Tentatively grant the appeal in part, deny the appeal in part of South Portland Neighborhood Association and uphold the Design Commission's decision to approve a building addition at 4310 SW Macadam Ave with modifications (Findings; Previous Agenda 172; LU 10-145100 DZM)

#### February 16, 2011 motion:

Motion to tentatively grant the appeal in part, deny the appeal in part, and uphold the Design Commission's decision with modifications, specifically: (1) Council determined the holding cells, processing area, and associated offices is a detention facility that requires conditional use review; (2) the Council agreed to include BDS staff's revised conditions B and C, as well as a new condition requiring conditional use review of the holding cells, processing area, and associated offices as a detention facility (second condition on page 2 of BDS staff 2/10/2011 memo): Moved by Commissioner Leonard and seconded by Mayor Adams. (Y-4; Saltzman absent)

#### February 23, 2011 motion:

Amend page 6 of Findings to replace the word "aliens" with "detainees": Moved by Commissioner Fritz and seconded by Commissioner Fish. (Y-5)





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

1900 SW 4th Avenue, Suite 5000 Portland, Oregon 97201 503-823-7300 Fax 503-823-5630 TTY 503-823-6868 www.portlandonline.com/bds

**MEMO** 

Date:

February 10, 2011

To:

Portland City Council

From:

Kara Fioravanti, Development Review

Phone number (503) 823-5892

Re:

LU 10-145100 DZM

#### SUGGESTED REVISIONS TO CONDITIONS OF APPROVAL B AND C

BDS and PBOT staff both agree existing Conditions of Approval B and C could be more clearly worded to ensure Phase 2, as suggested by Commissioner Fritz at the 1-19-11 Council hearing. Current conditions as approved by the Design Commission and proposed revised conditions follow:

#### Condition of Approval B for 10-145100:

#### Current Condition:

The proposed on-site SW Moody Avenue frontage improvements (noted in the approved plans as "Future Development" and including the proposed conversion of parking to ground level retail at the East Elevation and the kinetic water feature at the intersection of SW Moody and Bancroft) shall be completed within 120 days of substantial completion of at least the adjacent half-street public right-of-way improvements.

#### Proposed Revised Condition:

The applicant shall enter into a development agreement that will require property owner or designee to complete the proposed on-site SW Moody Avenue frontage improvements (noted in the approved plans as "Future Development" and including the proposed conversion of parking to ground level retail at the East Elevation and the kinetic water feature at the intersection of SW Moody and Bancroft) within 120 days of substantial completion of the adjacent half-street public right-of-way improvements. The development agreement must be executed and recorded prior to issuance of Phase I building permit.

#### Condition of Approval C for 10-145100:

#### Current Condition:

Subject to the applicant's or its successor's acceptance of conveyance of property currently held in the public right of way to the landowner, on-site SW Bancroft Street frontage improvements (noted in the approved plans as "Future Development") shall be completed within one year of a City Council approved street vacation and the vacated property reverting back to 1S1E10CD 500.

#### Proposed Revised Condition:

At such time as the City Council approves the street vacation of the SW Bancroft Street frontage adjacent to the subject site, the applicant will accept the vacated area and construct the proposed on-site SW Bancroft Street frontage improvements (noted in the approved plans as "Future Development") within 6 months of Council approval of the street vacation.

#### SUGGESTED CONDITIONS OF APPROVAL FOR A REQUIRED CONDITIONAL USE REVIEW

If council determines the project includes a Detention Facility, which requires a Conditional Use Review (CU), one of the following Conditions of Approval should be added to the final council action:

#### Suggested new Condition of Approval for the entire project:

If the building approved by this land use approval (LU 10-145100 DZM) includes a primary use subject to a Type III Conditional Use review per Table 130-1 (Detention Facility), the applicant may not obtain and BDS will not issue building permits in compliance with this land use approval until a final City decision is made on the required Type III Conditional Use and Central City Parking Reviews.

OR

#### Suggested new Condition of Approval for the Detention Facility portion of the project:

If the building approved by this land use approval (LU 10-145100 DZM) includes a primary use subject to a Type III Conditional Use review per Table 130-1 (Detention Facility), the applicant may obtain and BDS may issue building permits only for the portion of the building addition, building renovation, and sitework that includes the primary uses allowed by right (Office and Retail Uses) once this land use is final. The applicant may not obtain and BDS will not issue building permits for a Detention Facility with supporting office use and associated parking until a final City decision is made on the required Type III Conditional Use and Central City Parking Reviews.





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

1900 SW 4th Avenue, Suite 5000 Portland, Oregon 97201 503-823-7300 Fax 503-823-5630 TTY 503-823-6868 www.portlandonline.com/bds

#### **MEMO**

Date:

February 2, 2011

To:

Portland City Council

From:

Kara Fioravanti, Development Review

Phone number (503) 823-5892

Re:

LU 10-145100 DZM

The Type III DZM appeal hearing for LU 10-145100 DZM was held on January 19, 2011. New evidence on the use issue was submitted between January 19<sup>th</sup> and January 26<sup>th</sup>. This memo provides a response to some of the new evidence submitted prior to January 26<sup>th</sup>.

In a letter from the South Portland Neighborhood Association dated January 25, 2011 and titled "Additional Testimony", item #2 contends a Conditional Use Review is required because the project is a "1. Major Remodel, 2. Change of Use, and 3. Detention Facility".

A Conditional Use Review is not outright required for any "Major Remodel" or any "change of use" unless the new use is listed as a Conditional Use (in this case for a CX zoned property) in Table 130-1 of the Zoning Code. A Conditional Use Review is required based on Table 130-1, which establishes when a Primary Use(s) is/are either allowed, allowed with limitations, a conditional use, or prohibited.

Major Remodel: A "Major Remodel" is defined in the Zoning Code in Chapter 33.910. The definition is as follows: "Projects where the floor area is being increased by 50 percent or more, or where the cost of the remodeling is greater than the assessed value of the existing improvements on the site. Assessed value is the value shown on the applicable county assessment and taxation records for the current year." The proposed building addition/renovation project by the Department of Homeland Security is defined as a "Major Remodel" because floor area is being increased by more than 50% and the cost of remodeling is greater than the assessed value of the existing improvements on the site. This categorization, however, does not dictate whether or not a Conditional Use is required. This categorization simply requires compliance with specific development standards in the Zoning Code, where indicated. There is a higher expectation for existing development when a proposed project is defined as a "Major Remodel"; the expectation is that the comprehensive project should, at least, move the existing development closer to conformance with ground level- and pedestrian-focused development standards. Compliance for the following development standards is required for "Major Remodels": Required Building Lines in 33.510.215 D.1.; Ground Floor Windows in 33.510.220 B.; and Ground Floor Active Uses in 33.510.225 B.

(these three Chapter 33.510 code excerpts copied on page 2 for your reference)

Change of Use: The fact that the project is a "change of use" does not trigger a Conditional Use. Table 130-1 is the zoning tool used to establish the required level of review for the proposed Primary Use or Uses; and, that establishment is based on the classification of the proposed Primary Use or Uses. This table must be utilized to determine if the Primary Use or Uses in a proposed "change of use" project is/are either allowed, allowed with limitations, a conditional use, or prohibited.

(Table 130-1 copied on page 3 for your reference)

Detention Facility: Again, Table 130-1 is the zoning tool to used to establish the required level of review for the proposed Primary Use or Uses. For each individual commercial zone, Table 130-1 indicates which defined Primary Uses are either allowed, allowed with limitations, a conditional use, or prohibited. A Detention Facility in the CX zone is a Conditional Use. (Table 130-1 copied on page 3 for your reference)

Three Chapter 33.510 code excerpts re: "Major Remodel"

#### 1. 33.510.215 Required Building Lines

- **A. Purpose.** Required building lines are intended to enhance the urban quality of the Central City plan district.
- **B. Sites and development subject to the building line standard.** Sites subject to this standard are shown on Map 510-6 at the end of this chapter.
- **C. Special building lines.** On West Burnside between 10th and 21st Avenues, the special building line is 10 feet from the street lot line along West Burnside.

#### D. Building line standards.

1. New development and <u>major remodeling projects</u> along a frontage containing a required building line must comply with either Subparagraphs a. or b. below, except where there is also a special building line. Exterior walls of buildings designed to meet the requirements of this paragraph must be at least 15 feet high.

#### 2. 33.510.220 Ground Floor Windows

<b>A. Purpose.</b> In the Central City plan district, blank walls on the ground level of buildings are
limited in order to:
🗆 Provide a pleasant, rich, and diverse pedestrian experience by connecting activities occurring
within a structure to adjacent sidewalk areas;
□ Encourage continuity of retail and service uses;
☐ Encourage surveillance opportunities by restricting fortress-like facades at street level; and
□ Avoid a monotonous pedestrian environment.

The plan district modifications to the base zone standards for ground floor windows are intended to promote ground floor windows in a larger number of situations than in the base zones and to provide additional flexibility in meeting the standard.

**B. Major remodeling projects.** In the RX, CX, and EX zones, all major remodeling projects must also meet the ground floor window standard of the base zone, or the option below.

#### 3. 33.510.225 Ground Floor Active Uses

**A. Purpose.** The ground floor active use standards are intended to reinforce the continuity of pedestrian-active ground-level building uses. The standards are also to help maintain a healthy urban district through the interrelationship of ground floor building occupancy and street level accessible public uses and activities. Active uses include but are not limited to: lobbies, retail, residential, commercial, and office.

#### B. Sites and development subject to the ground floor active use standard.

Ground floor active use areas are shown on Map 510-7 at the end of this chapter. On identified sites, all new development and all major remodeling projects must meet the standard below.

#### Table 130-1

Title 33, Flavoring and Soning 4/24/20

Chapter 33.130 Commercial Zones

	***************************************		. 1 20. 1	<del>'</del>						
Table 130-1 Commercial Zone Frimary Uses										
Use Categories	CNI	CN2	001	CO2	СН	CS	ca	CX		
Residential Categories										
Housebold Living	Y	Y	Y	'n	¥	8.	8	Ý		
Group Living	1/(01)	L/CU	T/CT	L/GU   III	L/CU	L/CU	L/ČU	1/cu (1)		
Commercial Categories										
Retail Sales And Serace	L. (28)	¥	34	1.131	L/4I	¥	*	¥′		
Office	L. (28)	¥*	Ψ.	Y	1. (4)	l v	*	¥		
Ousck Vehicle Servaing	1 N	1113	i N	i N	1 N	Ň		1.11.21		
Vehicle Repair	N N	T N	M	N.	1 14	¥'	Ÿ	1, 151		
Commercial Parking	14	N	N	N	N	£.	cn(ril	CU		
SeE-Service Storage	N.	N	188	N N	N	N	L, itsi	Liei		
Commercial Cuidon Necreation		<del>  13</del>	1 1	i ii	1 1	Ÿ	¥ (100)	Y		
Major Event Entertainment	N	N	N	N	Ň	cu	CU	Y		
Industrial Categories				<u> </u>	1.5	200.00	66/62			
Manufacturing And Production	12) T\C0	L/CU Di	ä	N	L/CU 14, 5)	L/CU (5)	L/CU (\$.7)	L/CU		
Warshouse And Preight Movement	. 34	M	N	16	М	N	CU 5,7	N		
Pitolesale Sales	N	N	N	N	L [4, 5]	Litt	L (8,7)	1. [5]		
Industrial Service	N	N	N.	N	74	CUIBI	CU  5,7	CU (S)		
Redroad Yards	N	N	. I%	N	34	74	N	Ni Ni		
Winstn-Mainted	N	N	N	N	M	N	34	N		
Institutional Categories										
Sani: Utitien	Y/CU [10]	Y/CU (10)	Y/CD (to)	Y/CU (10)	Y/CU (10)	Y/CU (10)	Y/CU  10	Y/CU (10)		
Community Service	TACE.	L/CU	1/CU	L/CU	L/CU M	L/CU (5)	L/CU IM	L/CU		
Parka And Open Areas	A.	*	3.	Y	¥	*	**	Y		
Octobra e	Y	7	3'	Ϋ́	¥	*	¥	Y		
Coleges	Y	**	**	Y	Y	¥	¥	Y		
Medical Centers	Y	**	Y	Y	Y	¥	¥	Y		
Religiosa Institutiosa	Ϋ́	¥	Y	Y	Ŷ	¥	Ŷ	Y		
Descera	Y	¥	¥	Y	Ÿ	2,	¥	¥		
Other Categories										
Agricalture	M	M	N	188	N	CU	CU	cu		
Aviation And Surface Passenger Terminals	И	N	N	N	N	×	Œ	CU		
Detention Feduties	N	N	N	W	M	N	CU	CU		
Mining	N	N	M	N	N	N	N	N		
Kadio Presidency Transmission	1/00	L/CU	L/CU	L/CU	Lycu	L/CU	L/CU	L/CU		
Pacificia	191	190	(S)	191	190	150	194	(9)		
Red Losse And Utility Corridors	ĈŰ	00	ĊÚ	cu	CU	ĈÜ	<del>di</del>	CU		

Y = Yes, Allowed CU = Conditional Use Seriew Required

L - Allowed, But Special Limitations N - No. Prohibited

Notes:

The use categories are described in Chapter St. 920.

Regulations that correspond to the bracketed numbers [] are stated in 33.130.100.B.
 Specific uses and developments may also be subject to regulations in the 200s series of chapters.

#### January 19, 2011

Motion to accept the applicant's request to reopen the record for new evidence on the use issue and to accept the applicant's agreement to extend the 120-day decision clock until February 24, 2011. Allow all parties to submit evidence on the use issue according to the following timeline:

until 5:00 p.m. January 26, 2011: all parties may submit new evidence on the nature and proper use classification of the proposed ICE Facility.

until 5:00 p.m. February 2, 2011: all parties may respond to evidence submitted during the previous 7 day period.

5:00 p.m. February 7, 2011: the applicant may submit a final argument.

Council will continue the hearing to 2:00 p.m. February 16<sup>th</sup> and will deliberate and make a tentative decision. Council will adopt a final decision, with findings on February 23, 2011: Moved by Mayor Adams and seconded by Commissioner Fish. (Y-5)



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

1900 SW 4th Avenue, Suite 5000 Portland, Oregon 97201 503-823-7300 Fax 503-823-5630 TTY 503-823-6868 www.portlandonline.com/bds

#### **MEMORANDUM**

Date:

January 17, 2011

To:

Portland City Council

From:

Bureau of Development Services

Land Use Services

Re:

LU 10-145100 DZM, 4310 SW Macadam

Use Summary

The Revised Findings and Decision for LU 10-145100 DZM, dated December 7, 2010, described the proposed use for the proposed building addition at 4310 SW Macadam. Specifically pages 3-4 state the following (in italics):

**Zoning:** The site is zoned CXd, Central Commercial with design overlay. The <u>Central Commercial</u> (CX) zone is intended to provide for commercial development within Portland's most urban and intense areas. A broad range of uses is allowed to reflect Portland's role as a commercial, cultural and governmental center. Development is intended to be very intense with high building coverage, large buildings, and buildings placed close together.

There are 2 proposed primary uses for this new building: Office and Retail Sales and Service.

- Office is an allowed use in the CX zone. It will, by right, also include accessory uses. 33.920.030 C. states, "Accessory uses are allowed by right in conjunction with the use unless stated otherwise in the regulations. Also unless otherwise stated, they are subject to the same regulations as the primary use. Common accessory uses are listed as examples with the categories." Considerations used to determine whether the activities constitute primary uses or accessory uses are listed in 33.920.030 A.2. With regard to the submitted information the primary use, Office, includes the following: an entrance lobby, open floor plans for general office layout (cubicles and/or offices), and circulation space (hallways, stairs, elevators). With regard to the submitted information the accessory uses to the proposed primary use, Office, include the following: a loading area, a processing area for people awaiting a hearing before an administrative hearings officer, a gym, and lunch rooms.
- Retail Sales and Service is an allowed use in the CX zone. There are no accessory uses associated with the proposed Retail Sales and Service. Phase 2 of the proposed project includes a small Retail Sales and Service ground level space at the East elevation.

The <u>design</u> (d) overlay zone promotes the conservation and enhancement of areas of the City with special historic, architectural or cultural value. New development and exterior modifications to existing development are subject to design review.

This memo serves to describe why the use was classified as described above (and in the Revised Final Findings and Decision). 33.920.030 A. 1. states, "Uses are assigned to the category whose description most closely describes the nature of the primary use. The "Characteristics" subsection of each use category describes the characteristics of each use category. Developments may have more than one primary use. Developments may also have one or more accessory uses." At the time of initial application submittal (pre-application submittal in Spring of 2010), BDS considered a variety of use categories to determine the use of the proposed project. The considerations were based on evidence submitted by the applicant (Exhibits A.3 and A.4 of LU 10-145100 DZM).

While the proposed use doesn't fit squarely into any of the three options, the following 3 summaries describe in detail why the use considered by BDS was found by BDS to be relevant or not relevant.

#### Consideration #1: Office Use with Accessory uses

In the CX zone Office uses with Accessory uses are allowed outright. The Code defines Office as follows (in italics):

#### 33.920.240 Office

A. Characteristics. Office uses are characterized by activities conducted in an office setting that focus on the provision of goods and services, usually by professionals. Traditional Office uses are characterized by activities that generally focus on business, government, professional, medical, or financial services. Industrial Office uses are characterized by activities that, while conducted in an office-like setting, are more compatible with industrial activities, businesses, and districts. Their operations are less service-oriented than Traditional Office uses and focus on the development, testing, production, processing, packaging, or assembly of goods and products, which may include digital products such as internet home pages, media content, designs and specifications, computer software, advertising materials, and others. They primarily provide products to other businesses. They do not require customers or clients to visit the site; any such visits are infrequent and incidental.

- B. Accessory uses. Accessory uses may include cafeterias, health facilities, parking, or other amenities primarily for the use of employees in the firm or building.
- C. Examples. Examples include uses from the two subgroups listed below:
- 1. Traditional Office: Professional services such as lawyers or accountants; financial businesses such as lenders, brokerage houses, bank headquarters, or real estate agents; sales offices; government offices and public utility offices; medical and dental clinics, and blood collection facilities.
- 2. Industrial Office: Software and internet content development and publishing; computer systems design and programming; graphic and industrial design; engineers; architects; telecommunication service providers; data processing; television, video, radio, and internet studios and broadcasting; scientific and technical services; and medical and dental labs.

The proposed building will include 64,948 square feet of floor area (excluding parking), of which 61,578 square feet will be devoted to a traditional office setting (cubicles, meeting rooms, conference rooms, lobby areas, etc.) that focuses on "government services".

A listed Example of Traditional Offices includes "government offices", which this use has been classified by BDS.

As noted in the excerpt above from the December 7, 2010 Final Findings and Decision, the proposed processing area for people awaiting a hearing before an administrative hearings officer is being considered an Accessory Use. 33.920.030 C. states, "Accessory uses are allowed by right in conjunction with the use unless stated otherwise in the regulations. Also, unless otherwise stated, they are subject to the same regulations as the primary use. Common accessory uses are listed as examples with the categories."

- 33.920.030 A. 2. describes, "The following (bulleted) items are considered to determine what use category the use is in, and whether the activities constitute primary uses or accessory uses." BDS used the following bulleted list to determine Accessory Use vs. Primary Use for the proposed processing area. After each bulleted item, there is a short staff analysis of why the proposed processing area was considered an Accessory Use.
- > The description of the activity(ies) in relationship to the characteristics of each use category;

Staff analysis: This memo summarizes the analysis conducted with regard to the characteristics of each use category. And, it was determined that the description of activities was most similar to Office use, resulting in the Office use as the Primary Use.

- > The relative amount of site or floor space and equipment devoted to the activity;
  Staff analysis: The proposed building will include 64,948 square feet of floor area (excluding parking), of which 61,578 square feet will be devoted to a traditional office setting (cubicles, meeting rooms, conference rooms, lobby area, etc.) Less than 5% square feet of the proposed floor area is devoted to the processing area.
- > Relative amounts of sales from each activity; Staff analysis: Not applicable.
- > The customer type for each activity; Staff analysis: Not applicable.
- The relative number of employees in each activity;
  Staff analysis: The building can accommodate approximately 150 employees. It is expected that a minimum of one employee will be devoted to the processing area at any given time; the number of employees staffing the processing area depends on how many individuals are being processed.
- Hours of operation;
  - Staff analysis: The building will be open typical hours of a Traditional Office.
- Staff analysis: The proposed project includes a Class A Office building and attached parking garage. It has similarities to a traditional Office building. The security proposed is along a portion of future SW Moody Avenue and a portion of SW Bancroft. The security consists of a metal picket fence with brick piers, which is not atypical for creating a street edge adjacent to vehicle area. The more significant security at the vehicle entry facing SW Bancroft, which includes a guard house, is not atypical of hospitals, hi-tech research centers, etc. The proposed security does not include razor wire, double fencing or other more significant security associated with a typical jail setting. And, finally, the processing area is entirely internal to the building, in its basement level and the drop-off for the processing area occurs under cover in a space that is similar to a typical and required by Code loading space.
- > Vehicles used with the activity;
  Staff analysis: The drawings indicate the building will accommodate 101 fleet vehicles. The applicant did not elaborate on how the fleet vehicles will be used. The information submitted by the appellant and discussed by the applicant with the Design Commission notes the on-site vehicle maneuvering must accommodate a 55 passenger bus and a 67-foot long tractor trailer. At the Design Commission hearings, the applicant indicated it is rare for these large vehicles to access the site. The typical, daily vehicles to visit the site will be, as noted by the applicant at the Design Commission hearings, traditional cars and vehicles similar to the size of an "airport van".
- > The relative number of vehicle trips generated by the activity;
  Staff analysis: The Design Review approval criteria did not require the City to obtain this information.
- > Signs;
  - Staff analysis: Not applicable.
- > How the use advertises itself; and Staff analysis: Not applicable.
- > Whether the activity would be likely to be found independent of the other activities on the site. Staff analysis: The proposed processing area would not be found independent of the associated offices, concluding that the processing area is Accessory to the Office. However, the associated offices could be independent of the processing area, concluding that the Office is not Accessory to the processing area.

#### Consideration #2: Basic Utility

In the CX zone Basic Utilities, other than Radio Frequency Transmission Facilities, are allowed outright. The Code defines Basic Utility as follows (in italics):

#### 33.920.400 Basic Utilities

A. Characteristics. Basic Utilities are infrastructure services which need to be located in or near the area where the service is provided. Basic Utility uses generally do not have regular employees at the site. Services may be public or privately provided. All public safety facilities are Basic Utilities.

B. Accessory uses. Accessory uses may include parking; control, monitoring, data or transmission equipment; and holding cells within a police station.

C. Examples. Examples include water and sewer pump stations; sewage disposal and conveyance systems; electrical substations; water towers and reservoirs; Small Scale Energy Production, water quality and flow control facilities; water conveyance systems; water harvesting and re-use conveyance systems and pump stations; stormwater facilities and conveyance systems; telephone exchanges; mass transit stops or turn arounds, light rail stations, suspended cable transportation systems, transit centers; and public safety facilities, including fire and police stations, and emergency communication broadcast facilities.

The proposed use is a service that can be located anywhere in the Portland metropolitan area, which therefore negates the statement that it is a service which needs "to be located in or near the area where the service is provided".

The building is designed to accommodate up to 150 regular employees. As such, the proposed project will have "regular employees at the site".

The service provided is "public".

Per the Basic Utility definition, "all public safety facilities are Basic Utilities"; the definition of "public safety facility" is as follows: A facility necessary to respond to an immediate hazard to the public health and safety, and that is owned, leased, or operated by the City of Portland. Public safety facilities include fire and police stations, flood control facilities, water towers and pump stations needed for emergency service, and emergency communication broadcast facilities. The proposed facility will not be owned, leased, or operated by the City of Portland and therefore not a "public safety facility".

An Accessory use listed in the definition includes "holding cells within a police station". Though the proposed use includes holding cells, the proposed holding cells are not "holding cells within a police station".

#### Consideration #3: Detention Facility with Accessory Office use

In the CX zone Detention Facilities are a Conditional Use. The Code defines Detention Facility as follows (in italics):

#### 33.920.520 Detention Facilities

A. Characteristics. Detention Facilities includes facilities for the judicially required detention or incarceration of people. Inmates and detainees are under 24 hour supervision by peace officers, except when on an approved leave.

- B. Accessory Uses. Accessory uses include offices, recreational and health facilities, therapy facilities, maintenance facilities, and hobby and manufacturing activities.
- C. Examples. Examples include prisons, jails, probation centers, and juvenile detention homes.

Regarding the Code description that Detention Facilities are for the "judicially required detention or incarceration of people", Exhibit A.4 (in a Bullivant Houser Bailey June 2, 2010 letter) describes why the detention occurring in the facility is "administrative and civil in nature and not judicially required". The June 2, 2010 letter goes on to describe that "judicial' is defined as 'of relating to, or

by the court." (Black's Law Dictionary, Ninth Edition, p. 922) The June 2, 2010 letter indicates "no judge or court is involved in the detention portion of the process administered by U.S. Immigration and Customs Enforcement," and continues to elaborate why the detention portion is administrative and civil in nature.

The individuals being held in the proposed holding area will be under supervision at all times, as noted in the Detention Facility definition; those individuals will have a maximum stay of "12 hours or less" (Exhibit A.3).

The individuals being held may be under the supervision of "peace officers". Peace officers are defined in 33.910 as follows: Peace Officer includes a member of the Oregon State Police, sheriff, constable, marshal, or officer of the Bureau of Police. The individuals being held will be under the supervision of the "Department of Homeland Security (DHS) Immigrations and Customs Enforcement (ICE) law enforcement officers" (Exhibit A.3) – it is unclear from the applicant's submitted information if DHS ICE law enforcement officers are under the category of "marshal".

Please accept this memo in response to questions regarding the proposed use for the Department of Homland Security (DHS) Immigrations and Customs Enforcement (ICE) agency relocation to the 4310 SW Macadam building.

Redevelopment at the project site will include a renovation of the existing structure and a new addition of a three story parking and office building. The completed project will be of mixed use, measuring approximately 100,000 gross square feet (GSF) in area. The proposed 60,000 GSF building addition will contain two parking levels and one office floor. Each level will be about 20,000 GSF. The existing four story building measures 40,000 GSF.

The primary function will be of 'Class A' office use. Included within the 60,000 square feet of office area is a 3,000 SF detainee processing area. This use is accessory to the main Group B office function.

Staff posed everal questions to the original applicant regarding the ICE facility operations. We have consulted with ICE and offer the following clarifications as to building use:

1. What is included in the "detention area". You mentioned the area would be 2,700 SF. Does it include the rooms where the holding occurs? Are the rooms locked, have surveillance, have guards? How does the security work?

The processing area is a secure environment where individual are held no longer than 12 hours. Individuals in DHS ICE custody are never left unattended. The space is monitored by security cameras to ensure the safety and well being of the detainee. The space is staffed by DHS Federal law enforcement officers. Access to the holding areas is controlled by key and electronic locks for security reasons.

2. What is included in the rooms?

There is a central 800 SF room where detainees are processed by DHS ICE Federal law enforcement officers. Immediately adjacent to this area are seven short term (less than 12 hours) holding rooms of varying sizes – there are two larger rooms of 450 and 730 SF each; (2) medium sized 130 SF rooms; and (3) small 80 SF rooms. Each room is self-contained and includes benches, toilet facilities and phones. There is also an detainee search room, shower/changing room, a small food preparation room (containing microwave, refrigerator and sinkonly), interview room and client/visitor room.

3. What are the security guards - Federal Marshalls, Police Officers, Peace Officers, etc? Do they carry weapons?

The space is staffed by DHS ICE Federal law enforcement officers. There are no firearms allowed inside the processing areas.

MEMO



1120 NW Couch Street Suite 300, Portland O R 9 7 2 0 9 Tel: (503) 224,9656 Fax: (503) 299,6273 www.abdarchilects.com

LV10-145100 EXNA.3 4. Are the people being held under Federal watch?

This is a US Government Department of Homeland Security agency staffed by Federal law enforcement officers. People brought into the facility are under in Federal custody.

5. Are the people being held already through a judicial review? Was there a hearing that determined these people are being deported?

Individuals will be coming to the facility in various stages of the deportation removal hearing process. However, the majority of individuals will come from Oregon state prisons and local jails. They are processed and then transferred to other facilities where judicial or deportation proceedings may occur.

6. Maximum stay at this facility?

12 hours or less.

7. Maximum # of people to be held?

An average of 10-15 people are processed through the facility each day. The facility is sized to accommodate up to 100 people at any time – although historically, instances where this many people are present is very rare.

TO	Kara Fioravanti	( ) .A		\
PROJECT	4310 Macadam - EA 10-127599 <b>PC</b>	11/1/1	pre-app	conference)
PROJ. #	2010.6410	1110		
DATE	June 2, 2010			·
FROM	Keith Skille, AIA			

#### Dear Kara,

The 4310 Macadam project proposes a major renovation and addition to an existing office building located at the southern edge of Portland's South Waterfront Subdistrict. The project has been selected by the U.S. Government General Services Administration as a co-location facility for two Department of Homeland Security agencies dedicated to Immigrations and Customs Enforcement.

When completed, the project will include approximately 59,000 (40,000 existing and 19,000 new) square feet of occupied office and 38,000 square feet of at-grade and structured parking. The parking will be secured and dedicated for the exclusive use of the building occupants. Included as part of the office area is a 4,000 SF detained processing area.

We understand that based on responses to Staff questions submitted for review on May 10, 2010 an initial determination has been made that the project Use be classified as a Detention Facility.

Since learning of Staff's initial findings, we have spent the last two weeks discussing the actual use with the government agencies that will occupy the facility. We have also looked into the question of whether or not the detention of individuals held by the United States Government at this facility is 'judicially required'.

For your consideration, please accept this memorandum as further clarification of intended use for the proposed 4310 Macadam building renovation and addition. This memo will consist of two parts: first, a discussion about whether or not the relative program "fits" as a Detention Facility and second, and our proposed categorization for this unique project type.

### MEMO



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#### **DETENTION FACILITIES**

Section 33.920.520 defines Detention Facilities as follows:

- A. Characteristics. Detention Facilities include facilities for the judicially required detention or incarceration of people. Inmates and detainees are under 24 hour supervision by peace offices, except when on an approved leave.
- **B.** Accessory Uses. Accessory uses include offices, recreational and health facilities, therapy facilities, maintenance faculties and hobby and manufacturing activities.
- C. Examples. Examples include prisons, jails, probation centers and juvenile detention homes.
- **D. Exceptions.** Programs that provide care and training or treatment for psychiatric, alcohol, or drug programs, where patients are residents of the program, but where patients are not supervised by peace officers are

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classified as Group Living. Programs that provide transitional living experience e by former offenders, such as halfway houses, where residents are not supervised by peace officers, are also classified as Group Living.

Based on the Use Characteristics and Examples provided, Detention Facilities are jails and prisons. People held in these facilities are judicially required to be present. Simply put, they reside in these facilities due to the simple fact they have committed a crime and are incarcerated 24 hours a day, 7 days a week for a period of time.

That by definition a Detention Facility includes facilities for "judicially required" detention raises some specific questions related to its Use. Does the detention serve a criminal or civil administrative function? We are enclosing a letter from our client's counsel which concludes that the detention use in the proposed development is not "judicially required" due in large part to the fact that it is part of a civil administrative process and not criminal in nature.

The examples of Accessory Uses provided further reinforce the character of Detention Faculties. These additional uses are customarily found in State and County prisons and jails where inmates - do to the nature of their stay - have need for medical, vocational training and recreation facilities.

It is worthwhile to point out that the cited exceptions to Detention Facilities - resident outpatient psychiatric or medical faculties and transitional offender halfway houses - are classified as Group Living uses. As a point of information, exception 3 in Section 33.920.100 Group Living states, "Facilities for people who are under judicial detainment and are under the supervision of sworn officers are included in the Detention Facilities category." The common thread between the Group Living and Detention Facility Uses cited either the presence, or in the case of Group Living, the absence of "judicially required" confinement. If the detention is judicially required, it is a Detention Facility. If it is not judicially required, but is instead more akin to a civil or administrative confinement, it falls into another classification, such as Group Living.

We believe that detainee processing center cannot be put in the same category as a prison.

Generally speaking, in a prison or correctional facility, the building area dedicated to Detention Facility inmate housing is at least equal to the total accessory use spaces such as offices, treatment, and vocational training areas. For the proposed development, the processing area comprises approximately 7% of the total non-parking building area. (4,000 SF Detainee Processing/ 54,000 General Office = 6.9 percent.) Were this truly a Detention Facility, the areas would be reversed with the largest area attributed to the incarcerated living areas.

Detention Facilities are 24/7 operations. They exist as part of the criminal justice system with the purpose of either holding a suspect after arrest or carrying out a punitive sentence determined by the courts and a judge. In contrast, detainees held in this facility are present for not more than 12 hours. (Per an inter-governmental agreement Individuals held longer than 12 hours are housed in a Detention Facility.) Their come and go from the facility as a part of the civil INA mandated process for removing people from the United States and returning them to their native countries.

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#### **CLASSIFICATION OF USE**

Clearly the proposed facility presents a challenge with respect to categorizing its Use. It is on one hand a straight-forward mixed use office building. It also has an administrative function associated with immigration. Recognizing the unique activities that occur in the detainee processing area we believe it unlikely that any of the Use defined in Chapter 33.920 can be attributed to the project. Part B in Article 33.920.030 allows for developments to be classified with multiple primary uses.

We suggest consideration be given to rightfully classifying the development as having two primary uses: Commercial Traditional Office per 33.920.240.C.1 and Institutional Basic Utilities per 33.9200.400.

The 54,000 square feet of development area not associated with the processing area can easily be classified as Commercial Traditional Office. 33,902.240 states, "Traditional Office uses are characterized by actives that generally focus on business, government, professional, medical or financial services." Since the building will house approximately 130 people from two U.S. government agencies, working in enclosed offices and workstations, the use matches those characteristics associated with Office use. The Office use includes accessory areas such as a fitness center and structured parking dedicated to the building occupants. The use fits the role of a Traditional Office since it houses government offices.

The prior discussion outlined several important distinctions between the activities that occur in the processing area and those that occur within the confines of a Detention Facility. Clearly the activities associated with 4,000 square feet of development area cannot be deemed Accessory to a Traditional Office use. As a percentage of the total building area, the space is small - 4,000 square feet - the activities that occur inside the space clearly do not lend them to being deemed Accessory to a Traditional Office Use. The use does share some similar activities in terms of use, size, and "customers" as a police station which is categorized as Institutional Basic Utilities.

The Characteristics of a Basic Utility defined in 33.920,400 include those activities, "which need to be located near the area where the service is provided." As a U.S. Government agency charged with administering the Immigration and Nationality Act it is necessary to have a secure detainee processing area to maintain the safety of the aliens and general public. 33.920.400 states that Basic Utilities include public safety facilities, including police stations.

Accessory uses allowed within Basic Utilities include holding cells within a police station. Generally, a holding cell within a police station is used to temporarily detain people thought to have committed a crime. Even though such detention could be classified as "judicially required", it apparently is not significant enough to cause a police station to be classified as a Detention Facility. The detention of aliens in this proposed development is even further removed from the judicial system.

Categorizing the Processing Center as a Basic Utility is the best application of the considerations for classifying Use. Like a fire or police station it does not fit neatly with the other allowed Basic Utility uses such as electrical substations and water towers

Kara Fioravanti June 2, 2010 Page 4

and reservoirs. It is a public safety facility though; charged with enforcing federal immigration law in an administratively civil, just way.

Sincerely,

GBD ARCHITECTS Incorporated

Keith A. Skille, AIA LEED Accredited Professional Associate Principal

Encl/

Attorneys at Law

HOWARD W. CARSMAN Direct Dial: (503) 499-4425 E-mail: howard.carsman@bullivant.com

June 2, 2010

Via E-mail

Keith Skille, AIA GBD Architects, Inc. 1120 NW Couch St., #300 Portland, OR 97209

Re:

4310 SW MacadamAve

Dear Keith:

The purpose of this letter is to answer the following question: will the intended use of the ICE facility involve "judicially required" detention. After my review of the pertinent federal statutory and case law, it is apparent that to the extent detention will occur in the facility, it is administrative and civil in nature and not judicially required.

"Judicial" is defined as "of, relating to, or by the court." Black's Law Dictionary, Ninth Edition, p. 922. So, for example, judicial power is defined as

The authority vested in courts and judges to hear and decide cases and to make binding judgments on them; the power to construe and apply the law when controversies arise over what has been done or not done under it.

Under federal law, this power is vested in the U.S. Supreme Court and in whatever inferior courts Congress establishes.

Black's, p. 924.

No judge or court is involved in the detention portion of the process administered by U.S. Immigration and Customs Enforcement. Federal law, specifically The Immigration and Nationality Act ("INA") determines how a person who is not a U.S. citizen is detained and

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lawfully removed to the individual's country of origin. The INA empowers the Attorney General to apprehend and detain an alien pending a decision, reached through a hearing, on whether the alien is to be removed from the United States. See 8 U.S.C. § 1226(a). See Zadvyas v. Davius et al., 533 U.S. 678, 690 (2001).

As a civil, administrative proceeding, the detention does not meet the definition of "judicially required". A judge is not involved in the detention process. Detention under the INA has been described as "civil confinement." *Zadvyas* at 691. The justifications for this type of detention are not to punish or sanction the aliens, only to facilitate their lawful removal after a hearing can occur. *Demore v. Kim* 538 U.S. 510, 532 (2003).

The best and perhaps only example of detention that is judicially required is that which occurs as part of the system of criminal justice. Upon arrest, the accused is incarcerated. His incarceration comes under the jurisdiction of the court, which sets bail and the conditions of his release from incarceration. If convicted, a judge determines the sentence, which may include jail if the crime and statute so require it. In short, the entire process of detention is controlled by the court and judge.

In summary, any detention that occurs in the facility in question involves neither a judge nor court. Being civil and administrative in nature, it is not judicially required.

Very truly yours,

Howard W. Carsman

**HWC** 

cc: Patrick R. Prendergast Rod Grinberg

12575111.1

#### Moore-Love, Karla

From:

Steven Rupert [Steven@gbdarchitects.com]

Sent:

Friday, January 14, 2011 11:28 AM

To:

Ruiz, Amy; Trieu, Amy; DiBenedetto, Anna; Ames, Betsy; Finn, Brendan; Crail, Tim; Dillmann, Katja; Moore-Love, Karle: Bess, Linky Leddy, Line; Crumm, Matt. Novbern, Skin; Oishi

Karla; Beaumont, Kathryn; Edwards, Kenneth; Rees, Linly; Leddy, Lisa; Grumm, Matt; Newberry, Skip; Oishi,

Stuart; Schmanski, Sonia; Parsons, Susan; Bizeau, Tom; Anderson, Toni; Kovatch, Ty

Cc:

Fioravanti, Kara

Subject:

RE: Jan 10, 2011 Commissioners' Assistants Briefing

Attachments: FTP\_window.pdf

Hello,

The previously submitted Design review package for the 4310 Macadam project is available for download at the following link. Please note that this file will be available for the next 7 days for download.

ftp://ftpuser:71gbd78@ftp.gbdarchitects.com/DR\_4310\_Macadam

Click on the link; cutting and pasting the link from your browser will not work. With some browsers it may be necessary for you to "force" a refresh in order to see the files. To do so, hold down the shift key and click the refresh button in your browser.

Also, attached is a PDF of what you should see when you click on the link.

If you have any trouble, please feel free to contact me directly.

Regards, Steve

STEVEN RUPERT, AIA, LEED AP

SENIOR ASSOCIATE

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**From:** Fioravanti, Kara [mailto:Kara.Fioravanti@portlandoregon.gov]

Sent: Friday, January 14, 2011 11:03 AM

**To:** Ruiz, Amy; Trieu, Amy; DiBenedetto, Anna; Ames, Betsy; Finn, Brendan; Crail, Tim; Dillmann, Katja; Moore-Love, Karla; Beaumont, Kathryn; Edwards, Kenneth; Rees, Linly; Leddy, Lisa; Grumm, Matt; Newberry, Skip; Oishi, Stuart; Schmanski, Sonia; Parsons, Susan; Bizeau, Tom; Anderson, Toni; Kovatch,

Ty

Cc: Steven Rupert

Subject: RE: Jan 10, 2011 Commissioners' Assistants Briefing

Hi. You are all receiving this email because it was requested at Monday's Commissioners' Assistants briefing that I provide digital copies of the approved drawings (C Exhibits 1-99). Steven Rupert with GBD architects set up an FTP site that you can access to view the drawings. He is copied on this email and will "reply to all" with that FTP site link. Please contact me via email or phone 3-5892 if you have problems viewing the drawings.

One important note to make with these drawings (a note that is included in the Exhibit list of the Final Decision): "If any drawing has a discrepancy with any other drawing the higher numbered drawing prevails. The first set of drawings, C.7.-C.49, was updated with a second set of drawings, C.69.-C.94. The third set of drawings, C.96.-C.98., updates both previous sets."

So, basically, you want to focus your attention to C.69 and on, with emphasis on C.96-C.98.

One final note for you - the use memo I indicated at our meeting is still being drafted. Unfortunately, it won't be ready until next Tuesday the 18th. I'll get it to you as soon as possible.

Don't hesitate to contact me with questions or concerns, or problems with viewing the drawings.

Thanks.

Kara Fioravanti

Senior Planner City of Portland Design Review Historic Review

From: Poelwijk, Yvonne

Sent: Thursday, January 06, 2011 1:45 PM

**To:** Ruiz, Amy; Trieu, Amy; DiBenedetto, Anna; Ames, Betsy; Finn, Brendan; Crail, Tim; Dillmann, Katja; Esau, Rebecca; Moore-Love, Karla; Beaumont, Kathryn; Edwards, Kenneth; Rees, Linly; Leddy, Lisa; Grumm, Matt; Newberry, Skip; Oishi, Stuart; Schmanski, Sonia; Parsons, Susan; Bizeau, Tom; Anderson, Toni; Kovatch, Ty; Poelwijk, Yvonne

Cc: Fioravanti, Kara

Subject: Jan 10, 2011 Commissioners' Assistants Briefing

Attached are the following:

Yvonne CAB Briefing Memo

Kara
Planner Briefing Memo
Staff Report (9-28-10)
DZ Commission Memo (11-1-10)
Revised Staff Report (11-12-10)
DZ Revised Findings and Decision (12-7-10)

Let me know if problems with opening reading attachments.

Yvonne L Poelwijk BDS, Records Management (503) 823-7814 Office Hours: Mon - Fri, 7:00 AM - 3:30 PM Yvonne.Poelwijk@portlandoregon.gov

### This is what you should see when you click on the link:

