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January 8, 2015

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Portland City Council
c/o Karla Moore-Love, Council Clerk
1221 SW 4th Ave, Rm 130
Portland, OR 97204

Re: Block 7 Application (LU 14-105474 CP ZC)

Dear Mayor Hales and City Commissioners:

Mill Creek Residential Trust, the applicant in the above captioned land use review, hereby notifies the City Council that the above-captioned application is hereby withdrawn.

The applicant plans to re-file a revised application to add a concurrent Central City Parking Review. This is consistent with the "Delay Decision" option identified in the memorandum to City Council from Sheila Frugoli dated January 6, 2015. As such, no further City Council hearing of the LU 14-105474 CP ZC application will proceed.

The attached press release provides additional detail on this decision by the applicant. Mill Creek Residential Trust and the Multnomah Athletic Club appreciate the input provided by the City Council during the previous hearings on this matter and look forward to working with the City Council in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "DRH", written over a light gray circular stamp.

Damien R. Hall

DRH:crs

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Portland, Oregon

| Bend, Oregon

| Orlando, Florida

| Washington, DC



January 8, 2015

Contact: Leslie Carlson, Brink Communications
503-805-5560/leslie@brinkcomm.com

**MAC and Mill Creek Residential will gather more data before moving forward
with Block 7 project in Goose Hollow**

Development partners will produce parking report before re-applying to City of Portland for zone change

(Portland, Ore.)—The Multnomah Athletic Club (MAC) and Mill Creek Residential announced today that they will provide more data to the City of Portland and neighbors before moving forward with their efforts to develop the Block 7 property and improve pedestrian safety in the Goose Hollow neighborhood.

To provide more information about the project's impact, the development team will submit for a Central City Parking Review (CCPR), a specific land use review for new parking in the City's Central City District. Parking in the Central City District is subject to a more stringent set of regulations not applicable in other parts of the city. While a CCPR was not required as part of Mill Creek's application for a comprehensive plan and zone change, the development team believes it will provide valuable information about the project's benefits to the city and the Goose Hollow neighborhood.

"We believe that the CCPR and additional data will be beneficial to city staff and commissioners as they further evaluate our proposed project," said Sam Rodriguez, Mill Creek Residential Senior Managing Director. "At the end of the day, this project meets the city's desire for vibrant dense housing in the central city and makes the already desirable Goose Hollow neighborhood safer and more livable."

The MAC owns the Block 7 property, which is located in between SW Main and SW Madison on SW 20th, and has partnered with Mill Creek Residential to develop a 260- to 280-unit apartment complex with underground parking.

The city's plans for Block 7 call for a dense multi-family residential development on the site, which has been vacant for 22 years. The proposed building would be similar in scale and size to other multifamily projects in proximity to the property. Parking under the building for tenants as well as MAC members is designed to alleviate parking congestion and increase pedestrian safety on nearby streets. A tunnel connection from the existing MAC garage to the Block 7 garage reduces the number of cars circling the neighborhood as they look for parking.

"This project is good for Goose Hollow, good for the MAC and good for the city," said Darcy Henderson, President of the MAC's Board of Trustees. "We look forward to working with Mill Creek, the neighbors and the city to get approval to move forward."

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MEMORANDUM

TO: Mayor Hales and City Commissioners
FROM: Stephen T. Janik & Damien R. Hall
DATE: December 1, 2014
RE: Block 7 Application – LU 14-105474
Our File NO. 12092-18

The continued hearing on this matter is on December 4, 2014. This memorandum addresses issues raised in the prior Council hearing on October 1, 2014. Specifically, this memorandum responds to (i) questions presented by the City Council at the prior hearing, (ii) the RH zone parking standards issue raised by BDS staff, (iii) issues raised by the attorney for Friends of Goose Hollow (FOGH), and (iv) issues regarding the 1992 MAC Master Plan.

I. QUESTIONS PRESENTED BY THE CITY COUNCIL

At the prior Council hearing, the following questions were asked by Commissioners.

- What part of the proposed development is allowed under RH zoning?
- What impact does the proposed MAC parking have on vehicle queuing at the entrance of the Salmon Street garage?
- What are the applicant's reasons for not requesting a concurrent Central City Parking Review (CCPR)?

Below, each question is answered in order.

A. What part of the proposed development is allowed under RH zoning?

This section identifies the specific building size and use allowances for development of Block 7 under the current RH zone. All dimensional figures used in this analysis are necessarily approximate. The dimensional figures are consistent with the conditions of approval recommended by the BDS staff and the Hearings Officer.

1. Building Size

982465.3



The same size building, above grade, that is being proposed for Block 7 is allowed by right in both the RH or CX zones. The three main dimensional standards used by the Portland City Code (PCC) to regulate building size are height, FAR, and building coverage. The Central City Plan District sets the maximum allowed height and FAR irrespective of the base zone. The following chart identifies the (i) maximum height and FAR allowed on Block 7, (ii) maximum building coverage allowed in the RH and CX zones, and (iii) the dimensions of the building proposed on Block 7.

	Maximum Height	Maximum Building Coverage	Maximum FAR
RH	100 ft.	85%	7:1
CX	100 ft.	100%	7:1
Block 7 Proposed	87 ft.	85%	5.87:1

As is evident from the above chart, the same size building being proposed on Block 7, above grade, is allowed by right under both the RH and CX zones.

2. Uses Allowed

The RH zone would allow the 260-280 apartment units and the associated 191 parking stalls outright. The MAC parking and the 16 MAC studios are classified as Retail Sales and Service uses. The RH zone does not allow any Retail Sales and Service uses as an outright permitted use.

Any Retail Sales and Service use in the RH zone requires a conditional use permit, which has numerous approval criteria similar to the criteria for the Comprehensive Plan change. A conditional use application would be just as vigorously opposed by the neighbors as this application.

Even if a conditional use application were approved, Retail Sales and Service uses in the RH zone are limited to 20% of the net building area; anything more is prohibited (PCC 33.120.100(B)(2)(b)(2)). The net building area is 240,000 square feet, and the maximum amount of Retail Sales and Service uses permissible under a conditional use is 48,000 sq. ft. The MAC uses are 60,000 sq. ft. and collectively cannot be allowed in the RH zone. The chart below summarized this.

	RH ZONE		
	Permitted by Right	Permitted Under CU	Prohibited
Residential Uses	Yes		
Retail Sales and Service Uses		<48,000 square feet	>48,000 square feet

B. What impact does the proposed MAC parking have on vehicle queuing at the entrance of the Salmon Street garage?

Construction of the proposed MAC parking will reduce vehicle queuing at the entrance of the Salmon Street garage because electronic signage will direct



motorists to the tunnel and available parking under Block 7 when the current garage is at or near capacity.

Currently, when the existing garage is near capacity security guards need to stop vehicles and direct them away from the garage causing queuing, congestion and delay. The electronic signage will eliminate these and will efficiently direct parkers into the tunnel and the new garage. This point is supported by the following excerpts from the record.

- "The two existing driveways to the MAC's main parking garage are expected to operate with a minimal amount of delay (<15 sec) during the weekday a.m. and p.m. peak hours with the provision of the additional MAC parking on Block 7." Exhibit A-3, Kittelson TIA, p. 42.
- "The additional MAC parking on Block 7 will decrease the need to turn drives away because the parking garage is full which regularly occurs during peak hours and results in up to 200 cars being turned away. As a result entrance queuing that can occur today when drivers are turned away due to the existing garage being full will be mitigated." Exhibit A-3, Kittelson TIA, p. 42.
- "At the broad level, we concur with the Kittelson findings. The current 'status quo' for parking and access demand results in a high number of vehicles turned away from the existing MAC parking facility during peak periods. This situation drives traffic and demand back into the neighborhood, increasing congestion and creating conflicts for access (on-street) between residents and MAC users. The new parking capacity proposed for the Block 7 project will absorb this demand efficiently through use of an existing curb cut. We think this is an innovative solution and benefits the urban form of the district by minimizing conflicts across the pedestrian way in a way that a "new" parking facility with a new ingress/egress point would not." Exhibit H-10c, Rick Williams Consulting.

Efficiently directing motorists to the tunnel when the main parking structure nears capacity will decrease the need to turn away motorists, and thereby reduce queuing at the entrance of the parking garage.

C. What are the applicant's reasons for not requesting a concurrent Central City Parking Review (CCPR)?

The development code is not clear that a CCPR can be combined with a Comprehensive Plan map amendment. The problem is that until a Comprehensive Plan change and zone change are approved – allowing the MAC Retail Sales and Service uses – the RH zoning would not allow for the filing of a CCPR for parking that is not a permitted use. Several code sections make it uncertain if the applicant could legally file a concurrent CCPR with its Comprehensive Plan and zoning map amendment requests.

Assuming the applicant filed a concurrent CCPR, and all three requests were approved, opponents could challenge that procedure. Thus, in order to avoid creating a potential appeal issue the applicant will pursue a CCPR subsequent to the current review. This issue is addressed in detail in the attached



memorandum, which is Exhibit A-11 in the record. In any event, the applicant must obtain a CCPR approval for the 225 parking spaces it is seeking.

II. RH Zone Parking Standards

BDS submitted a memorandum dated October 24, 2014 which clarified two points, (i) the RH base zone parking standards are not approval criteria for this review, and (ii) the amount of parking on Block 7 will ultimately be determined through a CCPR. The applicant agrees with both of these points.

The applicant referenced the minimum parking required by Tables 266-1 and 266-2 for a health club use, as an illustration of how much parking the existing MAC might need if those tables applied. The point was to further illustrate that the MAC uses don't have sufficient parking. Were the RH zone parking standards applicable (which they are not in the Central City Plan District) the MAC would be required to provide at least 400 parking spaces more than are currently available. In contrast, only 225 spaces are proposed. The RH parking standard is not determinative criteria in this review, but does demonstrate the relatively low amount of available dedicated parking for an institution the size of the MAC.

III. Issues Raised by Project Opponents

In testimony to the Council, the attorney for the Friends of Goose Hollow LLC made certain arguments that are not evidence-based and misconstrue the potential impacts and legal requirements associated with the proposed development of Block 7. These arguments are identified and responded to below.

FOGH Argument 1:

The proposed MAC parking will result in an increase in traffic in the Goose Hollow neighborhood.

Response 1:

The Kittelson TIA has established that the proposal will result in reduced traffic congestion and lessened competition for on-street parking between MAC members and guests and neighborhood residents and businesses. Opponents have offered no credible evidence to rebut this finding. Pertinent findings from the Kittelson analysis and review by Rick Williams Consulting are as follow.

- "The additional MAC parking on Block 7 will not generate any new trips, but will accommodate peak hour parking demand that is not currently served by the existing MAC garage." Exhibit A-3, p. 3.
- "[T]he additional MAC parking on Block 7 will not generate any new trips. It is not tied to any increase in membership or building size at the club." Exhibit A-3, p. 31.
- "[I]t is also important to address concerns that have been expressed by some in the neighborhood that new parking in and of itself generates new trips. From this perspective, the addition of parking to an area necessarily increases the generation of trips to an area. Our firm would dispute this assumption, given that demand for parking is not a function of a parking space; rather it is a function of the land use adjacent to the space. Historical data provided by the MAC indicates that both MAC membership



and event use has been static (membership) or in some cases declining (events) over the past decade. Under this scenario, the addition of parking to the area will have significant positive outcomes as the 200 vehicles currently estimated to be forced back into the neighborhood will be accommodated more efficiently off-street; mitigating on-street congestion and conflicts. In a sense, the net new spaces provided by your project are allowing parking for the MAC to be "right sized" to the historical demands that the trip generator (the MAC) has consistently generated over the past decade. There has not necessarily been an increasing demand for parking generated by the MAC; there has not been an off-street supply of parking sized to a historically documented parking demand." Exhibit H-10c, Rick Williams Consulting.

FOGH Argument 2:

The proposed MAC parking is all visitor parking and therefore subject to additional criteria.

Response 2:

This argument misunderstands the parking standards in the Central City Plan District. The attorney is incorrectly arguing that the new MAC parking is "Visitor Parking" under the Code. In fact, the MAC parking being proposed is clearly "Preservation Parking," as it is proposed in conjunction with an existing nonresidential use (the MAC). See PCC 33.510.261.B.2.

In contrast, Visitor Parking serves shoppers, tourists, and other occasional visitors and is not associated with a particular development. See PCC 33.510.261.B.3. Clearly, the MAC parking serves regular visitors (MAC members), is associated with a particular development (the MAC), and therefore is not Visitor Parking. Furthermore, the Visitor Parking criteria (PCC 33.808.100.H) cited in the testimony of FOGH counsel are part of the CCPR standards and therefore not applicable to the current application.

The applicable CCPR standards will be addressed in the application for CCPR approval.

FOGH Argument 3:

The Kittelson TIA does not account for the MAC studio uses and the public has no way of knowing if such uses have more impact than apartments.

Response 3:

This issue was addressed in a March 21, 2014 letter from the applicant's traffic consultant, Julia Kuhn, to City staff. Exhibit A-13. In that letter, Ms. Kuhn explains that apartment use generates more trips than a temporary lodging use such as the MAC studios.

Thus, the TIA utilization of trip generation rates for apartment uses applies a higher standard of comparison. In other words, if FOGH counsel gets her way and the trip generation rates for the MAC studios are considered as temporary lodging, the trip generation of the proposed project compares even more favorably to the apartment building that can be built by right under the RH zone.

IV. 1992 MAC Master Plan



The 1992 Master Plan was a "conditional use master plan" under Code Chapter 33.820, and is a conditional use approval. It arose out of the conditional use approval of the existing MAC garage. The previously approved conditional uses in the Master Plan became permitted uses in 1996, when the City Council rezoned the existing parking garage and MAC Clubhouse to CX. Pursuant to PCC 33.700.110(B)(2)(b), when a former conditional use becomes a permitted use, the prior conditions no longer apply. Here, the prior conditions that no longer apply are those from the MAC garage approval (which imposed the Master Plan requirement) and all conditions in the Master Plan itself. Thus, the 1996 rezoning eliminated the conditional use master plan.

Furthermore, the 1992 Master Plan states that it terminates when it "no longer applies as a conditional use." Master Plan, p. 7. Both by operation of PCC 33.700.110(B)(2)(b) and by its own terms, the 1992 Master Plan is no longer applicable.

Even if the 1992 Master Plan still applied, that plan identified "possible future uses," including Block 7. That possible future use was described as a single mixed-use project of commercial and residential uses that "would be primarily residential; however, it may also include Club facilities and parking and neighborhood retail uses." Master Plan, p. 17 (emphasis added). The proposed project is consistent with that "possible future use," and no Master Plan amendment is required.



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March 21, 2014

Stephen T. Janik
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Ms. Sheila Frugoli, Senior Planner
Bureau of Development Services
City of Portland
1900 SW 4th Avenue, Suite 5000
Portland OR 97201

Re: Comprehensive Plan Map and Zoning Map Amendment
(LU 14-105474 CP ZC) Block 7

CCPR Issues

Dear Ms. Frugoli:

In your completeness review letter of February 4, 2014 for the above matters, you questioned why the applicant was not concurrently submitting an application for a CCPR for the 225 MAC stalls included in the proposed project. You commented that such a concurrently-filed CCPR application would give the reviewers (the Hearings Officer and City Council) "a complete analysis." You asked the applicant to explain why the CCPR was not being concurrently submitted.

The reason why the applicant is not concurrently submitting the CCPR application is because we do not believe that Title 33 would allow such a concurrent submittal. If that analysis is correct, as we set forth below, an opponent of the project could argue before LUBA that the concurrent CCPR application was a material procedural error and, assuming the City Council's approval of the requested Comprehensive Plan change, a zoning map change, with a concurrent CCPR approval, LUBA could well remand the entire case if the consolidated decision improperly included an approval of the CCPR.

There are several reasons why we believe it would be imprudent to file a concurrent CCPR application.

First, the Code nowhere explicitly authorizes the filing of a CCPR (or any other non-zone change land use review) when the approval requested would not be allowed under the then-existing comprehensive plan designation and zoning. This would be the case if we file a concurrent CCPR because the parking requested is a Retail Sales and Service Use, which is not allowed under the existing Comprehensive Plan designation and zoning, given the amount of building space this parking would utilize.

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In addition, PMC § 33.700.070(C) which applies to "situations where the Code is silent," seems to address the current situation and provides: "Proposals for uses, development, or land divisions when the Code is silent or where the rules of this section do not provide a basis for concluding that the proposal is allowed are prohibited."

Second, PMC § 33.700.070(D)(1)(e) provides that "an adjustment, conditional use, or other land use review may not be requested in order to allow an exception to the regulation in question." Applying for a CCPR approval of 225 parking stalls now, before a Comprehensive Plan and zone change allowing such a use, would in effect be seeking an exception from the current plan designation and R-H zoning that would prohibit the 225 parking stalls.

Third, PMC § 33.810.030 allows concurrent Comprehensive Plan map changes and zoning map changes, but only if the zoning map change is consistent with the comprehensive map change. (To the same effect is PMC § 33.855.030.) The only logical inference from this Code section is that concurrent applications for other land use reviews, which are not consistent with the then existing comprehensive plan and zoning designations, are not allowed. This inference is consistent with and required by PMC § 33.700.070(C) quoted above.

Fourth, PMC § 33.700.080(c) provides: "Applications will not be accepted for building permits or land use reviews based on regulations or zone changes that have been approved but not yet implemented." However, pre-application conferences may be requested and held. Clearly, a CCPR is a "land use review" (See PMC § 33.808). The approval of 225 parking stalls under a CCPR when prohibited by the existing plan designation and zoning would not be allowed until a permissive zone change was approved.

The only practical concerns that we can see with applying for a CCPR after approval of the requested Comprehensive Plan change and zoning map change are the following:

1. As discussed in the pre-application conference, the applicant will be applying for 225 stalls of Preservation Parking pursuant to PMC § 33.510.265(B)(3). This request will be based on the fact that the existing MAC buildings have far less parking than either the minimum or maximum amount of parking allowed under PMC Tables 266-1 and 266-2. In fact, the parking deficiency is greater than 225 stalls. If there is a concern that a subsequently-filed CCPR application would request more than 225 stalls, that concern can be easily addressed. The applicant agrees that a subsequently-filed CCPR will not request any more stalls than 225.

2. The Kittelson & Associates Traffic Impact Analysis (the "TIA") filed as part of the application included sections addressing the CCPR approval criteria in PMC § 33.808.100. This was because the applicant asked that all traffic-



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related issues pertinent to the Comprehensive Plan map change, the zoning map change, and the CCPR be analyzed because it was efficient, once the data had been collected, to apply the data to the criteria in these three land use reviews because the criteria are similar and responses to those criteria will be, to a large extent, similar and be based on the same data.

In order to avoid any confusion, we have revised the TIA by deleting from the main body of the TIA any discussion of compliance with the CCPR approval criteria. We have placed that analysis in the TIA as Appendix G, if a reviewer would like to have that analysis. A copy of the revised TIA is attached.

I hope the above is a satisfactory response to the issue you raised in your February 4, 2014 letter and our subsequent meeting. Please feel free to call me if you would like to discuss this letter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Stephen T. Janik", written over a horizontal line.

Stephen T. Janik

cc: Mr. Sam Rodriguez
Mr. Mike Silvey
Ms. Julia Kuhn

STJ:llr
Enclosures