

4-10-15

BDS
ATTN: YVONNE POELWIJK
1900 SW 4TH AVE, STE 5000
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131/220



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

FROM CONCEPT TO CONSTRUCTION

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

**NOTICE OF A RESCHEDULED PUBLIC HEARING BEFORE
THE CITY COUNCIL ON AN APPEAL OF THE
PORTLAND HISTORIC LANDMARKS COMMISSION**

CASE FILE: LU 14-218444 HREN – MT. TABOR RESERVOIRS DISCONNECTION

WHEN: May 28, 2015, 2:00 PM (Rescheduled from May 14, 2015 @ 2:00 PM)

WHERE: COUNCIL CHAMBERS, 1221 SW FOURTH AVENUE, PORTLAND OR 97204

Date: April 9, 2015
To: Interested Person
From: Hillary Adam, Land User Services, 503-823-3581

This purpose of this Notice is to inform you, as an interested party, that the Appeal hearing date before City Council for the above-referenced land use case has been rescheduled from May 14, 2015 @ 2:00 PM to May 28, 2015 @ 2:00 PM. Please refer to the original notice for all background information regarding this case.

The Historic Landmarks Commission decision of **approval with conditions** has been appealed by **the Portland Water Bureau and the Mt. Tabor Neighborhood Association**.

A public hearing will be held to consider an appeal of the Historic Landmarks Commission decision to approve with conditions a proposal to disconnect the Mt. Tabor Reservoirs from the public drinking water system at Mt. Tabor Park (6325 SE Division). The Historic Landmarks Commission decision of approval with conditions has been appealed by the Portland Water Bureau and the Mt. Tabor Neighborhood Association. At the hearing, City Council will consider the appeal. You are invited to testify at the hearing.

This will be an Evidentiary hearing, one in which new evidence can be submitted to the City Council. For a general explanation of the City Council hearing process please refer to the last page of this notice.

Appellant: Mt. Tabor Neighborhood Association
c/o Ty K. Wyman, Esq. 503-224-7324
851 SW Sixth Avenue, Suite #1500
Portland, OR 97204

Applicant/Appellant: Tom Carter, Applicant 503-823-7463
Teresa Elliot, Property Manager 503-823-7622
Patrick Easley, Contact Person 503-823-7005
City of Portland, Owner
c/o Portland Water Bureau
1120 SW 5th Avenue, Suite 600
Portland, OR 97204

Site Address: 6325 SE DIVISION ST (Mt. Tabor Park)

**GENERAL EXPLANATION OF CITY COUNCIL APPEAL HEARING PROCESS FOR
EVIDENTIARY/DE NOVO APPEALS**

1. SUBMISSION OF TESTIMONY

- a. Testimony may be submitted in writing to the Council Clerk, 1221 SW Fourth Avenue, Room 130, Portland, Oregon 97204; or via email to CCTestimony@portlandoregon.gov. Written comments must be received by the time of the hearing and should include the case file number.
- b. Testimony may be submitted orally (see below).

2. HEARINGS PROCESS

- a. The order of appearance and time allotments is generally as follows:

Staff Report	10 minutes
Appellant 1 (PWB)	10 minutes
Appellant 2 (MTNA)	10 minutes
Public Testimony	2.8 minutes each
Appellant 1 (PWB) Response	10 minutes
Appellant 2 (MTNA) Response	10 minutes
Appellant 1 (PWB) Rebuttal	5 minutes
Appellant 2 (MTNA) Rebuttal	5 minutes
Council Discussion	

- b. The applicant has the burden of proof to show that each and every element of the approval criteria can be satisfied. If the applicant is opposing the Historic Landmarks Commission's decision, the applicant may also argue the criteria are being incorrectly interpreted, the wrong approval criteria are being applied or additional approval criteria should be applied.
- c. In order to prevail, the opponents of the application must persuade the City Council to find that the applicant has not carried the burden of proof to show that the evidence submitted in support of the application demonstrates that each and every element of the approval criteria is satisfied. The opponents may wish to argue the criteria are being incorrectly applied, the wrong criteria are being applied or additional approval criteria should be applied.
- d. The failure to address an issue with sufficient specificity to afford the decision maker and the parties an opportunity to respond to the issue precludes an appeal to the Land Use Board of Appeals (LUBA) on that issue.

3. OTHER INFORMATION

- a. Prior to the hearing, the case file and the Review Body decision are available for review by appointment, at the Bureau of Development Services, 1900 SW 4th Avenue, Portland, OR 97201. Call 503-823-7617 to make an appoint to review the file.

If you have a disability and need accommodations, please call 823-4085 (TDD: 823-6868). Persons requiring a sign language interpreter must call at least 48 hours in advance.

3-5-2015

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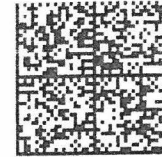
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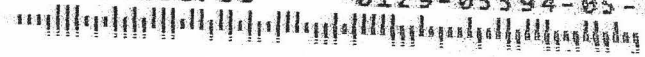
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City of Portland, Oregon
Bureau of Development Services
Land Use Services

FROM CONCEPT TO CONSTRUCTION

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

**NOTICE OF A PUBLIC HEARING BEFORE
THE CITY COUNCIL ON AN APPEAL OF THE
PORTLAND HISTORIC LANDMARKS COMMISSION**

CASE FILE: LU 14-218444 HREN – MT. TABOR RESERVOIRS DISCONNECTION
WHEN: May 14, 2015, 2:00 PM
WHERE: COUNCIL CHAMBERS, 1221 SW FOURTH AVENUE, PORTLAND OR 97204

Date: March 5, 2015
To: Interested Person
From: Hillary Adam, Land User Services, 503-823-3581

The Historic Landmarks Commission decision of **approval with conditions** has been appealed by **the Portland Water Bureau and the Mt. Tabor Neighborhood Association**.

A public hearing will be held to consider an appeal of the Historic Landmarks Commission decision to approve with conditions a proposal to disconnect the Mt. Tabor Reservoirs from the public drinking water system at Mt. Tabor Park (6325 SE Division). The Historic Landmarks Commission decision of approval with conditions has been appealed by the Portland Water Bureau and the Mt. Tabor Neighborhood Association. At the hearing, City Council will consider the appeal. You are invited to testify at the hearing.

This will be an Evidentiary hearing, one in which new evidence can be submitted to the City Council. For a general explanation of the City Council hearing process please refer to the last page of this notice.

Appellant: Mt. Tabor Neighborhood Association
c/o Ty K. Wyman, Esq. 503-224-7324
851 SW Sixth Avenue, Suite #1500
Portland, OR 97204

Applicant/Appellant: Tom Carter, Applicant 503-823-7463
Teresa Elliot, Property Manager 503-823-7622
Patrick Easley, Contact Person 503-823-7005
City of Portland, Owner
c/o Portland Water Bureau
1120 SW 5th Avenue, Suite 600
Portland, OR 97204

Site Address: 6325 SE DIVISION ST

Legal Description: TL 100 190.28 ACRES, SECTION 05 1S 2E
Tax Account No.: R992050130, R992050130
State ID No.: 1S2E05 00100, 1S2E05 00100
Quarter Section: 3236,3237,3136,3137

Neighborhood: Mt. Tabor, contact Stephanie Stewart at 503-230-9364.

Business District: Eighty-Second Ave of Roses Business Association, contact Frank Harris at 503-774-2832.

District Coalition: Southeast Uplift, contact Bob Kellett at 503-232-0010.

Plan District: None

Other Designations: Mount Tabor Park Reservoirs Historic District was listed in the National Register of Historic Places on January 15, 2004. Mount Tabor Park, also a historic district, was listed in the National Register of Historic Places on September 22, 2004.

Zoning: OS, OSc – Open Space base zone with Environmental Conservation overlay zone

Case Type: HR (Historic Resource Review) & EN (Environmental Review)
Procedure: Type III, with a public hearing before the Historic Landmarks Commission. The decision of the Historic Landmarks Commission can be appealed to City Council.

Proposal: In order to respond to the federal government’s Long Term Enhanced Surface Water Treatment Rule (LT2), which requires that the City of Portland cap or treat it’s drinking water, the Portland Water Bureau (PWB) proposes to disconnect Reservoirs 1, 5, and 6 from the city’s drinking-water system and construct new piped connections, valves, and other appurtenances on site that will allow continued operation of the water system without the use of the historic open reservoirs. When completed, the proposal will allow the reservoirs to continue to be used as water features that hold non-potable water. In order to comply with a federal drinking-water rule, the uncovered reservoirs must be physically disconnected in a way that prevents water in them from being released—even accidentally—into the drinking water distribution system.

The project occurs within Mount Tabor Park, in southeast Portland. The entire site is owned by the City of Portland and managed by the Portland Water Bureau and Portland Parks and Recreation. Mount Tabor was first established as a distribution site for Portland’s water in 1894, when two reservoirs were constructed. The reservoirs at Mount Tabor and, separately, Mount Tabor Park itself were listed in the National Register of Historic Places in 2004.

As a part of the disconnection process, some underground pipes that convey water from the reservoirs into the drinking water system will be cut and their ends plugged, and a new bypass pipe will be installed. The proposed work will take place at 11 discrete work areas in the park and includes only the changes required to disconnect the reservoirs from the drinking water system and to continue to operate the City’s water system without the Mount Tabor uncovered reservoirs. In order to continue to deliver the necessary volume of water to the drinking water distribution system, a bypass pipe and two connecting pipes will be constructed to carry it. PWB will also install two backflow preventers, two above-ground air vents, two sub-grade vaults, and covers of different sizes and shapes over manholes, sampling ports, and vaults.

The proposed changes can be reversed if, in the future, the federal rule is reversed.

When the project is completed, the reservoirs will be filled using the existing inlet pipes, drained into the City’s storm sewer system, cleaned and periodically refreshed. This will continue until a future project, to determine the future use of Mount Tabor Reservoirs, is completed.

Upon completion of the project, park users and neighbors can expect the following:

- PWB will continue to fill the reservoirs and periodically refresh the water in them until the future use planning is completed or until City Council directs otherwise.
- The reservoirs will retain existing inlet pipes or weirs maintaining the ability to fill the reservoirs in a manner comparable to the existing conditions.
- The reservoirs will continue to have the ability to be drained to the sewer system and the existing wash-down piping system used for cleaning the reservoirs will remain in place.
- The historic structures will have been protected from damage and kept in their current condition with no significant impacts or changes.
- Roads, trails and grassy areas that were disturbed by construction work will have been repaired and restored.
- All excavations will have been filled to restore and blend in with the original contours and all disturbed ground will be planted to blend with the surrounding vegetation.
- PWB will restore the west dog park entrance.

Because the proposed reservoir projects occur within the Mount Tabor Park Reservoirs Historic District and within Mount Tabor Park, also a historic district; and because some of the projects will occur within the city's Environmental Conservation overlay zone, both Historic Resource Review and Environmental Review are required, as noted below.

Historic Resource Review:

Specific to the Historic Resources Review, the applicant proposes the following alterations to the Mt. Tabor Reservoirs and surrounding parklands:

- Capping and plugging existing underground pipe. In some work areas, this requires excavation of earth and existing roadways, removal of existing pipe, and installation of new piping with restoration of the earth and roadways to existing or comparable conditions (Work Areas 2, 3, 4, 5, 6, 7, 8);
- Removal of existing underground vaults and construction of new underground vaults, including manhole covers, cast iron valve covers, air/vacuum release valves, above-ground vents. Work Area 7 will include two small concrete vaults beneath the walkway with concrete lids and brushed metal hatch covers. (Work Areas 3, 4, 5, 6, 7);
- Removal of existing gates at dog off-leash area and replacement with a new double-gate for pedestrians and new vehicle gate (Work Area 2);
- Removal of existing trees and landscaping and restoration of such landscaping, as feasible, based on location of existing and proposed piping, and areas capable of accepting new plantings (Work Areas 2, 5);
- Installation of buried electrical conduit (Work Areas 3, 4, 7);
- Construction of underground thrust blocks and cathodic protection system (Work Area 7);
- Construction of an above-ground electrical cabinet on concrete pad with shrub screening (Work Areas 7, 8);
- Cutting and temporarily removing historic iron pipe handrail to provide temporary access of construction vehicles, after which it will be reinstalled via welding to approximately match the existing condition (Work Area 5);
- Capping or covering outlet pipe openings in the reservoir (Work Areas 9, 10);
- Screening the inlet weir opening (Work Areas 9, 10);
- Welding shut the inlet opening inside the gatehouse (Work Areas 9, 10);
- Placing bar grating across the drain pipe opening (Work Areas 9, 10, 11);
- Screening the openings of the two pipes connecting Reservoirs 1 and 5 (Work Areas 9, 10);
- Removing the sheet metal barrier from the fence above the weir opening (Work Area 9);
- Removal of existing pipe and installation of new pipe within and outside of the Chlorination Building (Work Area 10);

- Installation of alarms in the weir and reservoir to alert when water levels in the reservoir approaches the weir, encroaching on the air gap (Work Areas 10, 11);
- Small penetrations and installation of vents and condulets at the roof and east wall Gatehouse 6 East, respectively (Work Area 11);
- Removing pipe ends and installing caps on the flanges of the outlet pipes (Work Area 11);
- Installation of new pipe inside Gatehouse 6 (Work Area 11); and
- Planting of new trees along the SE Harrison entrance (Work Area 12)

Historic Resource Review is required because the proposal is for non-exempt alterations to a Portland Historic Landmark and to resources in the Mount Tabor Park Reservoirs Historic District.

Environmental Review:

A portion of the Mt. Tabor site is within the City's Environmental Conservation overlay zone. Certain standards must be met to allow the work to occur by right. If the standards are not met, an Environmental Review is required. In this case, two elements of this project take place within the environmental overlay zones:

- **Construct approximately 850 feet of 48-inch steel pipe** from Conduit 3 to the pipe in SE Lincoln Drive near a park entrance (Work Area 3--about 350 feet of the pipe are within the Environmental Conservation zone).

The main itself is 48 inches in diameter, and requires a trench that provides three feet of clearance on each side. The resulting excavation will be a trench approximately ten feet wide. To dig such a trench and work safely alongside and within it, a disturbance area approximately 35 feet wide is needed.

The work involves the following elements:

- Construct a new 48-inch pipe in SE Lincoln Drive. About 350 feet of the pipe is within the environmental conservation overlay zone, but beneath the existing pavement.
 - Install a flow meter, appurtenances and vault with two manholes in the paved driveway.
 - Install two small electrical conduits and wiring in the paved driveway.
 - Install five CIV covers in locations to be determined.
- **Vault Work in Gravel Access Road** (Work Area 6). Conduit 4 is 56-inches in diameter. It will be disconnected from the distribution system at this location by cutting and plugging the pipe on the south side of the vault. The remaining portion of Conduit 4 will continue to service Reservoir 5. The second pipe (Conduit 2) is 44-inches in diameter and also follows this gravel road. It will be cut and plugged just past the vault, after it connects with the 30-inch diameter pipe. Valves will be installed on the conduits and the distribution pipe to control the direction of flow.

A new combination air/vacuum release valve will be installed inside the existing vault, to allow the release of entrapped air or relative vacuums and avoid damage to the pipes. A vent pipe will be installed on top of the same vault to allow air to freely flow in and out of it.

All of the excavation and ground disturbance required to complete this work will take place within the boundaries of the gravel driveway and existing vault disturbance areas.

The construction work in Work Areas 3 and 6 will avoid removing trees or other vegetation from environmental resource areas. In both locations work will occur in existing driveways and developed areas around existing vaults.

The disturbance areas described for the projects exceed the utility line development standards listed in Zoning Code section 33.430.150, and are therefore subject to environmental review.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are found in Zoning Code Section:

- **Historic Resource Review: 33.846.060. G** Other approval criteria
- **Environmental Review: 33.430.250 A** Public safety facilities, roads, driveways, walkways, outfalls, utilities, land divisions, Property Line Adjustments, Planned Developments, and Planned Unit Developments

HISTORIC LANDMARKS COMMISSION DECISION

It is the decision of the Historic Landmarks Commission to approve Historic Resource Review and Environmental Review for:

Historic Resource Review

Approval of the following alterations to the Mt. Tabor Reservoirs and surrounding parklands:

- Capping and plugging existing underground pipe. In some work areas, this requires excavation of earth and existing roadways, removal of existing pipe, and installation of new piping with restoration of the earth and roadways to existing or comparable conditions (Work Areas 2, 3, 4, 5, 6, 7, 8);
- Removal of existing underground vaults and construction of new underground vaults, including manhole covers, cast iron valve covers, air/vacuum release valves, above-ground vents. Work Area 7 will include two small concrete vaults beneath the walkway with concrete lids and brushed metal hatch covers. (Work Areas 3, 4, 5, 6, 7);
- Removal of existing gates at dog off-leash area and replacement with a new double-gate for pedestrians and new vehicle gate (Work Area 2);
- Removal of existing trees and landscaping and restoration of such landscaping, as feasible, based on location of existing and proposed piping, and areas capable of accepting new plantings (Work Areas 2, 5);
- Installation of buried electrical conduit (Work Areas 3, 4, 7);
- Construction of underground thrust blocks and cathodic protection system (Work Area 7);
- Construction of an above-ground electrical cabinet on concrete pad with shrub screening (Work Areas 7, 8);
- Cutting and temporarily removing historic iron pipe handrail to provide temporary access of construction vehicles, after which it will be reinstalled via welding to approximately match the existing condition (Work Area 5);
- Capping or covering outlet pipe openings in the reservoir (Work Areas 9, 10);
- Screening the inlet weir opening (Work Areas 9, 10);
- Welding shut the inlet opening inside the gatehouse (Work Areas 9, 10);
- Placing bar grating across the drain pipe opening (Work Areas 9, 10, 11);
- Screening the openings of the two pipes connecting Reservoirs 1 and 5 (Work Areas 9, 10);
- Removing the sheet metal barrier from the fence above the weir opening (Work Area 9);
- Removal of existing pipe and installation of new pipe within and outside of the Chlorination Building (Work Area 10);
- Installation of alarms in the weir and reservoir to alert when water levels in the reservoir approaches the weir, encroaching on the air gap (Work Areas 10, 11);
- Small penetrations and installation of vents and condulets at the roof and east wall Gatehouse 6 East, respectively (Work Area 11);
- Removing pipe ends and installing caps on the flanges of the outlet pipes (Work Area 11);
- Installation of new pipe inside Gatehouse 6 (Work Area 11); and
- Planting of new trees along the SE Harrison entrance (Work Area 12)

Approvals per Exhibits C-1 through C-52, signed, stamped, and dated February 9, 2015, subject to the following conditions:

- A.** As part of the building permit application submittal, the following development-related conditions (A – E) must be noted on each of the 4 required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled “ZONING COMPLIANCE PAGE- Case File LU 14-218444 HR EN. All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled “REQUIRED.”
- B.** Following completion of the disconnection, Reservoirs #1, #5, and #6 must continue to hold water within the normal historic operating range for each reservoir, which is 50% to 75%. The reservoirs must be maintained and cleaned, and may be emptied (partially or fully) for brief periods, as necessary, to address system operational requirements, to maintain security, regulatory compliance, or for safety concerns. The reservoirs shall not be partially or fully emptied for more than 60 days total, either consecutive or non-consecutive, within a calendar year, except in emergency circumstances. Any proposal to permanently remove visible water from the site, as required in the preceding sentence, will require a follow-up land use application to be reviewed by the Historic Landmarks Commission.
- C.** Within 5 years of final approval of this land use review, the City of Portland shall develop an interpretation program that tells the history of the Mt. Tabor Reservoirs and the Bull Run water delivery system, including the proposed disconnection. Prior to application for a Type II land use review, the City of Portland shall request and complete a Design Advice Request with the Historic Landmarks Commission in order to obtain advice on the parameters of the interpretation program.
- D.** The applicant will engage a qualified archaeologist to assess the project’s potential to impact archaeological resources. This assessment should include review by a qualified geo-archaeologist and be completed prior to issuance of construction permits. In the event of any archaeological discovery, work potentially affecting the archaeological resources will be stopped, the State Archaeologist will be notified, and the procedures specified by state regulations will be followed.
- E.** The City of Portland shall formally adopt the May 2009 Mount Tabor Reservoirs Historic Structures Report and fully implement the short- and long-term restorative recommendations and maintenance therein, including removal of non-historic elements, such as light fixtures and conduit, and restoration of the contributing resources of the Mt. Tabor Park Reservoirs Historic District by December 31, 2019.

Environmental Review

Approval of an Environmental Review for:

- Construct approximately 350 feet of 48-inch steel pipe in Work Area 3, within the Environmental Conservation zone; and
- Conduct Vault Work in Work Area 6, within the Environmental Conservation zone.

This approval is per Exhibits C.15, C.18, C.32, C.35, C.52, and Exhibit A.1 Appendices C and F, signed, stamped, and dated February 9, 2015, and subject to the following conditions:

- A. A BDS construction permit may be required.** Copies of the approved Exhibits C.15, C.18, C.32, C.35, C.52, and Exhibit A.1 Appendices C and F. LU 14-218444 HR EN and Conditions of Approval listed below, shall be included within all plan sets submitted for permits (building, Zoning, grading, Site Development, erosion control, etc. See “Other Technical Requirements” listed above). These exhibits shall be included on a sheet that is the same size as the plans submitted for the permit and shall include the following

statement, "Any field changes shall be in substantial conformance with approved LU 14-218444 HR EN Exhibits C.15, C.18, C.32, C.35, and C.52."

- B.** Temporary construction fencing shall be installed according to Section 33.248.065 or 33.248.068 (Tree Preservation Plans/Tree Protection Requirements), except as specified below. Temporary chain link, construction fencing shall be placed along the Limits of Construction Disturbance for the approved development, as depicted on Exhibit C.32 & C.35 Construction Management Plans, and as described in Exhibit A.1 Appendices C and F (Construction Management Plan and Tree Protection Plan) or as required by inspection staff during the plan review and/or inspection stages.
 - 1. No mechanized construction vehicles are permitted *in the environmental zones* outside of the approved "Limits of Construction Disturbance" delineated by the temporary construction fence. All planting work, invasive vegetation removal, and other work to be done outside the Limits of Construction Disturbance, shall be conducted using hand held equipment.
 - 2. All temporary construction areas *in the environmental zones* shall be revegetated, using native vegetation, as described in the Construction Management Plan in Exhibit A.1 Appendix C.
- C.** Failure to comply with any of these conditions may result in the City's reconsideration of this land use approval pursuant to Portland Zoning Code Section 33.700.040 and /or enforcement of these conditions in any manner authorized by law.

Note: In addition to the requirements of the Zoning Code, all uses and development must comply with other applicable City, regional, state and federal regulations.

This decision applies to only the City's environmental regulations. Activities which the City regulates through PCC 33.430 may also be regulated by other agencies. In cases of overlapping City, Special District, Regional, State, or Federal regulations, the more stringent regulations will control. City approval does not imply approval by other agencies.

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APPEAL

The Historic Landmarks Commission decision of an approval with conditions has been appealed by the Portland Water Bureau (Appellant #1) and the Mt. Tabor Neighborhood Association (Appellant #2).

According to the Appellant #1's statement, the appeal of the Historic Landmarks Commission decision is based on objection to:

- Condition #B language: "The reservoirs shall not be partially or fully emptied for more than 60 days total, either consecutive or non-consecutive, within a calendar year, except in emergency circumstances."
- Condition #E: "The City of Portland shall formally adopt the May 2009 Mount Tabor Reservoirs Historic Structures Report and fully implement the short- and long-term restorative recommendations and maintenance therein, including removal of non-historic elements, such as light fixtures and conduit, and restoration of the contributing resources of the Mt. Tabor Park Reservoirs Historic District by December 31, 2019."

According to the Appellant #2's statement, the appeal of the Historic Landmarks Commission decision is based on arguments that:

- 1. The Bureau of Development Services (BDS) failed to require identification of legal lot boundaries within the subject property;
- 2. The project requires Conditional Use approval because it changes the amount of existing basic utility use by more than 10%;
- 3. The application does not contain sufficient evidence that the application is exempt from a new Conditional Use review;

4. The record lacks sufficient evidence to demonstrate that the applicant will retain and preserve the reservoirs; and
5. The application does not demonstrate reversibility and the project jeopardizes the existing conditional use status (basic utility), therefore the decision does not ensure possible future restoration of the historic function of the site.

Review of the case file: The Historic Landmarks Commission decision and all evidence on this case are now available for review at the Bureau of Development Services, 1900 SW 4th Avenue, Suite 5000, Portland, OR 97201. Copies of the information in the file can be obtained for a fee equal to the City's cost for providing those copies. I can provide some of the information over the phone.

We are seeking your comments on this proposal. The hearing will be held before the City Council. To comment, you may write a letter in advance, or testify at the hearing. In your comments, you should address the approval criteria, as stated above. Please refer to the file number when seeking information or submitting testimony. Written comments **must be received by the end of the hearing** and should include the case file number and the name and address of the submitter. It must be given to the Council Clerk, in person, or mailed to 1221 SW Fourth Avenue, Room 140, Portland, OR 97204. A description of the City Council Hearing process is attached.

If you choose to provide testimony by electronic mail, please direct it to the following link: CCTestimony@portlandoregon.gov. Due to legal and practical reasons, City Council members cannot accept electronic mail on cases under consideration by the Council. Any electronic mail on this matter must be received no less than one hour prior to the time and date of the scheduled public hearing. The Council Clerk will ensure that all City Council members receive copies of your communication.

City Council's decision is final. Any further appeal must be filed with the Oregon Land Use Board of Appeals (LUBA). Failure to raise an issue in a hearing, in person or by letter, by the close of the record or at the final hearing on the case or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue, precludes an appeal to LUBA on that issue. Also, if you do not provide enough detailed information to the City Council, they may not be able to respond to the issue you are trying to raise. For more information, call the Auditor's Office at (503) 823-4086.

If you have a disability and need accommodations, please call 503-823-4085 (TDD: 503-823-6868). Persons requiring a sign language interpreter must call at least 48 hours in advance.

Attachments

1. Zoning Map
2. Site plan
3. Appellant #1 Statement
4. Appellant #2 Statement
5. City Council Appeal Process



City of Portland, Oregon - Bureau of Development Services

1900 SW Fourth Avenue • Portland, Oregon 97201 • 503-823-7300 • www.portlandoregon.gov/bds



Type III Decision Appeal Form

LU Number: LU 14-218444 HR EN

FOR INTAKE, STAFF USE ONLY

Date/Time Received 2/26/15 @ 2:05 Action Attached

Received By 5th FL Reception Fee Amount \$3,975-

Appeal Deadline Date _____ Fee Waived

Entered in Appeal Log Bill # 3231894

Notice to Auditor Unincorporated MC

Notice to Dev. Review _____

APPELLANT: Complete all sections below. Please print legibly.

PROPOSAL SITE ADDRESS 6325 SE Division St., Portland, OR DEADLINE OF APPEAL February 27, 2015

Name Portland Water Bureau (David Shaff, Bureau Administrator)

Address 1120 SW 5th Ave, Rm 600 City Portland State/Zip Code 97204

Day Phone (503) 823-2222 Email David.Shaff@portlandoregon.gov Fax (503) 823-4500

Interest in proposal (applicant, neighbor, etc.) Owner's representative

Identify the specific approval criteria at the source of the appeal:

Zoning Code Section 33.846.060.G.1 Zoning Code Section 33.846.060.G.9

Zoning Code Section 33. _____ Zoning Code Section 33. _____

Describe how the proposal does or does not meet the specific approval criteria identified above or how the City erred procedurally:

See attached

Appellant's Signature _____

FILE THE APPEAL - Submit the following:

- This completed appeal form
- A copy of the Type III Decision being appealed
- An appeal fee as follows:
 - Appeal fee as stated in the Decision, payable to City of Portland **PWB SAP billing # W01524.1PRC**
 - Fee waiver for ONI Recognized Organizations approved (see instructions under Appeals Fees A on back)
 - Fee waiver for low income individual approved (attach letter from Director)
 - Fee waiver for Unincorporated Multnomah County recognized organizations is signed and attached

CASE NO. _____
EXHIBIT 1.1

The appeal must be filed by 4:30 pm on the deadline listed in the Decision. To ensure the appeal is received within this deadline, the appeal should be filed in the Development Services Center at 1900 SW 4th Ave, 1st Floor, Suite 1500, Portland, Oregon, between 8:00 am and 3:00 pm on Monday through Wednesday and Friday, and between 8:00 am and 12:00 pm on Thursday. After 3:00 pm on Monday through Wednesday and Friday, and after 12:00 pm on Thursday, the form(s) must be submitted at the Reception Desk on the 5th Floor.

The Portland City Council will hold a hearing on this appeal. The land use review applicant, those who testified and everyone who received notice of the initial hearing will receive notice of the appeal hearing date.

Information about the appeal hearing procedure and fee waivers is on the back of this form.

PORTLAND WATER BUREAU APPEAL; LU 14-218444 HR EN

SUMMARY OF THE PROJECT

The Portland Water Bureau proposes to cap and block pipe inlets and outlets at the Mt. Tabor Reservoirs to comply with federal and state Safe Drinking Water Act rules. The work entails cutting and plugging buried pipes, adding screens or caps to certain inlet and outlet openings, constructing new underground pipes, and installing associated equipment, including vaults and hatch covers. The proposal will neither damage nor destroy any historic structures and will make only minor alterations to one reservoir gatehouse to install vent pipes and electrical conduit. The Water Bureau will maintain and regularly refresh water in the Reservoirs, although that water will not flow to the drinking water distribution system. The Oregon State Historic Preservation Office has determined that the proposed work will not adversely affect the Mt. Tabor Park historic site or the Mt. Tabor Reservoirs Historic District. The Historic Landmarks Commission approved the Bureau's land use application for the work, with conditions.

REASON FOR APPEAL

The Water Bureau balances dual responsibilities in the Mt. Tabor Reservoirs Historic District: operating a safe, effective drinking water supply system and being a steward of the historic resources in this district. This appeal seeks review of two of the Landmarks Commission's conditions of approval, Condition B and Condition E, which impair the bureau's ability to balance successfully these responsibilities. The Water Bureau otherwise accepts the bulk of the Landmarks Commission's Findings and Decision.

GROUNDS FOR APPEAL

Condition B

The Water Bureau appeals the italicized language found in Condition of Approval B, which the Commission imposed pursuant to PCC 33.846.060G.1:

Following completion of the disconnection, Reservoirs #1, #5, and

1 of 3 pages
CASE NO. 14-218444
EXHIBIT I.a

#6 must continue to hold water within the normal historic operating range for each reservoir, which is 50% to 75%. The reservoirs must be maintained and cleaned, and may be emptied (partially or fully) for brief periods, as necessary, to address system operational requirements, to maintain security, regulatory compliance, or for safety concerns. *The reservoirs shall not be partially or fully emptied for more than 60 days total, either consecutive or non-consecutive, within a calendar year, except in emergency circumstances.* Any proposal to permanently remove visible water from the site, as required in the preceding sentence, will require a follow-up land use application to be reviewed by the Historic Landmarks Commission.

The Water Bureau has committed to maintain water in the reservoirs and, in fact, accepted condition language originally proposed for this purpose by an attorney for some of the Mt. Tabor neighbors. For health and aesthetic reasons, however, the water must be regularly removed and refreshed.

The 60 day limitation added by the Landmarks Commission is operationally unworkable. Given the constraints under which it must operate, the Water Bureau cannot repeatedly and regularly remove and refresh the water in all three reservoirs within the annual 60 day time limit. Nor can the Bureau be assured of meeting its future regulatory obligations for operation of what are considered "high hazard dams." Further, the 60 day limitation is not consistent with the recent historic use of the reservoirs. Finally, given the SHPO's finding of no adverse effect, the 60-day limitation is not needed to assure compliance with the approval criteria to retain and preserve the historic character of the property.

Condition E:

The Water Bureau appeals Condition E requiring that the City "fully implement the short- and long-term restorative recommendations" contained in the May 2009 draft Mount Tabor Reservoirs Historic Structures Report. The Water Bureau estimates full implementation of all the report's recommendations will exceed the \$1.5 million cost estimated in that report. The Commission imposed this condition pursuant to the condition of approval found in PCC 33.846.060G.9, which reads as follows:

Preserve the form and integrity of historic resources. New

additions and adjacent or related new construction will be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic resource and its environment would be unimpaired

This approval criterion does not support the Commission's condition that the City undertake a reservoir historic restoration program. The condition is beyond the scope of the Water Bureau's proposal and is not proportional to the proposed project and its impacts. As SHPO has determined, the Water Bureau's proposed land use action has no "adverse effect" on the historic character of the Mt Tabor Reservoirs Historic District. The proposed project does not threaten the "form or integrity" of the Mt. Tabor historic resources. PCC 33.846.060G.9. The Water Bureau proposes no "new additions" or "adjacent or related new construction." Even the proposed piping work is designed so that if the work is reversed or "removed in the future, the essential form and integrity of the historic resource and its environment would be unimpaired." PCC 33.846.060G.9.

The Water Bureau's proposal meets the approval criteria found in PCC 33.846.060G.9, without Condition E. The Water Bureau understands its responsibilities to provide Portland's citizens with safe, reliable drinking water and to act as steward of the historic resources in the Mt. Tabor Reservoirs Historic District. However, the basic financial and policy decisions on how best to fulfill and manage both functions are for the City Council to make in other settings and are beyond the scope of this land use application.



City of Portland, Oregon - Bureau of Development Services

1900 SW Fourth Avenue • Portland, Oregon 97201 • 503-823-7300 • www.portlandoregon.gov/bds



Type III Decision Appeal Form

LU Number: 14-218444 HR EN

FOR INTAKE, STAFF USE ONLY

Date/Time Received 2/27/2015

Action Attached NARRATIVE

Received By L. DANLEY

Fee Amount — \$3,975

Appeal Deadline Date 1:41 pm

[N] Fee Waived

Entered in Appeal Log

Bill # 3732063

Notice to Auditor

[Y] Unincorporated MC

Notice to Dev. Review

APPELLANT: Complete all sections below. Please print legibly.

PROPOSAL SITE ADDRESS 6325 SE Division Street DEADLINE OF APPEAL 2/27/15

Name Mt. Tabor Neighborhood Association c/o Ty K. Wyman, Esq.

Address 851 SW Sixth Avenue, Suite #1500 City Portland State/Zip Code OR 97204

Day Phone 503-224-6440 Email twyman@dunncarney.com Fax 503-224-7324

Interest in proposal (applicant, neighbor, etc.) authorized neighborhood association

Identify the specific approval criteria at the source of the appeal:

Zoning Code Section 33. See cover letter

Zoning Code Section 33. _____ . _____

Zoning Code Section 33. _____ . _____

Zoning Code Section 33. _____ . _____

Describe how the proposal does or does not meet the specific approval criteria identified above or how the City erred procedurally:

See attached cover letter.

Appellant's Signature _____

FILE THE APPEAL - Submit the following:

- This completed appeal form
- A copy of the Type III Decision being appealed
- An appeal fee as follows:
 - Appeal fee as stated in the Decision, payable to City of Portland
 - Fee waiver for ONI Recognized Organizations approved (see instructions under Appeals Fees A on back)
 - Fee waiver for low income individual approved (attach letter from Director)
 - Fee waiver for Unincorporated Multnomah County recognized organizations is signed and attached

CASE NO. _____
EXHIBIT I.2

The appeal must be filed by 4:30 pm on the deadline listed in the Decision. To ensure the appeal is received within this deadline, the appeal should be filed in the Development Services Center at 1900 SW 4th Ave, 1st Floor, Suite 1500, Portland, Oregon, between 8:00 am and 3:00 pm on Monday through Wednesday and Friday, and between 8:00 am and 12:00 pm on Thursday. After 3:00 pm on Monday through Wednesday and Friday, and after 12:00 pm on Thursday, the form(s) must be submitted at the Reception Desk on the 5th Floor.

The Portland City Council will hold a hearing on this appeal. The land use review applicant, those who testified and everyone who received notice of the initial hearing will receive notice of the appeal hearing date.

Information about the appeal hearing procedure and fee waivers is on the back of this form.



February 27, 2015

TY K. WYMAN
Admitted in
Oregon

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Via Hand Delivery

Development Services Center
City of Portland
Bureau of Development Services
1900 SW Fourth Avenue, First Floor, Suite #1500
Portland, OR 97201

Re: Case File No. LU 14-218444 HR EN – Mt Tabor Reservoirs
Disconnection
Our File No.: MOU31.1

To Whom it May Concern:

This firm represents the Mt. Tabor Neighborhood Association (“MTNA”), the ONI-recognized neighborhood association within which the subject property sits. MTNA hereby appeals the February 9, 2015 decision on the referenced application.

This is a big case. The site (Mt. Tabor Park) is large (60 acres), highly visible, and accommodates two public services (a park and a water supply system) that have been vital to citizens for over a century. The applicant wants to make material alterations to the site and its uses. One might reasonably expect such an applicant to file an application prepared by independent professional planners and engineers, which application includes a comprehensive program to evaluate and mitigate the impacts of the proposed action.

Instead, PWB cobbled something together and threw it at the Historic Landmarks Commission. The HLC was left in the unenviable position of either denying the application outright or fashioning conditions to protect the public values inherent in the site. Understandably, the Commission did the latter. Notwithstanding these efforts, the application simply lacks the evidence necessary to support an approved decision.

1 of 3 pages

CASE NO. _____
EXHIBIT I 2a



PCC 33.730.030.H governs the content of this appeal. It requires, among other things, “[a] statement of which sections of the Zoning Code or which approval criteria the decision violates.” The decision violates:

1. PCC 33.730.060.C.3, requiring identification of legal lot boundaries within the subject property. Failure to require such information violated MTNA’s substantial rights. Inclusion of that information would have enabled MTNA to show that the applicant lacks sufficient authority over the subject property to undertake the project.

2. PCC 33.815.040.A.4, governing material changes in the extent of an existing conditional use. Because the project would change the amount of existing basic utility use by more than 10%, a new conditional use approval is required.

3. PCC 33.815.040.B.1, governing the circumstances under which alterations to an existing conditional use trigger a new conditional use review. The record contains insufficient evidence that the application is exempt from a new conditional use review pursuant to that code provision. The applicant failed even to address subsections a and b thereof, and the record shows that the “exterior improvement area” of the project exceeds 1500 square feet.

4. PCC 33.846.060.G.1, requiring demonstration that “the historic character of the property will be retained and preserved.” Improvement and use of the property as reservoirs is the material facet of its historic character. The record lacks sufficient evidence to demonstrate that the applicant will retain and preserve the reservoirs.

5. PCC 33.846.060.G.2, requiring demonstration that the historic resource remain a physical record of its time, place, and use, and PCC 33.846.060.G.9, requiring demonstration that the project be reversible. Because the project jeopardizes the existing conditional use status (basic utility), the decision does not ensure possible future restoration of the historic function of the site.

In further support of this appeal, I enclose a completed Type III Decision Appeal form, copy of the referenced decision, fee waiver approval letter, and check in the amount of \$5,000.

Development Services Center
February 27, 2015
Page 3

Thank you for your assistance. Please apprise us of our hearing date.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Ty K. Wyman', with a long horizontal flourish extending to the right.

Ty K. Wyman

TKW:car

Enclosures

cc: Mt. Tabor Neighborhood Association (w/encl.)
Eileen Brady and Brian Rohter (w/encl.)

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