



CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

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DECISION OF THE HEARINGS OFFICER

I. GENERAL INFORMATION

File No.: LU 12-116420 MS (HO 4120008)

Applicant: Dave Otte
HOLST Architecture
110 SE 8th
Portland, OR 97214

Owner: City of Portland Housing Bureau
421 SW 6th Avenue #500
Portland, OR 97204-1620

Hearings Officer: Kenneth D. Helm

Bureau of Development Services (BDS) Staff Representative: Chris Caruso

Site Address: 9999 NE Glisan Street

Legal Description: TL 3100 0.86 ACRES, SECTION 33 1N 2E; TL 3700 0.54 ACRES, SECTION 33 1N 2E; TL 3500 0.10 ACRES, SECTION 33 1N 2E; TL 3400 0.10 ACRES, SECTION 33 1N 2E

Tax Account No.: R942330810, R942331660, R942334560, R942334690

State ID No.: 1N2E33AD 03100, 1N2E33AD 03700, 1N2E33AD 03500, 1N2E33AD 03400

Quarter Section: 2940

Neighborhood: Hazelwood

Business District: Gateway Area Business Association

District Neighborhood Coalition: East Portland Neighborhood Office

Plan District: Gateway

Zoning: RXd, High-Density Residential with design overlay

Land Use Review: Type III, MS, Master Plan

BDS Staff Recommendation to Hearings Officer: Approval with conditions

Public Hearing: The hearing was opened at 1:32 p.m. on May 14, 2012, in the 3rd floor hearing room, 1900 SW 4th Avenue, Portland, Oregon, and was closed at 2:23 p.m. The record was held open until 4:30 p.m. on May 21, 2012 for new argument and evidence; until 4:30 p.m. on May 29, 2012, for argument/evidence in response from anyone; and until 4:30 p.m. on June 5, 2012, for applicant's rebuttal argument only. The record was closed at that time.

Testified at the Hearing:

Chris Caruso, BDS Staff Representative

Dave Otte, 110 SE 8th Avenue, Portland, OR 97214

Christopher Koback, (for Mel Fox, property owner of 9919 NE Glisan Street), 520 SW Yamhill, Suite 235, Portland, OR 97204

Tory Foster, 635 NE 100th Avenue, Portland, OR 97220

Michelle Haynes, 1135 SE Salmon, REACH Community Development (developer of the 2nd phase), Portland, OR

Elaine Wells, 847 NE 19th, Suite 200, Portland, OR 97232

Proposal: The applicant seeks approval of a Gateway Master Plan for phased development on a 62,898 square foot site in the Gateway Plan District. The site is made up of four parcels and is bounded by NE 99th Avenue, NE Glisan Street, and NE 100th Avenue. The proposal is called Glisan Commons and is a two-phase, mixed-use development that is a partnership between Human Solutions, Ride Connection, and REACH Community Development. The proposal is being managed by the Housing Development Center. Holst Architecture is the Architect-of-Record for Phase I, and Carleton Hart Architecture will be the Architect-of-Record for Phase II.

The development team has applied for a concurrent Type III Design Review for Phase I. Gateway Master Plan approval is requested for this two-phase development to allow for deferral of meeting the Portland Zoning Code's RX zone Minimum Density Requirement (Chapter 33.120, Table 120-3) until Phase II is completed. The RX zone requires one unit of housing per 500 square feet of site area which would equal 126 units for this 62,898 square foot site. Glisan Commons will eventually have a total of 127 units, with 67 units built in Phase I, and an additional 60 units built in Phase II. Complete build-out of the site is expected to take between three and four years.

Phase I fronts NE Glisan Street and NE 100th Avenue and is slated to begin construction in 2012. This Phase will consist of 67 units of affordable workforce housing for Human Solutions and office headquarters for Ride Connection. Section 33.526.120 of the Zoning Code allows Retail Sale and Service and Office uses in the RX zone to be up to 40% of the net building area. The proposed

amount of commercial office use is approximately 20% of the Phase I net building area. Phase II of Glisan Commons fronts NE 99th Avenue and will consist of 60 units of affordable senior housing for REACH Community Development. It is anticipated that Phase II construction will be initiated upon completion of Phase I. Phase II will also be required to go through Design Review.

Phase I contains the following elements:

- A five-story, LEED-certified 73,235 square foot mixed-use building with approximately 16,000 square feet of ground floor commercial office space for Ride Connection, oriented toward NE Glisan Street on the south side of the site. Ride Connection is a non-profit that provides transportation options to people with mobility challenges. The southeast corner of the ground floor will have a suite of meeting spaces that Ride Connection will own, but which could be used for community events, public meetings, and outreach. The upper four stories will have 67 affordable apartments. Sixty-three of the apartments are one-bedroom units and four of the apartments are studio units. The residential lobby, office, and utility services are located along NE 100th Avenue;
- A parking court and outdoor spaces will be located between the proposed buildings. The parking court has space for eight automobiles, ten fleet vans, and eight small buses. The outdoor spaces are for both employees and residents of both Phase I and Phase II, and include a walkway connecting to NE 100th Avenue, plazas with built-in seating, and covered bicycle parking for thirty bicycles; and
- Enhanced public rights-of-way on NE Glisan Street and NE 100th Avenue, including all new, wider public sidewalks with proposed Green Street improvements on both frontages.

Phase II will contain the following elements:

- An approximately 60,000 square foot, six-story, LEED-certified building with sixty affordable one-bedroom apartments for seniors plus related amenities including a community room and deck on the second floor. The ground floor contains a lobby, office, and utility space, as well as forty-four covered automobile parking spaces that directly connect to the interior parking court and outdoor areas on the site;
- A continuation of the courtyard from Phase I that will contain additional parking and outdoor spaces. The parking court will have space for 30 automobiles, bringing the total parking count for both phases to 85 automobile spaces. The outdoor spaces will include a generous pedestrian pathway connecting to NE 99th Avenue, and a shared central plaza space for use by residents and employees of the entire development. The completed courtyard will provide an east-west pedestrian connection through the entire site from NE 100th Avenue to NE 99th Avenue that will be open to the general public during the day; and
- Enhanced public rights-of-way on NE 99th Avenue, including all new and wider public sidewalks and proposed Green Street improvements.

Relevant Approval Criteria:

- 33.120 Multi-Dwelling Zones
- 33.526 Gateway Plan District
- 33.833 Gateway Master Plan Review, Gateway Regional Center Design Guidelines

HEARINGS OFFICER'S OVERVIEW

The Hearings Officer held a public hearing on May 14, 2012. The Hearings Officer explained the nature of quasi-judicial land-use hearings and made all the required statements necessary for compliance with ORS 197.763. The Hearings Officer explained that any party could request that the written record remain open and that if such a request were made, that the record would remain open for at least seven days.

At the hearing, BDS Staff provided a PowerPoint presentation that summarized the key points of the proposed development. Staff explained that, in total, 126 dwelling units were proposed as part of the two-phase development. Approval through a Gateway Master Plan was determined to be necessary in order for the senior affordable housing proposed for Phase II to obtain funding, in part through a grant of federal low income housing tax credits (LIHTC).

Mr. Dave Otte represented the applicant at the hearing. He confirmed agreement with the staff report and the recommended conditions of approval.

Mr. Chris Koback presented testimony on behalf of Mr. Mel Fox who opposes the application for a number of reasons. Mr. Fox is the owner of an adjacent property zoned for residential use and which currently supports a single-family dwelling. Mr. Koback provided oral testimony that closely followed a written letter of May 11, 2012 which is Exhibit H-4. He argued that the application could not be approved as proposed because the applicant had not provided a guarantee that Phase II would be funded and built in compliance with PCC 33.833.110.H. That provision, he argued, only allows a project to defer part of the required number of housing units if the applicant can guarantee that subsequent phases will be built. He stated that a guarantee under that provision requires some form of funding commitment letter or performance bond.

Mr. Koback argued that the project sought to authorize approval of a commercial bus fleet which has the consequence of adding commercial parking to the development. He explained that commercial parking is identified as a prohibited use in the Gateway Plan District. As part of this argument, he stated that the Gateway Master Plan review criteria required that the purpose statements of the Gateway Plan District in PCC 33.526 apply as approval standards, and that the application did not adequately address those approval standards. If these purpose statements were properly considered, he argued, the current proposal could not be approved because it represented an auto-oriented, rather than a transit-oriented, development, due in part to the large number of surface parking spaces being sought by the applicant.

Mr. Koback also conveyed Mr. Fox's concern that the vehicle ingress and egress point at NE 100th Avenue would create traffic congestion and safety problems for both vehicles and bicycles. He objected that no traffic study had been required for the project.

Mr. Koback argued that the proposal imposed unacceptable negative impacts on Mr. Fox's adjacent property by allowing the bus parking spaces to be located just 5 feet away from Mr. Fox's property.

The impacts from the bus operations were alleged to affect the desirability of Mr. Fox's property in a way inconsistent with PCC 33.833.110.I.

Mr. Tory Foster also testified in opposition to the application. He explained that he owns a six-plex just north of where the project would be located. He felt that the size of the proposed development would be inconsistent with existing housing such as his rental properties. He asserted that property values in the area will be negatively impacted by the development. He also expressed concern that a traffic impact study had not been undertaken as part of the review process.

During the applicant's final comment period the Hearings Officer asked questions about the likelihood of funding for Phase II of the development. The applicant explained that the state of Oregon administers the tax credit program for the federal government and that the number of tax credits that can be allocated per project per year are limited. For that reason, Phase I would be funded in part with tax credits allocated to this year, and Phase II would rely on tax credits allocated in a future year, starting as soon as 2013. Elaine Wells provided testimony about Ride Connection's operations. She clarified that the proposal was to operate 10 minivans and eight small buses from the proposed office at the subject property. She explained that the buses would serve the neighborhood and the larger area. She stated that Ride Connection seeks to locate their vehicles in neighborhoods that they serve. She clarified that other operations would be occurring at the office location including defensive driving courses and training on how to use the transit system.

At the end of the applicant's final comment period, the applicant requested that the record remain open to provide additional evidence. The Hearings Officer granted this request and set an open record schedule as follows: 1) all parties were allowed to submit argument and evidence on any issue until May 21, 2012, at 4:30 p.m., 2) all parties were allowed to submit argument and evidence in response by May 29, 2012, at 4:30 p.m., and 3) the applicant was allowed a final comment period to provide argument only until June 5, 2012, at 4:30 p.m.

The applicant, Mr. Fox, and BDS Staff all submitted documents into the record during these open record periods. That information is represented in exhibits H-6 through H-15. All evidence and argument was submitted during the appropriate period in accordance with the Hearings Officer's instructions, and no objections were made to the evidence and arguments submitted in the above identified exhibits. The record closed on June 5, 2012.

II. ANALYSIS

Site and Vicinity: The subject site is 62,898 square feet in area and is made up of four parcels. Streets adjacent to the site are NE 100th Avenue to the east, NE 99th Avenue to the west, and NE Glisan Street to the south. The site is flat with no obvious slope. It was originally developed with three single-family homes, one commercial building, and one barn. All the buildings will be demolished prior to construction of Glisan Commons. There currently are sidewalks along NE Glisan Street and portions of NE 99th Avenue but none along NE 100th Avenue. All three site frontages will be improved with sidewalks and street trees as required.

Surrounding uses include single- and multi-dwelling residences to the east, north and west, and multi-dwelling residences and retail offices to the south. The Gateway Transit Center and light rail MAX lines are located approximately four-tenths of a mile northwest of the site. TriMet bus service is available on NE Glisan Street and NE 99th Avenue.

The City of Portland's Transportation System Plan (TSP) classifies NE Glisan Street a Regional Corridor, Major City Traffic Street, Transit Access Street, City Bikeway, and City Walkway. Northeast 99th Avenue is classified as a Neighborhood Collector Street, Transit Access Street, Local Service Bikeway, and City Walkway. Northeast 100th Avenue is classified as a Local Service Bikeway. The site is located within the Gateway Pedestrian District.

Zoning: The Central Residential (RX) zone is a high-density multi-dwelling zone which allows the highest density of dwelling units of the residential zones. Density is not regulated by a maximum number of units per acre. Rather, the maximum size of buildings and intensity of use are regulated by floor area ratio (FAR) limits and other site development standards. Generally the density will be 100 or more units per acre. Allowed housing developments are characterized by a very high percentage of building coverage. The major types of housing development will be medium- and high-rise apartments and condominiums, often with allowed retail, institutional, or other service-oriented uses. Generally, RX zones will be located near the center of the city or in designated regional centers where transit is readily available and where commercial and employment opportunities are nearby.

The Design Overlay Zone [d] promotes the conservation, enhancement, and continued vitality of areas of the City with special scenic, architectural, or cultural value. This is achieved through the creation of design districts, applying the Design Overlay Zone as part of community planning projects, development of design guidelines for each district, and by requiring design review. In addition, design review ensures that certain types of infill development will be compatible with the neighborhood and will enhance the area.

Land Use History: City records indicate that prior land use reviews include:

MCF 84-76 BA (LU 76-100030) – Approval of a 72 square foot sign set 5 feet from the property line.

MCF 155-57 ZC (LU 57-100235) – Rezone properties from R-7 to C-3.

Agency Review: A "Request for Response" was mailed March 29, 2012. The following bureaus have responded with no issues or concerns:

- Site Development Section of BDS.
- Water Bureau (Exhibit E.1).
- Life Safety Review Section of BDS (Exhibit E.2).
- Fire Bureau (see Exhibit E.3).
- Bureau of Environmental Services (BES) (Exhibit E.5).

The Parks Bureau-Urban Forestry responded with the following key comments (Exhibit E.4 contains additional details):

1. Street trees will be required during street improvements.

The Portland Bureau of Transportation (PBOT) responded with the following key comments:

1. PBOT/Development Review has reviewed the application for its potential impacts regarding the public right-of-way, traffic impacts and conformance with adopted policies, street designations, Title 33, Title 17, and for potential impacts upon transportation services.
2. The site plan accurately reflects the dedications and street improvements identified in PBOT's Pre-Application response. Based on review by PBOT traffic engineering during the public works permit review, changes to the driveway designs and parking lot layout will be required as a condition of building permit and public works permit approval. The current design with two driveways in close proximity on NE 100th Avenue has the potential to create unsafe conflicts with pedestrians and vehicle circulation at the driveway entrances within NE 100th Avenue. If a vehicle in the southern driveway was turning northbound on NE 100th at the same time a vehicle leaving the northern driveway was turning southbound, unacceptable vehicle conflicts would occur. In addition, by adding six parking spaces in the double loaded lane between the driveways all the way up to the frontage, the design uses the public right-of-way for parking lot circulation which is not allowed. To mitigate for these impacts, the following three conditions of approval will be required. These conditions of approval have no impact on the Phase 1 parking layout and operation.
 - The northern driveway on NE 100th Avenue shall be eliminated from the plans.
 - The six double loaded parking spaces between the driveways closest to NE 100th Avenue shall be eliminated to provide for internal parking lot circulation.
 - The applicant for Phase II may propose an alternative parking lot layout that mitigates for the above stated concerns and must be approved by the City Traffic Engineer.
3. Transportation System Development Charges (Chapter 17.15)
 - System Development Charges (SDCs) may be assessed for this development. The applicant can receive an estimate of the SDC amount prior to submission of building permits by contacting Rich Eisenhauer at 503-823-7080.
4. Driveways and Curb Cuts (Section 17.28)
 - Curb cuts and driveway construction must meet the requirements in Title 17. The Title 17 driveway requirements will be enforced during the review of building permits.
5. Recommendation. No objection to approval subject to the following conditions:
 - The dedications and a bond and contract for the public works permit must be completed prior to building permit approval for Phase I.
 - The northern driveway on NE 100th Avenue shall be eliminated from the plans.
 - The six double loaded parking spaces between the driveways closest to NE 100th Avenue shall be eliminated to provide for internal parking lot circulation.
 - The applicant for Phase II may propose an alternative parking lot layout that mitigates for the above stated concerns and must be approved by the City Traffic Engineer.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on April 24,

2012. Two written responses were received from either the Neighborhood Association or notified property owners in response to the proposal prior to the hearing.

1. Bob Earnest and Jackie Putnam, Gateway Program Advisory Committee, April 27, 2012 – in support of project. See Exhibit H-11a.
2. Mel Fox, April 30, 2012 – does not support commercial parking on the site, fears negative impacts on future use of his adjacent land. Exhibits H-4, H-8 and H-12.

ZONING CODE APPROVAL CRITERIA

GATEWAY MASTER PLAN REVIEW (33.833)

Section 33.833.010 Purpose

The purpose of this chapter is to provide procedures and establish the approval criteria for Gateway Master Plan reviews. The approval criteria ensure that the flexibility, additional development capacity, and phasing of change within the Gateway Plan District is carried out within the context of desired connectivity, open area, design, mixed-use and other goals for the regional center. The review recognizes that Gateway is in transition from a suburban low-density area to a dense, mixed-use area.

Section 33.833.110 Approval Criteria

Requests for Gateway Master Plan review will be approved if the review body finds that the applicant has shown that all of the following approval criteria are met. The proposed Gateway Master Plan must:

A. Be consistent with the Gateway Plan District purposes and Urban Design Concept.

The Gateway Regional Plan District is Portland's only regional center. As designated in the Outer Southeast Community Plan, the Gateway Regional Center is targeted to receive a significant share of the city's growth. Gateway is served by Interstates 205 and 84, MAX light rail, and TriMet bus service. At the crossroads of these major transportation facilities and high-quality transit service, Gateway is positioned to become the most intensely developed area outside of the Central City. Future development will transform Gateway from a suburban low-density area to a dense, mixed-use regional center that maximizes the public's significant investment in the transportation infrastructure.

The regulations of this chapter encourage the development of an urban level of housing, employment, open space, public facilities, and pedestrian amenities that will strengthen the role of Gateway as a regional center. The regulations also ensure that future development will provide for greater connectivity of streets throughout the plan district. This development will implement the Gateway Regional Center Policy of the Outer Southeast Community Plan. Together, the use and development regulations of the Gateway plan district:

- Promote compatibility between private and public investments through building design and site layout standards;
- Promote new development and expansions of existing development that create attractive and convenient facilities for pedestrians and transit patrons to visit, live, work, and shop;
- Ensure that new development moves the large sites in the plan district closer to the open space and connectivity goals of the Gateway Regional Center;
- Create a clear distinction and attractive transition between properties within the regional center and the more suburban neighborhoods outside; and
- Provide opportunities for more intense mixed-use development around the light rail stations.

Findings: BDS Staff found that the proposal is consistent with the Gateway Plan District purposes and Urban Design Concept. Staff made the following findings:

“The proposed Gateway Master Plan for Glisan Commons will transform an underutilized 62,898 square foot site into a public-private mixed-use development near MAX light rail and buses that will boost transit ridership in the area and will also provide employment near transit with the office space constructed in Phase I. The proposed development through this Gateway Master Plan will capitalize on existing light rail infrastructure at the Gateway Transit Center. The proposed Gateway Master Plan development will improve connectivity through what is now a large inaccessible site by providing east-west walkways and driveways from NE 100th Avenue to NE 99th Avenue. Both phases of the proposed Gateway Master Plan will provide a catalyst for further development by increasing the number and variety of people living and working in the area, will provide inviting open space to serve the site and vicinity, and will provide well-designed development at envisioned urban densities. The first phases alone, anticipated to be completed within the first year of the Gateway Master Plan, will provide approximately 73,235 square feet of new residential and office development. This is approximately 50% of the required minimum density. Upon the completion of Phase II, the full requirements will be met.”

The Hearings Officer agrees with these findings and adopts them by this reference. The Hearings Officer also adopts the BDS Staff “Revised Findings” at pages 3 and 4 of Exhibit H-6 by this reference. Specific questions related to this criterion are addressed below.

Commercial Parking

Mr. Fox contends that the application does not comply with PCC 33.833.110.A, PCC 33.833.110.C, and PCC 33.526.110.A in part because Ride Connection will be using some of the available parking spaces for 18 commercial fleet vehicles (the “buses”). These buses consist of 10 minivans and eight 14-passenger minibuses. Mr. Fox argues that the nature of Ride Connection’s use of the buses, and the overnight parking of the buses in the parking lot of the proposed development, constitutes “commercial parking” and or storage of a commercial fleet. He argues that pursuant to PCC 33.526.110.A, commercial parking is a prohibited use in the Gateway Plan District. Exhibits H-4, H-8 and H-12. Specifically, Mr. Fox argues that Ride

Connection will not provide transport directed toward residents of the development and that the buses will simply be stored on site at night and on weekends. For these reason, he asserts, the bus parking cannot qualify as "accessory parking" for Ride Connection office use itself.

BDS Staff responds that the buses are owned and operated by Ride Connection and are an accessory use to the primary use which is as an office tenant of the proposed development. Exhibit H-6. BDS Staff states that at least part of the mission of Ride Connection is to assist residents of the Gateway area and residents of the development itself by providing transportation throughout the region. As an office use, staff views the parking which will be utilized by the buses as accessory parking which is allowed in the Gateway Plan District and the RXd zone. Staff particularly notes that these spaces that will be used for the buses will not be rented or sold for commercial gain.

The applicant relies upon the definition of commercial parking in PCC 33.920.210, and specifically rejects the contention that Ride Connection is a commercial transit service. Exhibit H-7. The applicant states that the buses do not provide transportation for a fee. The applicant argues that parking for the buses is for the purpose of providing rides to seniors and people with disabilities at the site and in the neighborhood. The buses, the applicant argues, are central to Ride Connection's core mission, and that mission is carried out in the office use located within the proposed development. For this reason, the applicant argues that Ride Connection's use falls within the exception to the use description for "commercial parking" identified in PCC 33.920.210.D. The scope of Ride Connection's activities include educational services, driver training, volunteer coordination and outreach events. Exhibit H-14. According to the applicant, the employees and volunteers that will operate the buses are headquartered at the office use, and therefore, the bus parking is not only necessary at that location but is accessory to that primary use. Exhibits H-7 and H-14.

Mr. Fox counters that the zoning code defines accessory parking in a way that requires the parking to be used for persons who are visiting or using the use to which the parking is associated. Exhibit H-12. Since the employees and the patrons of Ride Connection will park in other parking spaces provided for passenger vehicles, the bus vehicle spaces should not be considered accessory parking for Ride Connection's office use. Mr. Fox argues that even if the bus spaces are used by others during times when the buses are driving their routes, that fact does not transform the spaces into accessory parking when in reality they constitute storage of a commercial fleet during evenings and weekends. Exhibit H-12.

After reviewing the description of "Commercial Parking" in the "Description of the Use Categories" section of the zoning code at PCC33.920, the Hearings Officer agrees with BDS Staff and the applicant.

As described in PCC 33.920.210, the central characteristic of "commercial parking" as a use is that the parking "is not accessory to a specific use." In other words, the parking area is open to any vehicle whether or not a fee is charged for the parking space. The description of the proposed parking identified by BDS Staff in the staff report for both Phase I and Phase II is

primarily if not exclusively for employees and residents of the proposed development. The Hearings Officer is unaware of other evidence in the record that would indicate in any way that the parking proposed as part of Glisan Commons will be available to the public for either a fee or for free, unless the vehicle visiting the development is associated with the primary purpose proposed, which is residential housing and/or the office use that would be occupied by Ride Connection.

Certainly taken by itself, the use of the parking spaces for the buses operated by Ride Connection appears to fall within the exceptions category of PCC 33.920.210.D because those parking spaces will be used either for Ride Connection's buses or by residents of the facility or employees of Ride Connection. Those uses are undisputedly the primary uses of the proposed development. Even if the spaces allocated for bus parking did resemble commercial parking under PCC 33.920.210.A, which as explained above they do not, the proposed bus parking would qualify for the exception identified in PCC 33.920.210.D. Furthermore, the proposed bus parking spaces, because they are so closely associated with the primary office use which Ride Connection will occupy, also meets the definition of "accessory parking facility" as defined in PCC 33.910.

In addition to the legal analysis of parking definitions discussed above, the Hearings Officer finds that Mr. Fox's characterization of the bus parking as storage of commercial vehicles is inconsistent with the facts presented in this record. Mr. Fox's portrait of Ride Connection's operations is that the buses are taken out of the parking lot in the morning and dispatched continuously throughout the day from trip to trip without returning to the Ride Connection headquarters during the day. He appears to take the view that Ride Connection is no more than a dispatch center, and that the buses could and should be stored somewhere other than at the Ride Connection office. However, the applicant describes an operation that includes other activities such as driver training, volunteer training, education and outreach that are associated with Ride Connection's core mission of providing transportation to persons in need including "older adults, people with disabilities, rural residents, and low income jobseekers." Exhibit H-7b. Based on the evidence provided by the applicant, it appears that for at least some of Ride Connection's work, it is necessary to have the buses located close to the office headquarters to facilitate driver education and volunteer training. Thus, the record demonstrates that substantial evidence exists to support the applicant's argument that it is necessary that the buses be located on site. For these reasons, the Hearings Officer concludes that the intent of requesting the bus parking spaces is not simply to store the buses overnight and on weekends, but also to facilitate the education, training and volunteer coordination that Ride Connection requires to provide drivers for those buses and to carry out its purpose as an organization.

For all these reasons, the Hearings Officer concludes that the proposed bus parking spaces are appropriate to be included in the proposed development and are consistent with the Gateway Plan District and the Gateway Master Plan Review criteria.

Density

Mr. Fox makes two arguments with respect to the required density for the proposed development. First, that in part due to the parking spaces allocated to Ride Connection's buses, the proposal will just barely meet the minimum density requirements for the Gateway Plan District, which for this size property is 126 residential units. Exhibit H-4. Second, Mr. Fox alleges that the applicant and BDS Staff have incorrectly measured the square footage of the site and have erroneously concluded that the area available for development is smaller than the area actually available. This argument is based on a survey map submitted by Mr. Fox and is based on his own calculations of square footage. Exhibit H-8.

BDS staff responded to this argument by explaining that the total square footage of the proposed site is not fully available for development due to multiple property dedications required by PBOT. Exhibit H-9. According to staff, these dedications reduce the overall square footage of the site to the 62,898 square feet of buildable area as identified in the staff report.

The applicant agreed with BDS Staff's response noting that required dedications will alter the property lines and reduce the buildable portion of the site from 69,332 square feet to 62,898 square feet. The applicant notes that PBOT signed off on the initial site plan presented in the pre-application process stating that the plan accurately reflected the dedications and street improvements required for this project. Exhibit H-11.

The Hearings Officer finds that the calculations identified in the BDS Staff findings identified above correctly calculate the density requirements for residential housing on the proposed site. It does not appear that Mr. Fox took into account the required dedications identified by staff and PBOT when making his comment about whether the proposal could meet the Gateway Plan District residential housing density requirements. As to Mr. Fox's first argument, the record adequately shows that the proposal can accommodate the required housing density – even if just barely as he notes.

Purpose Statement as Approval Criteria

Mr. Fox argues that the purpose statements in PCC 33.526 and PCC 33.526.100 must be considered mandatory approval criteria by application of the master plan approval criteria in PCC 33.833.110.A. Exhibit H-4. Based on this assertion, Mr. Fox makes a number of arguments related to the overall design of the project, including the issue of whether the square footage allocated to bus parking is a prudent use of the space considering the goal of providing high density housing within the district, whether the proposal sufficiently and safely handles traffic entering onto NE 100th Avenue, whether the design adequately encourages the use of structured parking, whether Mr. Fox's property should have been included in the development plan, and whether the overall plan by leaving Mr. Fox's property out of the design is adversely affecting his property values. Exhibits H-4, H-8 and H-12.

The applicant responds that the purpose statements identified by Mr. Fox describe what the review criteria in PCC 33.833.110 are supposed to achieve. The applicant argues that those review criteria are the stated means by which the purposes of the Gateway Plan District are achieved, and are therefore, not mandatory approval criteria themselves. Exhibit H-7. BDS Staff appears to agree with the applicant stating that the purpose statements identified by Mr. Fox are assumed to be met if the development standards themselves are met. Exhibit H-6.

The Hearings Officer finds that the plain meaning of the language in PCC 33.833.110 does not identify the purpose statements in PCC 33.526.010 and PCC 33.526.100 as strict mandatory approval criteria in the way Mr. Fox asserts. PCC 33.833.110.A states:

Requests for Gateway master plan review will be approved if the review body finds that the applicant has shown that all of the following approval criteria are met. The proposed Gateway master plan must:

- A. Be consistent with the Gateway plan district purposes and Urban Design Concept;

As explained in more detail in the findings below for PCC 33.833.110.H, the Hearings Officer views the review standard of “be consistent with” to be a subjective criterion that requires the reviewer to find general consistency of the proposal with the objectives of the Gateway Plan District. Those findings are incorporated here by this reference. The language of PCC 33.833.110.A does not call out a requirement for strict compliance with each and every component of the Gateway Plan District, or the purpose statements in PCC 33.526.010 and PCC 33.526.100. Therefore, it is not necessary for an applicant to directly address those code provisions as a type of mandatory approval criteria as Mr. Fox asserts. It is enough to show compliance with the criterion in PCC 33.833.110 and consistency with the provisions set forth in PCC 33.526. The Hearings Officer also finds that Mr. Fox's argument is somewhat academic because the BDS Staff report and revised findings in Exhibit H-6 address all of the criteria in PCC 33.833.110, and in doing so overtly consider the project's consistency with PCC 33.526. From this perspective, the substantial evidence in the record and the analysis provided by staff demonstrate sufficient consistency with PCC 33.526 as a whole to satisfy requirement for consistency identified in PCC 33.833.110.A.

For essentially the same reasons, Mr. Fox also argues that the proposal must be found to meet the overall objectives of the Gateway Regional Center as set forth in a “2005 Report to Metro on the Gateway Regional Center.” Exhibit H-12. The Hearings Officer can find no language in the Gateway Master Plan review criteria that would indicate a consideration of Metro report is required. Furthermore, even if the report were somehow applicable, the objectives identified in the Metro report are generally considered to be aspirational objectives rather than criteria that might apply to individual development proposals. As such, the Hearings Officer finds that Mr. Fox's request does not constitute a sufficient basis for denial of the application.

Structured Parking

Mr. Fox argues that in order to meet the purposes of the Gateway Plan District, that structured parking should be required as part of the development. He argues that "the best plan for the district would be to have a single complementary parking facility that facilitate sound development of the entire block." Exhibit H-8. This is part of a larger argument in which Mr. Fox asserts that the Gateway Plan District requires a single design of an entire site which in this case would include his adjacent property. He notes that the basis for his argument is that the Gateway Regional Center Design Guideline C4 strongly encourages the use of structured parking.

BDS Staff responded that surface parking is allowed in the Gateway Plan District and the RXd zone. Exhibit H-9. The applicant responds that the identified guidelines do not express a strong preference for structured parking. Rather, Guideline C4 simply states that structured parking is more efficient than surface parking. Exhibit H-11.

The Hearings Officer finds that Mr. Fox has not identified a criterion or a purpose statement in PCC 33.526 which would require a master plan applicant to include structured parking in a development design. While Guideline C4 could be interpreted to state a preference for structured parking, there is no requirement in that guideline to provide structured parking. It appears to simply be encouraged. For this reason, the Hearings Officer agrees with BDS Staff and the applicant that it is not necessary to include structured parking in the master plan proposal in order to obtain approval.

B. Meet the Gateway Design Guidelines.

Findings: BDS Staff has recommended a condition of approval requiring the applicant to receive approval for the Type III land use review for Phase I building construction, which was reviewed as LU 12-115245 DZ by the Design Commission on May 17, 2012. That recommended condition is Condition of Approval B. BDS Staff also recommends a condition that imposes the same requirement for future phases of the proposed development. That recommended condition is Condition of Approval C. Mr. Fox commented during the open record period that the Design Commission had made requests for changes in the project that may adversely impact the ability of the applicant to complete Phase II. Exhibit H-8. However, there was no evidence submitted to corroborate that assertion, and Mr. Fox's argument is not well enough developed to warrant a finding that the recommended conditions cannot feasibly be met. The Hearings Officer finds that with the recommended conditions the proposal can meet the Gateway Design Guidelines.

C. Be consistent with the policy and objectives of the Gateway Regional Center Policy of the Outer Southeast Community Plan;

Findings: BDS Staff reached the following conclusions with regard to this criterion:

Gateway Regional Center Policy: One of the most important proposals in the Outer Southeast Plan is creating a "Regional Center" in the area from the Gateway

Shopping Center to the Portland Adventist Medical Center area. High-density housing and more intense commercial uses, including office buildings, are encouraged in the area. This Gateway Master Plan delivers a significant amount of development to Gateway, providing a mix of uses in two phases, anticipating up to:

- 117,235 square feet of residential space; and
- 16,000 square feet of office space.

These uses satisfy the following policy objectives outlined in the Outer Southeast Community Plan:

Economic Development: Glisan Commons includes 16,000 square feet of commercial office space that will contribute to the economic development and vitality of the area by providing employment opportunities in the area.

Open Space: The Glisan Commons development will widen and improve all three street frontages with new sidewalks and Green Streets. The development will also include open space in the courtyard as well as an east-west connection through the site from NE 100th Avenue to NE 99th Avenue that will be open to the public during the day. This site is specifically targeted by the Outer Southeast Community Plan as park deficient and Glisan Commons will help mitigate this deficiency for the employees and residents.

Housing: The Gateway Master Plan for Glisan Commons includes 127 units of housing for low to moderate income households that will have access to transit and employment opportunities.

The staff findings for this criteria are essentially unchallenged except for Mr. Fox's assertion that the project fails to comply with this criterion for the same reasons he identifies with respect to PCC 33.833.110.A and PCC 33.833.110.H. For the same reasons set forth in the findings for those two provisions in this decision, which are incorporated here by reference, the Hearings Officer finds that the proposal is consistent with the Gateway Regional Center Policy of the Outer Southeast Community Plan.

D. Comply with the Portland Master Street Plan: Gateway District.

Findings: BDS Staff made the following findings with respect to this criterion:

According to the Portland Master Street Plan, there are no new streets proposed through or adjacent to this site. According to the TSP, NE Glisan Street is classified as a Regional Corridor, Major City Traffic Street, Transit Access Street, City Bikeway, and City Walkway. Northeast 99th Avenue is classified as a Neighborhood Collector Street, Transit Access Street, Local Service Bikeway, and City Walkway. Northeast 100th Avenue is classified as a Local Service Bikeway. The developer is voluntarily enhancing all three street frontages with PBOT-approved green street facilities. No

new streets are proposed and the existing streets around the site will retain their transportation designations.

The record shows that there is no real dispute about whether the proposal complies with the Portland Master Street Plan. Therefore, the Hearings Officer adopts the staff findings as identified above. However, Mr. Fox raises two related arguments that are best addressed as part of the findings for this criterion. First, Mr. Fox questions whether it is prudent for the vehicles associated with this development to be routed to and from NE 100th Avenue. He argues that the proposal would be significantly safer and better designed to accommodate dense urban living if the traffic from the site went out on NE 99th Avenue. He also raises concern for bicycles leaving the site for the same reason. Exhibits H-4 and H-8. Second, Mr. Fox argues that it was error for the city to not require a traffic impact study under PCC 17.88.050. Exhibit H-8. This should have been done, he argues, due to the same safety concerns related to the intersection of NE 100th Avenue and NE Glisan.

BDS Staff supplied a response to these issues from PBOT. Exhibits H-9 and H-10. The memorandum from PBOT states that the bureau has already required changes to the project to address safety concerns. The memorandum goes on to state that it is the practice of PBOT to not require a traffic impact study when there is no specific transportation related approval criteria. Here, PBOT identifies PCC 33.833.110.E as potentially applicable to proposals for master plans in the Gateway district. However, that criterion, which is concerned with adequacy of service facilities including street capacity, is only triggered when the proposal will result in more floor area on the site than is allowed in the base zone. Exhibit H-10. PBOT explains that the current proposal is not proposing that level of floor area. PBOT goes on to explain that an administrative rule (TRN-10.27) has been adopted which recognizes that development resulting in fewer vehicle trips than allowed under existing zoning may be approved without a traffic impact study. PBOT goes on to explain that with respect to the vehicle access and bicycle safety issues, it has already made recommendations to the applicant which apparently have been accepted, and PBOT is supportive of the access located at NE 100th Avenue.

The Hearings Officer finds that BDS Staff and PBOT did not err by not requiring a transportation impact study for the proposed development. As Mr. Fox correctly recites, PCC 17.88.050 states that a Traffic Impact Study (TIS) "may" be required in certain circumstances. Clearly, this is permissive language and does not absolutely require a traffic study for every land use proposal. However, PBOT is granted discretion to require a TIS only where there is an underlying requirement for verifying the adequacy of the transportation system, or where the city engineer has identified specific safety or operational impacts. In this case, I agree with PBOT that the adequacy of service criteria in PCC 33.833.110.E is not triggered by the proposed development, and therefore, a traffic impact study would not be appropriate even under the discretionary standards set forth in PCC 17.88.050. As to the other safety issues raised, the memorandum from PBOT provides substantial evidence that the vehicle access and bicycle safety issues have been seriously and adequately considered by PBOT and that recommended changes have been made to mitigate or resolve those concerns. For all these reasons, the Hearings Officer finds that this criteria is met.

- E. The following criterion applies to proposals that will result in more floor area on the site than allowed by the base zone; this includes additional floor area transferred from other sites and that earned from bonuses: Provide adequate and timely infrastructure to support the proposed uses in addition to the existing uses in the area. Evaluation factors include street capacity, level of service, and other performance measures; access to arterials; connectivity; transit availability; on-street parking impacts; access restrictions; neighborhood impacts; impacts on pedestrian, bicycle, and transit circulation; safety for all modes; and adequate transportation demand management strategies;**

Findings: BDS Staff found that “[t]his criterion does not apply as the project is not requesting floor area in excess of what is allowed by the base zone.” The record shows that there is no dispute about the inapplicability of this provision for the current master plan proposal. The findings above for PCC 33.833.110.E explained why a traffic impact analysis is not required for this project and those findings are incorporated here by this reference.

- F. Result in more than one use, such as Residential, Retail Sales and Service, or Office uses, on the site.**

Findings: BDS Staff found, and the Hearings Officer agrees, that the project description and accompanying Site Plans, the final Gateway Master Plan build-out will include a mix of workforce housing and office use plus community meeting space in Phase I and senior housing in Phase II. This criterion is met.

- G. Provide adequate open area to serve the users of the site. The open area must be configured, designed, and located so that it connects to the surrounding area; and**

Findings: BDS Staff made the following findings with respect to this criterion:

While the Portland Zoning Code does not require any open space for the RX zone in the Gateway Plan District on sites less than 5 acres in total area, the Gateway Master Plan does provide 6,500 square feet of open space for both phases combined. This is more than 10% of the total site area. As shown on the Site Plan (Exhibit C.1), Phase I will provide 4,000 square feet of open space and Phase II will provide 2,500 square feet of open space, for use by employees and residents. The open spaces will be connected to both NE 99th Avenue and NE 100th Avenue through the east-west pedestrian pathway that is provided on the site (Exhibit C.1).

These findings do not appear to be contested by any party. However, Mr. Fox does raise various questions about the overall design of both Phase I and Phase II of the development, and makes recommendations about how the development could be better designed. Exhibit H-12. To the extent that any of those comments can be construed to include recommendations or objections to the allocation of space for open area, the findings for PCC 33.833.110.I are incorporated here by this reference. This criterion is met.

H. Guarantee that required housing that is deferred will be built.

Findings: The standard for complying with this component of the Gateway Master Plan Review criteria generated significant commentary from BDS Staff, the applicant and Mr. Fox. The BDS Staff Report accurately captures the factual circumstances as follows:

“The Glisan Commons development is required by Chapter 33.120 to build at least 126 units of housing for the 62,898 square foot site. Public funding from both the City of Portland and the State of Oregon is predicated on the entire Gateway Master Plan of Glisan Commons for 127 total units, and the project pro-forma includes both Phase I and Phase II in order to make the entire development feasible. However, because the State of Oregon will only fund a certain number of affordable housing units during any given year, a phased approach for the development is needed to reach minimum density requirements. It is the full intent of the development team to complete Phase II within a year of Phase I. Additionally, the Glisan Commons development team guarantees that development beyond Phase I will occur on the site within 10 years. At a bare minimum, the parking and landscaping associated with Phase II that benefits Phase I is required to be completed within 10 years as part of the existing development agreement with the City of Portland for the land.”

Beyond the applicant's information about financing this project and the asserted likelihood that financing will be available for Phase II, BDS Staff relies heavily on PCC 33.526.330.D.3 which imposes a 10 year period for initiating development approved as part of a master plan within the Gateway Regional Center. BDS Staff correctly states that this provision does not require completion of all development within 10 years of approval, rather, only that development must be initiated sometime during that 10 year period. BDS Staff interprets this provision to provide certainty that Phase II of the proposed master plan will be built in compliance with PCC 33.833.110.H. Exhibit H-6.

Mr. Fox disputes BDS Staff's interpretation by arguing that the term "guarantee" as used in PCC 33.833.110.H requires the applicant to guarantee that deferred housing will be built by a more stringent legal mechanism such as a performance bond. Exhibits H-4, H-8 and H-12. Mr. Fox argues that requiring something less than a performance bond, such as assurances from the applicant, would violate rules of statutory construction which require that stated terms be given their plain and ordinary meaning, and that terms may not be added or omitted from the zoning code provision in question. He asserts that if the term "guarantee" is not interpreted to mean some type of financial surety, that the word essentially becomes meaningless because no legal mechanism will exist to ensure that the housing which is being deferred to Phase II will actually be built. Exhibit H-8. Mr. Fox provided examples of a construction guarantee agreement, information about performance bonds, and an example of a type of performance bond requirement utilized by PBOT in certain circumstances (PCC 17.24.055). Exhibits H-8b, H-8c and H-8d.

The applicant responded by arguing that the term "guarantee," within the context of a Gateway Master Plan, is used to mean "sufficient assurances" rather than a financial guarantee represented by a performance bond. Exhibit H-7. The applicant argues that had the city intended to require a performance bond under PCC 33.833.110.H, it would have used those precise words, but did not. Exhibit H-11. The applicant further argues that had the city intended to impose a performance bond requirement that it certainly knows how to structure that requirement as evidenced by PCC 17.24.055. Exhibit H-14. Instead, the applicant offers a dictionary definition of "guarantee" which defines that term as "an assurance for the fulfillment of a condition." Exhibit H-14. The applicant also responds by providing additional explanation about the sources and structure of the funding for Phase II and the Portland Housing Bureau's high level of involvement and strong support for this project. Exhibits H-7c and H-11. The applicant also states that REACH, the Phase II developer for Glisan Commons, has never failed to be awarded the low income housing tax credits needed for such a project. Exhibit H-7. This factual assertion does not appear to be disputed by any party - although the relevance of the fact does appear to be disputed.

As an initial matter, the Hearings Officer finds that BDS Staff's reliance on the 10 year expiration period in PCC 33.526.330.D.3 is insufficient to comply with 33.833.110.H. The setting of an expiration date for land-use approvals does nothing to require that the proposed development actually be built. The master plan approval could easily be granted, and for a multitude of reasons, including the inability to obtain needed financing, the development approved as part of the master plan might not be initiated within the 10 year period. The only consequence to such a failure from a planning perspective is that a new application would be required at the time the development was revived or revised after the 10 year period had lapsed.

The intended meaning of the word "guarantee" as used in PCC 33.833.110.H is a much closer question. BDS Staff, the applicant, and Mr. Fox agree, and are correct in stating, that the term "guarantee" is not defined in PCC 33.910. In such cases, undefined terms are given their plain and ordinary meaning. That issue is discussed in more detail below. Both the applicant and Mr. Fox also correctly argue that rules of statutory construction require an interpretation which does not substitute one term for another. This is a recitation of ORS 174.010 which states that: "In the construction of a statute, the office of the judge is simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all." Applying this rule, it is clear that the City Council did not intend to impose through PCC 33.833.110.H the requirement of posting a "performance bond" to demonstrate that deferred housing would eventually be built. However, the Hearings Officer understands Mr. Fox to argue that in the context of a development project the term "guarantee" takes on the same meaning as a performance bond. Similarly, the Hearings Officer cannot simply substitute the words "provide assurances" for the term "guarantee" as the applicant asserts.

To properly determine the meaning of a local code provision like PCC 33.833.110.H, the reviewer must seek out the intent of the drafters. The tools available for that task are described

by the Oregon Supreme Court in *PGE v. BOLI*, 317 Or 606 (1993) which requires the reviewer to consider the text and the context of the provision in question. That same case dictates that terms be given their plain and ordinary meaning. Thus, the meaning of the term "guarantee" and the context in which it occurs within PCC 33.833.110 must dictate the ultimate meaning of PCC 33.833.110.H.

Again, the zoning code does not define the term "guarantee." Interestingly, the zoning code also does not define terms such as "performance bond," "bond," "financial assurances" or "surety." Webster's Third New International Dictionary is the Oregon appellate courts' preferred dictionary. *Pacificorp Power Marketing, Inc. v. Department of Revenue*, 340 Or 204, 215 (2006). That dictionary provides numerous definitions of both the term "guarantee" and "guaranty." The definition that appears to be most applicable in this instance is the definition for the transitive verb "guarantee." The full definition is helpful in this instance:

1: to be a guarantee, warranty, or surety for: undertake to answer for the debt, default, or miscarriage of (another): become responsible for the fulfillment of (the agreement of another): assume a suretyship for 2: to engage for the existence, permanence, or nature of (something): undertake to do or secure (something) * * * 3: to give a guaranty to (another): give or furnish security to: secure 4: two state or declare with conviction or an air of certainty.

This definition could supply support for either the applicant's interpretation or Mr. Fox's interpretation. Certainly the definition in (1) indicates that a guarantee can act as a surety in the case of a default which in function appears very similar to a performance bond. However, the definition in (2) supports the applicant's position that a guarantee can mean an undertaking to accomplish something promised. Thus, the dictionary definition of "guarantee" does not appear to be dispositive in this case.

The Hearings Officer finds that the definitions of two related terms is helpful to this analysis. The first is the Webster's definition of "performance bond" which is, "a surety bond guaranteeing faithful performance of a contract." The second is the Webster's primary definition of the word "assurance" which is "1a: the act of assuring: pledge, guarantee * * * b *archaic*: a guarantee or pledge of peace and safety, 3a: the quality or state of being sure or certain: freedom from doubt: certainty."

In connection with these additional definitions, the Hearings Officer concludes that equating the term "guarantee" with the term "performance bond" is inappropriate because a performance bond is intended to ensure that promises under a contract are performed between two parties. In the context of reviewing and approving a master plan, or any land-use decision, a local government is not creating a contract with the applicant. Here, the applicant is not proposing to build Glisan Commons for the City of Portland, and no provision of PCC 33.526 or PCC 33.833 suggest that the city would step into the shoes of the developer and complete the project if the developer were unable to do so. Thus, the term "performance bond" cannot be considered as synonym for the word "guarantee" in this instance.

However, the Hearings Officer agrees with Mr. Fox's argument that the term "guarantee" in PCC 33.833.110.H cannot be interpreted in a way that makes the term nearly meaningless. Therefore, if the applicant's argument that some form of "assurance" is all that PCC 33.833.110.H requires, then that reading it must be supported by other factors, including the context of PCC 33.833.110.H within the Gateway Master Plan Review criteria at PCC 33.833, and the Gateway Plan District provisions of PCC 33.526.

The Gateway Plan District provisions of the zoning code are overtly concerned with promoting development within the Gateway Regional Center. This is amply demonstrated in the purpose statement at PCC 33.526.330.A which states that "[t]he Gateway master plan adds development potential and flexibility for projects in specified areas." The purpose of allowing a master plan in the Gateway Plan District is at least in part to promote development by allowing flexibility in the project design. As set forth in PCC 33.526.330.B "Flexibility," a master plan is intended to provide flexibility particularly in identified project development areas. Here, the flexibility allowed explicitly allows the deferral of required housing to later phases of a project. PCC 33.526.330.B.3 states: "An approved Gateway master plan allows additional flexibility in any of the following situations: * * * 3. Defers the building of any required housing." Thus, the context of requiring some sort of "guarantee" that deferred housing will be built must be viewed in light of a policy determination that projects can be phased, and required housing deferred, in order to promote the development identified in a master plan under PCC 33.526.330.

The review standards of PCC 33.833.110 are also subjective rather than objective in nature. The review standards are mostly represented by terms such as "be consistent with" or "ensure that" or "provide adequate." Although a couple of the review standards are written in a more mandatory tone, such as "comply with the Portland Master Street Plan" at PCC 33.833.110.D, the overall tenor of the review criteria demonstrate the emphasis on flexibility identified in PCC 33.526.330.B. These types of subjective review criteria allow a great deal of latitude in the way an applicant may demonstrate compliance for a proposed master plan. And, for better or worse, those same criterion provide planning staff, the Hearings Officer, and ultimately the City Council a great deal of discretion in determining whether an applicant has complied.

Based on the above identified context for PCC 33.833.110.H and the dictionary definitions of "guarantee" and "assurance" in the Webster's Dictionary, the Hearings Officer finds that as used in PCC 33.833.110.H, the City Council likely intended the term "guarantee" to be read in its more colloquial form, which is to provide adequate assurances, based on information and evidence in the record, that the promised undertaking can reasonably be accomplished. Here, the applicant has provided abundant information about the future financing of Phase II of the proposed master plan, including evidence of past success in obtaining the needed low income housing tax credits and other financing necessary for this type of project. This information was provided through oral testimony at the public hearing, and in the applicant's subsequent written submissions during the open record period. Exhibits H-7, H-11 and H-14. The Hearings Officer finds that this information constitutes substantial evidence that a reasonable person could rely on in reaching a decision concerning the likelihood of the deferred housing being built in the near

future. That information is sufficient to provide the "guarantee" or adequate assurance that the deferred housing will be built in compliance with PCC 33.833.110.H. This criterion is met.

- I. Ensure that the appearance, location, and amount of nonresidential uses on residentially zoned portions of the site will not, by themselves or in combination with other nearby development and uses, decrease the desirability of adjacent residentially zoned areas for the retention of existing housing or development of new housing. Considerations include the proposed amounts of each use, building scale and style, setbacks, location of parking and vehicle access, landscaping, and other design features.**

Findings: BDS Staff made the following findings with respect to this criterion:

The proposed Glisan Commons Gateway Master Plan Phase I development includes approximately 16,000 square feet of ground floor office space for Ride Connection's headquarters. This non-residential space is appropriately located on the most commercially oriented frontage of NE Glisan Street which is also the street with the highest traffic and transit classifications in the TSP, making it the logical location for non-residential uses. The remainder of the Phase I building and all of the Phase II building will be in residential uses that continue the major development pattern in the surrounding area. Both Phase I and Phase II buildings have lobbies and active spaces facing the streets with vehicle areas toward the center of the site so that surface parking does not negatively impact the streetscape or public pedestrian environments. Vehicle access is discretely located on NE 100th Avenue and away from the nearest intersection to avoid traffic conflicts. Perimeter landscaping and green street improvements will further soften the edges of the site. Both buildings will be appropriately scaled at five and six stories, allowing them to blend in with the other recently constructed multi-dwelling housing developments that are located all around the site. Building and site materials for both phases of the Gateway Master Plan will be durable and high-quality elements including concrete pavers, metal and wood siding, metal-wrapped canopies, and porcelain tile.

Mr. Fox raises several objections to the proposal with respect to this criterion. First, Mr. Fox explains that his adjacent property, which is 12,000 square feet in size and supports a single-family dwelling, is adversely impacted by the location of the proposed bus parking spaces. He is concerned that the buses will be located within 5 feet of the common property line. He is concerned that the noise, exhaust, and commotion of the buses coming and going during the morning and evening hours will disturb residents of his property. Exhibit H-4. He is also concerned that if and when his property is redeveloped in the future, any new development on his property will have a ground-floor view of the bus parking spaces.

Second, Mr. Fox argues that the project and its design have had the impact of diminishing the value of his adjacent property. Exhibit H-8. This impact is the result, Mr. Fox argues, of having his property left out of the development plan for Glisan Commons. Exhibit H-12. He argues that his property has become an uneconomic remainder property within the Gateway Plan

District. Mr. Fox argues that this has been an intentional result of actions by Human Solutions, one of the entities proposing the development, and provides copies of letters e-mails, and real estate listings in support of this argument. Exhibits H-13a-h. To remedy this, he argues that the total site area of 81,000 square feet should have been considered for this proposal, including his property. As part of this argument he states that the purposes of the Gateway district as set forth in PCC 33.526 must be achieved by promoting a design that coordinates the development across adjoining properties and promotes structured parking as part of the design. Exhibits H-8, H-12.

BDS Staff respond to these arguments by stating that this criteria does not require adjacent property values to be addressed as part of a master plan review. Staff states that adjoining properties can be developed to meet applicable zoning standards independent of the current proposal. Exhibit H-9.

The applicant responds to Mr. Fox's arguments about the location of the bus parking spaces by explaining that normal day-to-day operations as imposed by Ride Connection limits the amount of time that engines are running to reduce both noise and exhaust impacts. The applicant identifies several ways in which the proposed development will benefit the surrounding neighborhood, and asserts that the proposed development will actually raise surrounding property values over time by improving the neighborhood. Exhibit H-7. The applicant also argues that for Phase I, only one-quarter of the development will be used for offices which is significantly below the 40% maximum allowed under current zoning for the district. The applicant also argues that the design of the Phase II building is set back from Mr. Fox's property by 10 feet and is stepped down from five stories to two stories as it approaches Mr. Fox's property. Exhibit H-11. The applicant also responds in detail to Mr. Fox's allegations that Human Solutions has purposely taken steps to devalue his property in order to purchase his property at a substantial discount. Exhibit H-14.

As an initial matter, the Hearings Officer notes that there appears to be a significant amount of acrimony between Mr. Fox and Human Solutions on the issue of whether Human Solutions would or should purchase his property, and whether there has been a purposeful intent to reduce his property value. I find that this type of evidence, and responding testimony from the applicant in exhibit H-14, are largely irrelevant to understanding whether the project complies with PCC 33.833.110.I. For that reason, I have decided to simply note that the information has been submitted into the record, but I will not consider it substantively as part of this decision.

The language of PCC 33.833.110.I focuses on the interaction between proposed nonresidential uses, in this case the office use associated with Ride Connection, and the impact of those uses on the "desirability of adjacent residentially zoned areas for the retention of existing housing or development of new housing." On the issue of perceived impacts on property values, I agree with staff that the criterion does not require a consideration of whether existing property values will be depressed or not.

More importantly, Mr. Fox's and the applicant's comments about property value go well beyond the question posed by PCC 33.833.110.I which is whether Ride Connection's office use and

accessory bus parking will have any measurable impact on the desirability of surrounding lands for residential use. As to those impacts, the Hearings Officer finds that Mr. Fox's assertions of negative impacts due to the noise exhaust and commotion of the buses' normal operations are too speculative to warrant a denial of the application. As described in this record, while the buses may be present during normal office hours part of the time, for a significant portion of the day the buses are anticipated to be away from the subject property. There is no indication in the record that all of the buses will start their engines at the same time every day creating loud noises or excessive fumes. Nor is there evidence in the record indicating that the buses will return at the same time creating the same conditions. The applicant points out that in all likelihood the buses will come and go from the subject property in much the same way as passenger vehicles would if those passenger vehicles were occupying the same parking spaces, and the impacts from the buses would not be significantly worse. The Hearings Officer agrees with that assessment. Furthermore, the record contains sufficient evidence that landscaping will be provided to screen the buses from adjacent properties, which will mitigate the perceived negative impacts. For all these reasons, I find that the proposed office use will not significantly decrease the desirability of adjacent residential housing or development of new housing as a result of the proposed master plan. This criterion is met.

Development Standards

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

III. CONCLUSIONS

Based on the findings of fact and conclusions of law set forth above, the Hearings Officer finds that the master plan application meets all the applicable criteria and should be approved.

IV. DECISION

Approval of a Gateway Master Plan for Glisan Commons, a two-phase mixed-use development in the Gateway Plan District, as indicated in Exhibits C.1-C.49 and subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related conditions (B through D) must be noted on each of the 4 required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE - Case File # LU 12-116420 MS." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."

- B. Approval of the concurrent Design Review LU 12-115245 DZ for Phase I, the five-story, 67 unit residential and office building with one driveway off of NE 100th Avenue, a parking court for 24 vehicles, outdoor areas, covered bicycle parking, enhanced public rights-of-way, and green street improvements.
- C. All future phases of development identified in this Gateway Master Plan must also be approved through separate Design Review land use applications.
- D. Per the Bureau of Transportation requirements, the dedications and a bond and contract for the public works permit will be completed prior to building permit approval for Phase I.



Kenneth D. Helm, Hearings Officer

June 19, 2012

Date

Application Determined Complete:	March 27, 2012
Report to Hearings Officer:	May 4, 2012
Decision Mailed:	June 20, 2012
Last Date to Appeal:	4:30 p.m., July 5, 2012
Effective Date (if no appeal):	July 6, 2012 Decision may be recorded on this date.

Conditions of Approval. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term "applicant" includes the applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

Appeal of the decision. ANY APPEAL OF THE HEARINGS OFFICER'S DECISION MUST BE FILED AT 1900 SW 4TH AVENUE, PORTLAND, OR 97201 (503-823-7526). Until 3:00 p.m., Tuesday through Friday, file the appeal at the Development Services Center on the first floor. Between 3:00 p.m. and 4:30 p.m., and on Mondays, the appeal must be submitted at the Reception Desk on the 5th Floor. **An appeal fee of \$5,000.00 will be charged** (one-half of the application fee

for this case, up to a maximum of \$5,000). Information and assistance in filing an appeal can be obtained from the Bureau of Development Services at the Development Services Center.

Who can appeal: You may appeal the decision only if you wrote a letter which is received before the close of the record on hearing or if you testified at the hearing, or if you are the property owner or applicant. If you or anyone else appeals the decision of the Hearings Officer, City Council will hold an evidentiary hearing, one in which new evidence can be submitted to them. Upon submission of their application, the applicant for this land use review chose to waive the 120-day time frame in which the City must render a decision. This additional time allows for any appeal of this proposal to be held as an evidentiary hearing.

Appeal Fee Waivers: Neighborhood associations recognized by the Office of Neighborhood Involvement may qualify for a waiver of the appeal fee provided that the association has standing to appeal. The appeal must contain the signature of the Chair person or other person authorized by the association, confirming the vote to appeal was done in accordance with the organization's bylaws.

Neighborhood associations, who wish to qualify for a fee waiver, must complete the Type III Appeal Fee Waiver Request for Organizations Form and submit it prior to the appeal deadline. The Type III Appeal Fee Waiver Request for Organizations Form contains instructions on how to apply for a fee waiver, including the required vote to appeal.

Recording the final decision.

If this Land Use Review is approved the final decision must be recorded with the Multnomah County Recorder. A few days prior to the last day to appeal, the City will mail instructions to the applicant for recording the documents associated with their final land use decision.

- A building or zoning permit will be issued only after the final decision is recorded.

The applicant, builder, or a representative may record the final decision as follows:

- By Mail: Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.
- In Person: Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034

For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

Expiration of this approval. An approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun.

Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

Applying for your permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

EXHIBITS
NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Written narrative (Revised May 3, 2012)
 - 2. 120-day Waiver
 - 3. Earlier Drawing Set C.1-C.48 (Revised April 20, 2012)
 - 4. Earlier Narrative (February 23, 2012)
 - 5. Exterior Material Cutsheets
 - 6. MGH Associates Stormwater Report
- B. Zoning Map (**attached**)
- C. Plans and Drawings
 - 1. C.6 Master Site Plan (**attached**)
 - 2. Cover Sheet
 - 3. C.1 Drawing Index
 - 4. C.2 Rendering
 - 5. C.3 Vicinity Plan and Area Photos
 - 6. C.4 Existing Site Plan
 - 7. C.5 Master Plan Diagram
 - 8. C.7 NE Glisan-View From the Southwest
 - 9. C.8 NE Glisan-Office Entry
 - 10. C.9 NE Glisan-View From the South
 - 11. C.10 NE Glisan-Elevation of Office Entry
 - 12. C.11 Intersection of NE Glisan and 100th-View From the Southwest
 - 13. C.12 Intersection of NE Glisan and 100th-View of Training Room From the Southwest
 - 14. C.13 NE 100th-View of Housing Entry
 - 15. C.14 NE 100th-View From the Northeast
 - 16. C.15 NE 100th-View From the Northeast
 - 17. C.16 Parking Piazza for Fleet Vehicles-View From the North
 - 18. C.17 Plaza and Path Through the Site-View From the Northeast
 - 19. C.18 Floor 01-Plan
 - 20. C.19 Floor 02 Plan and Floor 03 Plan
 - 21. C.20 Floor 04-05 Plan and Roof Plan
 - 22. C.21 Elevation-South
 - 23. C.22 Elevation-East
 - 24. C.23 Elevation/Section-Courtyard Looking South
 - 25. C.24 Elevation/Section-Looking East
 - 26. C.25 Building Section-East/West
 - 27. C.26 Wall Section @ South Entry
 - 28. C.27 Wall Section-South Roof Deck
 - 29. C.28 Wall Sections
 - 30. C.29 South Elevation (For Detail Reference)

31. C.30 Sections Details and Plan Detail
32. C.31 Exterior Lighting Plan
33. C.32 Luminaire Specifications
34. C.33 Luminaire Specifications
35. C.34 Utility Plan
36. C.35 Site Plan
37. C.36 Site Planting Plan
38. C.37 Partial South Elevation
39. C.38 Partial South Elevation-Office Entrance
40. C.39 Partial South Elevation
41. C.40 Partial East Elevation
42. C.41 Partial East Elevation-Housing Entrance
43. C.42 Partial North Elevation-Utility Entrance
44. C.43 Diagram-Sightlines to Rooftop Equipment at Adjacent House (Looking North)
45. C.44 Diagram-Sightlines to Rooftop Equipment at NE Glisan Looking East
46. C.45 Details
47. C.46 Details
48. C.47 Details
49. C.48 Details

D. Notification information

1. Request for response
2. Posting letter sent to applicant
3. Notice to be posted
4. Applicant's statement certifying posting
5. Mailing List
6. Mailed Notice
7. Mailing List for Amended Notice (May 7, 2012)
8. Amended Notice of Proposal (May 7, 2012)

E. Agency Responses

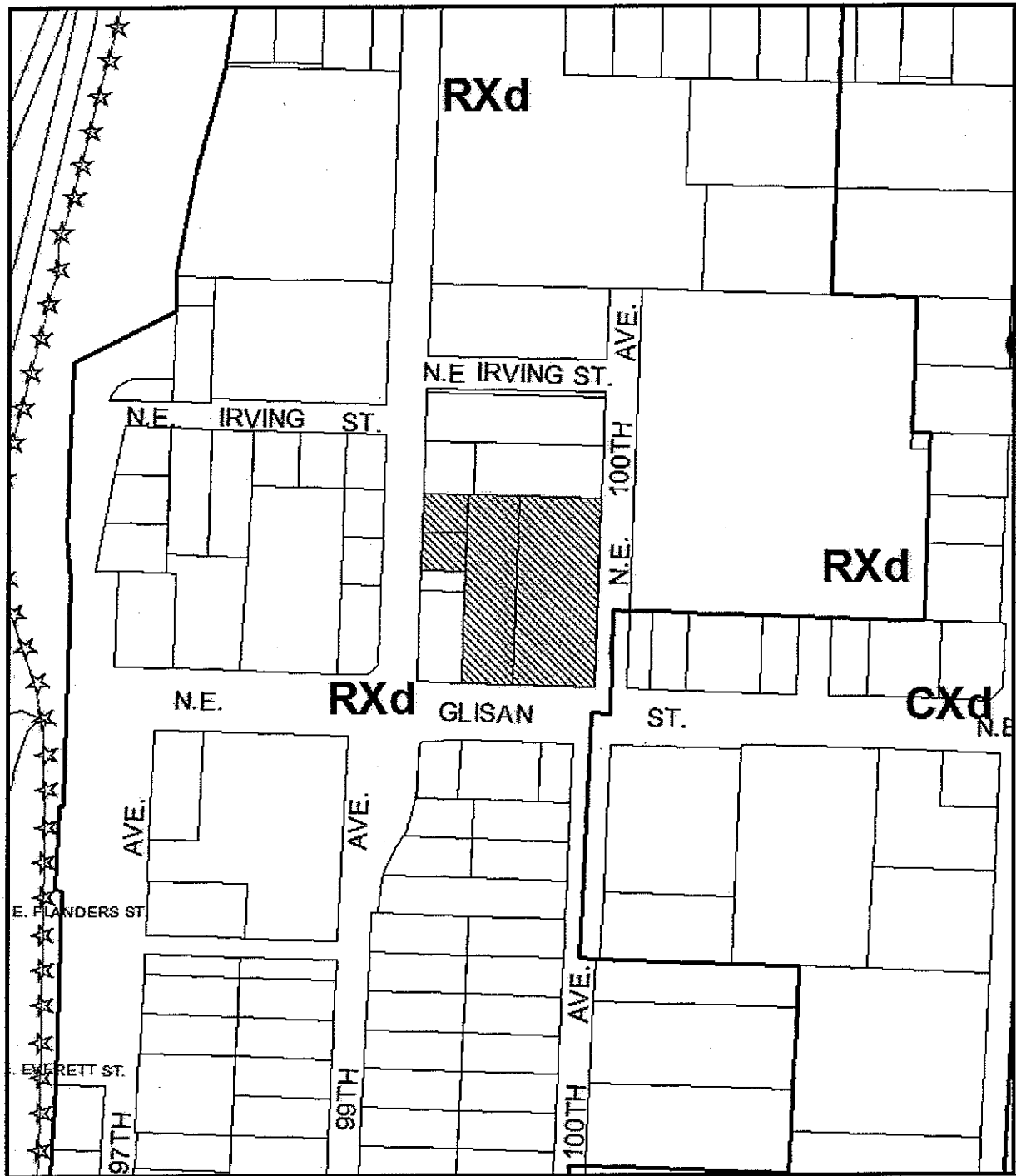
1. Water Bureau
2. Life Safety Review Section of Bureau of Development Services
3. Fire Bureau
4. Bureau of Parks, Forestry Division
5. Bureau of Environmental Services
6. Bureau of Transportation Engineering and Development Review
7. Bureau of Transportation Engineering and Development Review, Bob Haley, April 26, 2012 email response

F. Letters

1. Bob Earnest 1119 NE 107th Pl., Portland OR 97220 & Jackie Putnam 10246 SE Mill Ct., Portland OR 97216, Gateway Program Advisory Committee, April 27, 2012, in support of project.
2. Mel Fox 9700 SE 132nd Ave., Happy Valley OR 97086, April 30, 2012, does not support commercial parking on the site, fears negative impacts on future use of his adjacent land.

G. Other

1. Original LUR Application
 2. Site History Research
 3. Incomplete Letter
 4. Pre-Application Conference Summary Memo
 5. Informal contact between applicant and BDS
- H. Received in the Hearings Office
1. Hearing Notice - Caruso, Chris
 2. Staff Report - Caruso, Chris
 3. Amended Notice - Caruso, Chris
 4. 5/11/12 Letter - Koback, Christopher
 5. Record Closing Information - Hearings Office
 6. 5/21/12 Memo - Caruso, Chris
 7. 5/21/12 Letter - Livingston, Peter
 - a. Photos - Livingston, Peter
 - b. Ride Connection sheet - Livingston, Peter
 - c. 5/18/12 Letter to Hearings Officer from Manning - Livingston, Peter
 - d. Chart - Livingston, Peter
 - e. "Preliminary Sources & Uses of Financing" - Livingston, Peter
 - f. Typical Residential Floor Plan - Livingston, Peter
 8. 5/11/12 Letter - Koback, Christopher
 - a. Plans - Koback, Christopher
 - b. Performance Bond - Koback, Christopher
 - c. Construction Guarantee Agreement - Koback, Christopher
 - d. Assurance of Performance - Koback, Christopher
 - e. Gateway Regional Center Design Guidelines - Koback, Christopher
 9. 5/29/12 Memo - Caruso, Chris
 10. 5/23/12 Memo from Kurt Krueger - Caruso, Chris
 11. 5/29/12 letter with attachment - Livingston, Peter
 - a. 4/27/12 letter from Gateway Regional Center - Livingston, Peter
 12. 5/29/12 letter - Koback, Christopher
 13. 5/29/12 letter with attachments - Fox, Mel
 - a. RMLS Info. for 618 NE 99th Ave. - Fox, Mel
 - b. RMLS Info. for 604 NE 99th Ave. - Fox, Mel
 - c. 6/9/11 letter from HumanSolutions - Fox, Mel
 - d. Valuation of 9919 NE Glisan - Fox, Mel
 - e. 2/28/12 Memo from HumanSolutions - Fox, Mel
 - f. Glisan Commons - Fox, Mel
 - g. Letters/e-mails - Fox, Mel
 - h. 3/22/12 Memo from HumanSolutions - Fox, Mel
 14. 6/5/12 letter - Livingston, Peter
 15. 6/5/12 letter - Livingston, Peter



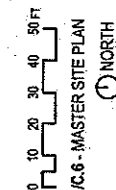
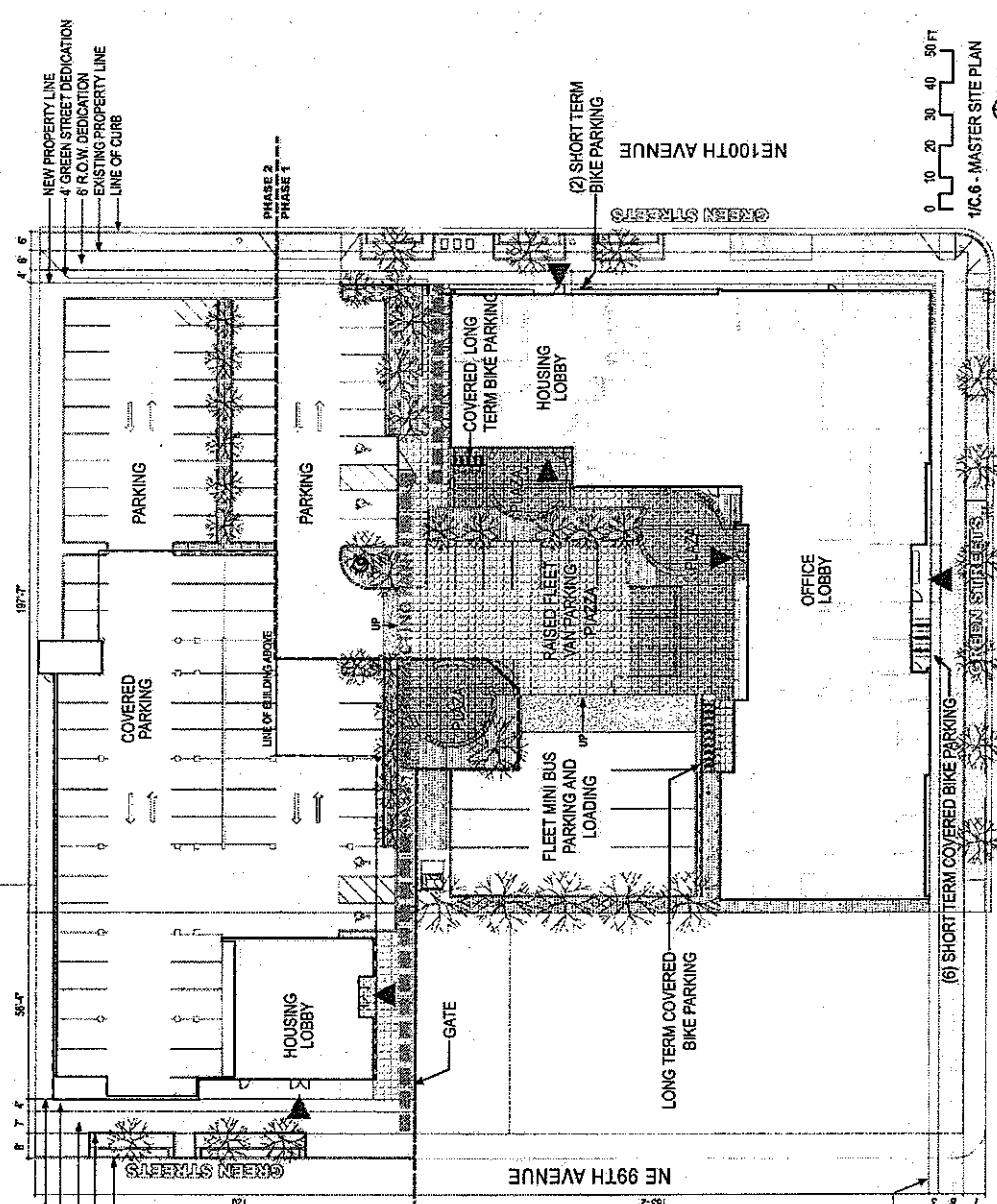
ZONING

 Site



This site lies within the:
GATEWAY PLAN DISTRICT

File No.	LU 12-116420 MS
1/4 Section	2940,3040
Scale	1 inch = 200 feet
State_Id	1N2E33AD 3700
Exhibit	B (Feb 28, 2012)



ZONING INFORMATION

PHASE I
 ZONE: RX
 MAX. FAR: 6:1
 PROPOSED FAR: 1.2 to 1
 BUILDING USE:
 67 Units (63 One Bedroom, 4 Studio)
 16,000 SF of Commercial Office
BICYCLE PARKING:
 88 Long Term Spaces (78 Req.)
 8 Short Term Bicycle Parking Spaces (6 Req.)
VEHICLE PARKING TOTALS
 8 Autos
 10 Fleet Vans
 8 Small Busses
LOADING SPACE TOTALS
 1 Required, Standard B

PHASE II
 ZONE: RX
 MAX. FAR: 6:1
 PROPOSED FAR: 2.1 to 1 (PHASE I-II)
 BUILDING USE:
 60 One Bedroom Units
VEHICLE PARKING TOTALS:
 77 Autos