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March 11, 2015

VIA EMAIL

Planning & Sustainability Commission
c/o Bureau of Planning & Sustainability
City of Portland
1900 SW 4th Avenue, Suite 7100
Portland, OR 97201

Re: Draft 2035 Comprehensive Plan – Additional Comments
Space Age Fuel, Inc.

Dear Commissioners:

This firm represents Space Age Fuel, Inc. (“Space Age Fuel”). Space Age Fuel owns and operates several gas stations/convenience stores/service garages throughout the City. The draft 2035 Comprehensive Plan proposes to change the Comprehensive Plan designation of several of Space Age Fuel’s properties. Based on the Planning & Sustainability Commission (the “Commission”) work sessions, we are submitting the following additional comments regarding the draft 2035 Comprehensive Plan to supplement our previous written comments, dated October 28, 2014.

- A. The Commission should postpone its recommendations for the 2035 Comprehensive Plan until it can consider it concurrently with the Mixed Use Zones Project.**

As several of the Commissioners expressed at the January 27, 2015 work session, we share the concern about the City staff’s proposal to complete the Commission process for the 2035 Comprehensive Plan before it considers the Mixed Use Zones Project. In fact, the City staff’s proposed schedule anticipates the Commission completing its process for the 2035 Comprehensive Plan before the proposed mixed use zoning code amendments are even publically released. For the reasons provided below, Space Age Fuel continues to believe that the Commission should postpone its recommendations for the 2035 Comprehensive Plan until it can consider it concurrently with the Mixed Use Zones Project.

Adopting recommendations for the Comprehensive Plan map amendments first will prohibit or significantly restrict the Commission’s ability to reconsider mixed use zoning designations

during the Mixed Use Zones Project process. Once the Commission recommends mixed use Comprehensive Plan designations for certain properties, it will be required to recommend mixed use zoning for those same properties in order to be consistent with the Comprehensive Plan designation. Since the Mixed Use Zones Project will provide far more detailed information regarding the impact of new mixed use zoning on these properties, such as changes to the allowed uses and development standards, it makes far better sense for the Commission to determine the appropriateness of changing properties to mixed use designations and zoning after it has the opportunity to review this more detailed information. The current approach requires the Commission to make these important decisions based entirely on general Comprehensive Plan policies.

The lack of certainty and specificity regarding the effect of mixed use designations and zoning exacerbates the confusion, concern and resistance from the public. It is simply not possible for Space Age Fuel or other property owners to understand the implications of changing the Comprehensive Plan designation to mixed use when the mixed use zones and standards have not yet been created. While we appreciate the Commission's willingness to extend the time period for submitting public comments on the 2035 Comprehensive Plan until March 13, 2015, neither the proposed mixed use zoning map amendments nor the code amendments will be publically released until after this deadline. Considering the Comprehensive Plan Map amendments and Mixed Use Zones Project amendments concurrently will allow property owners to make more informed comments on the City's proposal.

Although it was helpful for the City staff to report on the status of the Mixed Use Zones Project at the January 27 work session, it raised more questions than it answered. The City staff was unable to answer many of the Commissioners' questions because the Mixed Use Zones Project process details have not been worked out. The Commission should have answers to these important questions before it adopts the Comprehensive Plan amendments.

The City staff still has not adequately explained why the Comprehensive Plan amendments and Mixed Use Zones Project cannot and should not be considered concurrently. The City staff noted at the January 27 work session that the City needs to adopt the Comprehensive Plan policies before it can consider new zoning standards, but that is not true. The Portland City Code (PCC) expressly allows for Comprehensive Plan amendments and zoning amendments to be considered concurrently. PCC 33.810.030. In fact, it is common for local governments to consider Comprehensive Plan amendments and zoning amendments concurrently because the two amendments are so intertwined. How can the Commission adopt policies without a better understanding of the implication of those policies?

The 2035 Comprehensive Plan and Mixed Use Zones Project will have long-term, broad and significant effects throughout the City. The Commission should do the right thing and postpone its recommendations for the Comprehensive Plan Map amendments and consider them concurrently with the Mixed Use Zones Project amendments.

B. The Commission should not support new mixed use Comprehensive Plan designations and zones that will prohibit or restrict existing gas stations/convenience stores/service garages.

As we expressed in our October 28, 2014 letter, any new mixed use Comprehensive Plan designations and zones adopted by the City must ensure that Space Age Fuel's existing gas stations/convenience stores/service garages are allowed uses and developments in the new mixed use zone. The existing uses on these properties are all allowed uses in the current zones. Any new zoning regulations must ensure that these uses continue to be allowed uses in the new mixed use zones. Additionally, the City should not change the mixed use zone development standards in a way that creates a nonconforming development or exacerbates any existing nonconforming development situations.

We previously expressed concerns that the City staff may change the use and/or development standards for auto-oriented uses such as gas stations in some mixed use zones based on preliminary comments from City staff. The most recent Mixed Use Zones Project refined zoning concept information sessions confirms this concern. As noted in the attached portions of the February 25-26, 2015 information sessions PowerPoint presentation and survey, the City staff is proposing to limit or restrict certain auto-oriented uses in Centers overlay zones. Since the City staff has not yet indicated what new mixed use zones will be applied to Space Age Fuel's properties, we are uncertain if these restrictions will apply to our properties.

The Commission should not support new mixed use Comprehensive Plan designations and zones that will prohibit or restrict existing gas stations/convenience stores/service garages. The Commission should not support changes that will create numerous nonconforming use situations. At the January 27 work session, the Commission heard testimony regarding ongoing problems with a number of existing nonconforming use situations throughout the City that create significant difficulties for the property owners. As a result of these problems, the City staff is proposing that the Commission adopt amendments as part of the 2035 Comprehensive Plan to bring many of these properties into conformance. Why would the City want to create new nonconforming use problems with the adoption of the 2035 Comprehensive Plan and Mixed Use Zones Project? Space Age Fuel will strenuously object to any changes in the use or development standards that render these developments nonconforming.

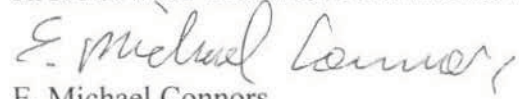
At a minimum, this is yet another reason that the Commission should postpone its recommendations for the Comprehensive Plan Map amendments and consider them concurrently with the Mixed Use Zones Project amendments. How can Space Age Fuel be expected to comment on the proposed changes to the Comprehensive Plan designation of its properties when it is not certain if those new designations will result in restrictions to its existing operations and/or conversion of these uses to nonconforming uses?

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We appreciate your consideration of our comments. We look forward to working with the City further on this matter.

Very truly yours,

HATHAWAY KOBACK CONNORS LLP

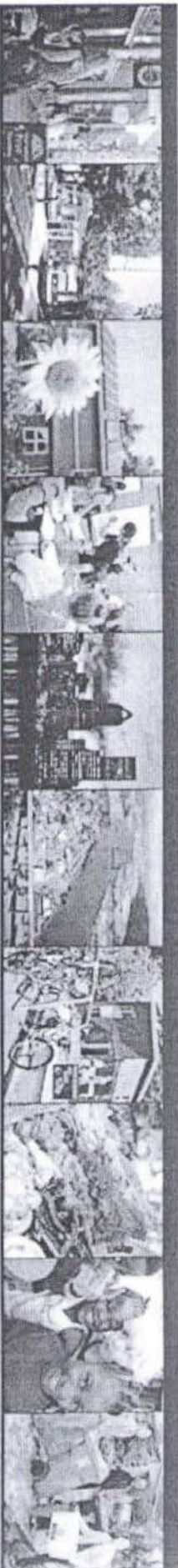
A handwritten signature in cursive script that reads "E. Michael Connors".

E. Michael Connors

EMC/df

Enclosures

cc: Space Age Fuel, Inc.



Mixed Use Zoning Project

Draft Revised Zoning Concept

Information Sessions

February 25-26, 2015



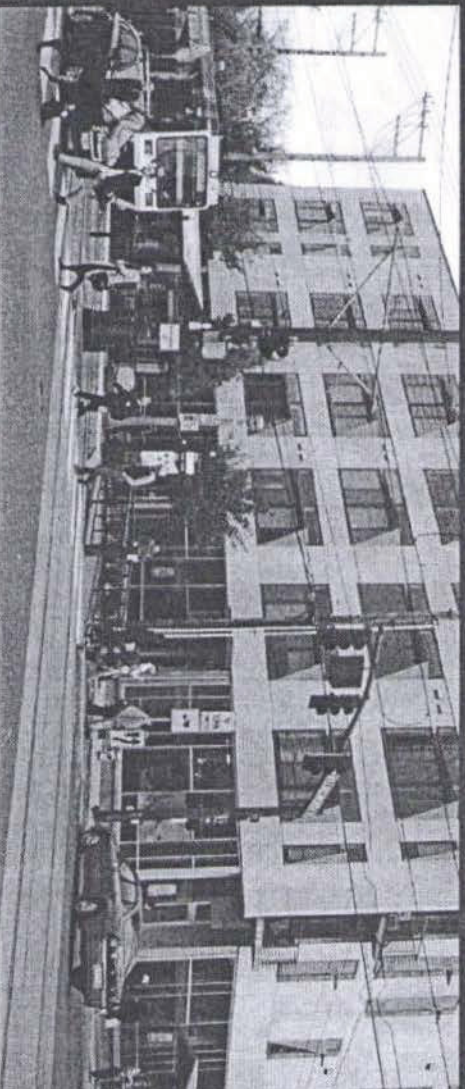
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Revised Zoning Concept: Centers Overlay

Create overlay zone that would be applied to core areas of centers with regulations that:

- Limit/prohibit: drive thru development, quick vehicle servicing, self-storage, other non-pedestrian uses
- Require/provide incentives for active ground floor uses
- Enhanced ground floor window requirements
- Set minimum floor area or residential density



Mixed Use Zones Project

Refined Zoning Concept – Information Sessions

February 25 & 26, 2015

Welcome and thanks for attending! The purpose of this information session is to:

- Share information about the conceptual zoning components, directions and framework
- Hear your feedback on how to approach zoning and design issues

Complete the Survey. We would like to hear your feedback on Zoning Code approaches for the mixed use zones. Indicate below your level of agreement with these potential approaches and drop off your comments at the sign-in table, or send them by **March 6, 2015** to:

Mixed Use Zones Project
 Portland Bureau of Planning and Sustainability
 1900 SW 4th Avenue #7100, Portland, OR 97201
mixedusezones@portlandoregon.gov
 503-823-7800 (f); 503-823-7700 (p)

Please tell us a bit about yourself (optional):

Resident: ___ Businessperson: ___ Development Pro: ___

Own: ___ Rent: ___ How Long in Portland: _____

Neighborhood: _____

Age: _____ Race/Ethnicity: _____

Feedback on Zoning Code Development and Design Direction

The city is exploring a range of development standards and other regulatory approaches to be included in the new mixed use zones. Please share your feedback on your level of agreement (circle response) with the following potential approaches (topic numbers correspond to numbers used in the [workshop presentation](#) and display boards).

Topic #	Zoning Code Approach	Level of Agreement		
1.	Relate building height to street scale. Require 75% of the upper-levels of buildings along narrower corridors (less than 70' wide) to be set back from the street frontage:			
	a. In the CM2 zone, limit building height to 3 stories (up to 38') within 10' of the front property line. b. In the CM3 zone, limit building height to 4 stories (up to 48') within 10' of the front property line.	Agree	Neutral	Disagree
Comments _____				
2.	Accommodate ground-floor active uses and roofline variety.			
	a. Allow additional 3' of building height for ground-floor commercial spaces.	Agree	Neutral	Disagree
	b. Allow parapets and minor architectural features to exceed height limits.	Agree	Neutral	Disagree
Comments _____				
3.	Height transitions and buffering.			
	a. Require taller buildings to "step down" to height of adjacent residential zones.	Agree	Neutral	Disagree
	b. Require a 10' setback adjacent to residential zones.	Agree	Neutral	Disagree
	c. Allow averaging of setbacks adjacent to residential zones, with deeper rear area setbacks in exchange for reduced setbacks within 50' of street frontages.	Agree	Neutral	Disagree
Comments _____				
	d. Exempt 1-story buildings from the 10' setback requirement.	Agree	Neutral	Disagree

Topic #	Zoning Code Approach	Level of Agreement
11.	Side setback requirements. Require residential windows to be located at least 5 feet from side or rear property lines. Comments _____ _____	Agree Neutral Disagree
12.	Detached house development. Limit new detached houses in the core mixed use/commercial areas of centers. Comments _____ _____	Agree Neutral Disagree
13.	Performance Bonus for public benefits. Please indicate your preference to an approach that sets a base development allowance and provides additional height or floor area when public/community benefits are provided in new development (e.g., affordable housing and commercial space, historic preservation, community services, publicly-accessible plazas, high-performance green features, and other potential elements). a. Set new development allowances and provide bonuses above existing (proposed). b. Set new development allowances and bonus back up to existing allowances. c. Maintain existing development allowances and bonus above existing. d. None of the above, or disagree with performance bonus approach. Comments _____ _____	<i>Check preferred approach</i> a. <input type="checkbox"/> b. <input type="checkbox"/> c. <input type="checkbox"/> d. <input type="checkbox"/>
15.	Neighborhood notification requirements. Require neighborhood and business association notification of new development in mixed use zones. Comments _____ _____	Agree Neutral Disagree
16.	Exterior display areas. Allow for exterior display of merchandise, vending carts, etc.	Agree Neutral Disagree
17.	Shared parking. Expand allowances for shared parking, allowing multiple businesses and residential buildings to share parking facilities. Comments _____ _____	Agree Neutral Disagree
Other	Core area requirements. Develop a "centers overlay"- to be applied in core commercial areas of centers - that requires buildings designed for active ground floor uses, requires pedestrian-oriented design features, <u>limits auto-oriented/drive-through uses</u> , and sets a minimum floor area development standard. Comments _____ _____	Agree Neutral Disagree