

10/19/11 Council motion.

1099 **TIME CERTAIN: 9:30 AM** – Tentatively grant appeal with conditions of Rodney Grinsberg on behalf of Lindquist Development Company, property owner, overturn a portion of the Hearings Officer's decision to deny a conditional use review to establish a detention facility to be operated by the Immigration & Customs Enforcement Agency at 4310 SW Macadam Ave (Findings; Previous Agenda 1071; LU 11-124052 CU PR) 5 minutes requested

Motion to adopt the findings and conclusions as presented by staff and grant the appeal. Overturn the Hearings Officer's decision denying the conditional use for a detention facility and uphold the Hearings Officer's decision, upholding the parking review; the effect of an affirmative vote will be to approve both the conditional use for the detention facility and the central city parking review for the ICE facility to be located at 4310 SW Macadam Avenue: Moved by Commissioner Saltzman and seconded by Commissioner Leonard. (Y-5)

**FINDINGS
ADOPTED**

10/05/11 Council motions.

1071 **TIME CERTAIN: 3:00 PM** – Appeal of Rodney Grinsberg on behalf of Lindquist Development Company, property owner, against the Hearings Officer's decision to deny a conditional use review to establish a detention facility to be operated by the Immigration & Customs Enforcement Agency at 4310 SW Macadam Ave (Hearing; Previous Agenda 1007; LU 11-124052 CU PR) 30 minutes requested

Motion to uphold the appeal with the following conditions: 1. The Detention Facility shall operate in conformance with the approved Security Plan (Exhibit A8), as amended by the ICE Custody Release Plan dated September 2011. 2. The Transportation Demand Management strategies identified in Exhibit A5 shall be implemented. 3. No razor wire or barbed wire will be used on the perimeter fence: Moved by Commissioner Leonard and seconded by Commissioner Fish. (Y-5)

Motion tentatively grant the appeal with conditions and overturn the Hearings Officer's denial of the Conditional Use Review; uphold the Hearings Officer's approval of the Central City Parking Review; prepare findings for October 19, 2011: Moved by Commissioner Fish and seconded by Commissioner Fritz. (Y-5)

**TENTATIVELY GRANT
THE APPEAL WITH
CONDITIONS AND
OVERTURN THE
HEARINGS OFFICER'S
DENIAL OF THE
CONDITIONAL USE
REVIEW; UPHOLD THE
HEARINGS OFFICER'S
APPROVAL OF THE
CENTRAL CITY
PARKING REVIEW;
PREPARE FINDINGS
FOR
OCTOBER 19, 2011
AT 9:30 AM TIME
CERTAIN**

Submitted by
Commissioner Fritz
10/05/2011

Proposed Conditions regarding ICE detention facility – Conditional Use

1. The Detention Facility is required to operate in conformance with the approved Security Plan (Exhibit A8) as amended by the ICE custody release plan (~~Asher memo submitted Sept. 2011~~).
2. The applicant shall implement the Transportation Demand Management strategies identified in Exhibit A5.
3. The following procedures shall be followed when releasing detainees at the site:
 - a. Telephone calls will be allowed for detainees to arrange transportation away from the Macadam site upon release;
 - b. Release from ICE custody shall be limited to times when transit services are available if subject is using mass transit and will be implemented under the following conditions:
 - subject released and transported from the site by family, friend, attorney, or nongovernmental organization; or
 - subject transported by ICE and released from custody at mass transit location with funds sufficient for transportation fare; or
 - subject transported by ICE and released from custody at their home or other mutually agreeable location within the City of Portland.
 - c. ICE will prominently post notice in the processing area advising detainees of these site specific release procedures; and
4. No razor wire or barbed wire shall be used on the perimeter fence.

9/21/11 Council Meeting
Motion

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| <p>1007 TIME CERTAIN: 2:00 PM – Appeal of Rodney Grinsberg on behalf of Lindquist Development Company, property owner, against the Hearings Officer's decision to deny a conditional use review to establish a detention facility to be operated by the Immigration & Customs Enforcement Agency at 4310 SW Macadam Ave (Hearing; LU 11-124052 CU PR) 3 hours requested</p> <p>Motion to continue the hearing to October 5, 2011 at 3pm and to give any party opportunity to submit a rebuttal to what they believe is new evidence in this proceeding by no later than 5pm September 28th; Moved by Commissioner Fish and seconded by Mayor Adams. (Y-5)</p> | <p>CONTINUED TO OCTOBER 5, 2011 AT 3:00 PM TIME CERTAIN</p> |
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Documents in question:

9/20 ICE letter

9/15 GSA letter

8/31 Police Bureau memo

8/17 Security plan from ICE

Staff and City Attorney understanding:

There will be no public testimony taken on Oct 5th.

On 10/5 there will be only Council deliberation, tentative vote and direction to staff to prepare findings for future date.



City of Portland, Oregon
Bureau of Development Services
Land Use Services

FROM CONCEPT TO CONSTRUCTION

Dan Saltzman, Commissioner
Paul L. Scarlett, Director
Phone: (503) 823-7300
Fax: (503) 823-5630
TTY: (503) 823-6868
www.portlandoregon.gov/bds

MEMO

Date: September 21, 2011
To: Portland City Council Members
From: Douglas Hardy, Development Review
(503) 823-7816
douglas.hardy@portlandoregon.gov
Re: Appeal of LU 11-124052 CU PR (ICE Detention Facility)

As part of the Bureau of Development Services (BDS) Staff Report and Recommendation to the Hearings Officer on land use case LU 11-124052 CU PR, a condition was included that required the Detention Facility to operate in conformance with the approved Security Plan. (The Security Plan was included as Exhibit 8 in the Staff Report and Recommendation; see attached.) Testimony provided at the Hearings Officer's hearing questioned how the City would know whether elements of the Security Plan that are interior to the building are implemented. In the case City Council decides to approve the Detention Facility and require the implementation of the Security Plan, BDS Staff recommends an additional condition be included that requires the applicant, prior to final occupancy of the Detention Facility, to provide BDS with written confirmation that the building elements included in the Security Plan have been implemented.

In response to recommendations made in the Hearings Officer's decision regarding the release of detainees at the site, the applicant has provided a document entitled "ICE Custody Release Plan" (see attached). The applicant requests that should City Council approve a Detention Facility at this site that the elements of this plan be included as an addendum to the Security Plan referenced above. BDS staff has reviewed the Custody Release Plan and recommends that only limited elements of the document be included as an addendum to any Security Plan City Council may require. Several of the elements of the proposed Custody Release Plan address programmatic issues that should not be regulated, nor could be practicably enforced, by the City. This includes such elements as the Mission Statement (Elements 1.0 through 1.2), or what sorts of investigations will take place at the facility (Elements 2.0 through 2.2). Additionally, the Custody Release Plan includes factors used when determining which detainees will be released (Elements 7.0 through 7.1.6). These factors are not something that the City is qualified to assess nor can practicably enforce, such as whether a released detainee is a danger to the public or a flight risk, and it is our understanding that these factors are federal policy which the facility is required to adhere to regardless of any condition the City may place on the site. Lastly, the Custody Release Plan includes some elements that are repetitive of what is included in the above referenced Security Plan.

BDS Staff recommends that should Council decide to include the Custody Release Plan as a condition of approval, only those items included in 5.0 through 5.4 be required to be implemented, which are directed at how released detainees are transported from the site. BDS Staff also recommends a requirement that ICE maintain a log of detainees that are released at the site. The log should at minimum identify the date and time the detainee was released, and that the detainee was released in conformance with Elements 5.0 through 5.4 of the ICE Custody Release Plan. The condition of approval should also require that the log be made available for review by BDS Compliance Service staff in situations where a complaint is received regarding ICE's compliance with the required release procedures.

If City Council decides to include these recommendations in an approval of the Detention Facility, the following is a suggestion for the wording of those conditions:

1. The Detention Facility is required to operate in conformance with the approved Security Plan (Exhibit A8). Prior to Final Occupancy, the applicant will submit a letter to the Bureau of Development Services confirming that the building elements of the Security Plan have been implemented.
2. The following procedures shall be followed when releasing detainees at the site:
 - a. telephone calls will be allowed for detainees to arrange transportation away from the Macadam site upon release;
 - b. release from ICE custody may be limited to designated release times and will be implemented under the following conditions:
 - subject released and transported from the site by family, friend, attorney, or nongovernmental organization;
 - subject transported by ICE and released from custody at mass transit location with funds sufficient for transportation fare;
 - subject transported by ICE and released from custody at other mutually agreeable location within the City of Portland.
 - c. ICE will prominently post notices in the processing area advising detainees of these site specific release procedures; and
 - d. ICE will maintain a log of all detainees released at the site, which will identify at minimum the date and time the detainee was released, and that the release was done in accordance with the requirements identified in 2a and 2b, above; this log shall be made available for review by BDS Compliance Service staff in situations where a complaint is received regarding ICE's compliance with the required release procedures.

Moore-Love, Karla

From: Walters, Ben
Sent: Monday, September 19, 2011 10:39 AM
To: Moore-Love, Karla
Cc: Parsons, Susan; Yocom, Jennifer; Rees, Linly
Subject: RE: Leonard teleconferencing next week

Karla:

The Mayor should make a statement at the beginning of the morning and afternoon sessions identifying that Commissioner Leonard will be participating by telephone, to make a "record of the circumstances constituting an emergency which requires use of electronic circumstances", to conform to the requirements of PCC 3.02.025.C. The statement needs to reflect, in some fashion, that failure to allow participation by telephone "would jeopardize the public interest, health, safety or welfare." PCC 3.02.025.A.

A reference to the requests as made by Commissioner Leonard should suffice.

Let me know if there are any questions.

Ben
' 503.823.4947
email ben.walters@portlandoregon.gov

From: Moore-Love, Karla
Sent: Friday, September 16, 2011 4:07 PM
To: Walters, Ben; Rees, Linly
Cc: Parsons, Susan
Subject: Leonard teleconferencing next week

Ben and Linly,

Commissioner Leonard has requested to participate by telephone (emails are attached) for the following items on the Wednesday, Sept. 21 agenda and Jennifer Yocom replied to the Commissioner's request stating the Mayor approved the requests:

9:30 a.m. Time Certain agenda item #982 Oregon Sustainability Center

11:00 a.m. Time Certain agenda item #S-986 Office of Equity

2:00 p.m. Time Certain agenda item 1007 LU 11-124052 ICE Detention Facility

<< Message: Re: Request to vote on Office of Equity ordinance 9/21/11 >> << Message: RE: Request to participate in hearing on LU 11-124052 CU PR by telephone >> << Message: Re: Request to participate in OSC hearing by telephone 9/21/11 >>

Karla

Karla Moore-Love
Council Clerk
Office of the City Auditor
503.823.4086

Parsons, Susan

From: Hardy, Douglas
Sent: Wednesday, August 10, 2011 7:16 AM
To: Parsons, Susan
Subject: Appeal Hearing for ICE Detention Facility (11-124052 CU PR)

Sue,

We had previously tentatively scheduled the Council appeal hearing for this case for August 24 at 2 pm, with a follow up meeting on August 31. The applicant has requested that the hearing date be postponed to September 21 in the afternoon. The hearing should last about 3 hours.

Thanks.

Douglas

Douglas Hardy, Senior Planner
Bureau of Development Services
Land Use Services Division
1900 SW Fourth Avenue, Suite 5000
Portland, OR 97201

douglas.hardy@portlandoregon.gov
(503) 823-7816 phone
(503) 823-5630 fax

Portland, Oregon
FINANCIAL IMPACT and PUBLIC INVOLVEMENT STATEMENT
For Council Action Items

(Deliver original to Financial Planning Division. Retain copy.)

| | | | |
|---|---|---|--|
| 1. Name of Initiator Douglas Hardy | | 2. Telephone No. 503-823-7816 | 3. Bureau/Office/Dept. Land Use Services - BDS |
| 4a. To be filed (hearing date): September 21, 2011, 2:00 TC | 4b. Calendar (Check One) Regular Consent 4/5ths <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> | | 5. Date Submitted to Commissioner's office and FPD Budget Analyst: September 13, 2011 |
| 6a. Financial Impact Section: <input checked="" type="checkbox"/> Financial impact section completed | | 6b. Public Involvement Section: <input checked="" type="checkbox"/> Public involvement section completed | |

1) Legislation Title:

This is an appeal of a **quasi-judicial** action. There is no legislation involved.
Case number: **LU 11-124052 CU PR (4310 SW Macadam Avenue)**

2) Purpose of the Proposed Legislation:

There is no legislation involved. This is an appeal of a **quasi-judicial** action (an appeal of a Land Use Review decision). Legislative Procedures described in Zoning Code Chapter 33.740 are handled by the Bureau of Planning & Sustainability. Quasi-Judicial Procedures described in Zoning Code Chapter 33.730, commonly known as "Land Use Reviews," are handled by the Bureau of Development Services. Quasi-judicial procedures allow for Type III Land Use Review decisions to be appealed to City Council per 33.730.030.F.

In this case, the Land Use Reviews included: a) a Conditional Use; and b) a Central City Parking Review:

- A Type III Conditional Use Review is required for a 5,198 square foot Detention Facility proposed at this site; and
- A Type III Central City Parking Review is required as parking for more than 60 spaces is proposed for use by Office tenants in the building, and by the Detention Facility.

The Hearings Officer's decision to deny the Conditional Use Review for the Detention Facility has been appealed by the property-owner, Rodney Grinberg of Lindquist Development Company. The appellant is challenging the Hearings Officer's decision and argues that the applicable Conditional Use approval criteria have been met.

3) Which area(s) of the city are affected by this Council item? (Check all that apply—areas are based on formal neighborhood coalition boundaries)?

The proposal is for an individual ownership in Southwest Portland, not an area.

- City-wide/Regional Northeast Northwest North

- Central Northeast Southeast Southwest East
 Central City
 Internal City Government Services

FINANCIAL IMPACT

4) Revenue: Will this legislation generate or reduce current or future revenue coming to the City? If so, by how much? If so, please identify the source.

This is not a legislative action.

5) Expense: What are the costs to the City related to this legislation? What is the source of funding for the expense? (Please include costs in the current fiscal year as well as costs in future years. If the action is related to a grant or contract please include the local contribution or match required. If there is a project estimate, please identify the level of confidence.)

This is not a legislative action.

6) Staffing Requirements:

This is not a legislative action, and so there are no staffing "requirements".

Staff responsibilities involved in processing the Land Use Review appeal include:

- the assigned planner from BDS/Land Use Services (LUS) Division;
- Records Management staff from LUS;
- supervisory oversight; and
- staff from PBOT and other city agencies who have been involved in this land use review.

- **Will any positions be created, eliminated or re-classified in the current year as a result of this legislation?** (If new positions are created please include whether they will be part-time, full-time, limited term, or permanent positions. If the position is limited term please indicate the end of the term.)

No positions will be created, eliminated or re-classified in the current year as a result of this quasi-judicial land use action.

- **Will positions be created or eliminated in future years as a result of this legislation?**

No positions will be created or eliminated in future years as a result of this quasi-judicial land use action.

(Complete the following section only if an amendment to the budget is proposed.) None.

7) Change in Appropriations (If the accompanying ordinance amends the budget please reflect the dollar amount to be appropriated by this legislation. Include the appropriate cost elements that are to be loaded by accounting. Indicate "new" in Fund Center column if new center needs to be created. Use additional space if needed.)

The ordinance accompanying this quasi-judicial land use action does not amend the budget.

| Fund | Fund | Commitment | Functional | Funded | Grant | Sponsored | Amount |
|------|------|------------|------------|--------|-------|-----------|--------|
|------|------|------------|------------|--------|-------|-----------|--------|

| | Center | Item | Area | Program | | Program | |
|--|--------|------|------|---------|--|---------|--|
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| | | | | | | | |

**[Proceed to Public Involvement Section — REQUIRED as of July 1, 2011]
PUBLIC INVOLVEMENT**

8) Was public involvement included in the development of this Council item (e.g. ordinance, resolution, or report)? Please check the appropriate box below:

- YES:** Please proceed to Question #9.
- NO:** Please, explain why below; and proceed to Question #10.

9) If “YES,” please answer the following questions:

a) What impacts are anticipated in the community from this proposed Council item? The impacts from this proposal are what the Conditional Use Review and Central City Parking Review are considering. There is a difference of opinion about the anticipated impacts, which is why the decision on the Conditional Use Review was appealed to City Council. Please see the Hearings Officer's Decision for an assessment of the impacts at the following link:

<http://www.portlandonline.com/bds/index.cfm?c=46579&a=359341>.

b) Which community and business groups, under-represented groups, organizations, external government entities, and other interested parties were involved in this effort, and when and how were they involved? The Zoning Code requires for a Type III Land Use Review that public notice be mailed to property owners within 400 feet of the subject site, and to recognized organizations within 1,000 feet of the subject site. The Zoning Code also requires that the site be posted for a minimum of 30 days prior to the first hearing before the Hearings Officer. Notices of hearings are also posted on the Bureau of Development Services website. There are no other public involvement efforts on the part of city staff.

c) How did public involvement shape the outcome of this Council item? The appeal of this quasi-judicial action is a direct outcome of public involvement on the part of the applicant.

d) Who designed and implemented the public involvement related to this Council item? City Council adopted the procedures outlined in the Zoning Code. The Bureau of Development Services implements these procedures.

e) Primary contact for more information on this public involvement process (name, title, phone, email): Douglas Hardy, Senior Planner, is the assigned planner for this quasi-judicial land use review. He prepared the public notices used for mailing and posting. His phone is 503-823-7816; and his e-mail address is douglas.hardy@portlandoregon.gov. However, these procedural activities are not a public involvement process per se.

10) Is any future public involvement anticipated or necessary for this Council item? Please describe why or why not. No. Once City Council makes their decision, the project may proceed (if appeal is denied). If the appeal is denied, the neighbors/appellants could appeal to a higher level - the State Land Use Board of Appeals (LUBA). If the appeal is upheld, the applicants may choose to appeal to a higher level (LUBA). Public involvement is not a component of the review done by the higher review bodies.

A rectangular box containing a handwritten signature in cursive script that reads "P. Scarlett".

PAUL L. SCARLETT, BUREAU DIRECTOR