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**Subject:** Applicant's final argument LU 17-144195 DZ [S-R.FID4415421]  
**Date:** Thursday, March 08, 2018 2:39:08 PM  
**Attachments:** [BDS ltr 01.pdf](#)  
[3-8-2018 Ltr to Portland Design Commission re Applicant's Final Argument....pdf](#)

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Attached is the applicant's two part final argument in the above referenced case.

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March 8, 2018

**VIA EMAIL**

Portland Design Commission  
1900 SW 4th Avenue, Suite 5000  
Portland, OR 97201

Re: Applicant's Closing Comment  
LU 17-144195 DZ - 3415 SE 62nd Avenue  
SE Powell Blvd. Self-Service Storage

Dear Commissioners,

This letter is the Applicant's closing comment regarding its application for Design approval of its Self-Service Storage facility. Please enter it into the record.

The Applicant has appreciated the opportunity to work with staff, the neighborhood and the Commission to arrive at a design that meets the City's Self-Storage Design Guidelines and is compatible with the character of the General Commercial Zone. As you know, the Applicant revised its design during the staff's administrative review to respond to comments by the neighborhood and staff. As a result, staff administratively approved the Applicant's design subject to conditions.

The Applicant has made further revisions to its design based on the testimony from the hearing and comments by the Commission. As a result, the Applicant submitted Scheme A to the Commission on February

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15, 2018. Jake Walker, Managing Director for the Applicant, explained the significance of Scheme A:

We believe that the project approved by staff met the design guidelines and exceeds the quality of any other recently approved self-storage facility. However, the suggestions from the hearing that we have been able to incorporate have further enhanced the project and made it even more compatible with the surrounding development and desired character of the zone. Our proposed Scheme A is responsive to Commission, community and staff feedback, while maintaining the functionality of the project.

Letter to Design Commissioners from Jake Walker, dated February 15, 2018 (the "Letter").

Mr. Walker also explained in his Letter that the Applicant also considered an alternative design to Scheme A in response to the comments from the Community, the Commission and staff—Scheme B. Mr. Walker pointed out, however, that Scheme B has a significant negative impact on the project's structural design and functionality:

While Scheme B is an alternative way to address concerns, it is no more effective than Scheme A, and has significant negative impacts on the project's structural design and functionality.

Mr. Walker requested the Commission to approve Scheme A as compliant with the City's Self-Service Storage Design Guidelines and responsive to the testimony from the neighborhood and comments by the Commission.

Notwithstanding the Applicant's revisions embodied in Scheme A, some members of the neighborhood and a competitor of the Applicant stated in response that the Applicant still had not gone far enough in its

design modifications. These comments were intended to persuade the Commission that it had the authority to require the Applicant to do even more, although Scheme A was a design improvement over the design administratively approved by the staff and consistent with recently approved self-storage facilities within the City.

The issue before your Commission is whether you will require even more design revisions than what the Applicant has made. With due respect to the Commission and the neighborhood, it is the Applicant's position that while the Commission has discretion in making its decision, there is a limit to that discretion in determining whether Scheme A satisfies the Self-Service Storage Design Guidelines.

Based on the testimony of Mr. Walker, Scheme A is responsive to the testimony from the neighbors and the comments from the Commission while maintaining the functionality of the project. Requiring even more design revisions (such as Scheme B) will make the project uneconomical and have significant negative impacts on the project's structural design and functionality. It is our position that requiring additional revisions through conditions (beyond Scheme A) would potentially constitute an unlawful exaction under *Dolan v. City of Tigard*, 512 U.S. 374, 114 S. Ct. 2309, 129 L.Ed.2d 304 (1994). As such, the Commission would be required to adopt findings that there was an essential nexus between the design mitigation measures and the City's interest; and that the design mitigation measures were roughly proportional to the impact of the project within the General Commercial Zone and immediate area. *McClure v. City of Springfield*, 175 Or App 425, 28 P2d 1222 (2001).

It is the Applicant's position that such findings would be difficult to make in this particular case. The staff has already administratively approved the design after the Applicant made a number of revisions responsive to staff. The Applicant has made additional revisions in response to comments from the neighborhood and Commission (Scheme A). The evidence demonstrates that Scheme A exceeds the quality of recently approved Self-Storage facilities. The Applicant has stated that requiring

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further revisions would have a significant adverse impact on the project's structural design and functionality.

The Applicant has shown its willingness to make reasonable revisions to its design in response to comments from the neighborhood and Commission. Scheme A represents the give and take between the Applicant, staff, neighbors and Commission in arriving at a design that works for all parties.

As a result, the Applicant respectfully requests the Commission to adopt Scheme A subject to the Applicant's response to Suggested Conditions of Approval set forth in its letter dated March 1, 2018 marked as Exhibit H.41.

Thank you for your consideration.

Very truly yours,

HATHAWAY LARSON LLP

*Gregory S. Hathaway*

Gregory S. Hathaway

GSH/mo

Jake Walker, Managing Director – Leon Capital Group  
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March 8, 2018

**VIA EMAIL**

Portland Design Commission  
1900 SW Fourth Avenue, Suite 5000  
Portland, OR 97201

**Re: Applicant's Final Argument  
SE Powell Blvd. Self-Service Storage (LU 17-144195 DZ, 3415 SE 62nd Ave.)**

Dear Commissioners:

This submittal is the final argument submitted on behalf of the applicant, Leon Capital Group, in the approved but appealed above referenced self-storage facility. The companion to this final argument is the closing comment submitted by Greg Hathaway on behalf of Leon. No new evidence is offered.

**1. Applicable Criteria and Compatibility**

Our prior testimony and evidence provide a detailed analysis of how the project satisfies the applicable design guidelines in PCC 33.284.050, which we will not repeat here. However, we would like to respond to the following items that were raised in testimony during the second open record period:

- **Applicable Criteria.** The only design guidelines that are applicable to the project are the self-storage specific guidelines in PCC 33.284.050. PCC 33.284.040.D. The Community Design Standards are not applicable to the project, and are not a basis for interpreting the self-storage specific guidelines. Community Design Standards are objective criteria that can be satisfied in lieu of a discretionary design review proceeding, and have no bearing on how discretionary guidelines should be interpreted. Instead, recently approved self-storage facilities provide precedent for how the self-storage design guidelines have been interpreted and applied.
- **Height.** Some participants have requested that the height of the project be reduced where it is adjacent to residential zoned property. The City has determined that in some cases, restrictions on commercial development that is located adjacent to residential development is appropriate. The buffer overlay zone, which applies only on the northern portion of the property, requires additional setbacks and landscaping, and imposes use restrictions. PCC 33.410.040. Height reductions are not required. Additionally, the compatibility analysis demonstrates that the project's 34 foot, 3 inch height (with prominent office corner at SE

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Powell Blvd/SE 62nd at 40 feet) is appropriate, in part due to the project's roofline, massing, materials, articulation and landscaping. This conclusion is consistent with recently approved self-storage facilities, which are 44 and 45 feet tall, with no step down in height or additional setbacks. LU 17-135754 (NE 67th and NE Halsey) and LU 16-239933 (SE 82nd and SE Brooklyn).

## 2. Traffic Concerns Generally

PBOT and ODOT responded to the generalized concerns raised about traffic, access and truck turning in exhibits H.47, H.48 and H.49, and their conclusions are consistent with testimony and evidence offered by Leon and its traffic engineer. PBOT and ODOT's key conclusions include:

- ingress and egress access on SE 62nd instead of SE Powell is appropriate;
- moving the driveway closer to the intersection with SE Powell is not preferred;
- there are no site distance issues;
- there is adequate on and off-site area for truck maneuvering; and
- PBOT has queuing concerns only if the garage door that is on the SE 62nd Avenue lot line is closed during business hours. So long as that garage door remains open during business hours (which is what is proposed), there are no queuing issues and a driveway design exception is approvable.

## 3. Conclusion

Leon's project was thoroughly reviewed by BDS staff, who approved the project. Through the appeal to Design Commission, additional changes have been made which enhance the project. The project satisfies all of the approval criteria and should be approved. The quality of the design and materials significantly exceeds other recently approved self-storage facilities, and is consistent with proposed self-storage code amendments. We request that the Design Commission deny the appeal and approve the project.

Very truly yours,



Dana L. Krawczuk

cc: Cassie Ballew and Tim Heron, BDS  
Bryan Barry and Jake Walker, Leon Capital Group  
Greg Hathaway