



City of Portland, Oregon - Bureau of Development Services

1900 SW Fourth Avenue - Portland, Oregon 97201 | 503-823-7300 | www.portlandoregon.gov/bds



Type III Decision Appeal Form

LU Number: 17-153413 HRM, AD

FOR INTAKE, STAFF USE ONLY

Date/Time Received 8/11/2017 10:03 AM

Action Attached

Received By dropped off L. DANLEY

Fee Amount 5000

Appeal Deadline Date 8/11/2017 4:30 PM

[Y] [N] Fee Waived

Entered in Appeal Log

Bill # 4171970

Notice to Auditor

[Y] [N] Unincorporated MC

Notice to Dev. Review

APPELLANT: Complete all sections below. Please print legibly.

PROPOSAL SITE ADDRESS 1120 SW 5th Avenue

DEADLINE OF APPEAL 4:30pm on 08-11-2017

Name Peter Meijer Architect, PC

Address 605 NE 21st Avenue, Suite 200

City Portland

State/Zip Code OR/97232

Day Phone (503) 517-0283

Email peterm@pmapdx.com

Fax N/A

Interest in proposal (applicant, neighbor, etc.) appellant

Identify the specific approval criteria at the source of the appeal:

Zoning Code Section 33. _____ . _____

Zoning Code Section 33. _____ . _____

Zoning Code Section 33. _____ . _____

Zoning Code Section 33. _____ . _____

Describe how the proposal does or does not meet the specific approval criteria identified above or how the City erred procedurally:

(please see attached documents)

Appellant's Signature _____

FILE THE APPEAL - Submit the following:

- This completed appeal form
- A copy of the Type III Decision being appealed
- An appeal fee as follows:
 - Appeal fee as stated in the Decision, payable to City of Portland and fee waiver request
 - Fee waiver for ONI Recognized Organizations approved (see instructions under Appeals Fees A on back)
 - Fee waiver request letter for low income individual is signed and attached
 - Fee waiver request letter for Unincorporated Multnomah County recognized organizations is signed and attached

The City must receive the appeal by 4:30 pm on the deadline listed in the Decision in order for the appeal to be valid. To file the appeal, submit the completed appeal application and fee (or fee waiver request as applicable) at the Reception Desk on the 5th Floor of 1900 SW 4th Ave, Portland, Oregon, between 8:00 am and 4:30 pm Monday through Friday.

The Portland City Council will hold a hearing on this appeal. The land use review applicant, those who testified and everyone who received notice of the initial hearing will receive notice of the appeal hearing date.

Information about the appeal hearing procedure and fee waivers is on the back of this form.

Type III Appeal Hearing Procedure

A Type III Decision may be appealed only by the applicant, the owner, or those who have testified in writing or orally at the hearing, provided that the testimony was directed to a specific approval criterion, or procedural error made. It must be filed with the accompanying fee by the deadline listed in the decision. The appeal request must be submitted on the Type III Appeal Form provided by the City and it must include a statement indicating which of the applicable approval criteria the decision violated (33.730.030) or what procedural errors were made. If the decision was to deny the proposal, the appeal must use the same form and address how the proposal meets all the approval criteria. There is no local Type III Appeal for cases in unincorporated Multnomah County.

Appeal Hearings for Type III Decisions are scheduled by the City Auditor at least 21 days after the appeal is filed and the public notice of the appeal has been mailed.

Appellants should be prepared to make a presentation to the City Council at the hearing. In addition, all interested persons will be able to testify orally, or in writing. The City Council may choose to limit the length of the testimony. Prior to the appeal hearing, the City Council will receive the written case record, including the appeal statement. The City Council may adopt, modify, or overturn the decision of the review body based on the information presented at the hearing or in the case record.

Appeal Fees

In order for an appeal to be valid, it must be submitted prior to the appeal deadline as stated in the decision and it must be accompanied by the required appeal fee or an approved fee waiver. The fee to appeal a decision is one-half of the original application fee. The fee amount is listed in the decision. The fee may be waived as follows:

Fee Waivers (33.750.050)

The director may waive required fees for Office of Neighborhood Involvement (ONI) Recognized Organizations and for low-income applicants when certain requirements are met. The decision of the director is final.

A. ONI Recognized Organizations Fee Waiver

Neighborhood or business organizations recognized by the City of Portland Office of Neighborhood Involvement (ONI) or Multnomah County are eligible to apply for an appeal fee waiver if they meet certain meeting and voting requirements.

These requirements are listed in the Type III Appeal Fee Waiver Request for Organizations form and instruction sheet available from the Bureau of Development Services Development Services Center, 1st floor, 1900 SW 4th, Portland, OR 97201. Recognized organizations must complete the Type III Appeal Fee Waiver Request for Organizations form and submit it prior to the appeal deadline to be considered for a fee waiver.

B. Low Income Fee Waiver

The appeal fee may be waived for an individual who is an applicant in a land use review for their personal residence, in which they have an ownership interest, and the individual is appealing the decision of their land use review application. In addition, the appeal fee may be waived for an individual residing in a dwelling unit, for at least 60 days, that is located within the required notification area. Low income individuals requesting a fee waiver will be required to certify their annual gross income and household size. The appeal fee will only be waived for households with a gross annual income of less than 50 percent of the area median income as established and adjusted for household size by the federal Department of Housing and Urban Development (HUD). All financial information submitted to request a fee waiver is confidential. Fee waiver requests must be approved prior to appeal deadline to be considered for a fee waiver.

Information is subject to change



Peter Meijer Architect, PC

MEMO

TO: Bureau of Development Services
1900 SW 4th Avenue, Suite 5000
Portland, OR 97201

DATE: August 10, 2017

PHONE:

ATTENTION: Director of BDS
PROJECT NAME: Portland Building Appeal
PROJECT NUMBER: LU 17-153413 HRM AD
SUBJECT: Fee waiver

I am submitting my appeal and the fee of \$5000 as stated in the mailed decision. I am also submitting a fee waiver request. My request is due to having Primary Appellant status as discussed with Hillary Adam in an in-person conversation on Monday, July 31st and a phone conversation on Tuesday, August 1st. Hillary informed me at this time that she had spoken with the City Attorneys and that I could qualify for a fee waiver based on this status. Because I had not asked about a fee waiver from Hillary, but received this welcome news unsolicited, I prepared the appeal with this understanding.

I therefore seek a refund of the \$5000 out-of-pocket for the appeal. This case is already under appeal and therefore this will provide a venue for the "other side."

BY: Peter Meijer, AIA

CC: File

Peter Meijer Architect (PMA) submits this appeal in response to the Historic Landmarks Commission's final findings and decision on the renovation of the Portland Building.

Executive Summary

The new design does not satisfy the Historic Resource Review criteria and related standards, and therefore we respectfully request that the Council reverse the Historic Landmark's Commission's decision based upon the reasoning set forth below.

In addition, the applicant's new design proposal does not sufficiently meet all of the City's initial goals for the project regarding interior work spaces and the exterior urban environments, is overly expensive for a project that does not meet these goals, would cause a precedent-setting but unnecessary permanent encroachment into the rights-of-way, and would cause a delisting of the one of the City's major historic landmarks for reasons that are unwarranted. The most problematic aspect is the rainscreen that would wrap around the upper levels of the exterior façade and cover the Portland Building's iconic and historic skin. The approach falls far from integrating universal historic preservation standards and causes further problems with accommodating the resource's overall historic nature.

We believe that the project has not met the following Approval Criteria. These include several policies from the Comprehensive Plan, which are applicable to the project because the Portland Building is a public facility. The 2035 Comprehensive Plan (p. HTU-6) says that the policies of the Comprehensive Plan should be applied "*to guide public facility investment choices.*"

Each of these issues above is discussed in depth starting on page 4.

Applicable Approval Criteria that are not met by the proposal:

Section 33.846.060.G.1.-5, 7, 8, and 10.

- 1. Historic Character:** The historic character of the property will be retained and preserved. Removal of historic materials or alteration of features and spaces that contribute to the property's historic significance will be avoided.
- 2. Record of its time:** The historic resource will remain a physical record of its time, place, and use. Changes that create a false sense of historic development, such as adding conjectural features or architectural elements from other buildings will be avoided.
- 3. Historic changes:** Most properties change over time. Those changes that have acquired historic significance will be preserved.

- 4. Historic features.** Generally, deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement, the new feature will match the old in design, color, texture, and other visual qualities and, where practical, in materials. Replacement of missing features must be substantiated by documentary, physical, or pictorial evidence.
- 5. Historic materials:** Historic materials will be protected. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials will not be used.
- 7. Differentiate new from old:** New additions, exterior alterations, or related new construction will not destroy historic materials that characterize a property. New work will be differentiated from the old.”
- 8. Architectural compatibility:** New additions, exterior alterations, or related new construction will be compatible with the resource’s massing, size, scale, and architectural features. When retrofitting buildings or sites to improve accessibility for persons with disabilities, design solutions will not comprise the architectural integrity of the historic resource.
- 10. Hierarchy of compatibility:** Exterior alterations and additions will be designed to be compatible primarily with the original resource, secondarily with adjacent properties, and finally, if located within a Historic or Conservation District, with the rest of the district. Where practical, compatibility will be pursued on all three levels.

Central City Fundamental Design Guidelines

- A3. Respect the Portland Block Structures.** Maintain and extend the traditional 200-foot block pattern to preserve the Central City’s ratio of open space to built space. Where superblocks exist...
- A6. Reuse/Rehabilitate/Restore Buildings.** Where practical, reuse, rehabilitate, and restore buildings and/or building elements.
- C2. Promote Quality and Permanence in Development.** Use design principles and building materials that promote quality and permanence.
- C3. Respect Architectural Integrity.** Respect the original character of an existing building when modifying its exterior. Develop vertical and horizontal additions that are compatible with the existing building, to enhance the overall proposal’s architectural integrity.
- C4. Complement the Context of Existing Buildings.** Complement the context of existing buildings by using and adding to the local design vocabulary.
- C5. Design for Coherency.** Integrate the different building and design elements including, but not limited to, construction materials, roofs, entrances, as well as window, door, sign, and lighting systems, to achieve a coherent composition.
- C10. Integrate Encroachments.** Size and place encroachments in the public right-of-way to visually and physically enhance the pedestrian environment. Locate permitted skybridges toward the middle of the block, and where they will be physically unobtrusive. Design skybridges to be visually level and transparent.

C11. Integrate Roofs and Use Rooftops. Integrate roof function, shape, surface materials, and colors with the building's overall design concept. Size and place rooftop mechanical equipment, penthouses, other components, and related screening elements to enhance views of the Central City's skyline, as well as views from other buildings or vantage points. Develop rooftop terraces, gardens, and associated landscaped areas to be effective stormwater management tools.

33.846.070 Modifications Considered During Historic Resource Review

33.130.230.C, ground floor windows.

Section 33.130.230.C requires ground floor windows because blank walls on the ground level of buildings are limited in order to:

- Provide a pleasant, rich, and diverse pedestrian experience by connecting activities occurring within a structure to adjacent sidewalk areas, or allowing public art at the ground level;
- Encourage continuity of retail and service uses;
- Encourage surveillance opportunities by restricting fortress-like facades at street level; and
- Avoid a monotonous pedestrian environment.

We believe that the project also has not met several policies in the *Comprehensive Plan 2035* and that these policies should be applicable because the building is a public facility:

Policy 8.23, Asset management. Improve and maintain public facility systems using asset management principles to optimize preventative maintenance, reduce unplanned reactive maintenance, achieve scheduled service delivery, and protect the quality, reliability, and adequacy of City services.

Policy 8.26, Capital programming. Maintain long-term capital improvement programs that balance acquisition and construction of new public facilities with maintenance and operation of existing facilities.

Policy 8.27, Cost-effectiveness. Establish, improve, and maintain the public facilities necessary to serve designated land uses in ways that cost-effectively provide desired levels of service, consider facilities' lifecycle costs, and maintain the City's long-term financial sustainability.

Policy 4.46, Historic and cultural resource protection. Within statutory requirements for owner consent, identify, protect, and encourage the use and rehabilitation of historic buildings, places, and districts that contribute to the distinctive character and history of Portland's evolving urban environment.

Policy 4.51, City-owned historic resources. Maintain City-owned historic resources with necessary upkeep and repair.

Policy 4.60, Rehabilitation and adaptive reuse. Encourage rehabilitation and adaptive reuse of buildings, especially those of historic or cultural significance, to conserve natural resources, reduce waste, and demonstrate stewardship of the built environment.

Basis for Appeal:

(1) The applicant's proposal does not meet many of its own stated goals regarding interior work spaces and the exterior urban environment.

Relevant Criteria: Central City Fundamental Design Guideline C11.

The new design does not meet the City's comprehensive goals that were outlined at the onset of this project because, while it solves the issue of water infiltration, it does not increase daylight in the building, improve the interior work environment, and falls short of improving the urban environment.

The new design addresses the *minimum* goals outlined in the City's Project Charter for the Portland Building—eliminating water intrusion issues, structural seismic upgrades, upgrading or replacing HVAC and other outdated building systems, and upgrading the building's accessibility to meet modern standards.

However, the project charter also outlined several other expectations to be included in the project scope that were not met:

- (1) Maintain the historic and iconic status of the building.
- (2) Incorporate current best practices in construction, design, and technology to create a 21st century facility that meets community, business, and operational needs.
- (3) Follow Universal Design practices.
- (4) Create a flexible and efficient building.
- (5) Demonstrate fiscal responsibility by using high quality and durable materials and systems.
- (6) Provide systems and materials that are economical to operate and maintain.
- (7) Balance remodel costs with the need to keep life-cycle costs low.
- (8) Increase daylight within the building.

While the new design meets the basic requirements outlined in the project charter, a National Historic Landmark should uphold the responsibility of facilitating public user experience so that citizens can share in its history, but the new design does not sufficiently address the goals associated with this expectation. The proposed design, mainly due to the rainscreen element, has a \$195 million budget and is therefore overly expensive for the rehabilitation of a *historic* building that only meets a minimum level of these goals.

- (A) The applicant's design proposal does not improve the quality and efficiency of the workplace because it does not increase the level of daylight present in the building, failing to achieve design goal #8 that was outlined in the project charter. As such, the new design also fails to achieve goals #2 and #3 in incorporating current best design practices and universal design principles. According to the Staff Report, "when 1,300 city employees were surveyed about desired improvements to the building, improved daylighting was one of the most requested items" (11). As per the Daylighting Study that Peter Meijer Architect performed on the 11th floor of the Portland Building, 77% of the existing 11th floor received less than 250 lux, an amount that does not sufficiently accommodate the needs of all types of office work. Only 23% of the space received sufficient daylighting for nonstrenuous office activities, and only a portion of which received adequate light for general office activities along the southern wall. The applicant's proposal would increase the levels of daylighting along the southern wall and at three

apertures along the western wall as well, but the overall percentage of office space inadequate for daylighting would increase to 80%. Likewise, the 11.5-inch extrusion of the rainscreen envelope at the upper levels will increase the depth of window apertures on the exterior of the Portland Building without increasing the size of the aperture itself. This will create a lower amount of natural daylight within the building, hardly enough to illuminate workstations. The new design under consideration also proposes a replacement of all upper level windows and the introduction of clear glazing where dark tinted glazing currently exists. Although the clearer glazing may improve daylighting, increasing the depth of window apertures will still result in an overall decrease in adequately lit work environments.

- (B) The new design does not improve the interior work environment in other ways. Certainly the proposal would address moisture intrusion along the perimeter wall as well as temperature differential problems caused by the aluminum sill plates transferring hot or cold temperatures directly inside. However, in addition to not improving daylighting within the building, the proposal increases the numbers of work stations within the building. As presented in the application submittal typical floor plan, there are 136 "permanent" work stations illustrated. This number is considerably more than the plan currently accommodates on a "typical" floor (changes depending on bureau and floor arrangement). 8' x 8' or larger cubicles are to be replaced by workstations about 5' x 7' in size, representing about 20 square feet less per person across all 1300 employees now in the building. Fitting many more people closer together does not improve the interior work environment.
- (C) Similarly, the applicant's proposal does not sufficiently achieve the City's goals for improving the urban environment surrounding the Portland Building. The new tile system permanently takes up either 7 inches or 5 inches of public sidewalk (depending on the side of the building) for the entire frontage of these facades along the ground floor of the Portland Building. The permit for this encroachment detail was approved by PBOT, but would not be necessary if a different design was instated that better achieved all of the City's goals. The encroachment is in no way an improvement on the urban environment. Likewise, wrapping the building in a metal shell that "recreates" the building's façade but hides its actual exterior from public viewing results in the loss of the historic resource's ability to tell its story. Nothing is better than the real thing, especially when the real thing still exists and is "fixable." It makes a huge difference to the public's understanding of the building (the point of historic preservation) to be able to visually see the older, authentic parts of the building.

The overall urban environment will not be improved by the proposed appearance of the building from further vantage points either. CCFDG C11, Integrate Roofs and Use Rooftops, is not met by the proposal. The Condition of Approval "G" imposed by the Landmarks Commission reads, "The proposed air handling units shall either be located at the interior of the building, or be significantly (at least 50%) reduced in scale (and not increased in number)." This Condition helps to address the problematic intrusion of these over-scaled pieces of equipment, but it is concerning that the Condition would theoretically allow the units, if reduced in scale, to be located almost anywhere and possibly close to roof edges. The condition is too vague and therefore cannot be relied on to address this guideline properly. The applicant must provide a drawing that shows the new units to ensure that the views of the building and impacts to the facades are minimized. This guideline is therefore not met.

In general, the urban environment would be improved by a scheme which respected the historic materials of the building; retaining them where possible and replacing them with visually matching materials where necessary. Metal panel is incapable of looking like painted concrete, and would be a jarring and inauthentic addition to the building.

(2) The proposed encroachment was not reviewed by PBOT's standard methods and is not necessary.

Relevant Criteria: Central City Fundamental Design Guidelines A3 and C10; City code TRN-8.08 Encroachments in the Public Right-of-Way

The proposal fails to improve the urban environment or the pedestrian experience along the building frontages. First, CCFDC guideline **C10** is not met. Second, the anticipated PBOT approval of the encroachment by the proposed cladding on the Portland Building raises additional equal privileges and immunities/equal protection issues. The City claims that the manner of installation of the proposed base tile would improve the pedestrian experience because the new material is "an improvement in the quality of the material." Yet the amount of encroachment (7" on the east; 5" on north and south) is not addressed and is a precedent-setting and unheard-of amount of public right-of-way encroachment, especially in Central City. Because this is a City-owned building, the normal PBOT process and standards for encroachment review (See Transportation code Section 3202) appear to have been totally waived. At minimum, the encroachment would require a Revocable Encroachment Permit and a building code appeal, according to the PBOT *Encroachments in the Public Right-of-Way* policy document found online (see discussion under Code section 3202.2.2 Architectural Features). Neither of these apparently were obtained. City property must be held to the same standards as private property. A response from PBOT of "no issues or concerns" indicates a troubling lack of transparency and a completely unacceptable waiver of the normally stringent rules governing encroachment review.

The replacement tile material proposed is different from the original, but not necessarily a higher quality. New tile to match the existing failed base tile can and should be manufactured, and can be installed properly over a drainage mat to visually match the existing conditions inside the loggia that are still in relatively good shape. The City's findings under C10 admit that "the existing ceramic tile systems are failing due to the method by which they were originally installed," not because of the quality of the material or lack thereof. The encroachment could be completely or almost completely eliminated from the project.

Further, it is not relevant to allow an encroachment due to better quality of material; the encroachment is a public "taking" which must be justified under PBOT's normal review standards and must also "visually and physically enhance the pedestrian environment" (guideline C10). The proposal does not do this more or better than a new installation using matching glazed ceramic material. This guideline is therefore not met.

The grant of an encroachment permit in this case raises serious substantive and procedural due process issues when private projects are routinely rejected under rigorous requirements to which the City does not even subject itself. *Eg Marggi v. Ruecker*, 20 Or App 669, 675, 533 P2d 1372 (1975) (Thorton, J., dissenting) ("a municipal legislative body must follow the procedural requirements of its own land-use legislation; failure to comply with such requirements renders its legislation invalid"). PBOT's response of "no issues or concerns" represents a complete waiver of the normal stringent rules governing encroachment review. For the City to permit its own encroachment while explicitly denying encroachments from private applicants violates Article I

Section 20 of the Oregon Constitution and the Equal Protection Clause of the Fourteenth Amendment to the US Constitution.

The expansion of the building footprint into the right-of-way on three sides alters the 200-foot block pattern in violation of CCFDG guideline **A3**. The findings report that “[t]he expanded footprint will be relatively imperceptible except at the east where the eastern portion of the current footprint of the Multnomah County Courthouse.” First, the guideline does not provide for variability in the block pattern depending on the relative, subjective perception of architectural features and building massing. The findings omit any mention of the numerous other buildings along this reach of SW Fourth Ave. which also respect the block structure by not encroaching into the right-of-way, and there is no evidence in the record of ground level encroachments similar to this proposal. The findings mention other buildings, without identifying them, which do not meet the property lines, although that only serves to justify the perception argument and avoids the central point, which is that the block pattern is to be preserved. The other (unspecified) buildings could be replaced with new structures at the property lines, with the exception of City Hall which is not likely to be replaced.

This historic building respects the block structure and the only justification for the encroachment is for the convenience of adding a new rainscreen over the existing building envelope. There are numerous aging buildings in Portland that might benefit from a modern rain screen, architectural embellishments, or other encroachments, which is the whole purpose of this guideline. That is, the buildings are to respect the block structure; not vice versa.

(3) The proposed overcladding design is overly expensive.

Relevant Criteria: Comprehensive Plan 2035, especially Chapter 8: Public Facilities and Services; Central City Fundamental Design Guideline A6. “Reuse/Rehabilitate/Restore Buildings”.

Costs for any project proposed through a land use review are normally not reviewed and don’t relate directly to approval criteria. However, because this is a City-owned project funded by a bank loan (an unusual arrangement for a public jurisdiction funded by taxpayer dollars), cost assessment should be part of the review. This appeal argues that the policies of the Comprehensive Plan should be applied “*to guide public facility investment choices,*” as noted in the 2035 Comprehensive Plan (p. HTU-6). Chapter 8 of the Comprehensive Plan, “Public Facilities and Services,” includes Public Investment Policies 8.20-8.26 and Funding Policies 8.27-8.30. Specifically, Policy **8.23**, Asset management; Policy **8.26**, Capital programming; and Policy **8.27**, Cost-effectiveness are not met by this extraordinarily expensive proposal. While the building does need rehabilitation and merits a budget to allow that, the amount of money allocated seems excessive and might be better spent elsewhere in the City. As noted above in basis for appeal #2, keeping costs low was also one of the “aspirational goals” outlined in the August 2016 project charter (see #7. “Balance remodel costs with the need to keep life-cycle costs low.”) This aspirational goal was so heavily tilted towards the goal of limiting maintenance in future that the current remodel costs spiraled out of control. “Balance” does not seem to have been achieved.

CCFDG **A6**. “Reuse/Rehabilitate/Restore Buildings” states that “where practical, reuse, rehabilitate, and restore buildings and/or building elements”. The new design proposes implementing an entirely new curtain wall structure around the building instead of renovating the existing skin because the City claims that this process will be more cost-effective. That is not the case, however, and PMA argues that it is more practical to rehabilitate the Portland Building. City code calls for a hierarchy of compatibility in Guideline 846.060.G.10, in

which the original resource is prioritized among all other aspects. From a practical sense, a rehabilitation of the existing skin in order to eliminate water infiltration *would* be more cost effective than a replacement, or overlying “recreation”, of it, and should be considered with priority to new development.

During the evaluation of façade repair options, alternative effective repairs were developed by Peter Meijer Architect, PC and rough order of magnitude costs were discussed by the Design/Build team. It was readily agreed by the Build team leaders that a repair approach vs. an overclad approach would result in a substantial savings.

As part of the hearing process, two independent cost estimators were provided the repair details and the overclad details. The façade was calculated to be 134,000 sf. One independent cost estimator evaluated the overclad cost at \$12.1M and the repair cost estimated at \$5.7M resulting in a savings of \$6.4M. The second independent cost estimator reported a savings of more than \$1.4M if the repair were instituted rather than the overclad.

The City’s Land use findings under A6 state “In part because of the significance of the building (as well as costs), the City decided that... demolition was not the preferred solution. Rather, the City has elected to rehabilitate the building...” Rehabilitation has a specific meaning when used in preservation.¹ The proposal is not rehabilitating the building because the exterior will be entirely new. Further, because the City determined that cost was a factor in deciding not to demolish the building, it was presumably looking for a more practical solution. This solution is not practical because there are lower-cost alternatives that will rehabilitate the building, so the language of the guideline “where practical, reuse, rehabilitate, and restore...” is not met.

Furthermore, the line of credit used to finance these renovations may have been potentially improper. It has been noted that, “[o]n April 4, 2017, the City closed on a \$190 million line of credit, which will be used to renovate the Portland Building. The balance on this line of credit is \$6.4 million.” *Limited Tax Revenue and Refunding Bonds, 2017 Series A (Sellwood Bridge and Archives Space Projects)* at 30. Obtaining a line of credit is within the City’s prerogative, but if it is secured upon the “full faith and credit” of the City, then it may be viewed as “bonded indebtedness” under Article XI of the Oregon Constitution, subject to the cap on such indebtedness and requiring a vote of the people under ORS Chapter 287A.

(4) The new design does not meet the standards of preservation.

Relevant Criteria: Code Section 33.846.060.G.1-5, 7, 8, and 10; Central City Fundamental Design Guidelines C3-C5; Code Section 33.8846.070 (and Code Section 33.445.050?) A and B; and Code Section 33.805.040 A, C, and D, and *Comprehensive Plan 2035* Policies 4.46, 4.51, and 4.60.

¹ Rehabilitation is defined as the act or process of making possible a compatible use for a property through repair, alterations, and additions while preserving those portions or features which convey its historical, cultural, or architectural values. U. S. Department of the Interior National Park Service Technical Preservation Services, *The Secretary of the Interior’s Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Buildings*.

Guideline 846.060.G.1 is not satisfied due to the removal of numerous historic architectural elements, including the formed “column capitals” and decorative “medallion and garland” elements; all upper level windows; ground floor storefront systems; and windows on the east elevation of the ground floor.

The project also includes extensive alteration of numerous features that contribute to the historic significance of the building, including changing the upper level window glazing from dark tint to clear, complete alteration of the building facades as well as hiding the original facades behind a rain screen, and enclosure of four bays of the ground level loggia. These features are identified in the National Register Nomination and therefore are essential to the historic character and integrity of the structure, and failure to retain and preserve these features violates this criterion.

The City argues that the new design closely replicates Graves’ “original design intent”, and claims that this intent holds more significance than the design that was built. The Portland Building is a Historic Landmark because of the events that influenced its original construction combined with the events that have since influenced that constructed design, and not because of a design that “was originally intended” but never actually happened. It is unreasonable for the City to undermine the significance of a Historic Landmark by devaluing the method in which it was constructed; the Portland Building’s history of value engineering serves as a memory of the economic conditions present in 1982. In order to meet Guideline 846.060.G.3 “Historic Changes”, the historic changes that have occurred should be respected and not reversed by a new development plan in order to correspond to a design that “should have happened”. Many, if not most historic buildings had earlier, unrealized designs, yet those designs are never treated as more important than the actual built structure. As an example, the Portland Landmark train station, Union Station, had an earlier design by McKim Mead and White. Would this design be considered more important than the constructed design by Van Brunt & Howe?

The City also makes the argument that a new design would meet Guideline 846.060.G.2 by assisting the Portland Building in serving as a “record of its time” because it would help to tell the story of how the 1982 low-budget construction resulted in the need for a new development plan with “increased expenditures”. Firstly, the existing building already serves as a “physical record of its time, place, and use” (060.G.2) by its very nature, and does not need an “unorthodox approach to rehabilitation” to validate its National level of historic significance. Validating a proposed major alteration by projecting its future historic significance is an unnatural way of creating history. We do not choose our histories before they have happened; we design in response to current events and our buildings serve as a record of those events. Secondly, there are other options that are more cost-effective than the applicant’s proposal that would more effectively achieve the building’s modern needs while appropriately preserving its history. Increasing expenditures is not an acceptable response to this design challenge that can be achieved more effectively at a lower cost. As far as the public would know or be able to see, the Portland building would become a completely new building. What is being proposed is not a record of its time, but a re-creation project typically used in preservation interpretation only when the original object or structure is gone.

The City claims that Guideline 846.060.G.4 “Historic Features” suggests that preservation standards warrant the removal and destruction of historic elements that are still intact in order to recreate elements that have deteriorated. This is not true, especially when this “recreation” of the elements will also hide and permanently encapsulate all historic elements. Guideline 846.060.G.7 “Differentiate new from old” suggests that historic elements should be prioritized above new development. The applicant’s proposal prioritizes a recreation of

historic elements in a different material over keeping and rehabilitating the existing historic elements on the exterior. Historic materials and features that are moderately well preserved should be kept and rehabilitated, not removed or recreated in a different material in order to make way for the new system. The new design radically modifies and hides the historic building, preventing it from being seen as a product of its time.

The applicant's proposal is not consistent with the overall existing architectural design and regulations for hierarchy of compatibility that are outlined in Guidelines 846.060.G.8 and 10. It is completely inappropriate to waive the criteria in order to look for "original design intent" outside of the existing design. Who would be able to judge what that is, or what period in the design development that "intent" should be taken? Graves' design intent, whatever and whenever it was, does not contribute to the Portland Building's historic significance. The new design also fails to address compatibility requirements because it does not "promote quality and permanence in development" as specified in CCDFC C2 or integrate the existing material usage as outlined in CCDFC C3 and C4. For historic preservation, there is a key distinction between compatibility with the resource and efforts to match an original. Here, the attempt is not even to match, but to visually recall, which conflicts with the compatibility requirement. The project will enshroud the entire building in a new rainscreen, which does not respect the original character of the exterior materials and finishes. Rather, it buries them under completely new materials which were essentially unknown when this building was constructed. More specifically, the use of metal cladding for the rainscreen is not visually or materially the same as the resource's concrete exterior. The size of the proposed new teal terracotta tiles is twice as large as the historic tiles, and will not match the existing tiles in color or texture. The proposal extends the building skin outward while leaving the plane of the windows at their existing location to create a highly altered appearance and shadow pattern. As discussed earlier, the PHLC Condition of Approval regarding rooftop equipment helps to address the problematic visual intrusion of these over-scaled pieces of equipment, but the condition is too vague and therefore cannot be relied on to address compatibility guidelines properly without drawings showing the size and location of units. The sheer scope, amount, and radical nature of the proposed alterations would not have been acceptable in other preservation projects of less significance, does not respect the original character of the building, and certainly should not be acceptable for a Historic Landmark like the Portland Building.

Portland participates in the Certified Local Governments (CLG) program, which enables us as a jurisdiction to receive matching grants from the State Historic Preservation Office (SHPO). We must meet certain requirements to become- and to remain- "certified." Portland generally has a robust and well-respected historic review process, but the NPS and the SHPO may have serious questions about whether Portland has met its CLG obligations in this matter. As a reminder, the Portland Building is of National historic significance. When the building was accepted onto the National Register, the National Parks Service sent an enthusiastic email to the Oregon SHPO: *"Enjoyed reading this nomination and besides wanting to feature it on our NR web page, I would also like to use it for NR workshops to show folks how to fill out the NR form, what is needed for national level of significance, and context!!!"* (Lisa Deline, 10/25/2011 email forwarded from SHPO).

Comprehensive plan policies 4.46, 4.51, and 4.60 are not met simply because this project as proposed is not a rehabilitation project. It is a historic re-creation, except it does not even replicate the same visual quality of the painted concrete exterior but uses a shiny metal exterior skin. It is no wonder that both the National Trust for Historic Places and the National Register of Historic Places have stated that the proposal would destroy the building's historic integrity and render it ineligible for the National Register.

Finally, PHLC's decision proclaims: "[t]he purpose of the Historic Resource Review process is to ensure that additions, new construction, and exterior alterations to historic resources do not compromise their ability to convey historic significance." PHLC Decision at 3. Yet by fundamentally changing the exterior materials of the building, the City is in fact undeniably "compromising historic significance." The US Park Service has stated, "the chief historical design component that remains to convey the building's significance is its historic exterior." Letter dated Mar 15, 2017 from Lisa Deline at the National Park Service (NPS) to Ian Johnson at the State Historic Preservation Office of Oregon (SHPO). Moreover, NPS further stated that the proposed renovations would "destroy the historic integrity of the building and necessitate its removal from the National Register."

The Portland Historic Landmarks Commission dismissed this monumental loss with no discussion whatsoever, commenting dryly that "[w]hile the proposal will permanently alter the original materials of the design, and some liberties have been taken in the proposed design, the integrity of the overall design intent will remain." The National Park Service disagrees, and the renovation will cause the delisting of the Portland Building. The proposed plan is a historic re-creation of the Portland Building, except it does not even replicate the same visual quality of the painted concrete exterior, but rather uses a shiny metal exterior skin. It is no wonder that both the National Trust for Historic Places and the National Register of Historic Places have stated that the proposal would destroy the building's historic integrity and render it ineligible for the National Register.

It is impossible to square the loss of Historic Registry designation with the mission of the PHLC to protect historic resources from such "compromises." Under the standard of review set out in ORS 197.829(1)(a), (b), and (c). LUBA will be required to reverse this approval as inconsistent with the language, purpose, and underlying policy of the City Code. The courts have indicated recently that the status of historic preservation laws will be given a narrow interpretation to protect historic values. *See Lake Oswego Pres. Soc'y v. City of Lake Oswego*, 360 Or 115, 122-23, 379 P3d 462 (2016). It is incumbent upon the City to be a leader in this area, not leading the fight against historic preservation

Modification Request

The Modification to reduce the amount of ground floor windows on the east façade specifically is not met by the proposal, because the Modification approval criteria require the development to equally or better meet the approval criteria than would a design that meets the standard, and will meet the purpose statement (found in 33.130.230.C, ground floor windows).

The east elevation of the Portland Building facing SW Fourth Ave. already fails to meet this standard, and the changes to this historic resource would further reduce the area of ground floor windows on this frontage down to zero, making a bad situation much worse. In other words, this application does not seek a "modification" of this standard, but rather a complete exemption. The findings correctly indicate that meeting this standard would "destroy the essential vision of Graves' design." However the issue is not whether the original design merits the modification. Rather, this proposal moves the building even further out of compliance than the original, and the issue is whether the elimination of what few windows exist meets the purpose of the ground floor window standards.

The purposes of this standard are not satisfied because the removal of the few windows on the east elevation blocks visual connections between activities in the building and on the sidewalk, it discourages the continuity of

retail and service uses on SW Fourth Ave., it eliminates the natural ground level surveillance commonly known as eyes on the street, and it creates a monotonous pedestrian environment. This side of the building deserves better. If the garage opening is to be removed (a proposal which this appellant generally supports) then the pedestrian environment and views into the building can also be improved.

Again, preservation of the historic resource does not justify changes push it further out of compliance with this standard, and therefore the modification criterion in Section **33.846.070.B.2** is not satisfied.

Conclusion

We thank the Council for your careful consideration of the applicable criteria and this appeal. The Portland Building is internationally known throughout the architectural world whether you learn about it in class or are fortunate enough to see it in person. As Portland's slogan is "the City that Works," we can do better to preserve the integrity of the historic features of the building, do better to preserve the taxpayer's potential investment in the building, and do better to ensure that the rehabilitation creates a better working environment for the dedicated city staff.