

**Portland Planning and Sustainability Commission**  
**October 11, 2016**  
**12:30 p.m.**  
**Meeting Minutes**

**Commissioners Present:** Jeff Bachrach, Katie Larsell, Gary Oxman, Michelle Rudd, Katherine Schultz, Chris Smith, Eli Spevak, Teresa St Martin, Maggie Tallmadge (left at 3:15 p.m.)

**Commissioners Absent:** Andre' Baugh, Mike Houck

**City Staff Presenting:** Joe Zehnder, Michael Armstrong, Andria Jacob, Kyle Diesner, Tyler Bump, Matt Tschabold, Tom Armstrong

**Other Presenters:** Lorelei Juntunen (ECONorthwest)

*Chair Schultz* called the meeting to order at 12:30 p.m. and gave an overview of the agenda.

[Documents and Presentations for today's meeting](#)

**Items of Interest from Commissioners**

- *Commissioner Smith* and *Commissioner Spevak* attended Strong Towns, hosted by 1,000 Friends, an urban policy fiscal meeting, last week.

**Director's Report**

Joe Zehnder

- Residential Infill Project – BPS' recommendation to Council on the concepts are being published on October 17. The PSC's next meeting (October 25) will include a briefing on staff's recommendations.
- The first Task 5 Comp Plan hearing at Council was last Thursday; this Thursday is the continuation. Big topics people raised (pretty balanced testimony on both sides of these issues) included parking minimums, drive-throughs, the 4:1 versus 2:1 FAR issue in northwest, the Hayden Island bike path and individual property requests.

**Consent Agenda**

- RWA #7940: SW Moody south of the Ross Island Bridge
- Consideration of Minutes from the September 27, 2016 PSC meeting

*Chair Schultz* (at the request of *Commissioner Baugh*) pulled the Street Vacation RWA #7940 off the Consent Agenda. This item will return to the PSC for a hearing in the upcoming months.

*Commissioner Smith* moved to approve the Consent Agenda. *Commissioner Oxman* seconded.

The Consent Agenda was approved with an aye vote.

(Y9 – Bachrach, Larsell, Oxman, Rudd, Schultz, Smith, Spevak, St Martin, Tallmadge)

**Home Energy Scoring**

Briefing: Michael Armstrong, Andria Jacob, Kyle Diesner

Michael introduced the policy proposal. City Council will likely have their hearing on this at the end of November.

The intent of the policy is to reduce carbon emissions and respond to the urgency of climate change. Some people think this policy goes too far too fast, but staff feels the proposed policy is an appropriate

step to address climate change. The policy is also intended to make it easier for prospective homebuyers to see the full cost of home-ownership.

This action is part of the 2015 Climate Action Plan (CAP) to reduce energy use in existing buildings and was first proposed in the 2009 CAP. Action 1B in the 2015 CAP reads: “Require energy performance ratings for all homes so that owners, tenants and prospective buyers can make informed decisions about energy costs and carbon emissions.” Residential buildings make up about 20 percent of carbon emissions. About three-quarters of existing houses were built before energy codes were in place and have not been retrofitted.

It’s also important for a prospective buyer to know their potential energy costs for housing they’re considering to buy. Over time, a more efficient home can save a homeowner on the order of \$10,000 over 10 years.

Benefits of the policy to Portlanders

- Better insight into the full costs of owning a home.
- Ability to compare energy costs and performance between homes.
- Knowledge of home improvements in advance of purchase.
- Access to specialized mortgage products
- Long-term operational savings from purchase of an energy-efficient home.

Staff is proposing that sellers of single-family homes obtain a home energy performance report, which includes:

- A home energy score and explanation of the score,
- An estimate of the total annual energy used in the home, by fuel type
- An estimate of the total monthly (or annual) cost of energy purchased for use in the home, in dollars by fuel type.
- The current average annual utility retail energy price by fuel type.

Staff have worked closely with the Oregon Department of Energy to stay aligned with existing statute and rules around home energy scoring systems and practices. The home energy score is based on how a home is built, not how the home is used. This type of score is called an asset rating and is considered best practice in the field because it allows buyers to compare homes on an apples-to-apples basis, which is not possible when you are just looking at past occupants’ utility bills. This is similar to a MPG rating on cars, which enables comparison between vehicles even though actual mileage may vary. Asset ratings are based on a relatively brief inspection of the home by a certified home energy assessor.

Under the proposed policy, a seller must disclose the information from this report to the City of Portland and to prospective buyers who visit the home while it is on the market. The requirement would apply to sellers or, in the case of newly constructed homes, homebuilders. However, sellers may have a designated representative, like a real estate professional, disclose the report and the score on their behalf.

Staff are proposing to use the US Department of Energy’s Home Energy Score rating tool. The reports are customizable to make it consumer-friendly. The report also provides a roadmap for either the seller or the buyer about what to do to get that higher score.

As a result of stakeholder engagement and public comments, staff identified a number of exemptions that would be necessary. Since the policy is triggered by the public listing of a home for sale, the proposal exempts those transactions that never hit the market or that present examples of hardship, like foreclosures and short sales.

The proposed policy also recognizes that the new construction market is different than the existing homes market. Currently, other scoring products are in use in new construction, and stakeholders

indicated a need for time to transition to the new scoring tool. For that reason, staff propose to provide a waiver for new homes that are using other scoring products.

Also in response to public comment about equity concerns and potential harm to vulnerable residents, staff have proposed a new element to the policy, a deferral for “Low Income Qualified Sellers” – household income at or below 60 percent of median household income. Sellers would be able to qualify for this exemption by showing participation in one of a number of income-qualified services or who can demonstrate hardship.

*Commissioner Tallmadge* suggested we may want to up this to include households at the 80 percent MFI threshold.

Rental homes are not included in the current proposal. However, staff noted that there are important equity benefits for renters since energy costs can burden lower-income households. However, equity stakeholder discussions suggested that though those equity benefits are understood, now is not the right time for this policy. Staff are therefore proposing to study this market, establish metrics to monitor that will identify when conditions are more favorable for a policy like this. BPS may recommend that Council establish a stakeholder committee to work on this, and staff welcome your thoughts on this piece.

*Commissioner Spevak* asked if this would apply to any single-home being sold.

- Any house that is sold, regardless of how it’s being used. But when houses are leased, we are not proposing to require disclosure to the tenant.

Staff heard a number of comments from the public in their outreach:

- Equity: how does the policy affect low-income and vulnerable people (e.g., elders on fixed incomes?)
- Housing: concern that this will increase cost of homes, and worsen the housing crisis. Staff share concerns about affordability and believe that the proposed policy will enable homebuyers to understand the full cost of homeownership, including energy bills, which will improve affordability in the long run.
- Voluntary: Commenters suggested that a requirement was too aggressive and preferred a voluntary program. Staff noted that a voluntary approach has been in place since 2009. Incentives for energy efficiency come from the utility sector, offered and promoted by Energy Trust of Oregon. These too are in effect. However, less than 2 percent of homes have gotten a score in Portland over the last 7 years.
- Many Portlanders recognize that home energy scores make the full cost of owning a home transparent in a way that they are not currently. Some argue that consumers (in this case, homebuyers) can find out what past occupants have paid for their utility bills and that it’s obvious if a house has insulation or bad windows.
- Support for consumer protection and climate protection benefits.

## **Discussion**

For PSC consideration:

1. What is the appropriate frequency for renewing the score?
2. Should Council establish a committee to identify appropriate market conditions for a policy addressing single-family rental housing?

This is tentatively scheduled to be at Council on November 23, which is a public hearing. This is an ordinance, so the second reading, likely December 7, is when Council will discuss and vote.

*Commissioner Smith* noted his experience is that you get what you measure. I understand the impetus for this, and I did read the letters with objections: there would be pressure on the assessors to give false-positive scores; economic burden to lower-income homeowners; and the idea that a bad score could reduce the marketability for a home, which could be a detriment particularly for low-income sellers.

- If a house gets a relatively low score and people can't invest in improvements, we have been talking to Enhabit about a customized loan product to meet the need. There are a number of home equity lines of credit opportunities as well. The flip side is: is it better to know or not to know?
- The "bad actors" questions: would home energy assessors have an incentive to rate homes poorly in order to generate business for energy-retrofit providers? Assessors must be certified, and there is QC for this if there are systematically biased results. The US Department of Energy requires entities that use the Home Energy Score tool to have an evaluation process in place. Currently, the Oregon Department of Energy is positioned to provide this role statewide; the City will also have to have someone to fill this QC role. Staff acknowledged the concern about assessors having a motivation to score houses low but also noted a countervailing pressure to score houses high in order to be viewed favorably for future assessments. For both reasons, quality control is essential.

*Commissioner Tallmadge:* What are the concerns about expanding to the rental market?

- There is a fear of cost of the assessment being pushed onto renters. This is part of a larger conversation, not that it's a bad idea.

*Commissioner Oxman:* The commercial building program... does it cover any residential homes?

- Only commercial buildings 20,000 square feet and larger. No residential properties are included.
- Attached single-family homes are included in this proposal, but not stacked condos.

What's encompassed by being a green-certified home?

- The green building ratings (e.g., Earth Advantage and LEED for homes) include energy scoring but also other criteria, such as indoor air quality, water efficiency, and waste. Energy use is one component of these other ratings.

On effectiveness, how much of a decrease in energy consumption could we expect via this program?

- In Austin, this program has been going for 7 years. Of the houses that went through the process, about 6 percent followed through with improvements. So this is an essential first step in a market transformation effort, but this alone won't get to our carbon-reduction goals.

What's the turn-over rate for housing in Portland? How long will it take us to report on a number of houses?

- There were 11,000 homes transacted last year. We expect this over time, likely in the 20-year range.

*Commissioner Rudd:* Did we provide incentives with the voluntary program? What level of publicity was included in the voluntary program?

- There were incentives initially but not anymore.

*Commissioner Bachrach:* Is this going to apply to new homes?

- Yes. In the spirit of level playing field, we want those homes to get a score. Scores do vary with size as well as type of construction.

There are lots of energy-oriented programs. Utility customers already fund the Energy Trust of Oregon. It doesn't take long as a home owner to know what your utility bills are. So I don't know how much more incentive it will be to score versus when the homeowner gets a few bills. The point is to encourage retrofitting, correct? How will we measure the success of getting retrofits? What should we expect for people to act on having this information?

- We work closely with other participants in the energy field. We would evaluate impacts of this on understanding how the residential retrofit

*Commissioner Spevak* noted this is a good proposal. Information disclosure prompts people to address energy efficiency issues through the real estate sale process, and the City has an interest in this. Did the other cities have voluntary programs before requiring disclosure? I think one of the things that's important is that we're providing buyers information before they make their decisions.

- Some jurisdictions had voluntary, and some had mandatory retrofit requirements initially but then changed from required upgrades to a required score.

*Commissioner St Martin:* I support energy efficiency improvements. What are the costs of implementation for the City?

- We expect we would reassign existing City staff to work on this. We may need to pull from our larger green building and climate team.

This is a mandatory program with no penalties, so isn't that really voluntary?

- The BPS Director is proposed to have the authority to issue a penalty for non-compliance.

I get a report and it gives me options of how I can save and things to do. If the things to do cost lots more than my ownership time (energy use) will cost, why would I choose invest in upgrades? The timing may make the scoring less effective. There are obvious things you can see in older houses we can point out. It's the things you can't see that becomes important. If someone gets a score and makes improvements, their house still has the old score attached.

- They could redo the score audit.
- We are proposing to make the information available in the home for prospective buyers, so it's beneficial for either the buyer or seller.

*Commissioner Larsell* is also interested in experiences from other cities. I was noticing the exceptions, and I don't know how many that would include. Has there been thought about having the banks cover the cost of the assessment? This is the first part of a market transformation program; what happens next? And is this public, and is there history of contractors getting this information that in turn they make pitches to homeowners about?

- On the number of expected annual exceptions: we can follow up.
- Market transformation: information is a start, but will be much more effective when paired with a program to actually get someone and motivated to invest. Training, education and new tools can help, so that's why we're considering the score a first step to increase the changes for a new programmatic effort to succeed.
- Scores will be public. So someone who is looking at houses can see them, and others will have access to them as well.

*Chair Schultz:* In terms of frequency for renewing the score, my gut reaction is that a study on the metrics would be important so we could evaluate it at that time. I would completely support this scoring for the rental market would be good, too. If you're giving an exemption to sellers at a certain financial threshold, but what about on the buyer end?

*Chair Schultz* asked about having the PSC write a letter to Council.

*Commissioner St Martin* thinks the use of a mandate without a sure impact is something we should be careful about. I'm only questioning if this is the right first step.

*Commissioner Spevak* recommends supporting this because we already have a voluntary program.

*Commissioner Smith* seconded.

*Commissioner Rudd* has some concern because we have a big turnout of people in the audience concerned about the proposal, but we don't have a hearing scheduled here. I understand we have CAP goals, but I'm not comfortable at this point to send a letter. I also know the voluntary program was not very successful at reaching lower-income people to assist with retrofits though there was some job creation.

- *Commissioner Bachrach* seconds this idea that it's inappropriate to give a recommendation to Council and we have outstanding questions on the Commission.

*Commissioner St Martin* asked for a pilot to pay for the work and see what people would do and if behaviors would change.

*Commissioner Oxman* has mixed feelings as well. The program may not make big changes in terms of the number of properties that will actually do change.

*Commissioner Larsell* asked if we note how many people showed up today against the proposal, and this is a first step to more work, if that would be a valuable letter to Council.

*Chair Schultz* noted we may not have support for a letter. I am personally supportive of the proposal and the work.

Michael clarified the question about a pilot: ETO has run repeated pilots over the past 7 years. The results are that voluntary programs have resulted in fewer than 2 percent of homes in Portland have energy scores.

*Commissioner Smith* asked to call the vote.

(Y5 – Larsell, Schultz, Smith, Spevak, Tallmadge; N4 – Bachrach, Oxman, Rudd, St Martin)

Staff will work with Commission officers to draft a letter for PSC to share with Council.

## **Inclusionary Housing**

Briefing: Tyler Bump, Matt Tschabold; Lorelei Juntunen (ECONorthwest)

Tyler introduced the project and today's briefing. He acknowledged Shannon Buono's great work on the code (Title 33) component of the proposal. The state passed the bill last March that allows inclusionary housing. Since then, the Portland Housing Bureau (PHB) has led a process including a panel of experts to see how we can make inclusionary housing work in Portland. Portland is not unique; there are many other cities having similar conversations at this time.

Lorelei discussed [The Economics of Inclusionary Development](#) report. The numbers are not Portland-specific since this is a national report. The increase in one-bedroom rents have risen much higher than incomes. The challenge is that average rents can be only barely feasible even for people making 100 percent MFI.

Most cities with inclusionary housing programs target affordability at 60-80 percent MFI. The percentage of units in a development to be affordable range from very low up to 20 percent.

The new state legislation allows cities to have a mandatory program. Opt outs are required in the policy (e.g. fee-in-lieu). And there are lots of incentives to consider.

The policy can only work in places where development is occurring because it applies only to new buildings.

Market feasibility when sufficient rent income can cover costs. Another factor is capital is mobile. These are things builders don't have much control over. The only place there is "squish" is on the land value. If a policy reduces the residual land value below expectations, then development will no longer move forward.

With higher-density development, there is higher per-square-foot costs to the developer. Assuming the land value is zero and no policy in place, we see lots of growth only in the Central City.

With IH without incentives, at a 20 percent set aside, 80% of MFI and assumed \$0 land price, big portions of the Central City are still feasible. We see a reduction in density in other areas because the rent that's achievable is not sufficient to support the higher construction costs in the higher-density development.

The Portland policy proposed does have incentives included. Incentives are necessary to make sure development is financially feasible and moves forward.

Ultimately:

- Well-calibrated IH programs can result in mixed income buildings in areas where new development is occurring.
- Poorly-calibrated IH programs create market disruptions and reduce development outcomes.
- Flexible programs are better:
  - Incentives
  - One size fits all vs. sub-market approach
  - Revisiting policy as market changes
  - Opt-out or fee-in-lieu

*Commissioner St Martin:* On the opt-out strategy, are incentives still provided?

- This changes from jurisdiction to jurisdiction

*Commissioner Spevak:* Do you see areas where IH have increased or decreased land value?

- Since every policy is different and many other variables, a pre/post assessment is almost impossible. Over time, you see land values going down, but since land owners have their own ideas of their property value, this doesn't always happen.

*Commissioner Bachrach:* The incentive package has been a big conversation with the work group. What difference does it make if we don't calibrate it right?

- A developer doesn't always know how much they'll be making. Returns are speculative and may not be known at the time the deal is financed, so if you can't show you can cover expenses, the project won't get financed, so it won't move forward.

In order to have a well-calibrated program, is it essential to have 100 percent incentive to compensate for the land value?

- There is a policy trade-off embedded here. Trade-offs and time periods are key.

*Commissioner Smith:* There is a calibration around not reducing multi-development. What about public dollars used in incentives versus using those dollars being used in other ways? You've described how there are different levels of returns... banks, then bank/developers, then everyone. Has anyone crafted a public policy program that grabs from where everyone is making money versus just going for the lower tranches?

*Chair Schultz:* On the importance of calibration... is there a rule of thumb that says when calibration needs to happen?

- No, it ties into market situations. Ideally you would do this project-by-project, but that's not practical.

You talked about inclusionary policies work when the housing market is building units. With the incentive packages, would these affect the market as offered today?

- We helped to develop the policies at the early stages but haven't been involved with the policies, which are still evolving.
- We expect lots of people to testify about this question.

Matthew walked through the program recommendations. Citywide, 20 percent of units are affordable at 80 percent MFI. Or only 10 percent at 60 percent MFI, which is the voluntary option. Requirements and incentives vary:

- Mixed Use zones
- Central city
- Zones with base FAR above 5.0
- Build off-site options
  - Build new units off-site
  - Off-site dedication of existing units
- Fee-in-lieu calibration is a two-step process

- Calculate maximum justifiable fee-in-lieu
- Calculate Portland fee-in-lieu recommendation (slide 10)

Tyler highlighted the 2035 Comp Plan policies that are applicable to the discussion and issues about IZ. He shared the proposed amendments to Title 33 (Zoning Code) and Title 30 (Housing Code) and Administrative Rules. (slide 12)

February 1, 2017 is the target date for this to be implemented, so we need to update the existing zoning code as well as the new codes for mixed use zones and the Central City. Base zones' density bonuses are a key first part.

In 2010-2035 we are looking at 123,000 new housing units. About 30,000 units in Central City and 50,000 in Mixed Use Zones, all of which would be subject to the IH policies.

Timeline

- October 25: PSC Hearing
- November 8: PSC Work Session & Recommendation
- December TBD: City Council
- Anticipated Effective Date: Feb 1, 2017

*Commissioner Smith:* If we calibrate right, then we should be holding feasibility the same before and after the program.

- In the calibration, it was not a dollar-for-dollar off-set. The market will change, but just the inclusionary requirement is what we looked at. In some cases we are marginally below, some slightly above. Effectively we are mitigating as much as possible.
- Public dollars going to incentives are being used as efficiently as possible.

Parking minimums: We have minimums in the mixed-use zones, but we are suggesting waiving for affordable units. What about getting rid of parking minimums altogether?

- Regarding waiving minimums, the increased cost of parking hurts the IH program so we'd have to provide much higher levels of subsidy.

*Commissioner Oxman* noted the current City subsidy for \$100,000 for each developed unit.

- This is a direct financial subsidy from PHB. It's sourced from Federal, URA or direct City general funds.

For the off-site development, I saw the criteria, which I assume are used to maintain equity. Was there discussion about if this is sufficient to maintain family support and integration with other average-income families?

- There was a question about the ½-mile. This aligns nicely with the radius around mass transit (light-rail), which can take advantage of comparable indicators.

In terms of the City's cost to build, the Willamette Week article showed that the City's costs were substantially higher.

- There may have been errors in that article, and I can look into that.

*Commissioner Rudd:* When we say "marginally" above and below, or "negligible", what's the scale?

- Depends on measure of analysis. We will look more closely at the numbers. We looked at various analyses, and we can make this work for our existing return requirements.
- We'll summarize the findings prior to the PSC work session.

Receiving sites have to be under construction or have a certificate of occupancy. If we can't work out the deal, what happens? Is there a risk to funding the projects with greater affordability if there is that time delay?

- We are looking into loosening this requirement that they are under construction and having some flexibility in having the units come online in a specific time.

With the transfer of affordability, do we think City sites will be receiving sites?



- Potentially. But a parameter of the off-site is that the City is not secondarily subsidizing the receiving site. So we'd have a rental development team to look at if the supplemental units aren't also receiving financing.

*Commissioner Bachrach* has been sitting in on some of the Task Force meetings. It's complicated, and staff has done a great job wading through everything. As the PSC, I think it's important not to risk our planning goals. We are designing the program for 80,000 units over the next 20 years in the Central City and MUZ. We should be protective of this and meeting our housing goals. If we err in the early years and we do lose housing, it's a detriment for many more years into the future. We heard that as we do this calibration, it's not quite working in MUZ. So we already have a program where the calibration analysis isn't quite working yet. So I'd have a concern signing off on this at this point. Will see that back again?

- There are concerns in the MUZ, but that second look will be complete before your October 25 hearing.

Are we spending the money effectively in the IZ program versus elsewhere? We've calculated the in-lieu fee based on a \$100,000 subsidy to non-profit developers. All the incentives we give to non-profits building affordable units and the \$100k direct subsidy, but the private developers with the same incentives don't get the financial bonus. What about subsidizing the private developers some amount as well? We would get a more cost-effective unit.

- It's not apples-to-apples. PHB is often financing 80-100 percent units being affordable. The financial structure is very different.
- If you look at the incentive packages, for those that only have an affordable property tax exemption, there is \$2000-3000 per unit. The full property tax exemption \$11,000-12,000 per unit.

There was discussion at the task force about needing to move this project quickly. Is there consideration of a phased approach?

- Commissioner Saltzman has requested to bring the full program to Council on December 8.

*Commissioner Spevak*: There is a big difference on property tax exemptions if they apply to all units or just the affordable units. The current proposal makes property tax abatements on all units available at the higher densities (generally in the Central City), but only for the affordable units in the mixed use zones. Is there anything magical about a 10-year tax abatement period (e.g. could it be tuned to a different number of years to create incentive bundles that achieve geographic parity between Central City and mixed use zone areas?

- We'll look into that.

*Commissioner St Martin*: When we talk about off-site units and dedicating existing, have you calibrated these choices to be neutral?

- We have calibrated so that should you choose a new construction off-site we will have more 60 percent MFI units off-site than we would on-site. This is equal with the 60-30 percent MFI as well.
- IH programs tend to be focused at 60-80 percent MFI. But knowing a build off-site option can build to 30 percent, so we wanted to be sure that's a good option.

Is the fee-in-lieu is structured so that's the last resort?

- Yes.

*Commissioner Larsell*: What's the variability in terms of your ability to predict and calibrate initially?

- We've had many people review and analyze our recommendations. With a full tax exemption program, we see this could work. We are again looking at the mixed use zones as we noted.

*Chair Schultz*: For the effective date of February 1, 2017... can you say it won't happen prior to that?

- We can't predict what Council will do, but functionally it will be very difficult to implement prior to then. I am fairly confident of this date. We don't know if Council would back-date this.

Prior to the work session, I'd like to understand the analysis of the effect of family housing units. What about a voucher program? I've met with Locust as well, and I've heard a slightly different take. "Negligible" is a question as *Commissioner Rudd* highlighted. As is defining parody.

*Commissioner Smith* asked about the MUZ bonuses. So for the existing Zoning Code, residential FAR is uncapped in zones. How do you calibrate based on uncapped?

- We are bringing those code changes forward in order to start counting residential floor space in the overall FAR limits.

## **Fossil Fuel Infrastructure Code Changes**

Work Session / Recommendation: Tom Armstrong, Michael Armstrong

*Commissioner Rudd* recused herself from this topic.

Tom commented on balancing the direction of the fossil fuel infrastructure resolution about opposing expansion yet at the same time encouraging safety and transition to non-fossil fuels.

There are three components to the amendments we're discussing:

- Define Bulk Fossil Fuel Terminals as a regulated land use.
- Prohibit Bulk Fossil Fuel Terminals in all base zones.
- Existing Bulk Fossil Fuel Terminals would become legal, non-conforming uses that can continue to operate.

In the staff memo, there are four big issues for the PSC's consideration:

- Storage capacity threshold and aggregation of small facilities
- Regulating existing terminals
- Exemption for regulated utilities
- Other issues

Defining Bulk Fossil Fuel Terminal:

- Marine, railroad, or pipeline transport access; and
- Transloading facilities (such as train-to-ship) or storage capacity exceeding 5 million gallons.

*Exclusions:*

- Distributors with access exclusively by truck.
- End-user facilities, including filling stations and firms that store fossil fuels for use as an input.
- Recovery or reprocessing used petroleum.

*Commissioner Smith* asked if it's transloading OR 5 million gallons or AND 5 million gallons?

- It's an "or". So any facility with transloading is prohibited.

## **Storage Capacity Threshold**

Proposed draft: Threshold of 5 million gallons

Possible amendments:

1. Reduce the threshold
2. Add language to prevent aggregation of small facilities
3. Add language to clarify status of rail yards and pipelines

*BPS Recommendation:* Retain the 5-million-gallon threshold.

*Commissioner Oxman:* Could someone permit a new transfer facility (e.g. coal from a train)? Or does this block that option?

- This would be blocked in Portland.

*Commissioner Tallmadge:* We're looking at the threshold for new facilities, yes?

- We're talking about 5 million gallons for existing and new facilities and if they'd fall under the fossil fuel terminal. The lower the 5-million-gallon threshold goes, if you say it's 0 (any amount of storage capacity), if you have a firm that has both fossil and bio tanks, they can no longer have the fossil tanks, so that has implications for their ability to blend fuels like biodiesel.

Can we lower the threshold for fuels we consider cleaner?

- We'd have to go back and redefine what a fossil fuel is in terms of the content. We are probably at a time where it would be difficult to come up with a new definition to set the mark. It could be something in your letter to Council to look at this in the future.

*Commissioner Oxman:* It seems like the primary policy focus is to limit expansion of fossil fuels going through the community. When we look at the other 24 listed, do we have a sense of what the aggregate volume of these is?

- We don't have data on what each individual business' capacity is. If we went with the 5-million-gallon threshold, we know they could expand up to that level, so the 24 businesses on the list could represent up to 125 million gallons of storage capacity. For comparison the 11 large facilities on our list have about 400 million gallons of storage capacity.

*Commissioner Smith* noted it seemed we had "OR" in some places and "AND" elsewhere.

- The intent is that they are regional facilities. Either they have large-scale storage or they could be a transload facility.

I am assuming the 5 million number is still relevant. So the logic was proposed that 5 million gallons is two unit trains. So if we lower the threshold to 2 million, that would prohibit any unit trains, so I'd suggest that to get to the intent of the policy.

*Commissioner Spevak* noted that at Port of Tacoma, there is a proposal for 87 million gallons of throughput at a proposed 8-million-gallon facility. It is possible that a relatively small tank can have lots of throughput. Let's decrease the size of allowable tanks. I concur with *Commissioner Smith's* proposal.

*Chair Schultz* noted that *Commissioner Tallmadge* is in favor of reducing the 5-million-gallon threshold. Tom noted this is something we don't know: how much some of the biodiesel and other firms have and the impact that would be.

*Commissioner Smith:* I move to reduce the threshold from 5 to 2 million gallons. *St Martin* seconded.

(Y6 – Larsell, Oxman, Schultz, Smith, Spevak, St Martin; N1 – Bachrach)

### **Aggregation of Small Facilities**

Aggregating a bunch of 2 million gallon facilities would require them to do a land division and other provisions.

Zoning Code (33.910.030) definition of "ownership":

An ownership is one or more contiguous lots that are owned by the same person, partnership, association, or corporation. Ownership also includes lots that are in common ownership but are separated by a shared right-of-way.

*Commissioner Spevak* moved to add the proposed language concerning aggregation of separate parcels will be classified as a Bulk Fossil Fuel Terminal when two or more factors are present:

- a. Located on adjacent parcels, including separated by a right-of-way;
- b. Facilities share or will share operating facilities such as driveways, parking, piping, or storage tanks; or
- c. Facilities are owned or operated by a single parent partnership or corporation.

*Commissioner Smith* seconded.

(Y6 – Larsell, Oxman, Schultz, Smith, Spevak, St Martin; Abstain 1 – Bachrach)

### **Exemption for Regulated Utilities**

During the comment process NW Natural suggested that almost by definition its services are direct-service to end users, which is identified in the November 2015 City Council resolution as one of the exceptions. Their argument is that their services are already regulated to serve customers. So it would be redundant and potentially conflicting if they had to satisfy both the PUC integrated resources plan process and this new regulation.

*Commissioner Smith:* We want to close off what you could do outside the intent of Council’s resolution. Could someone load a truck with LNG from NW Natural’s storage tank and deliver it to another utility or large user?

Shawna Brownstein, NWN: You can back a truck up and fill it with LNG to take it to places where we have low pressure on certain high-demand days. This facility is for peaking purposes, and the PUC wouldn’t let us put this into rates if it were serving another purpose. We’d have to get PUC approval to use the facility to sell to others. The volume of the tank is part of our resource plan. We can’t expand the facility unless it’s to directly meet the demands of our customers and the growth of the region.

*Commissioner Spevak:* Lots of people don’t use natural gas. PUC regulation doesn’t cover everything (e.g. the plants themselves).

*Commissioner Oxman* supports the exemption. BDS has already told us they have concerns about assessing and regulating fossil fuels. The PUC is already an existing body, and it sounds like there are restrictions built in.

*Chair Schultz* noted *Commissioner Tallmadge’s* comment to not exempt for regulated utilities.

*Commissioner Spevak* moved to not provide an exception for regulated utilities. *Commissioner Smith* noted inaction is sufficient in this case. Without a motion to adopt new language to exempt a public utility, the code will stay as-is.

### **Regulating Existing Terminals**

Proposed draft: Any facility with more than a 2-million-gallon capacity would be considered a non-conforming use.

Alternatives to consider:

- Limited use
  - No discretionary land use review.
  - Replacement or expansion for seismic upgrades or clean fuel standards allowed up to 10 percent increase in storage capacity.
- Conditional use
  - Discretionary land use review for seismic upgrades or clean fuel standards allowed up to 10 percent increase.

Staff proposes the Limited Use option: you can only expand if you're doing a seismic upgrade when you're adding a tank. They have to state in the development application what the purposed/use of the tank is to reduce the risk of bait-and-switch, which may be difficult to enforce going forward.

*Commissioner St Martin* asked about seismic upgrades. Are there specific upgrades to the tanks that are useful to upgrade their safety?

- The major benefit is replacing the tank. We've mainly seen companies demolish the existing tank, upgrade the foundation and then put the new tank in to replace the old one... not a retrofit.

*Commissioner Smith:* We have direction to stop being a fossil fuel export location. We have a Comp Plan seismic policy. But clean fuels is a state-level issue. Does the Council resolution include a clean fuels statement?

- It referenced not restricting infrastructure that accelerates transition to non-fossil fuel energy source, and we're suggesting these are a transitional fuel.

I'd come down on the conditional use option with clear criteria. I understand the current non-conforming use probably locks us into bad infrastructure.

*Commissioner Oxman* asked if there are requirements to meet seismic upgrades required in both the limited use and conditional use options.

- It depends on if you want to allow an expansion of fossil fuel capacity that will result in a seismic upgrade with a larger fossil fuel tank. It goes back to the AND versus OR question *Commissioner Spevak* raised.

What is the potential added value for using conditional use?

- There is a public review process and an opportunity to comment. BDS cautions what the discretionary judgement is: how will they determine the facility meets clean fuel standards or what's contained in the tank. The seismic upgrade and safety benefit from doing that is more straight-forward.

*Commissioner Smith:* What's the process difference for BDS between limited use versus conditional?

- Limited would be similar to a mixed-use building coming in... clear and objective standards. A company would come in with their demo plan, replacement plans, and if we want to go to the 10 percent increase, they would document where they are today in terms of capacity and what their next 10 percent would be.
- The staff memo includes code language in the back of the memo - code option #2.

And versus or: I would be ok with a seismic-only improvement if you're rehabbing a tank to do clean fuels.

*Commissioner Spevak* asked if under current regulations tanks are getting replaced to get them up to seismic.

- In theory, yes. But it's been very slow-going despite the fact that they can increase capacity. I thought the expansion option was to sweeten the deal.
- It's part of the uncertainty of what the demand for what type of fuel we'll have in the future. depending on how we phrase this, whether or not a clean fuel tank is included in a bulk fossil fuel terminal or not, and then if you need an incentive to do a seismic upgrade, is the question.

I am unconvinced allowing a 10 percent increase in capacity will motivate tank replacements with seismic upgrades since they haven't been doing these under current regulations that allow major increases in capacity.

*Commissioner St Martin:* If you had ten 5-million gallon tanks, could you wipe them and increase to one big 55-gallon tank?

- If we have the 10 percent included, yes. It would be marginally better because of the required seismic upgrade.

*Commissioner Oxman:* In limited use language, it talks about at least one fossil fuel tank. Would you be allowed the 10 percent increase if you take down the small tank versus the larger one?

- 10 percent is a cap for the full site, not individual tanks on the site, as it is currently written.

*Chair Schultz* shared *Commissioner Tallmadge's* option: non-conforming use is her first option. But if we opt for conditional use, certain safety criteria should be included.

*Chair Schultz* asked about the 10 percent addition: Do we know if economically this makes a dent in the cost of the required upgrade?

- We based this on the metric of the clean fuels standard and moving to 15 percent bio/ethanol fuel.

I am supportive of leaving this as a limited use because if we're not seismically upgrading now, I don't think we will in the future without encouraging the upgrade.

*Commissioner Smith* moved to adopt Option 2 (on page 11 in the staff report): Current facilities are limited use and an allowed 10 percent size upgrade. *Commissioner Larsell* seconded with the addition of notification requirement.

*Commissioner Oxman* proposed to include language about up to the amount specified in Table 140-8 to replace comparable capacity by 10 percent.

*Commissioner Spevak* suggested the limited use option but no not allow expansion of volume. This makes for a swift development process without increasing capacity. *Commissioner St Martin* seconded.

*Commissioner Smith* withdrew his motion. *Commissioner Larsell* withdrew her second. *Commissioner Smith* Moved Option 2 as stated. *Commissioner Larsell* seconded.

*Commissioner Oxman* re-proposed to include language about the expansion would be up to 10 percent of a specific unit/tank on the site. *Commissioner Smith* seconded.

- (Y6 – Larsell, Oxman, Schultz, Smith, Spevak, St Martin; N1 – Bachrach)

*Commissioner Larsell* moved to include notification in the limited use proposal. *Commissioner Smith* seconded.

- (Y4 – Larsell, Oxman, Smith, Spevak; N3 – Bachrach, St Martin, Schultz)

*Commissioner Spevak* proposed an amendment to say the current facilities are limited use but expansion is prohibited. *St Martin* seconded.

- (Y3 – Smith, Spevak, St Martin; N4 – Bachrach, Larsell, Oxman, Schultz)

The Commission voted on the overall proposal: Existing terminals are designated as a limited use. There is no discretionary land use review. Expansions are allowed up to 10 percent capacity for a tank/unit that is being seismically upgraded. And a notification to stakeholders is required.

(Y7 – Bachrach, Larsell, Oxman, Schultz, Smith, Spevak, St Martin)

## **Adjourn**

*Chair Schultz* adjourned the meeting at 4:34 p.m.