++++		PDC	
H5	Establish a city housing trust fund for replacement of lost housing, construction of new housing and preservation of existing housing.		++++		Planning/PDC/HAP/Mult. County	P 87
H6	Extend the Urban Homestead program to include conversion of obsolete and unused commercial and industrial buildings to housing.		++++		PDC	
H7	Encourage the State Board of Higher Education to build student housing on the Portland State University Campus.		++++		State Legislature	
H8	Establish an awards program for low, moderate and middle income housing construction and rehabilitation.		++++		Planning	
H9	Involve the Crime Prevention Office when reviewing the plans of major construction or redevelopment of housing projects.		++++		Planning/BOB/PPD	
H10	Aggressively explore, develop and take action to create housing incentives, particularly taking quick action on those potential incentives identified during the Plan development process.		++++		Planning/PDC/State Legislature/Pvt.	P 87

NOTE: Proposals for actions shown on the Action Charts and maps were adopted through City Council Resolution. The projects, programs and regulations listed are a starting place. As studies are undertaken, some actions will need to be amended, or in some cases, replaced with other proposals found to be better or more feasible.

DAVID C. NOREN
Attorney at Law
217 E. Main P.O. Box 586
Hillsboro, Oregon 97123-0586
Telephone: (503) 640-2661 Fax: (503) 648-7216
e-mail: david@norenlaw.com

December 5, 2013

SENT ELECTRONICALLY

Portland Design Commission
Portland Bureau of Development Services
1900 SW Fourth Avenue, Suite 1500
Portland, OR 97201

Re: Park Avenue West Casefile LU 13-214772 DZ/MS/AD

Dear Chair and Commissioners:

I represent SEIU Local 49 and Adelaida Maza. This letter is in response to the material submitted by the applicant's attorney, Steven Pfeiffer, in his letter of November 27, 2013.

1. Design Commission as Review Body. Mr. Pfeiffer argues that the Design Commission is the proper review body despite the individual commissioners' professional work, because the city's leadership has decided they are. But the city must still comply with state law, which prescribes membership of planning commissions, and it is clear that the Design Commission does not meet the requirements for a planning commission. This error prejudices my clients' substantial rights because, pursuant to ORS 227.175, appeals of Type II decisions may only be heard by a hearings officer or a planning commission or city council. The procedural error of having a Type III permit hearing conducted by the Design Commission cannot be excused (as would a planning commission decision) on the grounds that they are authorized by state law to hear appeals of Type II decisions. Decisions by the Design Commission as the initial hearings body are not allowed under ORS 227.175, and the application should be denied.

2. Consent of the City to Application. Mr. Pfeiffer argues that the city, through its Bureau of Parks and Recreation, did not need to consent to the application because they were mailed notice of it, but then provides an e-mail, dated November 27, 2013, from the Bureau director stating that Parks and Recreation "has no objection" to the proposed master plan. There is no evidence that the applicant conferred with the owner of Park Block 5 or gained permission before submitting the application. Moreover, attached to Mr. Abbate's e-mail is a recorded covenant concerning the earlier FAR transfers of 8.7 FAR from Park Block 5, in which the city stated its consent to those transfers, which

were a *fait accompli* by the time the city took ownership. That consent was signed by the Parks and Recreation Commissioner. Consent from that level -- an elected City Commissioner directly responsible to the voters -- should be required in this instance as well.

3. Revisions to Application. Mr. Pfeiffer presented no evidence concerning when the revised application form was in fact received by the city. Instead he argues that the revisions in the revised application narrative (which is dated November 7, not October 22, as he asserts) were not substantial and therefore the time limits of 33.730.060 do not apply. The revised application form dated October 22 and the revised application narrative dated November 7 are substantial revisions because they include the requests for an adjustment and for two design modifications that were not included in the October 9 application. Approval despite the applicant's failure to timely submit the application for adjustment and design modification will be a procedural error that prejudices my clients' substantial rights because the project cannot go forward as presented without these additional approvals.

Attached are copies from the casefile of the following: the first signed application form showing it was received on October 9; the "Summary of Request" from the application narrative dated October 9; the memo and revised application form dated October 22 with no indication when they were received by the city; and the "Summary of Request" from the application narrative dated November 7, 2013. Together these show that the application was substantially revised to include the adjustment and design modification requests.

Very truly yours,

A handwritten signature in black ink, appearing to read 'David C. Noren', with a stylized, sweeping flourish extending to the right.

David C. Noren

Attachment (7 pages)

cc Steven Pfeiffer



City of Portland, Oregon - Bureau of Development Services

1900 SW Fourth Avenue • Portland, Oregon 97201 • 503-823-7526 • www.portlandoregon.gov/bds



Land Use Review Application

File Number: LU 13-214772 DZ

FOR INTAKE, STAFF USE ONLY

Date Rec 10-9-13 by kaf

☐ Type I ☐ Type IX ☐ Type II ☐ Type Ix ☒ Type III ☐ Type IV

LU Reviews DZ

[Y] ☒ Unincorporated MC

[Y] ☒ Flood Hazard Area (LD & PD only)

[Y] ☒ Potential Landslide Hazard Area (LD & PD only)

Qtr Sec Map(s) 3029 Zoning CXd

Plan District Central City

Neighborhood Downtown

District Coalition NW/NW

Business Assoc D.R.C.

Related File # 13-212680 PC

APPLICANT: Complete all sections below that apply to the proposal. Please print legibly.

Development Site
Address or Location Park Block 4: 750 SW Park Avenue

Cross Street SW Ninth Avenue Sq. ft./Acreage 20,000 sf/0.46 acres

Site tax account number(s)

R 246982

R 246979

R

R 246980

R 246981

R

Adjacent property (in same ownership) tax account number(s)

R

R

R

Describe project (attach additional page if necessary)

The applicant requests a revision of LU 09-136017 MS DZ to add 4 floors to the previously approved mixed-use PAWT tower and an increase in eligible FAR bonuses, as follows: 1) Type III Design Review to increase the building from 26 stories to 30 stories - removing 11 floors of office and replacing those floors with 15 floors of residential - for a net increase of 4 stories; 2) Type III CCMP to revise the transfer of the unused development capacity from PB5 to PB4 from 9.1 FAR to the originally approved 11.7 FAR, and utilize a 3.0 FAR housing bonus on PB4 based on the reintroduction of housing to the project.

Describe proposed stormwater disposal methods

Connection to 12" storm sewer in SW Park Avenue, 20,000-gallon rainwater harvesting storage tank

Identify requested land use reviews

Type III Land Use Review, Type III CCMP

For renovation, provide exterior alteration value.
AND provide total project valuation.

\$ 119,000,000.00

\$

• Land Divisions - Identify number of lots (include lots for existing development).

New street (public or private)?

☐ yes ☒ no

continued / over 1


Exh. G.

Applicant Information

- Identify the primary contact person, applicant, property owner and contract purchaser. Include any person that has an interest in your property or anyone you want to be notified.
- For all reviews, the applicant must sign the Responsibility Statement.
- For land divisions, all property owners must sign the application.

PRIMARY CONTACT, check all that apply ☐ Applicant ☐ Owner ☒ Other Architect

Name Robert Thompson, FAIA

Signature 

Company/Organization TVA Architects, Inc.

Mailing Address 920 SW Sixth Avenue, Suite 1500

City Portland

State OR

Zip Code 97204

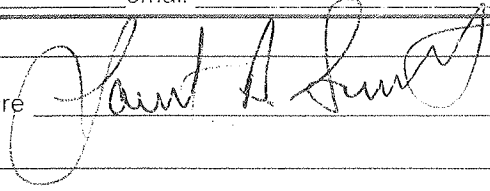
Day Phone 503-220-0668

FAX 503-225-0803

email bobt@tvaarchitects.com

Check all that apply ☐ Applicant ☒ Owner ☐ Other

Name Lamont Smith

Signature 

Company/Organization TMT Development

Mailing Address 805 SW Broadway Street, Suite 2020

City Portland

State OR

Zip Code 97205

Day Phone 503-241-1111

FAX 503-241-1999

email lamont@tmtdevelopment.com

Check all that apply ☐ Applicant ☐ Owner ☐ Other

Name _____

Signature _____

Company/Organization _____

Mailing Address _____

City _____

State _____

Zip Code _____

Day Phone _____

FAX _____

email _____

Check all that apply ☐ Applicant ☐ Owner ☐ Other

Name _____

Signature _____

Company/Organization _____

Mailing Address _____

City _____

State _____

Zip Code _____

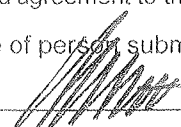
Day Phone _____

FAX _____

email _____

Responsibility Statement As the applicant submitting this application for a land use review, I am responsible for the accuracy of the information submitted. The information being submitted includes a description of the site conditions. I am also responsible for gaining the permission of the owner(s) of the property listed above in order to apply for this review and for reviewing the responsibility statement with them. If the proposal is approved, the decision and any conditions of the approval must be recorded in the County Deed Records for the property. The City of Portland is not liable if any of these actions are taken without the consent of the owner(s) of the property. In order to process this review, City staff may visit the site, photograph the property, or otherwise document the site as part of the review. I understand that the completeness of this application is determined by the Director. By my signature, I indicate my understanding and agreement to the Responsibility Statement.

Print name of person submitting this application Robert Thompson, FAIA

Signature 

Phone number 503-220-0668

Date October 9, 2013

Summary of Request. TMT Development Co., Inc. requests a revision of LU 07-140633 MS DZM AD to reflect an increase in the building's size and eligible floor-to-area (FAR) bonuses, as follows:

- Type III Design Review to increase the building from 26 stories to 30 stories, including the addition of four floors in the mid-section of the tower. The building will now require 23.7 FAR, as approved in the original land use approval (LU 07-140633 MS DZM AD). Design review is governed by Chapter 33.825.
- Type III Central City Master Plan (CCMP) to: 1) revise the transfer of the unused development capacity from Park Block 5 (PB 5) ("Sending" Site) to Park Block 4 (PB 4) ("Receiving" Site), returning it to the originally approved 11.7 FAR which leaves 0.3 FAR of development capacity behind on PB 5; and 2) utilize a 3.0 FAR housing bonus on PB 4 based on the reintroduction of housing in the project. Such density transfers are governed by Section 33.510.255, Central City Master Plans

There will be only minor changes to the ground floor, none of which affect the location of the combined driveway for the loading dock and underground garage entrance. This being the case, no change is sought in the Type II Adjustment also approved in LU 07-140633, to permit vehicle access on a "Parking Access-Restricted" Street, or the companion Central City Parking Review (CCPR) (LU 07-169105) to allow a garage entrance within 75' of a light rail transit (LRT) alignment. Thus, the applicant requests that these companion approvals remain in force

The three Design Modifications granted as part of the original Design Review approval must also be retained. The first of these is to permit the rooftop mechanical penthouse to be located within 15' of the edge of the building on all four facades. The second is to permit the reduction of required loading spaces from three to two to reduce the width of the shared loading dock/garage entrance on SW Park Avenue. The third is to permit the building's spire to extend more than 10' above the maximum height limit of 460'.

Project Summary

Due to changes in the recent economic climate, TMT Development Company, Inc., has elected to add four floors to its 26-story mixed-use Park Avenue West Tower, originally approved in 2007 as a 33-story mixed use building (PAWT.1) (LU 07-140633 MS DZM AD) and later in 2009 as a modified 26-story mixed use office building (PAWT.2) (LU 09 104171 DZ). The proposed design for PAWT.3 includes the addition of four floors in the mid-section of the tower, for a total of 30 stories: 2 floors of retail, 15 floors of housing, and 13 floors of office. The building's total height will increase from 407' to 460' - including roof-top mechanical - which returns the building proportions to a slender point tower while remaining within the maximum allowable height requirements for this subarea of Downtown.

The original building was approved through a combined transfer of base density (8.7 FAR) and density bonuses (3.0 FAR) from Park Block 5 - the site of Director Park - for a total of 11.7 FAR. The remaining 0.3 FAR was retained on PB 5 for the park's above-grade development. Park Avenue West Tower also used a full complement of FAR on its site - PB 4 - including a base FAR of 9.0 and bonuses of 3.0, for a total of 12.0 FAR. As a result, the original building used the full 23.7 FAR (474,000 gsf) in its above-grade development. This is based on a site size of 20,000 sf.

In the new 30-floor development scheme, the building will again utilize 23.7 FAR or 474,000 gsf. This is achieved by the introduction of 15 floors of housing, which allows the building to be eligible for a 3.0 FAR housing bonus. As a result, the project is eligible for a total FAR of 23.7.



Date: October 22, 2013
Project Name: Park Avenue West Tower.3
Project No: 13154
Re: City of Portland Type III Design Review

Memo

To: Kara Fioravanti
1900 SW Fourth Avenue
Portland, OR 97201

From: Robert Thompson, FAIA

Kara,

Pursuant to our recent pre-application conference discussion, we understand that we will need to request a new Adjustment for access on SW Park, similar to the initial Adjustment approved in 2007. Additionally, we will need to request two Design Modifications (approved in the original Design Review): (1) to permit the building's spire to extend more than 10' above the maximum height limit of 460', and (2) to permit the reduction of required loading spaces to one standard 35' long loading space and one 22.5' long loading space as indicated in our Type III submittal. We also understand that the CCMP modifications we are requesting have been adequately addressed by the narrative application submittal on file.

Please include the attached Adjustment application form, together with our narrative discussion of compliance with applicable criteria set forth in the initial Type III submittal on file, for purposes of our pending request for Adjustment and Design Modification approval by the Commission.

Thank you,

Robert Thompson, FAIA

tva architects, inc.
920 sw sixth avenue - suite 1500 portland, oregon 97204
phone: 503 220 0668 - www.tvaarchitects.com

Robert Thompson, FAIA Marc Labadie, LEED AP Roderick Ashley, AIA John Heili, AIA Montgomery J. Hill, AIA Tim Wybenga, LEED AP

EXH. 3



CITY OF PORTLAND, OREGON - BUREAU OF DEVELOPMENT SERVICES

1900 SW Fourth Avenue • Portland, Oregon 97201 • 503-823-7526 • www.portlandonline.com/bds



Land Use Review Application

File Number: _____

FOR INTAKE, STAFF USE ONLY

Date Rec _____ by _____

☐ Type I ☐ Type II ☐ Type IIx ☐ Type III ☐ Type IV

LU Reviews _____

[Y] [N] Unincorporated MC

[Y] [N] Flood Hazard Area (LD & PD only)

[Y] [N] Potential Landslide Hazard Area (LD & PD only)

Qtr Sec Map(s) _____ Zoning _____

Plan District _____

Neighborhood _____

District Coalition _____

Business Assoc _____

Related File # _____

APPLICANT: Complete all sections below that apply to the proposal. Please print legibly.

Development Site

Address or Location Park Block 4: 750 SW Park Avenue

Cross Street SW Ninth Avenue

Sq. ft./Acreage 20,000sf/0.46 acres

Site tax account number(s)

R 246982

R 246979

R

R 246980

R 246981

R

Adjacent property (in same ownership) tax account number(s)

R

R

R

Describe project

The Applicant requests a Type III Design Review to increase the building from 26 stories (approved in LU 09-136017 MS DZ) to 30 stories, and a Type II Adjustment to permit access on SW Park (similar to the adjustment approved in 2007). Additionally, the Applicant requests two Design Modifications which were approved in the original Design Review: (1) to permit the building's spire to extend more than 10' above the maximum height limit of 460', and (2) to permit the reduction of required loading spaces to one standard 35' long loading space and one 22.5' long loading space, as indicated in the Type III submittal. The Applicant requests a CCMP Amendment to revise the transfer of unused development capacity from PB5 to PB4 from 9.1 FAR to the originally approved 11.7 FAR, and to utilize a 3.0 FAR housing bonus on PB4 based on the reintroduction of housing to the project.

Describe proposed stormwater disposal methods

Connection to 12" storm sewer in SW Park Avenue, 20,000-gallon rainwater harvesting storage tank

Identify requested land use reviews

Type III Land Use Review, Type II Adjustment, two Design Modifications, CCMP Amendment

- Design Review - For new development, provide project valuation.
For renovation, provide exterior alteration value.

\$ \$119,000,000.00

- Land Divisions - Identify number of lots (include lots for existing development).

New street (public or private)?

☐ yes ☒ no

continued / over

Applicant Information

- Identify the primary contact person, applicant, property owner and contract purchaser. Include any person that has an interest in your property or anyone you want to be notified.
- For all reviews, the applicant must sign the Responsibility Statement.
- For land divisions, all property owners must sign the application.

PRIMARY CONTACT, check all that apply ☒ Applicant ☐ Owner ☐ Other

Name Robert Thompson, FAIA Signature 

Company/Organization TVA Architects, Inc.

Mailing Address 920 SW Sixth Avenue, Suite 1500

City Portland State Oregon Zip Code 97204

Day Phone 503-220-0668 FAX 503-225-0803 email bobt@tvaarchitects.com

Check all that apply ☐ Applicant ☐ Owner ☐ Other

Name _____ Signature _____

Company/Organization _____

Mailing Address _____

City _____ State _____ Zip Code _____

Day Phone _____ FAX _____ email _____

Check all that apply ☐ Applicant ☐ Owner ☐ Other

Name _____ Signature _____

Company/Organization _____

Mailing Address _____

City _____ State _____ Zip Code _____

Day Phone _____ FAX _____ email _____

Check all that apply ☐ Applicant ☐ Owner ☐ Other

Name _____ Signature _____

Company/Organization _____

Mailing Address _____

City _____ State _____ Zip Code _____

Day Phone _____ FAX _____ email _____

Responsibility Statement As the applicant submitting this application for a land use review, I am responsible for the accuracy of the information submitted. The information being submitted includes a description of the site conditions. I am also responsible for gaining the permission of the owner(s) of the property listed above in order to apply for this review and for reviewing the responsibility statement with them. If the proposal is approved, the decision and any conditions of the approval must be recorded in the County Deed Records for the property. The City of Portland is not liable if any of these actions are taken without the consent of the owner(s) of the property. In order to process this review, City staff may visit the site, photograph the property, or otherwise document the site as part of the review. I understand that the completeness of this application is determined by the Director. By my signature, I indicate my understanding and agreement to the Responsibility Statement.

Print name of person submitting this application ROBERT THOMPSON FAIA

Signature 

Phone number 503 220 0668 Date 10.22.2013

II. PROPOSED PROJECT

Summary of Request. TMT Development Co., Inc. requests approval for:

- Type III Design Review to increase the building from 26 stories (PAWT.2) to 30 stories, including the addition of four floors in the mid-section of the tower. The building will now require 23.7 FAR, as approved in the original land use approval (LU 07-140633 MS DZM AD) (PAWT.1). Design review is governed by Chapter 33.825.
- Central City Master Plan Amendment (CCMP) to: 1) revise the transfer of the unused development capacity from Park Block 5 (PB 5) ("Sending" Site) to Park Block 4 (PB 4) ("Receiving" Site), returning it to the originally approved 11.7 FAR which leaves 0.3 FAR of development capacity behind on PB 5; and 2) utilize a 3.0 FAR housing bonus on PB 4 based on the reintroduction of housing in the project. Such density transfers are governed by Section 33.510.255, Central City Master Plans.

The applicant also requests the following land use approvals:

- Type II Adjustment, (approved in LU 07-140633,) to permit vehicle access to the proposed tower garage and loading dock from a combined driveway on SW Park Avenue, which according to Map 510-9, is a "Parking Access-Restricted" Street, as governed by 33.805.
- Two Design Modifications (approved in the original Design Review approval): (1) to permit the building's spire to extend more than 10' above the maximum height limit of 460', and (2) to permit the reduction of required loading spaces to one standard 35' long loading space and one 22.5' long loading space.

The applicant understands the Companion Central City Parking Review (CCPR) (LU 07-169105) remains in force, as it was already permitted. It allows a garage entrance within 75' of a light rail transit (LRT) alignment. No change in the location of the combined access to the loading dock and below-grade parking structure is proposed.

Project Summary

Due to changes in the recent economic climate, TMT Development Company, Inc., has elected to add four floors to its 26-story mixed-use Park Avenue West Tower, originally approved in 2007 as a 33-story mixed use building (PAWT.1) (LU 07-140633 MS DZM AD) and later in 2009 as a modified 26-story mixed-use office building (PAWT.2) (LU 09-104171 DZ). The proposed design for PAWT.3 includes the addition of four floors in the mid-section of the tower, for a total of 30 stories: 2 floors of retail, 15 floors of housing, and 13 floors of office. The building's total height will increase from 407' to 460' - including roof-top mechanical - which returns the building proportions to a slender point tower while remaining within the maximum allowable height requirements for this subarea of Downtown.

The original building was approved through a combined transfer of base density (8.7 FAR) and density bonuses (3.0 FAR) from Park Block 5 - the site of Director Park - for a total of 11.7 FAR. The remaining 0.3 FAR was retained on PB 5 for the park's above-grade development. Park Avenue West Tower also used a full complement of FAR on its site - PB 4 - including a base FAR of 9.0 and bonuses of 3.0, for a total of 12.0 FAR. As a result, the original building used the full 23.7 FAR (474,000 gsf) in its above-grade development. This is based on a site size of 20,000 sf.

In the new 30-floor development scheme, the building will again utilize 23.7 FAR or 474,000 gsf. This is achieved by the introduction of 15 floors of housing, which allows the building to be eligible for a 3.0 FAR housing bonus. As a result, the project is eligible for a total FAR of 23.7.

From: Abbaté, Mike
Sent: Wednesday, November 27, 2013 11:30 AM
To: Fioravanti, Kara
Cc: Auerbach, Harry; Lofgren, Todd
Subject: CASE FILE: LU 13-214772 DZM, MS, AD (PC 13-212680), Park Avenue West (South Park Block 4)

TO: Bureau of Development Services Staff: Kara Fioravanti 503-823-5892 / Kara.Fioravanti@portlandoregon.gov
RE: CASE FILE: LU 13-214772 DZM, MS, AD (PC 13-212680), Park Avenue West (South Park Block 4)

Site Address: Building site: 728 SW 9th Avenue
Floor Area Transfer site: 877 SW Taylor Street, 800 SW Yamhill Street, 825 W/SW Park Avenue

As owner of Park Block 5, Portland Parks & Recreation, has no objection to the proposed Central City Master Plan Amendment to allow an increase in the transfer of floor area from Director Park (formerly known as Park Block 5) to the proposed tower site (Park Block 4). Portland Parks & Recreation would like to note that the bonus FAR on Park Block 5 – 0.5 bonus FAR through the "water feature/public fountain bonus option" and 2.5 bonus FAR through the "locker room bonus option" is owned by Portland Parks & Recreation. In addition, Park Block 5 will retain a base FAR of 0.3:1 to accommodate 3 small park structures. Transfer of the bonus FAR from Park Block 5 to Park Block 4 will need to be agreed upon by the respective owners of the two properties. Attached to this email is the Land Use Covenant documenting the FAR on Park Block 5. Recital F of that Land Use Covenant reflects that PP&R retains 0.3:1 of the base FAR. Section 1.1.5 of that Land Use Covenant provides: "Nothing in this Covenant affects any FAR bonus attributable to the construction of the water feature on Park Block 5 or any FAR bonus attributable to the construction of the bicycle lockers under the surface of Park Block 5. The City of Portland will continue to own the bonus FAR attributable to those elements." PP&R previously has expressed its willingness to discuss with the owner of Park Block 5 and/or Park Block 4 the possible transfer of its remaining bonus FAR, and remains open to that possibility. To date, however, no such transfer has been negotiated, and the City, through PP&R still owns that bonus FAR.

MIKE ABBATÉ, ASLA, LEEDTM
Director
503-823-5379
mike.abbate@portlandoregon.gov<<mailto:mike.abbate@portlandoregon.gov>>

[cid:image001.jpg@01CEEB64.1A1A6F00]

AMENDED LAND USE COVENANT
INCLUDING
COVENANT TRANSFERRING FLOOR AREA RATIO

Grantor: FOX TOWER, L.L.C.
c/o TMT Development Co., Inc.
805 SW Broadway, Suite 2020
Portland, Oregon 97205

Multnomah County Official Records
C Swick, Deputy Clerk

2011-032550



\$56.00

Grantee: WEST PARK AVENUE, LLC
c/o TMT Development Co., Inc.
805 SW Broadway, Suite 2020
Portland, Oregon 97205

00808074201100325500050057

03/14/2011 11:21:34 AM

1R-AMMODCCR
\$25.00 \$11.00 \$15.00 \$5.00

Cnt=1 Stn=21 ATESB

Affects: Park Block 5, CITY OF PORTLAND (transferring)
Park Block 4, CITY OF PORTLAND (receiving)

After recording return to:

Dean N. Alterman
Folawn Alterman & Richardson LLP
805 SW Broadway, Suite 2750
Portland, Oregon 97205

AMENDED LAND USE COVENANT
INCLUDING
COVENANT TRANSFERRING FLOOR AREA RATIO

This Amended Land Use Covenant Including Covenant Transferring Floor Area Ratio (this "Covenant") is made as of December 15, 2010 by FOX TOWER, L.L.C., an Oregon limited liability company, as holder of an easement and owner of certain improvements on Block 5, PORTLAND PARK BLOCKS ("Fox Tower"), and WEST PARK AVENUE LLC, an Oregon limited liability company, as owner of Block 4, PORTLAND PARK BLOCKS ("WPA"). This Covenant replaces in its entirety the Land Use Covenant Including Covenant Transferring Floor Area Ratio that was dated as of October 1, 2010 and recorded on December 2, 2010 as Document No. 2010-151855, Multnomah County Records. This Covenant is entered into for the purpose of correcting an error of calculation in the prior covenant.

RECITALS

A. The City of Portland, by and through its Bureau of Parks and Recreation (the "Parks Bureau") holds fee title to Block 5, PORTLAND PARK BLOCKS ("Park Block 5"), which it acquired by donation. Parks Bureau has constructed a public park on the surface of Park Block 5, and now operates that park and certain related surface and subsurface improvements.

B. Fox Tower holds an easement of record to construct and maintain a subsurface parking garage and certain surface improvements on and beneath Park Block 5. Fox Tower has done so, and now operates a parking garage beneath Park Block 5.

C. Parks Bureau and Fox Tower have separately agreed to submit Park Block 5 to the condominium form of ownership, forming two nonresidential condominium units, under which Parks Bureau and Fox Tower will each own one condominium unit on Park Block 5. Parks Bureau will own a unit located on the surface and used as a public park. Fox Tower will own a subsurface unit with certain ancillary surface structures that is used as a parking garage.

D. WPA owns Block 4, PORTLAND PARK BLOCKS ("Park Block 4"). WPA has begun construction of an office and retail tower on Park Block 4.

E. The zoning code of the City (the "Code") regulates the maximum floor-area ratio ("FAR") for properties in the downtown core area, including Park Block 4 and Park Block 5. The Code also allows the transfer of unused FAR from one property to another, under certain conditions and with certain restrictions.

F. Park Block 5 is 20,000 square feet in area and has a base FAR of 9:1, for a total allowable floor area of 180,000 square feet. The former owners of Park Block 4 purchased 8.7:1 of that FAR (equal to 174,000 square feet) from the former owner of Park Block 5 for use to redevelop Park Block 4, leaving 0.3:1 (equal to 6,000 square feet) with Park Block 5. Fox Tower purchased that FAR from the former owners of Park Block 4 with the intent to transfer it to WPA for use in developing Park Block 4. Fox Tower and WPA now wish to document and complete that transfer on the public record, for the use of WPA on Park Block 4. By executing this Covenant, Parks Bureau consents to this transfer but does not undertake any affirmative obligation to any person or party whomsoever.

NOW, THEREFORE, THE PARTIES AGREE:

Section I. Floor Area Ratio Transfer.

1.1 The recitals above are true and correct and are part of this Covenant.

1.2 Fox Tower transfers to WPA, from Park Block 5 and for the benefit of and appurtenant to Park Block 4, 174,000 square feet of unused FAR (the "Transferred FAR"), representing a transfer of 8.7:1 of the FAR from Park Block 5, that the prior owners of Park Block 4 had purchased from the prior owner of Park Block 5 and then assigned to Fox Tower.

1.3 To the extent that this transfer must be ratified or approved by Fox Tower as current owner of a property interest in Park Block 5, Fox Tower ratifies and approves this transfer.

1.4 For purposes of this Covenant, the FAR remaining on Park Block 5 is 6,000 square feet. The new base FAR on Park Block 4, before giving effect to certain density bonuses

allowed in the zoning code of the City of Portland, some of which are described in other sections of this Covenant, is 354,000 square feet.

1.5 Nothing in this Covenant affects any FAR bonus attributable to the construction of the water feature on Park Block 5 or any FAR bonus attributable to the construction of the bicycle lockers under the surface of Park Block 5. The City of Portland will continue to own the bonus FAR attributable to those elements.

Section II. Land Use Covenant: Retail Use Bonus Option

2.1 Section 33.510.210 of the zoning code allows projects in certain areas that provide retail uses to receive bonus floor area. For each square foot of retail space in excess of one-half the site area, one additional square foot of floor space is earned. The project on Park Block 4 is in a qualifying area. For the benefit of the City of Portland, WPA covenants that it will construct and maintain retail space on Park Block 4 of not less than 28,000 square feet, for a retail use bonus of 18,000 square feet (0.9 FAR) in accordance with Section 33.510.210.

2.2 In accordance with Section 33.700.060 of the zoning code, WPA covenants for the benefit of the City that WPA will comply with all applicable Code requirements and conditions of approval. If WPA fails to perform its obligations contained in this Section II, then the City may terminate occupancy of Park Block 4 and seek all necessary injunctive relief, including seeking to prevent future occupancy of Park Block 4 while a violation of this Section II exists.

Section III. General Provisions

3.1 This Covenant runs with the land and binds and benefits future owners of Park Block 4 and Park Block 5 and all persons claiming by, through, and under Fox Tower, WPA, and the City of Portland.

3.2 This Covenant is intended to benefit WPA as owner of Park Block 4 by documenting its receipt of FAR from Park Block 5 and the floor area bonuses provided by Section 33.510.210 of the Code. This Covenant is also intended to benefit the City of Portland by assuring that the overall density of development on Park Block 4 and Park Block 5 does not exceed the maximum density the Code allows.

3.3 The owners of Park Block 4 and Park Block 5 will execute and deliver, from time to time, such reasonable instruments as either of them may deem necessary (a) to confirm that the transfer of property interest described in this Covenant is a transfer of FAR only and not a transfer of fee ownership of land or the ownership interests that would create liability for real estate taxes; water, sewer, or other public utility charges; downtown development agency and similar charges; or any other similar governmental or public agency charges, and (b) to make all applications and filings as may be reasonably necessary to enable the owner of Park Block 4 to fully utilize the Transferred FAR.

3.4 Fox Tower and WPA will comply with all applicable Code requirements and conditions of approval of this Covenant.

3.5 Fox Tower warrants to WPA that it is the legal owner of and has good right to convey the unused FAR, and covenants that it will execute or procure any further necessary assurances of its rights to make this transfer.

3.6 This Covenant may not be amended without the written consent of the City of Portland.


3.7 This Covenant may be terminated by Fox Tower upon recordation of an instrument signed by the City and Fox Tower acknowledging that Park Block 4 and Park Block 5 are no longer subject to the FAR limitations and the resulting FAR calculations as recorded in this Covenant.


3.8 In any suit or action to enforce this Covenant, the prevailing party will be entitled to an award of its reasonable attorney fees and costs, at trial and on appeal.

3.9 The parties will submit this Covenant to the Multnomah County Recorder for recording at the expense of WPA.

FOX TOWER, L.L.C.:

WEST PARK AVENUE LLC:
By Fox Tower, L.L.C., member:


Vanessa Sturgeon, Manager

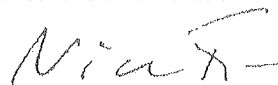

Vanessa Sturgeon, Manager

CONSENT OF CITY OF PORTLAND

The City of Portland, by and through its Bureau of Parks and Recreation, consents to this Covenant.

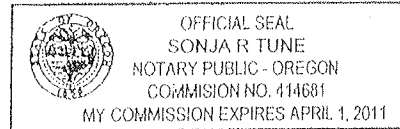
DATED this 7th day of March, 2011.

CITY OF PORTLAND:

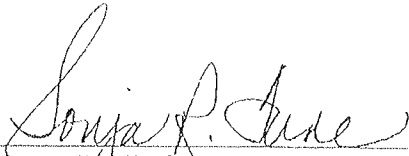

Nicholas S. Fish
Commissioner of Parks and Recreation

ACKNOWLEDGMENTS

State of Oregon)
County of Multnomah)

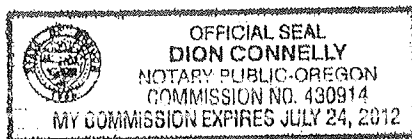


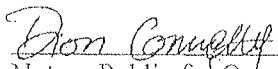
This Covenant was acknowledged before me on Feb. 25, 2011 by VANESSA STURGEON as Manager of Fox Tower, L.L.C., an Oregon limited liability company, for itself and as a member of West Park Avenue LLC, an Oregon limited liability company, as the voluntary act of each of those companies.



Notary Public for Oregon
My commission expires April 1, 2011

The Consent of the City of Portland to this Covenant was acknowledged before me on March 7, 2011 by NICHOLAS S. FISH as Commissioner of Parks and Recreation of the City of Portland as his voluntary act on behalf of the City of Portland.





Notary Public for Oregon
My commission expires 7.24.12

APPROVED AS TO FORM



CITY ATTORNEY

Moore-Love, Karla

From: David Noren [david@norenlaw.com]
Sent: Tuesday, February 11, 2014 4:46 PM
To: Moore-Love, Karla
Cc: Fioravanti, Kara; Rees, Linly; Kathryn Beaumont; Pfeiffer, Steven L. (Perkins Coie); Nicole Knudsen
Subject: Appellant's Letter to City Council
Attachments: Appellant's Letter to Council 2-11-14.pdf

Dear Ms. Moore-Love,

I represent the appellant, SEIU Local 49. Attached is my letter to the council for the appeal hearing to, morrow on the Park Avenue West Tower.

Please distribute the letter with its attachments to the mayor and commissioners. I am copying opposing counsel, staff, and the city attorney's office.

Thank you.

David Noren

This message is private or privileged. If you are not the person for whom this messa

David C. Noren, Attorney
P.O. Box 586
217 East Main Street
Hillsboro, OR 97123
Phone (503) 640-2661
Fax (503) 648-7216

2/11/2014

DAVID C. NOREN
Attorney at Law
217 E. Main P.O. Box 586
Hillsboro, Oregon 97123-0586
Telephone: (503) 640-2661 Fax: (503) 648-7216
e-mail: david@norenlaw.com

February 11, 2014

DELIVERED ELECTRONICALLY

Portland City Council
c/o Council Clerk Karla Moore-Love
1221 SW Fourth Avenue, Room 130
Portland, OR 97204

Re: Park Avenue West Casefile LU 13-214772 DZ/MS/AD
De Novo Hearing February 12, 2014

Dear Mayor Hales and Commissioners:

I represent SEIU Local 49. This case concerns a proposed master plan to transfer density, in the form of Floor Area Ratio or FAR credits owned by the City of Portland, from Park Block 5 to Park Block 4, to allow an additional four stories on a previously approved 26-story building. We urge you to deny the application. For purposes of this de novo appeal hearing we are emphasizing four reasons you should deny the application, but we continue to assert all the reasons for denial set out in detail in our three letters to the Design Commission, copies of which are attached.

1. **The application is not consistent with the Central City Plan Policy 3.C to “encourage the development of housing in a wide range of types and prices and rent levels.”**

The applicant, BDS staff, and the Design Commission have all taken the position that this policy is merely “aspirational” and that this individual project does not need to provide a “wide range of types and prices and rent levels.” Instead, they claim this policy is intended to be a general guide for planning the downtown area as a whole. But their position ignores two important facts about this case.

First, this application is for a master plan, which allows flexibility by overriding the specific requirements of the development code, but only if the master plan is consistent with the broader Central City Plan policies. To get the extraordinary benefit of the master plan and FAR transfers, the applicant must show how the master plan is consistent

with even the so-called aspirational elements of the Central City Plan. The application makes clear that the 10 stories of housing will be "high end" and makes no effort to provide for a range of prices and rents. If this were not a master plan project, high-end might be enough. But with a master plan, the project should include the range of rents and prices called for in the Central City Plan.

Second, and of critical importance, is the fact that the FAR credits to be transferred belong to the city. Because the transfer proposed in the master plan uses city property to achieve the additional height, the city is party to the transfer and has an obligation to see that its property is used in a way that is consistent with Housing Policy 3.C. It can and should do so by denying this application and negotiating with the applicant to require that the project include a range of rents and prices as part of the consideration the city receives for the FAR credits.

2. There is no evidence that the owner will transfer the FAR credits; without the credits the proposed building is not allowed at this location.

The city's ownership of the FAR credits was not addressed until the appellant raised it at the Design Commission hearing on November 21. The only evidence on the issue is an e-mail, dated November 27, from Parks Director Abbaté that states that Portland Parks and Recreation "has no objection to the proposed Central City Master Plan Amendment" but makes clear that "the bonus FAR on Park Block 5 – 0.5 bonus FAR through the 'water feature/public fountain bonus option' and 2.5 bonus FAR through the 'locker room bonus' is owned by Portland Parks and Recreation." Mr. Abbaté does say that "PP&R previously has expressed its willingness to discuss with the owner of Park Block 5 and/or Park Block 4 the possible transfer of its remaining FAR, and remains open to that possibility." But this is not evidence that the transfer *will* occur. There is no evidence that the City Council has delegated its authority to dispose of real property interests to the Director of PP&R. There is not any evidence that the City Council (which does have the authority, within limits, to dispose of real property such as FAR credits) has or will agree to the transfer, or under what circumstances it may do so.

The applicant has the burden of proving that the application meets the standards of the development code, including the FAR limits that would restrict the building to the approved 26 stories. Because there is no evidence that the FAR will be transferred, the applicant has failed to meet that burden and the application should be denied.

3. Approving this application without requiring some element of affordable housing may be inconsistent with the federal Fair Housing Act's requirement to remove impediments to fair housing, potentially exposing the city to liability concerning its use of HUD funds.

The city is the recipient of millions of dollars annually in federal block grants and other funds that require compliance with the federal Fair Housing Act. As a recipient, the city must certify that it is working to affirmatively further fair housing and reduce segregation, not just in its public housing programs but in all its programs that affect housing, including planning and zoning. While the city may reasonably say that it cannot require affordable housing in every land use case that comes before it, can it fail to require some element of affordable housing under the circumstances of this case and still certify that it is working to remove impediments to fair housing?

This case presents an unusually strong basis for requiring affordable housing. The downtown area has particular high rents and prices that have a disproportionate effect on racial minorities, the disabled, and families with children. If the city fails to take this opportunity, it may have difficulty later demonstrating its commitment to fair housing in all its programs, as required by federal law.

While the Fair Housing Act's requirements are not directly applicable as review criteria, they do provide context for the city's Central City Plan policies on housing, and should be considered in deciding whether this application is consistent with those policies.

4. The City erred in processing this application before the Design Commission rather than the city hearings officer.

33.720.020.B assigns "*all land use reviews subject to a Type III proceeding*" to the hearings officer, with limited exceptions that do not apply in this case. One exception provides that the Design Commission may hear a Type III application for "*reviews in the Central City plan district for height and FAR bonuses and transfers.*" 33.720.202.C.4. However, transfers in excess of 3:1 FAR, or transfers of FAR across rights of way, are allowed (if allowed at all in this subarea) only as part of a master plan. Nothing in the code authorizes the Design Commission, rather than the Hearings Officer, to review Type III Central City master plans. The Design Commission findings indicate that this is a Type II amendment to a master plan, but the application itself states that it is a Type III Master Plan request.

Master plans should be reviewed by either a hearings officer or a planning commission that meets the requirements of state law. Having a specialist body of industry insiders decide whether a proposal complies with the broad planning policies of the Central City Plan is contrary to both the city code and state law.

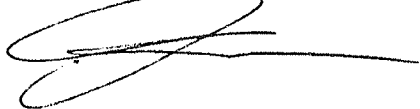
The Design Commission's failure to follow its own rules of procedure in the two cases preceding this case at the November 21 hearing led to a delay of nearly seven hours between the time for which the hearing was noticed and the time it occurred. SEIU's working members who attended the hearing were unable to wait while the Design

Commission dithered for seven hours over just two other cases. A hearings officer would have followed the rules and the hearing would have occurred in a timely manner.

CONCLUSION

This application should be denied because it is not consistent with the policy to encourage housing in a wide range of types and prices and rent levels, and because there is no evidence that the proposed transfer of the city's FAR credits will occur. SEIU Local 49 is prepared to work with the city attorney to develop appropriate findings in support of denial. The finding interpreting the applicability of the housing policy in this case should emphasize that the transferred property is city property, which requires the city as well as the applicant to act consistently with the plan policies on housing. Such an interpretation is legally sound and would be subject to great deference by any review body, should the applicant decide to appeal a denial.

Very truly yours,

A handwritten signature in black ink, appearing to read 'David C. Noren', with a large, sweeping flourish extending to the right.

David C. Noren

ATTACHMENTS:

1. November 21 Letter from SEIU Local 49
2. November 21 Letter from Noren
3. November 27 Letter from Noren
4. December 5 Letter from Noren
5. November 27 e-mail from Director Abbaté



November 21, 2013

Portland Design Commission
Portland Bureau of Development Services
1900 SW Fourth Avenue, Suite 1500
Portland, OR 97201

Re: Park Avenue West, Casefile LU 13-214772 DZ/MS/AD

Dear Chair and Commissioners:

SEIU Local 49 is a private sector union with close to 10,000 members. Almost a quarter of our members work providing important yet often overlooked services cleaning and protecting downtown office buildings. The core mission of SEIU Local 49 is to improve the lives of working people. Our focus on this mission takes us beyond the four walls of a workplace and encompasses a drive to improve the livability and sustainability of the communities in which our members live.

Livability for our members means access to good jobs, access to affordable transportation, access to healthcare, and, most relevant to the issue at hand today, access to affordable housing.

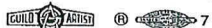
Janitors, security officers, and their allies are proud of the work they have done to raise standards for themselves and their families. Yet despite that hard work and hard-won industry improvements, the increased cost of living and Portland's ultra-competitive housing market force many of our members to seek housing far from their places of work. Ms. Maza's story, of leaving the city center to be able to put a roof over her head while continuing to perform her service job in the heart of the city, is typical. Adela used to live in inner Southeast Portland, near 15th and Hawthorne; she now lives past 175th and SE Powell. Workers are forced to travel longer distances, often by bus and late at night, to get from home to work. This disparity between affordable housing and job quality forces many of our members to travel upwards of 1.5 hours on public transportation to reach their jobs. Adding insult to injury, the price of bus fare has steadily increased.

The lack of affordable and accessible housing presents a hardship for our membership and all service workers. A project of this size in our central core that seeks the special benefit of density transfers should provide some lower cost housing in return for that benefit. The city should capitalize on this opportunity to require more affordable housing. Failure to do so adversely impacts our members.

SEIU has a long track record related to affordable and accessible housing for all. For many years SEIU has partnered with various social and environmental justice allies focused on making Portland sustainable and equitable. Access to affordable housing is an important piece of that work.

SERVICE EMPLOYEES
INTERNATIONAL UNION
LOCAL 49

3536 SE 26th Avenue
Portland, OR 97202-2901
503.236.4949
Fax 503.238.6692
Toll Free 800.955.3352
Toll Free Fax 888.595.7979
www.seiu49.org





Our past efforts have included participation in a diverse coalition of housing and transportation advocates in the Legislature regarding the lifting of a ban on inclusionary zoning that would enable the inclusion of more affordable housing in public projects. Additionally, we have worked with the Community Alliance of Tenants and the Portland Housing Alliance. As part of our broader effort to promote a truly sustainable and equitable Portland, we have been actively involved with the Coalition for a Livable Future and OPAL.

As an organization we are committed to ensuring that Portland is a city that works for everyone. We want to see an inclusive city where all workers can live close to where they work. The working class cannot be segregated out of the sustainable attributes of our city. The city's failure to require elements of affordable housing in this project will therefore adversely affect or aggrieve the members of SEIU Local 49 and Ms. Maza

Sincerely,

Maggie Long
Director of Property Services
Service Employees International Union, Local 49
(503) 236-4949 x 256
maggiel@seiu49.org

SERVICE EMPLOYEES
INTERNATIONAL UNION
LOCAL 49

3536 SE 26th Avenue
Portland, OR 97202-2901
503.236.4949
Fax 503.238.6692
Toll Free 800.955.3352
Toll Free Fax 888.595.7979
www.seiu49.org



DAVID C. NOREN
Attorney at Law
217 E. Main P.O. Box 586
Hillsboro, Oregon 97123-0586
Telephone: (503) 640-2661 Fax: (503) 648-7216
e-mail: david@norenlaw.com

November 21, 2013

HAND DELIVERED

Portland Design Commission
Portland Bureau of Development Services
1900 SW Fourth Avenue, Suite 1500
Portland, OR 97201

Re: Park Avenue West Casefile LU 13-214772 DZ/MS/AD

Dear Chair and Commissioners:

I represent SEIU Local 49 and Adelaida Maza. This project presents an important opportunity to increase affordable housing in downtown Portland, but the application is being rushed through without participation by the appropriate decision makers and without adequately addressing affordable housing policies. The master plan should not be approved unless it includes some affordable housing.

STANDING

SEIU 49 and Adelaida Maza have standing to participate in this hearing because they may be adversely affected or aggrieved by the city's decision. As described below, the decision to allow transfer of floor-area ratio (FAR) across a right of way in the Downtown district is allowed, if at all, only as part of an approved master plan. The decision is therefore subject to the approval criteria for central city master plans in 33.510.255.E, which require the applicant to show that "the proposed plan is consistent with the policy objectives of the Central City Plan." Those policies include Housing Policy 3.C, "*Encourage the development of housing in a wide range of types and prices and rent levels.*" The application narrative makes clear that the proposed residential use will be for "high end" units, not for a wide range of rent levels. The union's membership, folks like Ms. Maza, increasingly must relocate a distance from the city center in order to find affordable housing, yet the service jobs they perform---as janitors, security guards and similar lower-wage workers --- are often located in the central city, forcing them to

travel longer distances, often by bus and late at night, to get from home to work. The city's failure to require elements of affordable housing will therefore adversely affect or aggrieve the members of SEIU Local 49 and Ms. Maza.

We are including in the record a video disk about Ms. Maza, a union member who works downtown, lives in east county where housing is more affordable, and struggles with public transportation to get to and from her work. Folks like Ms. Maza deserve more opportunities for housing near their jobs.

PROCEDURAL HISTORY

This project was first reviewed and approved in 2007 as a central city master plan under 33.510.255, with related design review under Chapter 33.825 (Casefile LU 07-140633 MS DZM AD). That matter was processed as a Type III review by the Design Commission and went to the City Council on appeal. The project as approved included transfer of 11.7:1 FAR from Park Block 5 to Park Block 4, nearly doubling the FAR for the project site. It also included ten floors of residential use with 84 condominium units. Blocks 4 and 5 were at that time owned by closely related entities, TMT and the Marilyn Moyer Charitable Trust. Block 5 had been acquired for seven million dollars in 2006 but was subject to a deed restriction requiring surface development be limited to use as park, with possible one-story structures on 30% of the area. The transfer of 11.7 FAR authorized by the master plan granted an extraordinary bonus to TMT, since it could not have used the surface of Block 5 for development anyway.

In 2008, Portland Park Block 5 was deeded to the City of Portland.

In 2009 the applicant requested a change to the Master Plan to reduce the project to 26 stories, eliminate the residential use, and transfer some of the FAR (2.6:1) back to Park Block 5. That central city master plan (Casefile LU 09-136017 MS DZ), with only 9.1 FAR transferred from Block 5 to Block 4, was approved by a Type III review by the Design Commission; it was not appealed to the City Council, and remains the approved master plan for the site.

The applicant is now, in 2013, seeking to transfer FAR yet again, back from Block 5 to Block 4, to increase the height to 30 floors, and to again include housing, now 15 floors of rental units. Initially, the applicant did not apply for a master plan review. Its application, submitted on July 19, 2013, was only for design review. The application was deemed complete on the day it was submitted and the matter was promptly processed as a Type II Design Review. SEIU Local 49 submitted written comments requesting that affordable housing be addressed as part of the decision. The application was approved without any review of master plan standards. SEIU Local 49 and Adelaida Maza timely filed an appeal, identifying incorrect processing of the application as one ground for

appeal. The matter was promptly scheduled for an appeal hearing before this Design Commission, but the applicant withdrew the application the day before the hearing.

On the same day, October 9, the applicant submitted the application in this case, seeking a Type III proceeding for both design review and a central city master plan. The signed application form does not identify Park Block 5 as being part of the application, and neither the application form nor the narrative identifies the City of Portland as the owner of Block 5; instead the narrative states that Block 5 is owned by the Marilyn Moyer Memorial Trust. There is no indication in the file that the applicant obtained the consent of the owner of Block 5 to apply for this master plan. The application was deemed complete on October 14, but on October 22 the applicant submitted a revised application form, still not identifying Block 5 as part of the application and not identifying any owners; this form added a Type II adjustment request. The notice of hearing was sent on November 1. A revised narrative was submitted on November 8 addressing the adjustment criteria.

PROCEDURAL ERRORS

1. Type III review of Central City master plans must be by a hearing before the Hearings Officer, not before the Design Commission.

33.720.020.B assigns *"all land use reviews subject to a Type III proceeding"* to the Hearings Officer, with limited exceptions that do not apply in this case. One exception provides that the Design Commission may hear a Type III application for *"reviews in the Central City plan district for height and FAR bonuses and transfers."* 33.720.202.C.4. However, transfers in excess of 3:1 FAR, or transfers of FAR across rights of way, are allowed (if allowed at all in this subarea) only as part of a master plan. Nothing in the code authorizes the Design Commission, rather than the Hearings Officer, to review Type III Central City master plans. The proper procedure for hearing both a Type III design review by the Design Commission and a Type III master plan by the Hearings Officer is a *"joint hearing before the applicable review bodies"* as set forth in 33.720.020.G.3. The earlier master plan approvals in 2007 and 2009 were approved by the Design Commission rather than the Hearings Officer, but this master plan must now go through the proper procedure, before the Hearings Officer, rather than be reviewed by the Design Commission, which had no authority to approve master plans in the first place. Therefore the application review procedure being used in this case violates the city code, and this Design Commission lacks authority to approve this application.

ORS 227.175 governs how cities may process applications for permits and zone changes. ORS 227.175(3) provides: *"Except as provided in subsection (10) of this section, the hearings officer shall hold at least one public hearing on the application."* ORS 227.175(1)(a)(A) provides generally that *"the hearings officer or such other person as the governing body designates may approve or deny an application for a permit without*

a hearing if the hearings officer or other designated person” provides notice and an opportunity to appeal; this exception to the requirement for a hearing before a hearings officer is commonly referred to as a Type II procedure. The statute does *not* provide that an “other person authorized by the governing body” may conduct the hearing on a permit. Therefore the application review procedure for this matter established by the city violates state law, and this Design Commission lacks authority to approve this application.

The procedural error of reviewing the master plan application by a hearing before the Design Commission prejudices the parties’ substantial rights. ORS 227.175(10)(a)(D) provides that an appeal from a decision, other than a decision by a hearings officer after a hearing, “*shall be to a hearings officer, the planning commission or the governing body.*” ORS 227.030(4) provides that “*no more than two members [of a city planning commission] shall be engaged in the same kind of occupation, business, trade or profession.*” Three members of this Design Commission are architects, two are landscape architects, and one is an urban designer. Arguably all six are “engaged in the same kind of occupation, business, trade or profession,” but certainly at least three are in the same profession. This Design Commission does not meet the requirements for a planning commission under state law, and is therefore not authorized to conduct hearings on appeals of Type II decisions, as a planning commission would be. Its lack of experience and familiarity with the broader planning issues addressed by the Planning and Sustainability Commission (which does meet the state requirements for a planning commission, with the city code limitation on membership a verbatim copy of the state requirement) prejudices the parties’ substantial rights to a review body more familiar with the comprehensive planning process, and in particular with the housing policies of the Central City Plan, than this Design Commission composed of design professionals charged with reviewing design issues.

2. The signed application form does not identify Block 5 as part of the application and does not identify the owner of Block 5.

33.730.060.C requires that the signed application form include an “*accurate legal description, tax account numbers and location of the property...and the name and addresses of all property owners.*” Portland Park Block 5 is not identified on the signed application form, so it may not be considered as part of the application, and the application must therefore be denied. Block 5 is now owned by the City of Portland, yet the City is not identified as the owner in any of the application or file materials, including in the staff report. The application narrative is apparently a hurried reworking of the 2007 and 2009 applications; it states that Block 5 is owned by the Marilyn Moyer Charitable Trust and that Block 4 is owned by Fox Tower LLC. In fact (as the signed application form states) Block 4 is owned by West Park Avenue LLC. Block 5, which is not identified at all on the signed two-page application form, is owned by the City of Portland, and there is no indication whether anyone at the City of Portland has agreed to this proposed FAR transfer. The city should certainly have been identified in the

application and the notice as the owner of one of the properties that is the subject of the central city master plan. Failure to so identify the owner prejudices the parties' substantial right to engage the owner concerning the proposed use. Only by searching property records were we able to determine that in fact the City of Portland, and not TMT or any related entity, owned Block 5; the application narrative is very misleading. The applicant who signed the application form, architect Robert Thompson, gave assurance in the Responsibility Statement that the information on ownership was accurate and that he had gained the permission of the property owners identified in the application. Because the signed application failed to identify Block 5 as part of the development site and failed to identify the City of Portland as the owner of Block 5, and because the applicant apparently did not confer with the owner of Block 5 or secure the owner's permission to submit the application, Block 5 may not be considered as part of this application, and the requested FAR transfer from Block 5 must be denied.

The city should only be processing permit applications from owners, pursuant to ORS 227.175(1), not from "applicants" who are not owners; approving this application without proof that the City has consented to the application is therefore a violation of state law.

3. The revisions to the application were made less than 10 days before the notice of the request was mailed.

33.730.060 requires that any changes to an application that substantially alter the request must be made at least 10 days before the notice of the request is mailed. The applicant submitted a revised signed application dated October 22, but there is no indication on the form or in the file when it was actually received or determined to be complete. See Exhibit G.3. The application for an adjustment is therefore not timely and may not be considered as part of this hearing, nor may the revised application narrative submitted on November 8. The submittal of the revised narrative significantly delayed the city's response to our request for a copy of the narrative; it was not made available until late last Friday, six days before the hearing. All of this is indicative of the haste with which this application is being rushed through the process.

SUBSTANTIVE REVIEW CRITERIA

1. Housing Policy 3.C is a compelling reason to require affordable housing as part of this master plan.

The first master plan approval criterion is *"The proposed plan is consistent with the policy objectives of the Central City Plan."* 33.510.255.E.1 The application has not adequately addressed the policy objectives of the Central City Plan. As the purpose description of the Central City Master Plan provides, at 33.510.255.A, *"the additional development potential and flexibility is possible because the plan is used to demonstrate*

that the policy objectives of the Central City Plan and the public service needs of the area are addressed."

In addressing the Central City Plan policies, the application narrative mentions only the first element of Policy 3 (Housing). The application narrative does not address Plan Policy 3 as a whole. In particular it does not address the Policy 3.C objective to "*encourage the development of housing in a wide range of types and prices and rent levels.*" This policy objective allows the city to require affordable housing as part of the trade-off for the additional development potential that would be authorized by this new master plan.

If this project is to get the extraordinary benefit of the requested FAR transfers it should provide at least some affordable housing, so that that lower-income working folks like SEIU's members who work downtown can afford to live near their work. We request that you either deny the application as inconsistent with the policies of the Central City Plan, or that you impose a condition of approval to require a substantial affordable housing component as part of your approval of residential use and building expansion.

2. Floor area ratio transfers are not allowed to cross rights of way in this subarea, even as part of a master plan.

The relevant approval criteria for FAR transfers are as follows: 33.510.200.B: "*Floor area ratios greater than that shown on Map 510-2 [ie. 9.0:1] are prohibited unless allowed by Subsections C. through G., below, or by 33.510.210 [i.e. bonuses].*" 33.510.200.C.1: "*Except as provided by C.2 through C.5 [not relevant to this case], below, increases in FAR, whether by transfers of floor area or bonus floor area options, of more than 3 to 1 are prohibited.*" 33.510.200.D .1: "*Floor area transfers across rights-of-way are prohibited in the Downtown subdistrict.*" 33.510.255.B: A central city master plan can allow flexibility where it "*allocates allowed floor area to individual development sites that will not remain in the same ownership.*" Taken together, these provisions prohibit any transfer of FAR greater than 3:1, and prohibit any transfers across rights of way in the Downtown subarea. The master plan flexibility is to "*allocate floor area to individual sites that will not remain in the same ownership.*" It does not authorize floor area ratio transfers across rights of way in the Downtown subarea or otherwise trump the limitations in 33.510.200.C.1 and D.1.

CONCLUSION

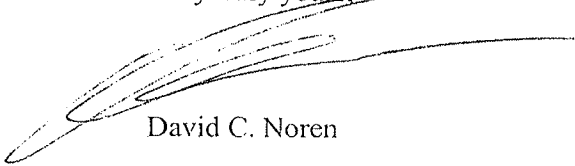
This application should be denied because the Design Commission lacks authority to approve it. It should also be denied because it is not consistent with the policy to encourage housing in a wide range of types and prices and rent levels, and because the proposed FAR transfers are prohibited in this subarea. In the alternative, any approval

Portland Design Commission
November 21, 2013
Page 7

should require an affordable housing component for some of the additional floors being approved for residential use.

If this matter is not continued, please leave the record open for additional testimony.

Very truly yours,

A handwritten signature in dark ink, consisting of several overlapping, sweeping strokes that form a stylized, elongated shape.

David C. Noren

DAVID C. NOREN
Attorney at Law
217 E. Main P.O. Box 586
Hillsboro, Oregon 97123-0586
Telephone: (503) 640-2661 Fax: (503) 648-7216
e-mail: david@norenlaw.com

November 27, 2013

SENT ELECTRONICALLY

Portland Design Commission
Portland Bureau of Development Services
1900 SW Fourth Avenue, Suite 1500
Portland, OR 97201

Re: Park Avenue West Casefile LU 13-214772 DZ/MS/AD

Dear Chair and Commissioners:

I represent SEIU Local 49 and Adelaida Maza. This additional material is in response to the oral comments of the applicant's attorney, Steven Pfeiffer, at the hearing on November 21.

Mr. Pfeiffer argued that the city's comprehensive plan policies, in particular the Central City Plan policy concerning housing, were not applicable to a permit application such as this. Mr. Pfeiffer contended that only land use regulations apply here, and that the comprehensive plan policies only apply to plan amendments. However, the land use regulations themselves, specifically the central city master plan criteria, make the Central City Plan policies applicable to master plans. The application narrative and staff report both recognize this, identifying Policy 3, "Housing," as an applicable review criterion, but failing to address the "further statements" of the policy, including the Policy 3.C objective, "*encourage the development of housing in a wide range of types and prices and rent levels.*" The "Plan Organization" section at page 7 of the Central City Plan makes clear that "the policies include 'further statements' which provide explicit target accomplishments for the community." Copies of the Central City Plan Organization section and of Policy 3 are attached.

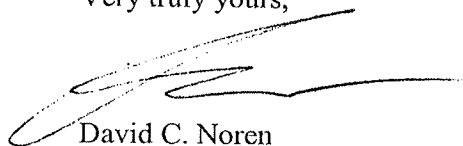
Mr. Pfeiffer also argued that the restrictive covenant that severely limits surface development of Block 5 is not relevant. It may be that the private covenant limiting development (and thus limiting floor-area ratio that could be developed on Block 5) does not of itself prevent transfer of FAR to Block 4. However, the restrictive covenant is relevant in considering whether to approve a master plan, because compliance with the Housing Policy 3.C objective should consider whether requiring affordable housing is

Portland Design Commission
November 27, 2013
Page 2

appropriate in a particular instance. Because this applicant is getting the extraordinary benefit of the FAR transfer from a block that could not be developed in any case, it is more appropriate to consider, and impose, an affordable housing requirement than if the applicant were actually giving something up to get the FAR transfer.

The application should be denied because it is not consistent with the policy to encourage housing in a wide range of types and prices and rent levels, and because the proposed FAR transfers are prohibited in this subarea. In the alternative, any approval should require an affordable housing component for some of the additional floors being approved for residential use.

Very truly yours,

A handwritten signature in black ink, appearing to read "David C. Noren", with a long horizontal flourish extending to the right.

Attachment (2 pages)

cc Steven Pfeiffer

Plan Organization

The Adopted Central City Plan consists of several parts. The Plan Map and Land Use Designations, Vision Statement, and the Goal and Policies make up the Plan that was adopted by ordinance by the City Council. Also adopted by resolution were the action charts, maps, and district urban design plans which accompany the policies.

A color fold-out Plan Map, showing land use designations and some of the major thematic elements of the Plan, is included as part of the Plan. On the reverse side, there is a map of the predominant land uses in the Central City. The supplemental maps included in this Plan also reflect the land use information and plan elements on the fold-out Plan Map.

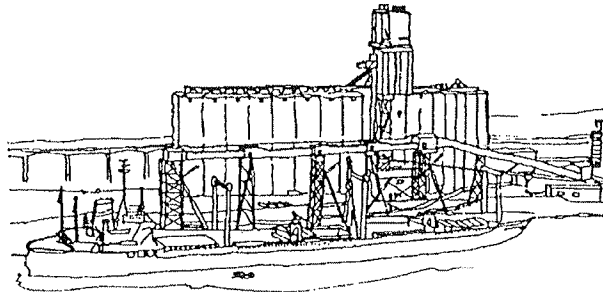
The Vision statement guides the adoption and future implementation of the Plan. The Vision illustrates where the Plan is leading us and provides a standard by which to measure the Plan's success. Following the Vision is the Plan Goal. This Goal ties the Central City Plan to Portland's adopted Comprehensive Plan, making the Plan and its 21 policies a part of the Comprehensive Plan. The Vision and the Goal set the stage for the body of the Plan.

The Plan is built around 21 policies for the Central City. The first 12 policies reflect the areas of functional study covered by the Steering Committee and Functional Advisory Committees. The next policy addresses future review and monitoring of the Plan. Policies 14 through 21 address the districts that make up the Central City, with one policy for each district. The policies include "further statements" which provide explicit target accomplishments for the community.

The charts and maps illustrate the ideas for implementing each of the Central City Plan policies. The proposals are assigned a time-frame for action (immediate, short, or long-range), and a possible lead implementing agency or agencies is identified. The proposal, in some cases, is indexed to a fuller discussion and explanation in the Description of Selected Actions and Strategies, Plan and Supplemental Maps, and the Code Amendments sections of this report. All actions and strategies listed on the action charts were adopted by resolution, those which specify changes in zoning designations or in the zoning code were implemented with the Plan at the time of its adoption through an ordinance that amended the City's Comprehensive Plan and Zoning Code. Programs and projects formally approved by the Council by resolution are approved on a policy basis but without the binding force of law.

Functional and district maps accompany the policies and illustrate further the proposals listed on the action charts and provide a geographic context for actions that are site specific. The maps which accompany the functional topic policies are of the whole Central City study area and present area-wide relationships. The maps which accompany the district policies are detailed urban design plans for the districts. Each urban design plan illustrates the proposals contained in the district action chart. They also present more specific details for the location of such elements as district gateways.

Illustrations of the Portland of the future as envisioned by this Plan are presented throughout this report. Generally, these are an artist's concept of what a specific new development or improvement might look like. The illustrations are not intended as images of how things will look, or even should look, but how they might look. As development occurs, those working on the implementation of the idea will produce a final design of the projects. The illustrations in this document are a starting place for the creative individuals to build on.



Policy 3: HOUSING

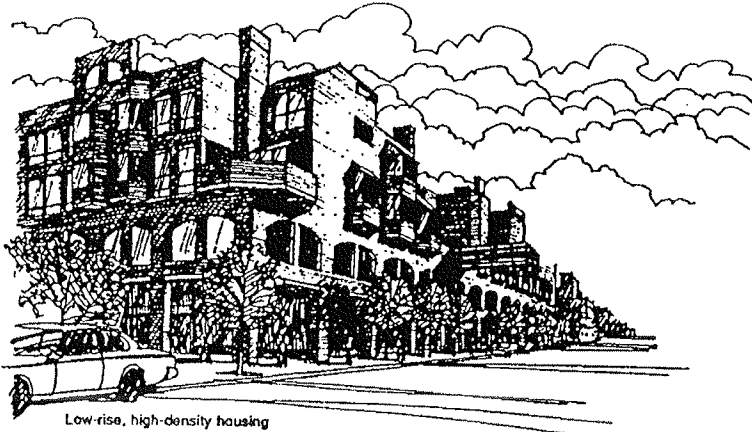
Maintain the Central City's status as Oregon's principal high density housing area by keeping housing production in pace with new job creation.

FURTHER:

- A. Promote the construction of at least 5,000 new housing units in the Central City by the year 2010.
- B. Preserve and encourage rehabilitation of existing housing.
- C. Encourage the development of housing in a wide range of types and prices and rent levels.
- D. Foster the growth of housing to help reinforce the Central City as a lively urban area, especially during evenings.
- E. Secure greater regional participation in addressing the housing needs of the homeless, low-income and other special needs populations.
- F. Where residential development is required, assure that when development of the housing is deferred to the future the housing site is designated and zoned residential.



Loft Housing: Conversion of obsolete industrial and commercial buildings into housing.



Low-rise, high-density housing

ACTION CHART

#	PROPOSALS FOR ACTION	TIMING			POSSIBLE IMPLEMENTING AGENCY	INDEX TO ACTION DETAIL
		ADOPT WITH PLAN	NEXT FIVE YEARS	SIX TO 20 YEARS		
	PROJECTS					
H1	Study and make recommendations on building code amendments needed to allow safe/cost-effective creation of loft housing.		++++		Planning/BOB	
H2	Expand eligibility for property tax abatement for housing, in targeted areas, to include the entire Central City.		++++		State Legislature/Planning	
H3	Provide year-round shelter for the homeless.		++++		HRB/Mult. County	
	PROGRAMS					
H4	Use urban renewal and tax increment financing programs to foster the development and preservation of housing in urban renewal districts, (particularly preservation of SRO housing).		++++		PDC	
H5	Establish a city housing trust fund for replacement of lost housing, construction of new housing and preservation of existing housing.		++++		Planning/PDC/HAP/Mult. County	P 87
H6	Extend the Urban Homestead program to include conversion of obsolete and unused commercial and industrial buildings to housing.		++++		PDC	
H7	Encourage the State Board of Higher Education to build student housing on the Portland State University Campus.		++++		State Legislature	
H8	Establish an awards program for low, moderate and middle income housing construction and rehabilitation.		++++		Planning	
H9	Involve the Crime Prevention Office when reviewing the plans of major construction or redevelopment of housing projects.		++++		Planning/BOB/PPD	
H10	Aggressively explore, develop and take action to create housing incentives, particularly taking quick action on those potential incentives identified during the Plan development process.		++++		Planning/PDC/State Legislature/Pvt.	P 87

NOTE: Proposals for actions shown on the Action Charts and maps were adopted through City Council Resolution. The projects, programs and regulations listed are a starting place. As studies are undertaken, some actions will need to be amended, or in some cases, replaced with other proposals found to be better or more feasible.

DAVID C. NOREN
Attorney at Law
217 E. Main P.O. Box 586
Hillsboro, Oregon 97123-0586
Telephone: (503) 640-2661 Fax: (503) 648-7216
e-mail: david@norenlaw.com

December 5, 2013

SENT ELECTRONICALLY

Portland Design Commission
Portland Bureau of Development Services
1900 SW Fourth Avenue, Suite 1500
Portland, OR 97201

Re: Park Avenue West Casefile LU 13-214772 DZ/MS/AD

Dear Chair and Commissioners:

I represent SEIU Local 49 and Adelaida Maza. This letter is in response to the material submitted by the applicant's attorney, Steven Pfeiffer, in his letter of November 27, 2013.

1. **Design Commission as Review Body.** Mr. Pfeiffer argues that the Design Commission is the proper review body despite the individual commissioners' professional work, because the city's leadership has decided they are. But the city must still comply with state law, which prescribes membership of planning commissions, and it is clear that the Design Commission does not meet the requirements for a planning commission. This error prejudices my clients' substantial rights because, pursuant to ORS 227.175, appeals of Type II decisions may only be heard by a hearings officer or a planning commission or city council. The procedural error of having a Type III permit hearing conducted by the Design Commission cannot be excused (as would a planning commission decision) on the grounds that they are authorized by state law to hear appeals of Type II decisions. Decisions by the Design Commission as the initial hearings body are not allowed under ORS 227.175, and the application should be denied.

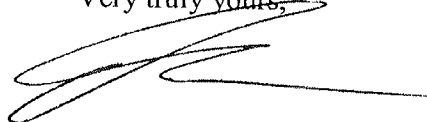
2. **Consent of the City to Application.** Mr. Pfeiffer argues that the city, through its Bureau of Parks and Recreation, did not need to consent to the application because they were mailed notice of it, but then provides an e-mail, dated November 27, 2013, from the Bureau director stating that Parks and Recreation "has no objection" to the proposed master plan. There is no evidence that the applicant conferred with the owner of Park Block 5 or gained permission before submitting the application. Moreover, attached to Mr. Abbate's e-mail is a recorded covenant concerning the earlier FAR transfers of 8.7 FAR from Park Block 5, in which the city stated its consent to those transfers, which

were a *fait accompli* by the time the city took ownership. That consent was signed by the Parks and Recreation Commissioner. Consent from that level -- an elected City Commissioner directly responsible to the voters -- should be required in this instance as well.

3. Revisions to Application. Mr. Pfeiffer presented no evidence concerning when the revised application form was in fact received by the city. Instead he argues that the revisions in the revised application narrative (which is dated November 7, not October 22, as he asserts) were not substantial and therefore the time limits of 33.730.060 do not apply. The revised application form dated October 22 and the revised application narrative dated November 7 are substantial revisions because they include the requests for an adjustment and for two design modifications that were not included in the October 9 application. Approval despite the applicant's failure to timely submit the application for adjustment and design modification will be a procedural error that prejudices my clients' substantial rights because the project cannot go forward as presented without these additional approvals.

Attached are copies from the casefile of the following: the first signed application form showing it was received on October 9; the "Summary of Request" from the application narrative dated October 9; the memo and revised application form dated October 22 with no indication when they were received by the city; and the "Summary of Request" from the application narrative dated November 7, 2013. Together these show that the application was substantially revised to include the adjustment and design modification requests.

Very truly yours,

A handwritten signature in black ink, appearing to read 'David C. Noren', with a long horizontal flourish extending to the right.

David C. Noren

Attachment (7 pages)

cc Steven Pfeiffer



City of Portland, Oregon - Bureau of Development Services

1900 SW Fourth Avenue • Portland, Oregon 97201 • 503-823-7526 • www.portlandoregon.gov/bds



Land Use Review Application

File Number: LU 13-214772 DZ

FOR INTAKE, STAFF USE ONLY

Date Rec 10-9-13 by kaf

☐ Type I ☐ Type IX ☐ Type II ☐ Type IIX ☒ Type III ☐ Type IV

LU Reviews DZ

[Y] ☒ Unincorporated MC

[Y] ☒ Flood Hazard Area (LD & PD only)

[Y] ☒ Potential Landslide Hazard Area (LD & PD only)

Qtr Sec Map(s) 3029 Zoning CXd

Plan District Central City

Neighborhood Downtown

District Coalition NW/NW

Business Assoc D.R.C.

Related File # 13-212680 PC

APPLICANT: Complete all sections below that apply to the proposal. Please print legibly.

Development Site
Address or Location Park Block 4: 750 SW Park Avenue

Cross Street SW Ninth Avenue Sq. ft./Acreage 20,000 sf/0.46 acres

Site tax account number(s)

R 246982

R 246979

R

R 246980

R 246981

R

Adjacent property (in same ownership) tax account number(s)

R

R

R

Describe project (attach additional page if necessary)

The applicant requests a revision of LU 09-136017 MS DZ to add 4 floors to the previously approved mixed-use PAWT tower and an increase in eligible FAR bonuses, as follows: 1) Type III Design Review to increase the building from 26 stories to 30 stories - removing 11 floors of office and replacing those floors with 15 floors of residential - for a net increase of 4 stories; 2) Type III CCMP to revise the transfer of the unused development capacity from PB5 to PB4 from 9.1 FAR to the originally approved 11.7 FAR, and utilize a 3.0 FAR housing bonus on PB4 based on the reintroduction of housing to the project.

Describe proposed stormwater disposal methods

Connection to 12" storm sewer in SW Park Avenue, 20,000-gallon rainwater harvesting storage tank

Identify requested land use reviews

Type III Land Use Review, Type III CCMP

For renovation, provide exterior alteration value.
AND provide total project valuation.

\$ 119,000,000.00

\$ _____

• Land Divisions - Identify number of lots (include lots for existing development).

New street (public or private)?

☐ yes ☒ no

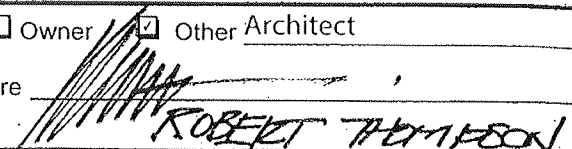
continued / over 1

Exh. G.

Applicant Information

- Identify the primary contact person, applicant, property owner and contract purchaser. Include any person that has an interest in your property or anyone you want to be notified.
- For all reviews, the applicant must sign the Responsibility Statement.
- For land divisions, all property owners must sign the application.

PRIMARY CONTACT, check all that apply ☐ Applicant ☐ Owner ☒ Other Architect

Name Robert Thompson, FAIA Signature 

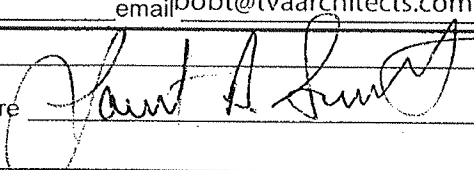
Company/Organization TVA Architects, Inc.

Mailing Address 920 SW Sixth Avenue, Suite 1500

City Portland State OR Zip Code 97204

Day Phone 503-220-0668 FAX 503-225-0803 email bobt@tvaarchitects.com

Check all that apply ☐ Applicant ☒ Owner ☐ Other

Name Lamont Smith Signature 

Company/Organization TMT Development

Mailing Address 805 SW Broadway Street, Suite 2020

City Portland State OR Zip Code 97205

Day Phone 503-241-1111 FAX 503-241-1999 email lamont@tmtdevelopment.com

Check all that apply ☐ Applicant ☐ Owner ☐ Other

Name _____ Signature _____

Company/Organization _____

Mailing Address _____

City _____ State _____ Zip Code _____

Day Phone _____ FAX _____ email _____

Check all that apply ☐ Applicant ☐ Owner ☐ Other

Name _____ Signature _____

Company/Organization _____

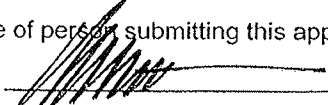
Mailing Address _____

City _____ State _____ Zip Code _____

Day Phone _____ FAX _____ email _____

Responsibility Statement As the applicant submitting this application for a land use review, I am responsible for the accuracy of the information submitted. The information being submitted includes a description of the site conditions. I am also responsible for gaining the permission of the owner(s) of the property listed above in order to apply for this review and for reviewing the responsibility statement with them. If the proposal is approved, the decision and any conditions of the approval must be recorded in the County Deed Records for the property. The City of Portland is not liable if any of these actions are taken without the consent of the owner(s) of the property. In order to process this review, City staff may visit the site, photograph the property, or otherwise document the site as part of the review. I understand that the completeness of this application is determined by the Director. By my signature, I indicate my understanding and agreement to the Responsibility Statement.

Print name of person submitting this application Robert Thompson, FAIA

Signature 

Phone number 503-220-0668 Date October 9, 2013

II. PROPOSED PROJECT

Summary of Request. TMT Development Co., Inc. requests a revision of LU 07-140633 MS DZM AD to reflect an increase in the building's size and eligible floor-to-area (FAR) bonuses, as follows:

- Type III Design Review to increase the building from 26 stories to 30 stories, including the addition of four floors in the mid-section of the tower. The building will now require 23.7 FAR, as approved in the original land use approval (LU 07-140633 MS DZM AD). Design review is governed by Chapter 33.825.
- Type III Central City Master Plan (CCMP) to: 1) revise the transfer of the unused development capacity from Park Block 5 (PB 5) ("Sending" Site) to Park Block 4 (PB 4) ("Receiving" Site), returning it to the originally approved 11.7 FAR which leaves 0.3 FAR of development capacity behind on PB 5; and 2) utilize a 3.0 FAR housing bonus on PB 4 based on the reintroduction of housing in the project. Such density transfers are governed by Section 33.510.255, Central City Master Plans

There will be only minor changes to the ground floor, none of which affect the location of the combined driveway for the loading dock and underground garage entrance. This being the case, no change is sought in the Type II Adjustment also approved in LU 07-140633, to permit vehicle access on a "Parking Access-Restricted" Street, or the companion Central City Parking Review (CCPR) (LU 07-169105) to allow a garage entrance within 75' of a light rail transit (LRT) alignment. Thus, the applicant requests that these companion approvals remain in force

The three Design Modifications granted as part of the original Design Review approval must also be retained. The first of these is to permit the rooftop mechanical penthouse to be located within 15' of the edge of the building on all four facades. The second is to permit the reduction of required loading spaces from three to two to reduce the width of the shared loading dock/garage entrance on SW Park Avenue. The third is to permit the building's spire to extend more than 10' above the maximum height limit of 460'.

Project Summary

Due to changes in the recent economic climate, TMT Development Company, Inc., has elected to add four floors to its 26-story mixed-use Park Avenue West Tower, originally approved in 2007 as a 33-story mixed use building (PAWT.1) (LU 07-140633 MS DZM AD) and later in 2009 as a modified 26-story mixed-use office building (PAWT.2) (LU 09-104171 DZ). The proposed design for PAWT.3 includes the addition of four floors in the mid-section of the tower, for a total of 30 stories: 2 floors of retail, 15 floors of housing, and 13 floors of office. The building's total height will increase from 407' to 460' - including roof-top mechanical - which returns the building proportions to a slender point tower while remaining within the maximum allowable height requirements for this subarea of Downtown.

The original building was approved through a combined transfer of base density (8.7 FAR) and density bonuses (3.0 FAR) from Park Block 5 - the site of Director Park - for a total of 11.7 FAR. The remaining 0.3 FAR was retained on PB 5 for the park's above-grade development. Park Avenue West Tower also used a full complement of FAR on its site - PB 4 - including a base FAR of 9.0 and bonuses of 3.0, for a total of 12.0 FAR. As a result, the original building used the full 23.7 FAR (474,000 gsf) in its above-grade development. This is based on a site size of 20,000 sf.

In the new 30-floor development scheme, the building will again utilize 23.7 FAR or 474,000 gsf. This is achieved by the introduction of 15 floors of housing, which allows the building to be eligible for a 3.0 FAR housing bonus. As a result, the project is eligible for a total FAR of 23.7.



Date: October 22, 2013
Project Name: Park Avenue West Tower.3
Project No: 13154
Re: City of Portland Type III Design Review

Memo

To: Kara Fioravanti
1900 SW Fourth Avenue
Portland, OR 97201

From: Robert Thompson, FAIA

Kara,

Pursuant to our recent pre-application conference discussion, we understand that we will need to request a new Adjustment for access on SW Park, similar to the initial Adjustment approved in 2007. Additionally, we will need to request two Design Modifications (approved in the original Design Review): (1) to permit the building's spire to extend more than 10' above the maximum height limit of 460', and (2) to permit the reduction of required loading spaces to one standard 35' long loading space and one 22.5' long loading space as indicated in our Type III submittal. We also understand that the CCMP modifications we are requesting have been adequately addressed by the narrative application submittal on file.

Please include the attached Adjustment application form, together with our narrative discussion of compliance with applicable criteria set forth in the initial Type III submittal on file, for purposes of our pending request for Adjustment and Design Modification approval by the Commission.

Thank you,

Robert Thompson, FAIA

tva architects, inc.
920 sw sixth avenue : suite 1500 : portland, oregon 97204
phone: 503 220 0668 : www.tvaarchitects.com

Robert Thompson, FAIA Marc Labadie, LEED AP Roderick Ashley, AIA John Heitl, AIA Montgomery J. Hill, AIA Tim Wybenga, LEED AP

EXH 9.3



CITY OF PORTLAND, OREGON - BUREAU OF DEVELOPMENT SERVICES

1900 SW Fourth Avenue • Portland, Oregon 97201 • 503-823-7526 • www.portlandonline.com/bds



Land Use Review Application

File Number: _____

FOR INTAKE, STAFF USE ONLY

Date Rec _____ by _____

☐ Type I ☐ Type II ☐ Type IIx ☐ Type III ☐ Type IV

LU Reviews _____

[Y] [N] Unincorporated MC

[Y] [N] Flood Hazard Area (LD & PD only)

[Y] [N] Potential Landslide Hazard Area (LD & PD only)

Qtr Sec Map(s) _____ Zoning _____

Plan District _____

Neighborhood _____

District Coalition _____

Business Assoc _____

Related File # _____

APPLICANT: Complete all sections below that apply to the proposal. Please print legibly.

Development Site

Address or Location Park Block 4: 750 SW Park Avenue

Cross Street SW Ninth Avenue

Sq. ft./Acreage 20,000sf/0.46 acres

Site tax account number(s)

R 246982

R 246979

R

R 246980

R 246981

R

Adjacent property (in same ownership) tax account number(s)

R

R

R

Describe project

The Applicant requests a Type III Design Review to increase the building from 26 stories (approved in LU 09-136017 MS DZ) to 30 stories, and a Type II Adjustment to permit access on SW Park (similar to the adjustment approved in 2007). Additionally, the Applicant requests two Design Modifications which were approved in the original Design Review: (1) to permit the building's spire to extend more than 10' above the maximum height limit of 460', and (2) to permit the reduction of required loading spaces to one standard 35' long loading space and one 22.5' long loading space, as indicated in the Type III submittal. The Applicant requests a CCMP Amendment to revise the transfer of unused development capacity from PB5 to PB4 from 9.1 FAR to the originally approved 11.7 FAR, and to utilize a 3.0 FAR housing bonus on PB4 based on the reintroduction of housing to the project.

Describe proposed stormwater disposal methods

Connection to 12" storm sewer in SW Park Avenue, 20,000-gallon rainwater harvesting storage tank

Identify requested land use reviews

Type III Land Use Review, Type II Adjustment, two Design Modifications, CCMP Amendment

- Design Review - For new development, provide project valuation.
For renovation, provide exterior alteration value.

\$ \$119,000,000.00

- Land Divisions - Identify number of lots (include lots for existing development).
New street (public or private)?

☐ yes ☒ no

continued / over 1

Applicant Information

- Identify the primary contact person, applicant, property owner and contract purchaser. Include any person that has an interest in your property or anyone you want to be notified.
- For all reviews, the applicant must sign the Responsibility Statement.
- For land divisions, all property owners must sign the application.

PRIMARY CONTACT, check all that apply

☒ Applicant

☐ Owner

☐ Other

Name Robert Thompson, FAIA

Signature [Signature]

Company/Organization TVA Architects, Inc.

Mailing Address 920 SW Sixth Avenue, Suite 1500

City Portland

State Oregon

Zip Code 97204

Day Phone 503-220-0668

FAX 503-225-0803

email bobt@tvaarchitects.com

Check all that apply

☐ Applicant

☐ Owner

☐ Other

Name _____

Signature _____

Company/Organization _____

Mailing Address _____

City _____

State _____

Zip Code _____

Day Phone _____

FAX _____

email _____

Check all that apply

☐ Applicant

☐ Owner

☐ Other

Name _____

Signature _____

Company/Organization _____

Mailing Address _____

City _____

State _____

Zip Code _____

Day Phone _____

FAX _____

email _____

Check all that apply

☐ Applicant

☐ Owner

☐ Other

Name _____

Signature _____

Company/Organization _____

Mailing Address _____

City _____

State _____

Zip Code _____

Day Phone _____

FAX _____

email _____

Responsibility Statement As the applicant submitting this application for a land use review, I am responsible for the accuracy of the information submitted. The information being submitted includes a description of the site conditions. I am also responsible for gaining the permission of the owner(s) of the property listed above in order to apply for this review and for reviewing the responsibility statement with them. If the proposal is approved, the decision and any conditions of the approval must be recorded in the County Deed Records for the property. The City of Portland is not liable if any of these actions are taken without the consent of the owner(s) of the property. In order to process this review, City staff may visit the site, photograph the property, or otherwise document the site as part of the review. I understand that the completeness of this application is determined by the Director. By my signature, I indicate my understanding and agreement to the Responsibility Statement.

Print name of person submitting this application

ROBERT THOMPSON FAIA
ARCHITECT

Signature

[Signature]

Phone number

503 220 0668

Date

10.22.2013

II. PROPOSED PROJECT

Summary of Request. TMT Development Co., Inc. requests approval for:

- Type III Design Review to increase the building from 26 stories (PAWT.2) to 30 stories, including the addition of four floors in the mid-section of the tower. The building will now require 23.7 FAR, as approved in the original land use approval (LU 07-140633 MS DZM AD) (PAWT.1). Design review is governed by Chapter 33.825.
- Central City Master Plan Amendment (CCMP) to: 1) revise the transfer of the unused development capacity from Park Block 5 (PB 5) ("Sending" Site) to Park Block 4 (PB 4) ("Receiving" Site), returning it to the originally approved 11.7 FAR which leaves 0.3 FAR of development capacity behind on PB 5; and 2) utilize a 3.0 FAR housing bonus on PB 4 based on the reintroduction of housing in the project. Such density transfers are governed by Section 33.510.255, Central City Master Plans.

The applicant also requests the following land use approvals:

- Type II Adjustment, (approved in LU 07-140633,) to permit vehicle access to the proposed tower garage and loading dock from a combined driveway on SW Park Avenue, which according to Map 510-9, is a "Parking Access-Restricted" Street, as governed by 33.805.
- Two Design Modifications (approved in the original Design Review approval): (1) to permit the building's spire to extend more than 10' above the maximum height limit of 460', and (2) to permit the reduction of required loading spaces to one standard 35' long loading space and one 22.5' long loading space.

The applicant understands the Companion Central City Parking Review (CCPR) (LU 07-169105) remains in force, as it was already permitted. It allows a garage entrance within 75' of a light rail transit (LRT) alignment. No change in the location of the combined access to the loading dock and below-grade parking structure is proposed.

Project Summary

Due to changes in the recent economic climate, TMT Development Company, Inc., has elected to add four floors to its 26-story mixed-use Park Avenue West Tower, originally approved in 2007 as a 33-story mixed use building (PAWT.1) (LU 07-140633 MS DZM AD) and later in 2009 as a modified 26-story mixed-use office building (PAWT.2) (LU 09-104171 DZ). The proposed design for PAWT.3 includes the addition of four floors in the mid-section of the tower, for a total of 30 stories: 2 floors of retail, 15 floors of housing, and 13 floors of office. The building's total height will increase from 407' to 460' - including roof-top mechanical - which returns the building proportions to a slender point tower while remaining within the maximum allowable height requirements for this subarea of Downtown.

The original building was approved through a combined transfer of base density (8.7 FAR) and density bonuses (3.0 FAR) from Park Block 5 - the site of Director Park - for a total of 11.7 FAR. The remaining 0.3 FAR was retained on PB 5 for the park's above-grade development. Park Avenue West Tower also used a full complement of FAR on its site - PB 4 - including a base FAR of 9.0 and bonuses of 3.0, for a total of 12.0 FAR. As a result, the original building used the full 23.7 FAR (474,000 gsf) in its above-grade development. This is based on a site size of 20,000 sf.

In the new 30-floor development scheme, the building will again utilize 23.7 FAR or 474,000 gsf. This is achieved by the introduction of 15 floors of housing, which allows the building to be eligible for a 3.0 FAR housing bonus. As a result, the project is eligible for a total FAR of 23.7.

From: Abbaté, Mike
Sent: Wednesday, November 27, 2013 11:30 AM
To: Fioravanti, Kara
Cc: Auerbach, Harry; Lofgren, Todd
Subject: CASE FILE: LU 13-214772 DZM, MS, AD (PC 13-212680), Park Avenue West (South Park Block 4)

TO: Bureau of Development Services Staff: Kara Fioravanti 503-823-5892 / Kara.Fioravanti@portlandoregon.gov
RE: CASE FILE: LU 13-214772 DZM, MS, AD (PC 13-212680), Park Avenue West (South Park Block 4)

Site Address: Building site: 728 SW 9th Avenue
Floor Area Transfer site: 877 SW Taylor Street, 800 SW Yamhill Street, 825 W/SW Park Avenue

As owner of Park Block 5, Portland Parks & Recreation, has no objection to the proposed Central City Master Plan Amendment to allow an increase in the transfer of floor area from Director Park (formerly known as Park Block 5) to the proposed tower site (Park Block 4). Portland Parks & Recreation would like to note that the bonus FAR on Park Block 5 — 0.5 bonus FAR through the "water feature/public fountain bonus option" and 2.5 bonus FAR through the "locker room bonus option" is owned by Portland Parks & Recreation. In addition, Park Block 5 will retain a base FAR of 0.3:1 to accommodate 3 small park structures. Transfer of the bonus FAR from Park Block 5 to Park Block 4 will need to be agreed upon by the respective owners of the two properties. Attached to this email is the Land Use Covenant documenting the FAR on Park Block 5. Recital F of that Land Use Covenant reflects that PP&R retains 0.3:1 of the base FAR. Section I.1.5 of that Land Use Covenant provides: "Nothing in this Covenant affects any FAR bonus attributable to the construction of the water feature on Park Block 5 or any FAR bonus attributable to the construction of the bicycle lockers under the surface of Park Block 5. The City of Portland will continue to own the bonus FAR attributable to those elements." PP&R previously has expressed its willingness to discuss with the owner of Park Block 5 and/or Park Block 4 the possible transfer of its remaining bonus FAR, and remains open to that possibility. To date, however, no such transfer has been negotiated, and the City, through PP&R still owns that bonus FAR.

MIKE ABBATÉ, ASLA, LEEDTM
Director
503-823-5379
mike.abbate@portlandoregon.gov<<mailto:mike.abbate@portlandoregon.gov>>

[cid:image001.jpg@01CEEB64.1A1A6F00]

AMENDED LAND USE COVENANT
INCLUDING
COVENANT TRANSFERRING FLOOR AREA RATIO

Grantor: FOX TOWER, L.L.C.
c/o TMT Development Co., Inc.
805 SW Broadway, Suite 2020
Portland, Oregon 97205

Multnomah County Official Records
C Swick, Deputy Clerk

2011-032550



\$56.00

Grantee: WEST PARK AVENUE, LLC
c/o TMT Development Co., Inc.
805 SW Broadway, Suite 2020
Portland, Oregon 97205

00808074201100325500050057

03/14/2011 11:21:34 AM

1R-AMMODCCR
\$25.00 \$11.00 \$15.00 \$5.00

Cnt=1 Stn=21 ATESB

Affects: Park Block 5, CITY OF PORTLAND (transferring)
Park Block 4, CITY OF PORTLAND (receiving)

After recording return to:

Dean N. Alterman
Folawn Alterman & Richardson LLP
805 SW Broadway, Suite 2750
Portland, Oregon 97205

AMENDED LAND USE COVENANT
INCLUDING
COVENANT TRANSFERRING FLOOR AREA RATIO

This Amended Land Use Covenant Including Covenant Transferring Floor Area Ratio (this "Covenant") is made as of December 15, 2010 by FOX TOWER, L.L.C., an Oregon limited liability company, as holder of an easement and owner of certain improvements on Block 5, PORTLAND PARK BLOCKS ("Fox Tower"), and WEST PARK AVENUE LLC, an Oregon limited liability company, as owner of Block 4, PORTLAND PARK BLOCKS ("WPA"). This Covenant replaces in its entirety the Land Use Covenant Including Covenant Transferring Floor Area Ratio that was dated as of October 1, 2010 and recorded on December 2, 2010 as Document No. 2010-151855, Multnomah County Records. This Covenant is entered into for the purpose of correcting an error of calculation in the prior covenant.

RECITALS

A. The City of Portland, by and through its Bureau of Parks and Recreation (the "Parks Bureau") holds fee title to Block 5, PORTLAND PARK BLOCKS ("Park Block 5"), which it acquired by donation. Parks Bureau has constructed a public park on the surface of Park Block 5, and now operates that park and certain related surface and subsurface improvements.

B. Fox Tower holds an easement of record to construct and maintain a subsurface parking garage and certain surface improvements on and beneath Park Block 5. Fox Tower has done so, and now operates a parking garage beneath Park Block 5.

C. Parks Bureau and Fox Tower have separately agreed to submit Park Block 5 to the condominium form of ownership, forming two nonresidential condominium units, under which Parks Bureau and Fox Tower will each own one condominium unit on Park Block 5. Parks Bureau will own a unit located on the surface and used as a public park. Fox Tower will own a subsurface unit with certain ancillary surface structures that is used as a parking garage.

D. WPA owns Block 4, PORTLAND PARK BLOCKS ("Park Block 4"). WPA has begun construction of an office and retail tower on Park Block 4.

E. The zoning code of the City (the "Code") regulates the maximum floor-area ratio ("FAR") for properties in the downtown core area, including Park Block 4 and Park Block 5. The Code also allows the transfer of unused FAR from one property to another, under certain conditions and with certain restrictions.

F. Park Block 5 is 20,000 square feet in area and has a base FAR of 9:1, for a total allowable floor area of 180,000 square feet. The former owners of Park Block 4 purchased 8.7:1 of that FAR (equal to 174,000 square feet) from the former owner of Park Block 5 for use to redevelop Park Block 4, leaving 0.3:1 (equal to 6,000 square feet) with Park Block 5. Fox Tower purchased that FAR from the former owners of Park Block 4 with the intent to transfer it to WPA for use in developing Park Block 4. Fox Tower and WPA now wish to document and complete that transfer on the public record, for the use of WPA on Park Block 4. By executing this Covenant, Parks Bureau consents to this transfer but does not undertake any affirmative obligation to any person or party whomsoever.

NOW, THEREFORE, THE PARTIES AGREE:

Section I. Floor Area Ratio Transfer.

1.1 The recitals above are true and correct and are part of this Covenant.

1.2 Fox Tower transfers to WPA, from Park Block 5 and for the benefit of and appurtenant to Park Block 4, 174,000 square feet of unused FAR (the "Transferred FAR"), representing a transfer of 8.7:1 of the FAR from Park Block 5, that the prior owners of Park Block 4 had purchased from the prior owner of Park Block 5 and then assigned to Fox Tower.

1.3 To the extent that this transfer must be ratified or approved by Fox Tower as current owner of a property interest in Park Block 5, Fox Tower ratifies and approves this transfer.

1.4 For purposes of this Covenant, the FAR remaining on Park Block 5 is 6,000 square feet. The new base FAR on Park Block 4, before giving effect to certain density bonuses

allowed in the zoning code of the City of Portland, some of which are described in other sections of this Covenant, is 354,000 square feet.

1.5 Nothing in this Covenant affects any FAR bonus attributable to the construction of the water feature on Park Block 5 or any FAR bonus attributable to the construction of the bicycle lockers under the surface of Park Block 5. The City of Portland will continue to own the bonus FAR attributable to those elements.

Section II. Land Use Covenant: Retail Use Bonus Option

2.1 Section 33.510.210 of the zoning code allows projects in certain areas that provide retail uses to receive bonus floor area. For each square foot of retail space in excess of one-half the site area, one additional square foot of floor space is earned. The project on Park Block 4 is in a qualifying area. For the benefit of the City of Portland, WPA covenants that it will construct and maintain retail space on Park Block 4 of not less than 28,000 square feet, for a retail use bonus of 18,000 square feet (0.9 FAR) in accordance with Section 33.510.210.

2.2 In accordance with Section 33.700.060 of the zoning code, WPA covenants for the benefit of the City that WPA will comply with all applicable Code requirements and conditions of approval. If WPA fails to perform its obligations contained in this Section II, then the City may terminate occupancy of Park Block 4 and seek all necessary injunctive relief, including seeking to prevent future occupancy of Park Block 4 while a violation of this Section II exists.

Section III. General Provisions

3.1 This Covenant runs with the land and binds and benefits future owners of Park Block 4 and Park Block 5 and all persons claiming by, through, and under Fox Tower, WPA, and the City of Portland.

3.2 This Covenant is intended to benefit WPA as owner of Park Block 4 by documenting its receipt of FAR from Park Block 5 and the floor area bonuses provided by Section 33.510.210 of the Code. This Covenant is also intended to benefit the City of Portland by assuring that the overall density of development on Park Block 4 and Park Block 5 does not exceed the maximum density the Code allows.

3.3 The owners of Park Block 4 and Park Block 5 will execute and deliver, from time to time, such reasonable instruments as either of them may deem necessary (a) to confirm that the transfer of property interest described in this Covenant is a transfer of FAR only and not a transfer of fee ownership of land or the ownership interests that would create liability for real estate taxes; water, sewer, or other public utility charges; downtown development agency and similar charges; or any other similar governmental or public agency charges, and (b) to make all applications and filings as may be reasonably necessary to enable the owner of Park Block 4 to fully utilize the Transferred FAR.

3.4 Fox Tower and WPA will comply with all applicable Code requirements and conditions of approval of this Covenant.

3.5 Fox Tower warrants to WPA that it is the legal owner of and has good right to convey the unused FAR, and covenants that it will execute or procure any further necessary assurances of its rights to make this transfer.

3.6 This Covenant may not be amended without the written consent of the City of Portland.

3.7 This Covenant may be terminated by Fox Tower upon recordation of an instrument signed by the City and Fox Tower acknowledging that Park Block 4 and Park Block 5 are no longer subject to the FAR limitations and the resulting FAR calculations as recorded in this Covenant.

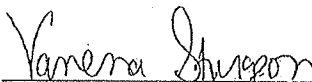
3.8 In any suit or action to enforce this Covenant, the prevailing party will be entitled to an award of its reasonable attorney fees and costs, at trial and on appeal.

3.9 The parties will submit this Covenant to the Multnomah County Recorder for recording at the expense of WPA.

FOX TOWER, L.L.C.:

WEST PARK AVENUE LLC:
By Fox Tower, L.L.C., member:


Vanessa Sturgeon, Manager

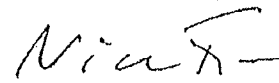

Vanessa Sturgeon, Manager

CONSENT OF CITY OF PORTLAND

The City of Portland, by and through its Bureau of Parks and Recreation, consents to this Covenant.

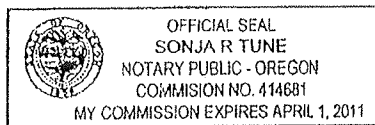
DATED this 7th day of March, 2011.

CITY OF PORTLAND:

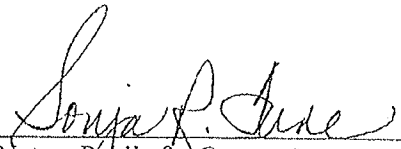

Nicholas S. Fish
Commissioner of Parks and Recreation

ACKNOWLEDGMENTS

State of Oregon)
County of Multnomah)

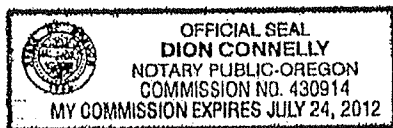


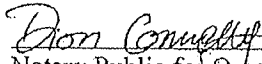
This Covenant was acknowledged before me on Feb. 25, 2011 by VANESSA STURGEON as Manager of Fox Tower, L.L.C., an Oregon limited liability company, for itself and as a member of West Park Avenue LLC, an Oregon limited liability company, as the voluntary act of each of those companies.



Notary Public for Oregon
My commission expires April 1, 2011

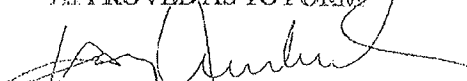
The Consent of the City of Portland to this Covenant was acknowledged before me on March 7, 2011 by NICHOLAS S. FISH as Commissioner of Parks and Recreation of the City of Portland as his voluntary act on behalf of the City of Portland.





Notary Public for Oregon
My commission expires 7.24.12

APPROVED AS TO FORM



CITY ATTORNEY

DAVID C. NOREN
Attorney at Law
217 E. Main P.O. Box 586
Hillsboro, Oregon 97123-0586
Telephone: (503) 640-2661 Fax: (503) 648-7216
e-mail: david@norenlaw.com

February 11, 2014

DELIVERED ELECTRONICALLY

Portland City Council
c/o Council Clerk Karla Moore-Love
1221 SW Fourth Avenue, Room 130
Portland, OR 97204

Re: Park Avenue West Casefile LU 13-214772 DZ/MS/AD
De Novo Hearing February 12, 2014

Dear Mayor Hales and Commissioners:

I represent SEIU Local 49. This case concerns a proposed master plan to transfer density, in the form of Floor Area Ratio or FAR credits owned by the City of Portland, from Park Block 5 to Park Block 4, to allow an additional four stories on a previously approved 26-story building. We urge you to deny the application. For purposes of this de novo appeal hearing we are emphasizing four reasons you should deny the application, but we continue to assert all the reasons for denial set out in detail in our three letters to the Design Commission, copies of which are attached.

1. **The application is not consistent with the Central City Plan Policy 3.C to “encourage the development of housing in a wide range of types and prices and rent levels.”**

The applicant, BDS staff, and the Design Commission have all taken the position that this policy is merely “aspirational” and that this individual project does not need to provide a “wide range of types and prices and rent levels.” Instead, they claim this policy is intended to be a general guide for planning the downtown area as a whole. But their position ignores two important facts about this case.

First, this application is for a master plan, which allows flexibility by overriding the specific requirements of the development code, but only if the master plan is consistent with the broader Central City Plan policies. To get the extraordinary benefit of the master plan and FAR transfers, the applicant must show how the master plan is consistent

with even the so-called aspirational elements of the Central City Plan. The application makes clear that the 10 stories of housing will be "high end" and makes no effort to provide for a range of prices and rents. If this were not a master plan project, high-end might be enough. But with a master plan, the project should include the range of rents and prices called for in the Central City Plan.

Second, and of critical importance, is the fact that the FAR credits to be transferred belong to the city. Because the transfer proposed in the master plan uses city property to achieve the additional height, the city is party to the transfer and has an obligation to see that its property is used in a way that is consistent with Housing Policy 3.C. It can and should do so by denying this application and negotiating with the applicant to require that the project include a range of rents and prices as part of the consideration the city receives for the FAR credits.

2. There is no evidence that the owner will transfer the FAR credits; without the credits the proposed building is not allowed at this location.

The city's ownership of the FAR credits was not addressed until the appellant raised it at the Design Commission hearing on November 21. The only evidence on the issue is an e-mail, dated November 27, from Parks Director Abbaté that states that Portland Parks and Recreation "has no objection to the proposed Central City Master Plan Amendment" but makes clear that "the bonus FAR on Park Block 5 – 0.5 bonus FAR through the 'water feature/public fountain bonus option' and 2.5 bonus FAR through the 'locker room bonus' is owned by Portland Parks and Recreation." Mr. Abbaté does say that "PP&R previously has expressed its willingness to discuss with the owner of Park Block 5 and/or Park Block 4 the possible transfer of its remaining FAR, and remains open to that possibility." But this is not evidence that the transfer *will* occur. There is no evidence that the City Council has delegated its authority to dispose of real property interests to the Director of PP&R. There is not any evidence that the City Council (which does have the authority, within limits, to dispose of real property such as FAR credits) has or will agree to the transfer, or under what circumstances it may do so.

The applicant has the burden of proving that the application meets the standards of the development code, including the FAR limits that would restrict the building to the approved 26 stories. Because there is no evidence that the FAR will be transferred, the applicant has failed to meet that burden and the application should be denied.

3. Approving this application without requiring some element of affordable housing may be inconsistent with the federal Fair Housing Act's requirement to remove impediments to fair housing, potentially exposing the city to liability concerning its use of HUD funds.

The city is the recipient of millions of dollars annually in federal block grants and other funds that require compliance with the federal Fair Housing Act. As a recipient, the city must certify that it is working to affirmatively further fair housing and reduce segregation, not just in its public housing programs but in all its programs that affect housing, including planning and zoning. While the city may reasonably say that it cannot require affordable housing in every land use case that comes before it, can it fail to require some element of affordable housing under the circumstances of this case and still certify that it is working to remove impediments to fair housing?

This case presents an unusually strong basis for requiring affordable housing. The downtown area has particular high rents and prices that have a disproportionate effect on racial minorities, the disabled, and families with children. If the city fails to take this opportunity, it may have difficulty later demonstrating its commitment to fair housing in all its programs, as required by federal law.

While the Fair Housing Act's requirements are not directly applicable as review criteria, they do provide context for the city's Central City Plan policies on housing, and should be considered in deciding whether this application is consistent with those policies.

4. The City erred in processing this application before the Design Commission rather than the city hearings officer.

33.720.020.B assigns "*all land use reviews subject to a Type III proceeding*" to the hearings officer, with limited exceptions that do not apply in this case. One exception provides that the Design Commission may hear a Type III application for "*reviews in the Central City plan district for height and FAR bonuses and transfers.*" 33.720.202.C.4. However, transfers in excess of 3:1 FAR, or transfers of FAR across rights of way, are allowed (if allowed at all in this subarea) only as part of a master plan. Nothing in the code authorizes the Design Commission, rather than the Hearings Officer, to review Type III Central City master plans. The Design Commission findings indicate that this is a Type II amendment to a master plan, but the application itself states that it is a Type III Master Plan request.

Master plans should be reviewed by either a hearings officer or a planning commission that meets the requirements of state law. Having a specialist body of industry insiders decide whether a proposal complies with the broad planning policies of the Central City Plan is contrary to both the city code and state law.

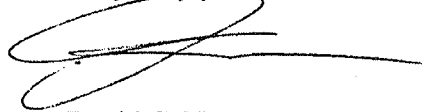
The Design Commission's failure to follow its own rules of procedure in the two cases preceding this case at the November 21 hearing led to a delay of nearly seven hours between the time for which the hearing was noticed and the time it occurred. SEIU's working members who attended the hearing were unable to wait while the Design

Commission dithered for seven hours over just two other cases. A hearings officer would have followed the rules and the hearing would have occurred in a timely manner.

CONCLUSION

This application should be denied because it is not consistent with the policy to encourage housing in a wide range of types and prices and rent levels, and because there is no evidence that the proposed transfer of the city's FAR credits will occur. SEIU Local 49 is prepared to work with the city attorney to develop appropriate findings in support of denial. The finding interpreting the applicability of the housing policy in this case should emphasize that the transferred property is city property, which requires the city as well as the applicant to act consistently with the plan policies on housing. Such an interpretation is legally sound and would be subject to great deference by any review body, should the applicant decide to appeal a denial.

Very truly yours,

A handwritten signature in black ink, appearing to be 'David C. Noren', written over a horizontal line.

David C. Noren

ATTACHMENTS:

1. November 21 Letter from SEIU Local 49
2. November 21 Letter from Noren
3. November 27 Letter from Noren
4. December 5 Letter from Noren
5. November 27 e-mail from Director Abbaté



November 21, 2013

Portland Design Commission
Portland Bureau of Development Services
1900 SW Fourth Avenue, Suite 1500
Portland, OR 97201

Re: Park Avenue West, Casefile LU 13-214772 DZ/MS/AD

Dear Chair and Commissioners:

SEIU Local 49 is a private sector union with close to 10,000 members. Almost a quarter of our members work providing important yet often overlooked services cleaning and protecting downtown office buildings. The core mission of SEIU Local 49 is to improve the lives of working people. Our focus on this mission takes us beyond the four walls of a workplace and encompasses a drive to improve the livability and sustainability of the communities in which our members live.

Livability for our members means access to good jobs, access to affordable transportation, access to healthcare, and, most relevant to the issue at hand today, access to affordable housing.

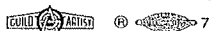
Janitors, security officers, and their allies are proud of the work they have done to raise standards for themselves and their families. Yet despite that hard work and hard-won industry improvements, the increased cost of living and Portland's ultra-competitive housing market force many of our members to seek housing far from their places of work. Ms. Maza's story, of leaving the city center to be able to put a roof over her head while continuing to perform her service job in the heart of the city, is typical. Adela used to live in inner Southeast Portland, near 15th and Hawthorne; she now lives past 175th and SE Powell. Workers are forced to travel longer distances, often by bus and late at night, to get from home to work. This disparity between affordable housing and job quality forces many of our members to travel upwards of 1.5 hours on public transportation to reach their jobs. Adding insult to injury, the price of bus fare has steadily increased.

The lack of affordable and accessible housing presents a hardship for our membership and all service workers. A project of this size in our central core that seeks the special benefit of density transfers should provide some lower cost housing in return for that benefit. The city should capitalize on this opportunity to require more affordable housing. Failure to do so adversely impacts our members.

SEIU has a long track record related to affordable and accessible housing for all. For many years SEIU has partnered with various social and environmental justice allies focused on making Portland sustainable and equitable. Access to affordable housing is an important piece of that work.

SERVICE EMPLOYEES
INTERNATIONAL UNION
LOCAL 49

3536 SE 26th Avenue
Portland, OR 97202-2901
503.236.4949
Fax 503.238.6692
Toll Free 800.955.3352
Toll Free Fax 888.595.7979
www.seiu49.org





Our past efforts have included participation in a diverse coalition of housing and transportation advocates in the Legislature regarding the lifting of a ban on inclusionary zoning that would enable the inclusion of more affordable housing in public projects. Additionally, we have worked with the Community Alliance of Tenants and the Portland Housing Alliance. As part of our broader effort to promote a truly sustainable and equitable Portland, we have been actively involved with the Coalition for a Livable Future and OPAL.

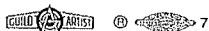
As an organization we are committed to ensuring that Portland is a city that works for everyone. We want to see an inclusive city where all workers can live close to where they work. The working class cannot be segregated out of the sustainable attributes of our city. The city's failure to require elements of affordable housing in this project will therefore adversely affect or aggrieve the members of SEIU Local 49 and Ms. Maza

Sincerely,

Maggie Long
Director of Property Services
Service Employees International Union, Local 49
(503) 236-4949 x 256
maggiel@seiu49.org

SERVICE EMPLOYEES
INTERNATIONAL UNION
LOCAL 49

3536 SE 26th Avenue
Portland, OR 97202-2901
503.236.4949
Fax 503.238.6692
Toll Free 800.955.3352
Toll Free Fax 888.595.7979
www.seiu49.org



DAVID C. NOREN
Attorney at Law
217 E. Main P.O. Box 586
Hillsboro, Oregon 97123-0586
Telephone: (503) 640-2661 Fax: (503) 648-7216
e-mail: david@norenlaw.com

November 21, 2013

HAND DELIVERED

Portland Design Commission
Portland Bureau of Development Services
1900 SW Fourth Avenue, Suite 1500
Portland, OR 97201

Re: Park Avenue West Casefile LU 13-214772 DZ/MS/AD

Dear Chair and Commissioners:

I represent SEIU Local 49 and Adelaida Maza. This project presents an important opportunity to increase affordable housing in downtown Portland, but the application is being rushed through without participation by the appropriate decision makers and without adequately addressing affordable housing policies. The master plan should not be approved unless it includes some affordable housing.

STANDING

SEIU 49 and Adelaida Maza have standing to participate in this hearing because they may be adversely affected or aggrieved by the city's decision. As described below, the decision to allow transfer of floor-area ratio (FAR) across a right of way in the Downtown district is allowed, if at all, only as part of an approved master plan. The decision is therefore subject to the approval criteria for central city master plans in 33.510.255.E, which require the applicant to show that "the proposed plan is consistent with the policy objectives of the Central City Plan." Those policies include Housing Policy 3.C, "*Encourage the development of housing in a wide range of types and prices and rent levels.*" The application narrative makes clear that the proposed residential use will be for "high end" units, not for a wide range of rent levels. The union's membership, folks like Ms. Maza, increasingly must relocate a distance from the city center in order to find affordable housing, yet the service jobs they perform---as janitors, security guards and similar lower-wage workers --- are often located in the central city, forcing them to

travel longer distances, often by bus and late at night, to get from home to work. The city's failure to require elements of affordable housing will therefore adversely affect or aggrieve the members of SEIU Local 49 and Ms. Maza.

We are including in the record a video disk about Ms. Maza, a union member who works downtown, lives in east county where housing is more affordable, and struggles with public transportation to get to and from her work. Folks like Ms. Maza deserve more opportunities for housing near their jobs.

PROCEDURAL HISTORY

This project was first reviewed and approved in 2007 as a central city master plan under 33.510.255, with related design review under Chapter 33.825 (Casefile LU 07-140633 MS DZM AD). That matter was processed as a Type III review by the Design Commission and went to the City Council on appeal. The project as approved included transfer of 11.7:1 FAR from Park Block 5 to Park Block 4, nearly doubling the FAR for the project site. It also included ten floors of residential use with 84 condominium units. Blocks 4 and 5 were at that time owned by closely related entities, TMT and the Marilyn Moyer Charitable Trust. Block 5 had been acquired for seven million dollars in 2006 but was subject to a deed restriction requiring surface development be limited to use as park, with possible one-story structures on 30% of the area. The transfer of 11.7 FAR authorized by the master plan granted an extraordinary bonus to TMT, since it could not have used the surface of Block 5 for development anyway.

In 2008, Portland Park Block 5 was deeded to the City of Portland.

In 2009 the applicant requested a change to the Master Plan to reduce the project to 26 stories, eliminate the residential use, and transfer some of the FAR (2.6:1) back to Park Block 5. That central city master plan (Casefile LU 09-136017 MS DZ), with only 9.1 FAR transferred from Block 5 to Block 4, was approved by a Type III review by the Design Commission; it was not appealed to the City Council, and remains the approved master plan for the site.

The applicant is now, in 2013, seeking to transfer FAR yet again, back from Block 5 to Block 4, to increase the height to 30 floors, and to again include housing, now 15 floors of rental units. Initially, the applicant did not apply for a master plan review. Its application, submitted on July 19, 2013, was only for design review. The application was deemed complete on the day it was submitted and the matter was promptly processed as a Type II Design Review. SEIU Local 49 submitted written comments requesting that affordable housing be addressed as part of the decision. The application was approved without any review of master plan standards. SEIU Local 49 and Adelaida Maza timely filed an appeal, identifying incorrect processing of the application as one ground for

appeal. The matter was promptly scheduled for an appeal hearing before this Design Commission, but the applicant withdrew the application the day before the hearing.

On the same day, October 9, the applicant submitted the application in this case, seeking a Type III proceeding for both design review and a central city master plan. The signed application form does not identify Park Block 5 as being part of the application, and neither the application form nor the narrative identifies the City of Portland as the owner of Block 5; instead the narrative states that Block 5 is owned by the Marilyn Moyer Memorial Trust. There is no indication in the file that the applicant obtained the consent of the owner of Block 5 to apply for this master plan. The application was deemed complete on October 14, but on October 22 the applicant submitted a revised application form, still not identifying Block 5 as part of the application and not identifying any owners; this form added a Type II adjustment request. The notice of hearing was sent on November 1. A revised narrative was submitted on November 8 addressing the adjustment criteria.

PROCEDURAL ERRORS

1. Type III review of Central City master plans must be by a hearing before the Hearings Officer, not before the Design Commission.

33.720.020.B assigns *"all land use reviews subject to a Type III proceeding"* to the Hearings Officer, with limited exceptions that do not apply in this case. One exception provides that the Design Commission may hear a Type III application for *"reviews in the Central City plan district for height and FAR bonuses and transfers."* 33.720.202.C.4. However, transfers in excess of 3:1 FAR, or transfers of FAR across rights of way, are allowed (if allowed at all in this subarea) only as part of a master plan. Nothing in the code authorizes the Design Commission, rather than the Hearings Officer, to review Type III Central City master plans. The proper procedure for hearing both a Type III design review by the Design Commission and a Type III master plan by the Hearings Officer is a *"joint hearing before the applicable review bodies"* as set forth in 33.720.020.G.3. The earlier master plan approvals in 2007 and 2009 were approved by the Design Commission rather than the Hearings Officer, but this master plan must now go through the proper procedure, before the Hearings Officer, rather than be reviewed by the Design Commission, which had no authority to approve master plans in the first place. Therefore the application review procedure being used in this case violates the city code, and this Design Commission lacks authority to approve this application.

ORS 227.175 governs how cities may process applications for permits and zone changes. ORS 227.175(3) provides: *"Except as provided in subsection (10) of this section, the hearings officer shall hold at least one public hearing on the application."* ORS 227.175(1)(a)(A) provides generally that *"the hearings officer or such other person as the governing body designates may approve or deny an application for a permit without*

a hearing if the hearings officer or other designated person” provides notice and an opportunity to appeal; this exception to the requirement for a hearing before a hearings officer is commonly referred to as a Type II procedure. The statute does *not* provide that an “other person authorized by the governing body” may conduct the hearing on a permit. Therefore the application review procedure for this matter established by the city violates state law, and this Design Commission lacks authority to approve this application.

The procedural error of reviewing the master plan application by a hearing before the Design Commission prejudices the parties’ substantial rights. ORS 227.175(10)(a)(D) provides that an appeal from a decision, other than a decision by a hearings officer after a hearing, “*shall be to a hearings officer, the planning commission or the governing body.*” ORS 227.030(4) provides that “*no more than two members [of a city planning commission] shall be engaged in the same kind of occupation, business, trade or profession.*” Three members of this Design Commission are architects, two are landscape architects, and one is an urban designer. Arguably all six are “engaged in the same kind of occupation, business, trade or profession,” but certainly at least three are in the same profession. This Design Commission does not meet the requirements for a planning commission under state law, and is therefore not authorized to conduct hearings on appeals of Type II decisions, as a planning commission would be. Its lack of experience and familiarity with the broader planning issues addressed by the Planning and Sustainability Commission (which does meet the state requirements for a planning commission, with the city code limitation on membership a verbatim copy of the state requirement) prejudices the parties’ substantial rights to a review body more familiar with the comprehensive planning process, and in particular with the housing policies of the Central City Plan, than this Design Commission composed of design professionals charged with reviewing design issues.

2. The signed application form does not identify Block 5 as part of the application and does not identify the owner of Block 5.

33.730.060.C requires that the signed application form include an “*accurate legal description, tax account numbers and location of the property...and the name and addresses of all property owners.*” Portland Park Block 5 is not identified on the signed application form, so it may not be considered as part of the application, and the application must therefore be denied. Block 5 is now owned by the City of Portland, yet the City is not identified as the owner in any of the application or file materials, including in the staff report. The application narrative is apparently a hurried reworking of the 2007 and 2009 applications; it states that Block 5 is owned by the Marilyn Moyer Charitable Trust and that Block 4 is owned by Fox Tower LLC. In fact (as the signed application form states) Block 4 is owned by West Park Avenue LLC. Block 5, which is not identified at all on the signed two-page application form, is owned by the City of Portland, and there is no indication whether anyone at the City of Portland has agreed to this proposed FAR transfer. The city should certainly have been identified in the

application and the notice as the owner of one of the properties that is the subject of the central city master plan. Failure to so identify the owner prejudices the parties' substantial right to engage the owner concerning the proposed use. Only by searching property records were we able to determine that in fact the City of Portland, and not TMT or any related entity, owned Block 5; the application narrative is very misleading. The applicant who signed the application form, architect Robert Thompson, gave assurance in the Responsibility Statement that the information on ownership was accurate and that he had gained the permission of the property owners identified in the application. Because the signed application failed to identify Block 5 as part of the development site and failed to identify the City of Portland as the owner of Block 5, and because the applicant apparently did not confer with the owner of Block 5 or secure the owner's permission to submit the application, Block 5 may not be considered as part of this application, and the requested FAR transfer from Block 5 must be denied.

The city should only be processing permit applications from owners, pursuant to ORS 227.175(1), not from "applicants" who are not owners; approving this application without proof that the City has consented to the application is therefore a violation of state law.

3. The revisions to the application were made less than 10 days before the notice of the request was mailed.

33.730.060 requires that any changes to an application that substantially alter the request must be made at least 10 days before the notice of the request is mailed. The applicant submitted a revised signed application dated October 22, but there is no indication on the form or in the file when it was actually received or determined to be complete. See Exhibit G.3. The application for an adjustment is therefore not timely and may not be considered as part of this hearing, nor may the revised application narrative submitted on November 8. The submittal of the revised narrative significantly delayed the city's response to our request for a copy of the narrative; it was not made available until late last Friday, six days before the hearing. All of this is indicative of the haste with which this application is being rushed through the process.

SUBSTANTIVE REVIEW CRITERIA

1. Housing Policy 3.C is a compelling reason to require affordable housing as part of this master plan.

The first master plan approval criterion is "*The proposed plan is consistent with the policy objectives of the Central City Plan.*" 33.510.255.E.1 The application has not adequately addressed the policy objectives of the Central City Plan. As the purpose description of the Central City Master Plan provides, at 33.510.255.A, "*the additional development potential and flexibility is possible because the plan is used to demonstrate*

that the policy objectives of the Central City Plan and the public service needs of the area are addressed."

In addressing the Central City Plan policies, the application narrative mentions only the first element of Policy 3 (Housing). The application narrative does not address Plan Policy 3 as a whole. In particular it does not address the Policy 3.C objective to *"encourage the development of housing in a wide range of types and prices and rent levels."* This policy objective allows the city to require affordable housing as part of the trade-off for the additional development potential that would be authorized by this new master plan.

If this project is to get the extraordinary benefit of the requested FAR transfers it should provide at least some affordable housing, so that that lower-income working folks like SEIU's members who work downtown can afford to live near their work. We request that you either deny the application as inconsistent with the policies of the Central City Plan, or that you impose a condition of approval to require a substantial affordable housing component as part of your approval of residential use and building expansion.

2. Floor area ratio transfers are not allowed to cross rights of way in this subarea, even as part of a master plan.

The relevant approval criteria for FAR transfers are as follows: 33.510.200.B: *"Floor area ratios greater than that shown on Map 510-2 [ie. 9.0:1] are prohibited unless allowed by Subsections C. through G., below, or by 33.510.210 [i.e. bonuses]."* 33.510.200.C.1: *"Except as provided by C.2 through C.5 [not relevant to this case], below, increases in FAR, whether by transfers of floor area or bonus floor area options, of more than 3 to 1 are prohibited."* 33.510.200.D .1: *"Floor area transfers across rights-of-way are prohibited in the Downtown subdistrict."* 33.510.255.B: A central city master plan can allow flexibility where it *"allocates allowed floor area to individual development sites that will not remain in the same ownership."* Taken together, these provisions prohibit any transfer of FAR greater than 3:1, and prohibit any transfers across rights of way in the Downtown subarea. The master plan flexibility is to *"allocate floor area to individual sites that will not remain in the same ownership."* It does not authorize floor area ratio transfers across rights of way in the Downtown subarea or otherwise trump the limitations in 33.510.200.C.1 and D.1.

CONCLUSION

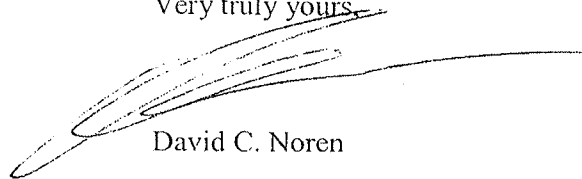
This application should be denied because the Design Commission lacks authority to approve it. It should also be denied because it is not consistent with the policy to encourage housing in a wide range of types and prices and rent levels, and because the proposed FAR transfers are prohibited in this subarea. In the alternative, any approval

Portland Design Commission
November 21, 2013
Page 7

should require an affordable housing component for some of the additional floors being approved for residential use.

If this matter is not continued, please leave the record open for additional testimony.

Very truly yours,

A handwritten signature in dark ink, consisting of several overlapping, sweeping strokes that form a cursive, somewhat abstract shape.

David C. Noren

DAVID C. NOREN
Attorney at Law
217 E. Main P.O. Box 586
Hillsboro, Oregon 97123-0586
Telephone: (503) 640-2661 Fax: (503) 648-7216
e-mail: david@norenlaw.com

November 27, 2013

SENT ELECTRONICALLY

Portland Design Commission
Portland Bureau of Development Services
1900 SW Fourth Avenue, Suite 1500
Portland, OR 97201

Re: Park Avenue West Casefile LU 13-214772 DZ/MS/AD

Dear Chair and Commissioners:

I represent SEIU Local 49 and Adelaida Maza. This additional material is in response to the oral comments of the applicant's attorney, Steven Pfeiffer, at the hearing on November 21.

Mr. Pfeiffer argued that the city's comprehensive plan policies, in particular the Central City Plan policy concerning housing, were not applicable to a permit application such as this. Mr. Pfeiffer contended that only land use regulations apply here, and that the comprehensive plan policies only apply to plan amendments. However, the land use regulations themselves, specifically the central city master plan criteria, make the Central City Plan policies applicable to master plans. The application narrative and staff report both recognize this, identifying Policy 3, "Housing," as an applicable review criterion, but failing to address the "further statements" of the policy, including the Policy 3.C objective, "*encourage the development of housing in a wide range of types and prices and rent levels.*" The "Plan Organization" section at page 7 of the Central City Plan makes clear that "the policies include 'further statements' which provide explicit target accomplishments for the community." Copies of the Central City Plan Organization section and of Policy 3 are attached.

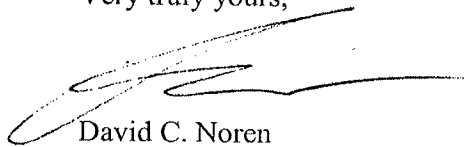
Mr. Pfeiffer also argued that the restrictive covenant that severely limits surface development of Block 5 is not relevant. It may be that the private covenant limiting development (and thus limiting floor-area ratio that could be developed on Block 5) does not of itself prevent transfer of FAR to Block 4. However, the restrictive covenant is relevant in considering whether to approve a master plan, because compliance with the Housing Policy 3.C objective should consider whether requiring affordable housing is

Portland Design Commission
November 27, 2013
Page 2

appropriate in a particular instance. Because this applicant is getting the extraordinary benefit of the FAR transfer from a block that could not be developed in any case, it is more appropriate to consider, and impose, an affordable housing requirement than if the applicant were actually giving something up to get the FAR transfer.

The application should be denied because it is not consistent with the policy to encourage housing in a wide range of types and prices and rent levels, and because the proposed FAR transfers are prohibited in this subarea. In the alternative, any approval should require an affordable housing component for some of the additional floors being approved for residential use.

Very truly yours,

A handwritten signature in black ink, appearing to read 'David C. Noren', with a long horizontal flourish extending to the right.

Attachment (2 pages)

cc Steven Pfeiffer

Plan Organization

The Adopted Central City Plan consists of several parts. The Plan Map and Land Use Designations, Vision Statement, and the Goal and Policies make up the Plan that was adopted by ordinance by the City Council. Also adopted by resolution were the action charts, maps, and district urban design plans which accompany the policies.

A color fold-out Plan Map, showing land use designations and some of the major thematic elements of the Plan, is included as part of the Plan. On the reverse side, there is a map of the predominant land uses in the Central City. The supplemental maps included in this Plan also reflect the land use information and plan elements on the fold-out Plan Map.

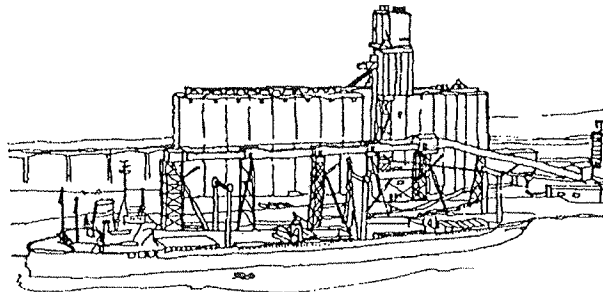
The Vision statement guides the adoption and future implementation of the Plan. The Vision illustrates where the Plan is leading us and provides a standard by which to measure the Plan's success. Following the Vision is the Plan Goal. This Goal ties the Central City Plan to Portland's adopted Comprehensive Plan, making the Plan and its 21 policies a part of the Comprehensive Plan. The Vision and the Goal set the stage for the body of the Plan.

The Plan is built around 21 policies for the Central City. The first 12 policies reflect the areas of functional study covered by the Steering Committee and Functional Advisory Committees. The next policy addresses future review and monitoring of the Plan. Policies 14 through 21 address the districts that make up the Central City, with one policy for each district. The policies include "further statements" which provide explicit target accomplishments for the community.

The charts and maps illustrate the ideas for implementing each of the Central City Plan policies. The proposals are assigned a time-frame for action (immediate, short, or long-range), and a possible lead implementing agency or agencies is identified. The proposal, in some cases, is indexed to a fuller discussion and explanation in the Description of Selected Actions and Strategies, Plan and Supplemental Maps, and the Code Amendments sections of this report. All actions and strategies listed on the action charts were adopted by resolution, those which specify changes in zoning designations or in the zoning code were implemented with the Plan at the time of its adoption through an ordinance that amended the City's Comprehensive Plan and Zoning Code. Programs and projects formally approved by the Council by resolution are approved on a policy basis but without the binding force of law.

Functional and district maps accompany the policies and illustrate further the proposals listed on the action charts and provide a geographic context for actions that are site specific. The maps which accompany the functional topic policies are of the whole Central City study area and present area-wide relationships. The maps which accompany the district policies are detailed urban design plans for the districts. Each urban design plan illustrates the proposals contained in the district action chart. They also present more specific details for the location of such elements as district gateways.

Illustrations of the Portland of the future as envisioned by this Plan are presented throughout this report. Generally, these are an artist's concept of what a specific new development or improvement might look like. The illustrations are not intended as images of how things will look, or even should look, but how they might look. As development occurs, those working on the implementation of the idea will produce a final design of the projects. The illustrations in this document are a starting place for the creative individuals to build on.

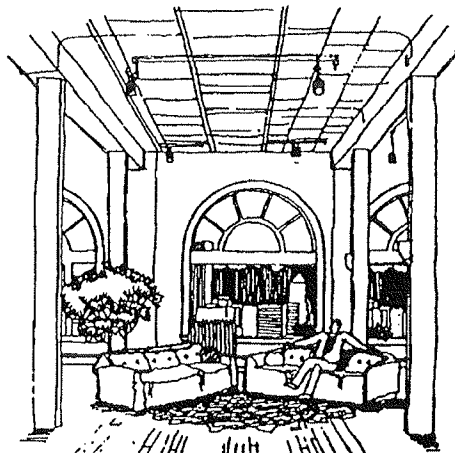


Policy 3: HOUSING

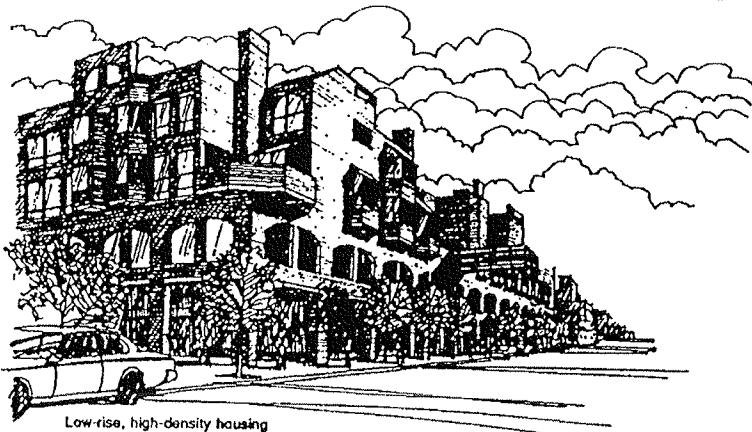
Maintain the Central City's status as Oregon's principal high density housing area by keeping housing production in pace with new job creation.

FURTHER:

- A. Promote the construction of at least 5,000 new housing units in the Central City by the year 2010.
- B. Preserve and encourage rehabilitation of existing housing.
- C. Encourage the development of housing in a wide range of types and prices and rent levels.
- D. Foster the growth of housing to help reinforce the Central City as a lively urban area, especially during evenings.
- E. Secure greater regional participation in addressing the housing needs of the homeless, low-income and other special needs populations.
- F. Where residential development is required, assure that when development of the housing is deferred to the future the housing site is designated and zoned residential.



Loft Housing. Conversion of obsolete industrial and commercial buildings into housing.



Low-rise, high-density housing

ACTION CHART

#	PROPOSALS FOR ACTION	TIMING			POSSIBLE IMPLEMENTING AGENCY	INDEX TO ACTION DETAIL
		ADOPT WITH PLAN	NEXT FIVE YEARS	SIX TO 20 YEARS		
	PROJECTS					
H1	Study and make recommendations on building code amendments needed to allow safe/cost-effective creation of loft housing.		++++		Planning/BOB	
H2	Expand eligibility for property tax abatement for housing, in targeted areas, to include the entire Central City.		++++		State Legislature/ Planning	
H3	Provide year-round shelter for the homeless.		++++		HRB/Mult. County	
	PROGRAMS					
H4	Use urban renewal and tax increment financing programs to foster the development and preservation of housing in urban renewal districts, (particularly preservation of SRO housing).		++++		PDC	
H5	Establish a city housing trust fund for replacement of lost housing, construction of new housing and preservation of existing housing.		++++		Planning/PDC/ HAP/Mult. County	P 87
H6	Extend the Urban Homestead program to include conversion of obsolete and unused commercial and industrial buildings to housing.		++++		PDC	
H7	Encourage the State Board of Higher Education to build student housing on the Portland State University Campus.		++++		State Legislature	
H8	Establish an awards program for low, moderate and middle income housing construction and rehabilitation.		++++		Planning	
H9	Involve the Crime Prevention Office when reviewing the plans of major construction or redevelopment of housing projects.		++++		Planning/BOB/ PPD	
H10	Aggressively explore, develop and take action to create housing incentives, particularly taking quick action on those potential incentives identified during the Plan development process.		++++		Planning/PDC/ State Legislature/ Pvt.	P 87

NOTE: Proposals for actions shown on the Action Charts and maps were adopted through City Council Resolution. The projects, programs and regulations listed are a starting place. As studies are undertaken, some actions will need to be amended, or in some cases, replaced with other proposals found to be better or more feasible.

DAVID C. NOREN
Attorney at Law
217 E. Main P.O. Box 586
Hillsboro, Oregon 97123-0586
Telephone: (503) 640-2661 Fax: (503) 648-7216
e-mail: david@norenlaw.com

December 5, 2013

SENT ELECTRONICALLY

Portland Design Commission
Portland Bureau of Development Services
1900 SW Fourth Avenue, Suite 1500
Portland, OR 97201

Re: Park Avenue West Casefile LU 13-214772 DZ/MS/AD

Dear Chair and Commissioners:

I represent SEIU Local 49 and Adelaida Maza. This letter is in response to the material submitted by the applicant's attorney, Steven Pfeiffer, in his letter of November 27, 2013.

1. **Design Commission as Review Body.** Mr. Pfeiffer argues that the Design Commission is the proper review body despite the individual commissioners' professional work, because the city's leadership has decided they are. But the city must still comply with state law, which prescribes membership of planning commissions, and it is clear that the Design Commission does not meet the requirements for a planning commission. This error prejudices my clients' substantial rights because, pursuant to ORS 227.175, appeals of Type II decisions may only be heard by a hearings officer or a planning commission or city council. The procedural error of having a Type III permit hearing conducted by the Design Commission cannot be excused (as would a planning commission decision) on the grounds that they are authorized by state law to hear appeals of Type II decisions. Decisions by the Design Commission as the initial hearings body are not allowed under ORS 227.175, and the application should be denied.

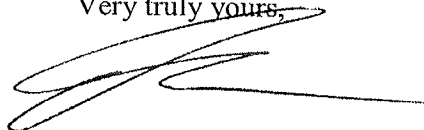
2. **Consent of the City to Application.** Mr. Pfeiffer argues that the city, through its Bureau of Parks and Recreation, did not need to consent to the application because they were mailed notice of it, but then provides an e-mail, dated November 27, 2013, from the Bureau director stating that Parks and Recreation "has no objection" to the proposed master plan. There is no evidence that the applicant conferred with the owner of Park Block 5 or gained permission before submitting the application. Moreover, attached to Mr. Abbate's e-mail is a recorded covenant concerning the earlier FAR transfers of 8.7 FAR from Park Block 5, in which the city stated its consent to those transfers, which

were a *fait accompli* by the time the city took ownership. That consent was signed by the Parks and Recreation Commissioner. Consent from that level -- an elected City Commissioner directly responsible to the voters -- should be required in this instance as well.

3. Revisions to Application. Mr. Pfeiffer presented no evidence concerning when the revised application form was in fact received by the city. Instead he argues that the revisions in the revised application narrative (which is dated November 7, not October 22, as he asserts) were not substantial and therefore the time limits of 33.730.060 do not apply. The revised application form dated October 22 and the revised application narrative dated November 7 are substantial revisions because they include the requests for an adjustment and for two design modifications that were not included in the October 9 application. Approval despite the applicant's failure to timely submit the application for adjustment and design modification will be a procedural error that prejudices my clients' substantial rights because the project cannot go forward as presented without these additional approvals.

Attached are copies from the casefile of the following: the first signed application form showing it was received on October 9; the "Summary of Request" from the application narrative dated October 9; the memo and revised application form dated October 22 with no indication when they were received by the city; and the "Summary of Request" from the application narrative dated November 7, 2013. Together these show that the application was substantially revised to include the adjustment and design modification requests.

Very truly yours,

A handwritten signature in black ink, appearing to read 'David C. Noren', with a stylized, sweeping flourish at the end.

David C. Noren

Attachment (7 pages)

cc Steven Pfeiffer



City of Portland, Oregon - Bureau of Development Services

1900 SW Fourth Avenue • Portland, Oregon 97201 • 503-823-7526 • www.portlandoregon.gov/bds



Land Use Review Application

File Number: LU 13-24772 DZ

FOR INTAKE, STAFF USE ONLY

Date Rec 10-9-13 by kaf

☐ Type I ☐ Type Ix ☐ Type II ☐ Type Iix ☒ Type III ☐ Type IV

LU Reviews DZ

[Y] ☒ Unincorporated MC

[Y] ☒ Flood Hazard Area (LD & PD only)

[Y] ☒ Potential Landslide Hazard Area (LD & PD only)

Qtr Sec Map(s) 3029 Zoning CXd

Plan District Central City

Neighborhood Downtown

District Coalition NW/NW

Business Assoc D.R.C.

Related File # 13-212680 PC

APPLICANT: Complete all sections below that apply to the proposal. Please print legibly.

Development Site
Address or Location Park Block 4: 750 SW Park Avenue

Cross Street SW Ninth Avenue Sq. ft./Acreage 20,000 sf/0.46 acres

Site tax account number(s)

R 246982

R 246979

R

R 246980

R 246981

R

Adjacent property (in same ownership) tax account number(s)

R

R

R

Describe project (attach additional page if necessary)

The applicant requests a revision of LU 09-136017 MS DZ to add 4 floors to the previously approved mixed-use PAWT tower and an increase in eligible FAR bonuses, as follows: 1) Type III Design Review to increase the building from 26 stories to 30 stories - removing 11 floors of office and replacing those floors with 15 floors of residential - for a net increase of 4 stories; 2) Type III CCMP to revise the transfer of the unused development capacity from PB5 to PB4 from 9.1 FAR to the originally approved 11.7 FAR, and utilize a 3.0 FAR housing bonus on PB4 based on the reintroduction of housing to the project.

Describe proposed stormwater disposal methods

Connection to 12" storm sewer in SW Park Avenue, 20,000-gallon rainwater harvesting storage tank

Identify requested land use reviews

Type III Land Use Review, Type III CCMP

For renovation, provide exterior alteration value.
AND provide total project valuation.

\$ 119,000,000.00

\$

• Land Divisions - Identify number of lots (include lots for existing development).

New street (public or private)?

☐ yes ☒ no

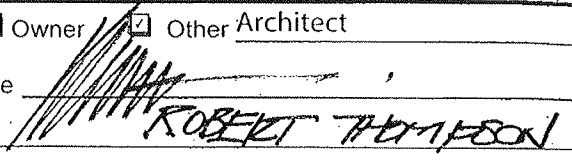
continued / over 1

ETH. 67.

Applicant Information

- Identify the primary contact person, applicant, property owner and contract purchaser. Include any person that has an interest in your property or anyone you want to be notified.
- For all reviews, the applicant must sign the Responsibility Statement.
- For land divisions, all property owners must sign the application.

PRIMARY CONTACT, check all that apply ☐ Applicant ☐ Owner ☒ Other Architect

Name Robert Thompson, FAIA Signature 

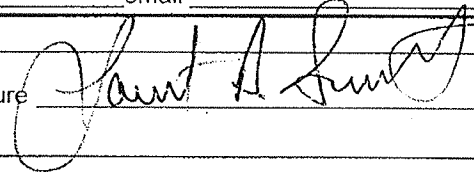
Company/Organization TVA Architects, Inc.

Mailing Address 920 SW Sixth Avenue, Suite 1500

City Portland State OR Zip Code 97204

Day Phone 503-220-0668 FAX 503-225-0803 email bobt@tvaarchitects.com

Check all that apply ☐ Applicant ☒ Owner ☐ Other

Name Lamont Smith Signature 

Company/Organization TMT Development

Mailing Address 805 SW Broadway Street, Suite 2020

City Portland State OR Zip Code 97205

Day Phone 503-241-1111 FAX 503-241-1999 email lamont@tmtdevelopment.com

Check all that apply ☐ Applicant ☐ Owner ☐ Other

Name _____ Signature _____

Company/Organization _____

Mailing Address _____

City _____ State _____ Zip Code _____

Day Phone _____ FAX _____ email _____

Check all that apply ☐ Applicant ☐ Owner ☐ Other

Name _____ Signature _____

Company/Organization _____

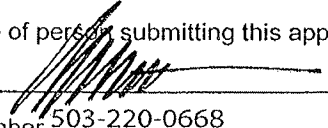
Mailing Address _____

City _____ State _____ Zip Code _____

Day Phone _____ FAX _____ email _____

Responsibility Statement As the applicant submitting this application for a land use review, I am responsible for the accuracy of the information submitted. The information being submitted includes a description of the site conditions. I am also responsible for gaining the permission of the owner(s) of the property listed above in order to apply for this review and for reviewing the responsibility statement with them. If the proposal is approved, the decision and any conditions of the approval must be recorded in the County Deed Records for the property. The City of Portland is not liable if any of these actions are taken without the consent of the owner(s) of the property. In order to process this review, City staff may visit the site, photograph the property, or otherwise document the site as part of the review. I understand that the completeness of this application is determined by the Director. By my signature, I indicate my understanding and agreement to the Responsibility Statement.

Print name of person submitting this application Robert Thompson, FAIA

Signature 

Phone number 503-220-0668 Date October 9, 2013

II. PROPOSED PROJECT

Summary of Request. TMT Development Co., Inc. requests a revision of LU 07-140633 MS DZM AD to reflect an increase in the building's size and eligible floor-to-area (FAR) bonuses, as follows:

- Type III Design Review to increase the building from 26 stories to 30 stories, including the addition of four floors in the mid-section of the tower. The building will now require 23.7 FAR, as approved in the original land use approval (LU 07-140633 MS DZM AD). Design review is governed by Chapter 33.825.
- Type III Central City Master Plan (CCMP) to: 1) revise the transfer of the unused development capacity from Park Block 5 (PB 5) ("Sending" Site) to Park Block 4 (PB 4) ("Receiving" Site), returning it to the originally approved 11.7 FAR which leaves 0.3 FAR of development capacity behind on PB 5; and 2) utilize a 3.0 FAR housing bonus on PB 4 based on the reintroduction of housing in the project. Such density transfers are governed by Section 33.510.255, Central City Master Plans

There will be only minor changes to the ground floor, none of which affect the location of the combined driveway for the loading dock and underground garage entrance. This being the case, no change is sought in the Type II Adjustment also approved in LU 07-140633, to permit vehicle access on a "Parking Access-Restricted" Street, or the companion Central City Parking Review (CCPR) (LU 07-169105) to allow a garage entrance within 75' of a light rail transit (LRT) alignment. Thus, the applicant requests that these companion approvals remain in force

The three Design Modifications granted as part of the original Design Review approval must also be retained. The first of these is to permit the rooftop mechanical penthouse to be located within 15' of the edge of the building on all four facades. The second is to permit the reduction of required loading spaces from three to two to reduce the width of the shared loading dock/garage entrance on SW Park Avenue. The third is to permit the building's spire to extend more than 10' above the maximum height limit of 460'.

Project Summary

Due to changes in the recent economic climate, TMT Development Company, Inc., has elected to add four floors to its 26-story mixed-use Park Avenue West Tower, originally approved in 2007 as a 33-story mixed use building (PAWT.1) (LU 07-140633 MS DZM AD) and later in 2009 as a modified 26-story mixed-use office building (PAWT.2) (LU 09-104171 DZ). The proposed design for PAWT.3 includes the addition of four floors in the mid-section of the tower, for a total of 30 stories: 2 floors of retail, 15 floors of housing, and 13 floors of office. The building's total height will increase from 407' to 460' - including roof-top mechanical - which returns the building proportions to a slender point tower while remaining within the maximum allowable height requirements for this subarea of Downtown.

The original building was approved through a combined transfer of base density (8.7 FAR) and density bonuses (3.0 FAR) from Park Block 5 - the site of Director Park - for a total of 11.7 FAR. The remaining 0.3 FAR was retained on PB 5 for the park's above-grade development. Park Avenue West Tower also used a full complement of FAR on its site - PB 4 - including a base FAR of 9.0 and bonuses of 3.0, for a total of 12.0 FAR. As a result, the original building used the full 23.7 FAR (474,000 gsf) in its above-grade development. This is based on a site size of 20,000 sf.

In the new 30-floor development scheme, the building will again utilize 23.7 FAR or 474,000 gsf. This is achieved by the introduction of 15 floors of housing, which allows the building to be eligible for a 3.0 FAR housing bonus. As a result, the project is eligible for a total FAR of 23.7.



Date: October 22, 2013
Project Name: Park Avenue West Tower.3
Project No: 13154
Re: City of Portland Type III Design Review

Memo

To: Kara Fioravanti
1900 SW Fourth Avenue
Portland, OR 97201

From: Robert Thompson, FAIA

Kara,

Pursuant to our recent pre-application conference discussion, we understand that we will need to request a new Adjustment for access on SW Park, similar to the initial Adjustment approved in 2007. Additionally, we will need to request two Design Modifications (approved in the original Design Review): (1) to permit the building's spire to extend more than 10' above the maximum height limit of 460', and (2) to permit the reduction of required loading spaces to one standard 35' long loading space and one 22.5' long loading space as indicated in our Type III submittal. We also understand that the CCMP modifications we are requesting have been adequately addressed by the narrative application submittal on file.

Please include the attached Adjustment application form, together with our narrative discussion of compliance with applicable criteria set forth in the initial Type III submittal on file, for purposes of our pending request for Adjustment and Design Modification approval by the Commission.

Thank you,

Robert Thompson, FAIA

tva architects, inc.
920 sw sixth avenue : suite 1500 : portland, oregon 97204
phone: 503 220 0668 : www.tvaarchitects.com

Robert Thompson, FAIA Marc Labadie, LEED AP Roderick Ashley, AIA John Heili, AIA Montgomery J. Hill, AIA Tim Wybenga, LEED AP

ENG. 3



CITY OF PORTLAND, OREGON - BUREAU OF DEVELOPMENT SERVICES

1900 SW Fourth Avenue • Portland, Oregon 97201 • 503-823-7526 • www.portlandonline.com/bds



Land Use Review Application

File Number: _____

FOR INTAKE, STAFF USE ONLY

Date Rec _____ by _____

☐ Type I ☐ Type II ☐ Type IIx ☐ Type III ☐ Type IV

LU Reviews _____

[Y] [N] Unincorporated MC

[Y] [N] Flood Hazard Area (LD & PD only)

[Y] [N] Potential Landslide Hazard Area (LD & PD only)

Qtr Sec Map(s) _____ Zoning _____

Plan District _____

Neighborhood _____

District Coalition _____

Business Assoc _____

Related File # _____

APPLICANT: Complete all sections below that apply to the proposal. Please print legibly.

Development Site

Address or Location Park Block 4: 750 SW Park Avenue

Cross Street SW Ninth Avenue

Sq. ft./Acreage 20,000sf/0.46 acres

Site tax account number(s)

R 246982

R 246979

R

R 246980

R 246981

R

Adjacent property (in same ownership) tax account number(s)

R

R

R

Describe project

The Applicant requests a Type III Design Review to increase the building from 26 stories (approved in LU 09-136017 MS DZ) to 30 stories, and a Type II Adjustment to permit access on SW Park (similar to the adjustment approved in 2007). Additionally, the Applicant requests two Design Modifications which were approved in the original Design Review: (1) to permit the building's spire to extend more than 10' above the maximum height limit of 460', and (2) to permit the reduction of required loading spaces to one standard 35' long loading space and one 22.5' long loading space, as indicated in the Type III submittal. The Applicant requests a CCMP Amendment to revise the transfer of unused development capacity from PB5 to PB4 from 9.1 FAR to the originally approved 11.7 FAR, and to utilize a 3.0 FAR housing bonus on PB4 based on the reintroduction of housing to the project.

Describe proposed stormwater disposal methods

Connection to 12" storm sewer in SW Park Avenue, 20,000-gallon rainwater harvesting storage tank

Identify requested land use reviews

Type III Land Use Review, Type II Adjustment, two Design Modifications, CCMP Amendment

- Design Review - For new development, provide project valuation.
For renovation, provide exterior alteration value.

\$ \$119,000,000.00

- Land Divisions - Identify number of lots (include lots for existing development).
New street (public or private)?

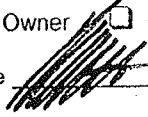
☐ yes ☒ no

continued / over1

Applicant Information

- Identify the primary contact person, applicant, property owner and contract purchaser. Include any person that has an interest in your property or anyone you want to be notified.
- For all reviews, the applicant must sign the Responsibility Statement.
- For land divisions, all property owners must sign the application.

PRIMARY CONTACT, check all that apply ☒ Applicant ☐ Owner ☐ Other

Name Robert Thompson, FAIA Signature 

Company/Organization TVA Architects, Inc.

Mailing Address 920 SW Sixth Avenue, Suite 1500

City Portland State Oregon Zip Code 97204

Day Phone 503-220-0668 FAX 503-225-0803 email bobt@tvaarchitects.com

Check all that apply ☐ Applicant ☐ Owner ☐ Other

Name _____ Signature _____

Company/Organization _____

Mailing Address _____

City _____ State _____ Zip Code _____

Day Phone _____ FAX _____ email _____

Check all that apply ☐ Applicant ☐ Owner ☐ Other

Name _____ Signature _____

Company/Organization _____

Mailing Address _____

City _____ State _____ Zip Code _____

Day Phone _____ FAX _____ email _____

Check all that apply ☐ Applicant ☐ Owner ☐ Other

Name _____ Signature _____

Company/Organization _____

Mailing Address _____

City _____ State _____ Zip Code _____

Day Phone _____ FAX _____ email _____

Responsibility Statement As the applicant submitting this application for a land use review, I am responsible for the accuracy of the information submitted. The information being submitted includes a description of the site conditions. I am also responsible for gaining the permission of the owner(s) of the property listed above in order to apply for this review and for reviewing the responsibility statement with them. If the proposal is approved, the decision and any conditions of the approval must be recorded in the County Deed Records for the property. The City of Portland is not liable if any of these actions are taken without the consent of the owner(s) of the property. In order to process this review, City staff may visit the site, photograph the property, or otherwise document the site as part of the review. I understand that the completeness of this application is determined by the Director. By my signature, I indicate my understanding and agreement to the Responsibility Statement.

Print name of person submitting this application ROBERT THOMPSON FAIA

Signature 

Phone number 503 220 0668 Date 10.22.2013

II. PROPOSED PROJECT

Summary of Request. TMT Development Co., Inc. requests approval for:

- Type III Design Review to increase the building from 26 stories (PAWT.2) to 30 stories, including the addition of four floors in the mid-section of the tower. The building will now require 23.7 FAR, as approved in the original land use approval (LU 07-140633 MS DZM AD) (PAWT.1). Design review is governed by Chapter 33.825.
- Central City Master Plan Amendment (CCMP) to: 1) revise the transfer of the unused development capacity from Park Block 5 (PB 5) ("Sending" Site) to Park Block 4 (PB 4) ("Receiving" Site), returning it to the originally approved 11.7 FAR which leaves 0.3 FAR of development capacity behind on PB 5; and 2) utilize a 3.0 FAR housing bonus on PB 4 based on the reintroduction of housing in the project. Such density transfers are governed by Section 33.510.255, Central City Master Plans.

The applicant also requests the following land use approvals:

- Type II Adjustment, (approved in LU 07-140633,) to permit vehicle access to the proposed tower garage and loading dock from a combined driveway on SW Park Avenue, which according to Map 510-9, is a "Parking Access-Restricted" Street, as governed by 33.805.
- Two Design Modifications (approved in the original Design Review approval): (1) to permit the building's spire to extend more than 10' above the maximum height limit of 460', and (2) to permit the reduction of required loading spaces to one standard 35' long loading space and one 22.5' long loading space.

The applicant understands the Companion Central City Parking Review (CCPR) (LU 07-169105) remains in force, as it was already permitted. It allows a garage entrance within 75' of a light rail transit (LRT) alignment. No change in the location of the combined access to the loading dock and below-grade parking structure is proposed.

Project Summary

Due to changes in the recent economic climate, TMT Development Company, Inc., has elected to add four floors to its 26-story mixed-use Park Avenue West Tower, originally approved in 2007 as a 33-story mixed use building (PAWT.1) (LU 07-140633 MS DZM AD) and later in 2009 as a modified 26-story mixed-use office building (PAWT.2) (LU 09-104171 DZ). The proposed design for PAWT.3 includes the addition of four floors in the mid-section of the tower, for a total of 30 stories: 2 floors of retail, 15 floors of housing, and 13 floors of office. The building's total height will increase from 407' to 460' - including roof-top mechanical - which returns the building proportions to a slender point tower while remaining within the maximum allowable height requirements for this subarea of Downtown.

The original building was approved through a combined transfer of base density (8.7 FAR) and density bonuses (3.0 FAR) from Park Block 5 - the site of Director Park - for a total of 11.7 FAR. The remaining 0.3 FAR was retained on PB 5 for the park's above-grade development. Park Avenue West Tower also used a full complement of FAR on its site - PB 4 - including a base FAR of 9.0 and bonuses of 3.0, for a total of 12.0 FAR. As a result, the original building used the full 23.7 FAR (474,000 gsf) in its above-grade development. This is based on a site size of 20,000 sf.

In the new 30-floor development scheme, the building will again utilize 23.7 FAR or 474,000 gsf. This is achieved by the introduction of 15 floors of housing, which allows the building to be eligible for a 3.0 FAR housing bonus. As a result, the project is eligible for a total FAR of 23.7.

From: Abbaté, Mike
Sent: Wednesday, November 27, 2013 11:30 AM
To: Fioravanti, Kara
Cc: Auerbach, Harry; Lofgren, Todd
Subject: CASE FILE: LU 13-214772 DZM, MS, AD (PC 13-212680), Park Avenue West (South Park Block 4)

TO: Bureau of Development Services Staff: Kara Fioravanti 503-823-5892 / Kara.Fioravanti@portlandoregon.gov
RE: CASE FILE: LU 13-214772 DZM, MS, AD (PC 13-212680), Park Avenue West (South Park Block 4)

Site Address: Building site: 728 SW 9th Avenue
Floor Area Transfer site: 877 SW Taylor Street, 800 SW Yamhill Street, 825 W/SW Park Avenue

As owner of Park Block 5, Portland Parks & Recreation, has no objection to the proposed Central City Master Plan Amendment to allow an increase in the transfer of floor area from Director Park (formerly known as Park Block 5) to the proposed tower site (Park Block 4). Portland Parks & Recreation would like to note that the bonus FAR on Park Block 5 — 0.5 bonus FAR through the "water feature/public fountain bonus option" and 2.5 bonus FAR through the "locker room bonus option" is owned by Portland Parks & Recreation. In addition, Park Block 5 will retain a base FAR of 0.3:1 to accommodate 3 small park structures. Transfer of the bonus FAR from Park Block 5 to Park Block 4 will need to be agreed upon by the respective owners of the two properties. Attached to this email is the Land Use Covenant documenting the FAR on Park Block 5. Recital F of that Land Use Covenant reflects that PP&R retains 0.3:1 of the base FAR. Section I.1.5 of that Land Use Covenant provides: "Nothing in this Covenant affects any FAR bonus attributable to the construction of the water feature on Park Block 5 or any FAR bonus attributable to the construction of the bicycle lockers under the surface of Park Block 5. The City of Portland will continue to own the bonus FAR attributable to those elements." PP&R previously has expressed its willingness to discuss with the owner of Park Block 5 and/or Park Block 4 the possible transfer of its remaining bonus FAR, and remains open to that possibility. To date, however, no such transfer has been negotiated, and the City, through PP&R still owns that bonus FAR.

MIKE ABBATÉ, ASLA, LEEDTM
Director
503-823-5379
mike.abbate@portlandoregon.gov <<mailto:mike.abbate@portlandoregon.gov>>

[cid:image001.jpg@01CEEB64.1A1A6F00]

AMENDED LAND USE COVENANT
INCLUDING
COVENANT TRANSFERRING FLOOR AREA RATIO

Grantor: FOX TOWER, L.L.C.
c/o TMT Development Co., Inc.
805 SW Broadway, Suite 2020
Portland, Oregon 97205

Multnomah County Official Records
C Swick, Deputy Clerk

2011-032550



\$56.00

Grantee: WEST PARK AVENUE, LLC
c/o TMT Development Co., Inc.
805 SW Broadway, Suite 2020
Portland, Oregon 97205

1R-AMMODCCR
\$25.00 \$11.00 \$15.00 \$5.00

03/14/2011 11:21:34 AM
Cnt=1 Stn=21 ATESB

Affects: Park Block 5, CITY OF PORTLAND (transferring)
Park Block 4, CITY OF PORTLAND (receiving)

After recording return to:
Dean N. Alterman
Folawn Alterman & Richardson LLP
805 SW Broadway, Suite 2750
Portland, Oregon 97205

AMENDED LAND USE COVENANT
INCLUDING
COVENANT TRANSFERRING FLOOR AREA RATIO

This Amended Land Use Covenant Including Covenant Transferring Floor Area Ratio (this "Covenant") is made as of December 15, 2010 by FOX TOWER, L.L.C., an Oregon limited liability company, as holder of an easement and owner of certain improvements on Block 5, PORTLAND PARK BLOCKS ("Fox Tower"), and WEST PARK AVENUE LLC, an Oregon limited liability company, as owner of Block 4, PORTLAND PARK BLOCKS ("WPA"). This Covenant replaces in its entirety the Land Use Covenant Including Covenant Transferring Floor Area Ratio that was dated as of October 1, 2010 and recorded on December 2, 2010 as Document No. 2010-151855, Multnomah County Records. This Covenant is entered into for the purpose of correcting an error of calculation in the prior covenant.

RECITALS

A. The City of Portland, by and through its Bureau of Parks and Recreation (the "Parks Bureau") holds fee title to Block 5, PORTLAND PARK BLOCKS ("Park Block 5"), which it acquired by donation. Parks Bureau has constructed a public park on the surface of Park Block 5, and now operates that park and certain related surface and subsurface improvements.

B. Fox Tower holds an easement of record to construct and maintain a subsurface parking garage and certain surface improvements on and beneath Park Block 5. Fox Tower has done so, and now operates a parking garage beneath Park Block 5.

C. Parks Bureau and Fox Tower have separately agreed to submit Park Block 5 to the condominium form of ownership, forming two nonresidential condominium units, under which Parks Bureau and Fox Tower will each own one condominium unit on Park Block 5. Parks Bureau will own a unit located on the surface and used as a public park. Fox Tower will own a subsurface unit with certain ancillary surface structures that is used as a parking garage.

D. WPA owns Block 4, PORTLAND PARK BLOCKS ("Park Block 4"). WPA has begun construction of an office and retail tower on Park Block 4.

E. The zoning code of the City (the "Code") regulates the maximum floor-area ratio ("FAR") for properties in the downtown core area, including Park Block 4 and Park Block 5. The Code also allows the transfer of unused FAR from one property to another, under certain conditions and with certain restrictions.

F. Park Block 5 is 20,000 square feet in area and has a base FAR of 9:1, for a total allowable floor area of 180,000 square feet. The former owners of Park Block 4 purchased 8.7:1 of that FAR (equal to 174,000 square feet) from the former owner of Park Block 5 for use to redevelop Park Block 4, leaving 0.3:1 (equal to 6,000 square feet) with Park Block 5. Fox Tower purchased that FAR from the former owners of Park Block 4 with the intent to transfer it to WPA for use in developing Park Block 4. Fox Tower and WPA now wish to document and complete that transfer on the public record, for the use of WPA on Park Block 4. By executing this Covenant, Parks Bureau consents to this transfer but does not undertake any affirmative obligation to any person or party whomsoever.

NOW, THEREFORE, THE PARTIES AGREE:

Section I. Floor Area Ratio Transfer.

1.1 The recitals above are true and correct and are part of this Covenant.

1.2 Fox Tower transfers to WPA, from Park Block 5 and for the benefit of and appurtenant to Park Block 4, 174,000 square feet of unused FAR (the "Transferred FAR"), representing a transfer of 8.7:1 of the FAR from Park Block 5, that the prior owners of Park Block 4 had purchased from the prior owner of Park Block 5 and then assigned to Fox Tower.

1.3 To the extent that this transfer must be ratified or approved by Fox Tower as current owner of a property interest in Park Block 5, Fox Tower ratifies and approves this transfer.

1.4 For purposes of this Covenant, the FAR remaining on Park Block 5 is 6,000 square feet. The new base FAR on Park Block 4, before giving effect to certain density bonuses

allowed in the zoning code of the City of Portland, some of which are described in other sections of this Covenant, is 354,000 square feet.

1.5 Nothing in this Covenant affects any FAR bonus attributable to the construction of the water feature on Park Block 5 or any FAR bonus attributable to the construction of the bicycle lockers under the surface of Park Block 5. The City of Portland will continue to own the bonus FAR attributable to those elements.

Section II. Land Use Covenant: Retail Use Bonus Option

2.1 Section 33.510.210 of the zoning code allows projects in certain areas that provide retail uses to receive bonus floor area. For each square foot of retail space in excess of one-half the site area, one additional square foot of floor space is earned. The project on Park Block 4 is in a qualifying area. For the benefit of the City of Portland, WPA covenants that it will construct and maintain retail space on Park Block 4 of not less than 28,000 square feet, for a retail use bonus of 18,000 square feet (0.9 FAR) in accordance with Section 33.510.210.

2.2 In accordance with Section 33.700.060 of the zoning code, WPA covenants for the benefit of the City that WPA will comply with all applicable Code requirements and conditions of approval. If WPA fails to perform its obligations contained in this Section II, then the City may terminate occupancy of Park Block 4 and seek all necessary injunctive relief, including seeking to prevent future occupancy of Park Block 4 while a violation of this Section II exists.

Section III. General Provisions

3.1 This Covenant runs with the land and binds and benefits future owners of Park Block 4 and Park Block 5 and all persons claiming by, through, and under Fox Tower, WPA, and the City of Portland.

3.2 This Covenant is intended to benefit WPA as owner of Park Block 4 by documenting its receipt of FAR from Park Block 5 and the floor area bonuses provided by Section 33.510.210 of the Code. This Covenant is also intended to benefit the City of Portland by assuring that the overall density of development on Park Block 4 and Park Block 5 does not exceed the maximum density the Code allows.

3.3 The owners of Park Block 4 and Park Block 5 will execute and deliver, from time to time, such reasonable instruments as either of them may deem necessary (a) to confirm that the transfer of property interest described in this Covenant is a transfer of FAR only and not a transfer of fee ownership of land or the ownership interests that would create liability for real estate taxes; water, sewer, or other public utility charges; downtown development agency and similar charges; or any other similar governmental or public agency charges, and (b) to make all applications and filings as may be reasonably necessary to enable the owner of Park Block 4 to fully utilize the Transferred FAR.

3.4 Fox Tower and WPA will comply with all applicable Code requirements and conditions of approval of this Covenant.

3.5 Fox Tower warrants to WPA that it is the legal owner of and has good right to convey the unused FAR, and covenants that it will execute or procure any further necessary assurances of its rights to make this transfer.

3.6 This Covenant may not be amended without the written consent of the City of Portland.


3.7 This Covenant may be terminated by Fox Tower upon recordation of an instrument signed by the City and Fox Tower acknowledging that Park Block 4 and Park Block 5 are no longer subject to the FAR limitations and the resulting FAR calculations as recorded in this Covenant.

3.8 In any suit or action to enforce this Covenant, the prevailing party will be entitled to an award of its reasonable attorney fees and costs, at trial and on appeal.

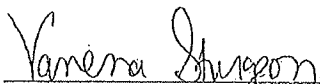
3.9 The parties will submit this Covenant to the Multnomah County Recorder for recording at the expense of WPA.

FOX TOWER, L.L.C.:

WEST PARK AVENUE LLC:
By Fox Tower, L.L.C., member:



Vanessa Sturgeon, Manager



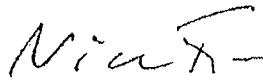
Vanessa Sturgeon, Manager

CONSENT OF CITY OF PORTLAND

The City of Portland, by and through its Bureau of Parks and Recreation, consents to this Covenant.

DATED this 7th day of March, 2011.

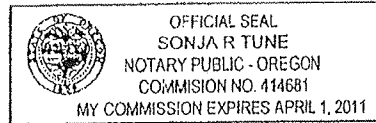
CITY OF PORTLAND:



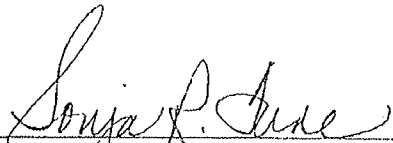
Nicholas S. Fish
Commissioner of Parks and Recreation

ACKNOWLEDGMENTS

State of Oregon)
County of Multnomah)

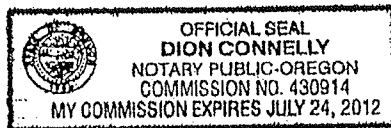


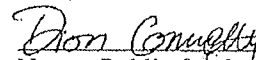
This Covenant was acknowledged before me on Feb. 25, 2011 by VANESSA STURGEON as Manager of Fox Tower, L.L.C., an Oregon limited liability company, for itself and as a member of West Park Avenue LLC, an Oregon limited liability company, as the voluntary act of each of those companies.



Notary Public for Oregon
My commission expires April 1, 2011

The Consent of the City of Portland to this Covenant was acknowledged before me on March 7, 2011 by NICHOLAS S. FISH as Commissioner of Parks and Recreation of the City of Portland as his voluntary act on behalf of the City of Portland.





Notary Public for Oregon
My commission expires 7.24.12

APPROVED AS TO FORM



CITY ATTORNEY