May - 28 - 15 MT TABOR LHR 14-218448 HR EN 4.7 GB MARK BARTLETT 5-28-15

MT TABOR LHR on Disconnect LHR 218448 HR EN

(1) Dan Coombs Memorandum on Park + PWB title - distinct ownership - commingling of lots + assets of dissimilar burdens.

(2) City Charter chapter 11-104 WATER funds

(3) 1959 Parcel Map

(4) Sept 2008 Memorandum -

(5) Council SVD on Historic preservation 2004

(6) PWB Defines Reservoirs to SHPO

(7) MT TABOR Deed + Park use only language

(8) MTY Technical Memo Discussing expansion as it applies to 33.258

(7) Conditional use code @ MT TABOR

(8) use Determination payment (EA + DAR)

(9) Public Record Request Feb 5, 2015

(10) Notes to HLC 1-12-15

(11) Demo of Listed Hist Assets Code "confidential" (BDs by final 2006)

(12)* Response to PWB to HLC 12-30-14

(13) MT TABOR Deed list from DAN

(14) DVD of HLC Hearings (A) 12-1-14 (3 HRS)
(B) JAN 12 2015 (3 HRS) (C) JAN 26 2015 (3 HRS)

1-26-15 Docs on DVD

All HLC Hearings (A) 12-1-14 1-12-15 and (B) Misc listed items 1-13

In Dex D 4 DVDs

AUDITOR 05/28/15 PM 1:18

Combs, Dan

From: Combs, Dan
Sent: Thursday, 03 October, 2002 16:57
To: Kessler, Dennis
Cc: Nelson, Brenda; Warren, Thom; Doane, Jim; Spetter, Ruth; 'Kathryn.L.Mallon@us.mwhglobal.com '
Subject: Water Bureau Ownership at Mt. Tabor

Dennis;
This is a bit long, but I've tried to categorize with immediate functional project items at the beginning, and more complex (esoteric) issues at the bottom.

1. WATER/PARKS LAND EXCHANGE SITES.
Yesterday (Oct. 2) I talked with Kathryn Mallon about the potential for land exchange arrangements between Water and Parks, in reaction to Water's future project activities displacing Parks' operations at their Mt. Tabor facility. I will be providing her with more data on individual Water-owned parcels by separate email. There are a few potential sites for at least short-term occupation by Parks, such as the former Hazelwood Water District property at 1017 NE 117th Ave. (please be clear this could NOT include the building. which is already fully utilized by Water, but only the open grassy area to the North), or possibly a portion of the presently vacant area of the Ground Water Pump Station site (16400 NE Airport Way). Other alternatives mentioned include part of the Interstate site, Lusted Hill (not the Plant site, but the potential future treatment/filtration site off Dodge Park Blvd., which Parks gave up their lease on and vacated a couple of years ago), Powell Butte (assuming compliance with the latest Council-approved Conditional Use Master Plan), and some even less likely candidates. Kelly Butte also comes to mind; both Water's large vacant parcels, and the old "911" facility owned by BGS. (This probably belongs in the "less likely" category, but worth investigating). If you have a list of candidate sites please let me know.

2. MAPPING WATER'S LEGAL PARCEL BOUNDARIES.
I also talked with Kathryn about the legal boundaries between Parks and Water properties on Mt. Tabor. There apparently is still not certainty over what parts of the total area are owned by Parks, and what is owned by Water. To help define the legal parcel boundaries owned independently by the two Bureaus, I am forwarding to you 2 copies of maps and other documents which clearly outline Water's ownership on Mt. Tabor. These are in your slot of the 5th-floor mail cart. You can forward these on to Brenda and/or Kathryn. These maps are:
(a) Large (24" x 34") general overview of Mt. Tabor, with heavy lines indicating the Water Bureau's outer property boundaries. This is based on the same digital data used to create the other map products provided recently by Thom Warren. For clarity, the data has been filtered to leave only what helps the viewer orient the property boundaries to the overall site.
(b) Copy of Water Bureau "General Plans" map "3-B-6" dated 03-24-1959. This map is an older rendition of the Water Bureau's outer property boundaries. In addition, this 1959 map shows the individual parcels originally purchased by Water (in lighter lines), and the "City Auditor's Deed Number" for each acquisition deed. These deeds, and relevant County Surveys of Record for the vicinity, are the basis of Water's boundary lines shown in the most recent mapping products Thom has provided for the project. Note this map also shows the parcels and Deed Numbers for the Park Bureau parcels, existing and vacated public street rights-of-way, and roadway improvements in the overall Mt. Tabor park area, all as of 1959 or earlier.
(c) Partition Plat No. 1997-85, which was created by Water as part of the sale of Water's property along SE Division. "Parcel 2" of the Plat is owned by Water but has been occupied by Parks for many years (more on that further below).
(d) "Proposed Minor Land Division - Tentative Site Plan" dated 01/24/1997 is a detailed survey of the area ultimately referred to as Partition Plat No. 1997-85. The value of this map is that it shows the future street reserve required by conditions of approval of the Partition Plat. These conditions are within City of Portland Case File LUR 96-00 748 MP as referenced in the Plat. The future street reserve provides for the extension of SE 64th Avenue between SE Sherman and Division Streets. This reserve is a 40-ft. wide strip which is the most western 40-feet of Parcel 2. Any future development of Parcel 2 by either Parks, Water or some other future owner would trigger the street right-of-way dedication requirement of LUR 96-00 748 MP.

(e) Water's "Design file" printed on 03/07/1997. This map overlays site improvements as of 1996-97 on the Partition Plat No. 1997-85 "Parcel 1" and "Parcel 2" boundaries. From this map it can be seen the extent of Parks' use of Water's parcel. The east line of Parcel 2 (east boundary of Water's property) runs through Parks' more eastern building closest to SE Division.
(f) Two copies of the County Assessor's data on Parcel 2 of Partition Plat No. 1997-85, as of today (10/03/2002). This is County Taxlot Account No. 1s2e05cc 8702. The County data shows the property as owned by the Bureau of Water Works, in accord with Partition Plat No. 1997-85. The inset maps show current zoning designations, building footprints, and some underground water & sewer line info (some more accurate utility details are also available in Water's mapping data).
I hope all the above helps define what Water does (and does not) own at Mt. Tabor. See Thom or myself for more info if needed.

3. MORE ON PARKS' USE OF "PARCEL 2" AND OTHER WATER BUREAU LAND AT MT. TABOR.
The parcel owned by Water on the North side of SE Division at SE 64th Ave. is what remains from the larger parcel originally purchased by Water for the "Reservoir 2" site at SE 60th & Division eastward. Most of that original parcel was sold to the developers of the "Courtyard Plaza" complex. As noted above, the remaining portion ("Parcel 2" of Partition Plat No. 1997-85) is owned by Water but used by Parks as part of their facility. I am not aware of any written agreement between Water and Parks for Parks' use of the Water Bureau property on Mt. Tabor, either for this particular parcel or for the overall Mt. Tabor area. Neither has Parks ever provided me with a copy of such a document. It's possible there was and is an agreement somewhere in the City's files, and I have just never been able to find it. If you know of such an agreement, please let me know. The absence of an agreement raises some interesting questions, issues, concerns and opportunities.

4. PROJECT APPROACH TO MT. TABOR PARCEL OWNERSHIP.
Besides the simple question of each Bureau's boundaries being properly mapped, I came away from my discussion with Kathryn with an impression the general approach towards parcel ownership on Mt. Tabor, so far as related to Water's project needs, is not fully inclusive of the unique nature of the property rights involved in Water Fund vs. City General Fund land title authorities and obligations. On Mt. Tabor (and other sites as well, including Washington Park) there are two distinct classes of parcels, with two distinct parties of ownership. The "General Fund owners" (Portland's citizens, taxpayers) are a separate entity from the "Water Fund owners" (Water Bureau ratepayers - including wholesale customers, and Water Fund bond/debt holders). Recognition of these two different ownership categories should underlie any discussion regarding the use and disposition of any Water Fund and/or General Fund assets on Mt. Tabor, in order for decisions made to be legally appropriate and allowable under City Charter and related limitations.

5. SOURCE AND BASIS OF WATER'S PARCELS ON MT. TABOR.
The Water Bureau's parcel ownership's originate from individual purchases (mostly from private parties), for the sole purpose of future water reservoir construction. All these parcels were obtained (as far as can be inferred from the records at hand) without consideration towards the use of any Water property on Mt. Tabor for public park purposes. Likewise, all the parcels currently owned by Parks are separate legal acquisitions made by Parks specifically and solely for public park purposes, having nothing to do with use of any Park property for Water purposes. As a result, there is no "co-mingling" of parcel ownership's on Mt. Tabor. Any impression of one indivisible City ownership is a misconception, due in part to previous County Assessor's accounting practices, reflected also in the "graphical index" to the accounting data (the Assessor's maps), the practice of such "accounting shortcuts" (taxlot consolidation at the whim of the Assessor) for individual legal land parcels now prohibited by Oregon Statutes. Due to the County Assessor's historic practice of "consolidating" legally separate and unique tax lots and parcels under one "taxlot account" for assessment and taxation purposes, the County Assessor's data currently available does not reflect the original unique legal parcels within the larger "consolidated taxlot" of City ownership on Mt. Tabor. This is only due to the historic results of the Assessor's now prohibited accounting process being still reflected in the Assessor's mapping products. The Assessor's maps are NOT necessarily a complete, correct or reliable legal source for property ownership data at the individual parcel level (as states the County's disclaimer on their maps, in different words). The County's Deed Records are the preferred source of exact parcel ownership data. The Water Bureau's property ownership maps are based on Deed Records data. An examination and analysis of each deed for the acquisition of Water Bureau property on Mt. Tabor was conducted as part of creating Water's property ownership maps.

6. CITY CHARTER PROVISIONS SEGREGATING WATER FUND ASSETS INCLUDES LAND PARCELS.
Water's current project needs to address this "parcel ownership" issue because use of real property owned by the

Water Bureau is controlled by applicable language of the City Charter, specifically Section 11-104 of Chapter 11, which reads:
"Section 11-104. Funds.
After payment of expenses for issuance of water bonds, the proceeds shall be placed in the Water Construction Fund.
Money from the sale of water and charges related to water works or service shall be placed in the Water Fund. After deducting sinking fund requirements, operating expenses of the water works and plant and the Water Bureau, which may include depreciation on plant and property, and maintenance expense found necessary or appropriate, the Council may transfer any excess in the Water Fund to the Water Construction Fund.
The Council may make transfers between funds in the Water Bureau, but the funds and accounts of the Water Bureau relating to water plant and works shall be separate from other accounts and funds of the City and treated as a separate municipal operation. The Council may impose charges it finds equitable upon the operation of the water system for municipal services of other departments, Bureaus and officers, and may impose fees of the same character as for public utilities. Otherwise, money in the Water Fund or the Water Construction Fund shall not be transferred to the General Fund of the City, nor to special funds unrelated to the water works, water system and the sinking funds for water bond debt service. [New sec. Nov. 8, 1966.]"

In examining whether an expenditure of Water Bureau Funds in support of a General Fund bureau, or the use of a Water Bureau asset by a General Fund bureau, would be appropriate, under chapter 11 of the City Charter, the City Attorney's Office has determined that the proper test is a determination of whether the proposed expenditure can be said to be "related to the water works, water system and the sinking funds for water bond debt service."

The City Attorney's Office has found several times over the years that it is not legally proper to transfer a Water Bureau capital asset to a General Fund bureau when payment by the General Fund to the Water Fund is less than the market value of the asset. (City Attorney Opinion 81-44, 82-150, 88-165, other City documents.) The City Attorney has determined: "The phrase "accounts relating to water plant and works" is reasonably read to include the capital "accounts" of the Water Bureau. Otherwise, through the transfer of capital assets, the Charter's purpose to protect the ratepayer investment in Water Bureau plant and works could be evaded." (Memorandum of March 9, 1990 from Jeffrey L. Rogers, City Attorney to Mayor Bud Clark and Commissioners Lindberg and Bogle.)

What the above means in short is that Parks cannot use a Water Fund property for any purpose, and neither can Water Funds be used in support of a Park purpose, without "market value" compensation to the Water Fund in some form. The City Attorney has stated: "Fair market value is best determined by a current appraisal or by an arms length negotiation... Since City Council ultimately manages both the General Fund and the Water Funds, Council must take care that the amount transferred between funds is legally defensible as reasonably reflecting fair market value." (Memorandum of March 9, 1990 as above.)

In relation to an expenditure of Water Bureau Funds or use of Water Fund Assets for Park Bureau purposes, it might be maintained by Parks or others that there exist past arrangements between Water and private parties, that create a precedent for certain arrangements between Parks and Water. Namely, in the acquisition of private property for Water Bureau purposes, the Water Bureau might properly pay to remove encumbrances from the property when necessary to make the property available for Water's purposes. This would apply in the case of encumbrances such as a restrictive easement within property the Bureau desired to purchase, or possibly a site condition which needed to be dealt with as part of the transaction (payment for demolition of a building, or for the value of timber which would be removed during construction, are examples). The assumption is that Water would be willing to provide payment or compensation of some sort to remove an existing problem, so that the site could then be more fully used for Water Bureau purposes. The City Attorney's Office has confirmed such an expenditure appears to fit the "related to" test that Office has set out for appropriate Water Bureau Fund expenditures. The answer is qualified however: The expenditure must be "reasonable". Using Water Bureau assets or funds to provide a new or replacement site or building for Park purposes, would iikely not be a reasonable expenditure under the "related to test" - unless the Water Fund received "market value" compensation in exchange. Since at Mt. Tabor this would probably involve property already owned by Water, that Parks has been using without providing "market value" compensation to Water in exchange (and that "market value" determined under the City Attorney's restrictive interpretation), proposing that Water would compensate Parks for the right to use property already owned by Water may be contrary to the City Charter.

7. RECOMMENDED ACTIONS.

Based on all the above, any discussion about Water's proposed use of Park property on Mt. Tabor, and Water's potential assistance to Parks in relocating Parks' operations from Mt. Tabor, should (1) recognize and legally account for Water's existing valid and enforceable property rights on Mt. Tabor which are distinct from Parks and City General Fund property rights; and (2) recognize and legally account for "market value" exchanges required between Parks and Water for use of the land parcel(s) by those Bureaus. It's suggested the ownership's be examined in similar detail at Washington Park. There are opportunities to resolve some long-standing discrepancies in ownership as compared to use at both these major Water/Parks areas, and a consolidated approach to dealing with both at the same time is possibly best for all concerned.

I suggest no decisions or commitments regarding the disposition of Water Fund properties in relation to the project be made without a full review by the City Attorney. Ruth Spetter has worked previously in this area and she is copied. Thanks for the opportunity to comment.

Section 11-104 Funds. - Printable Version

After payment of expenses for issuance of water bonds, the proceeds shall be placed in the Water Construction Fund.

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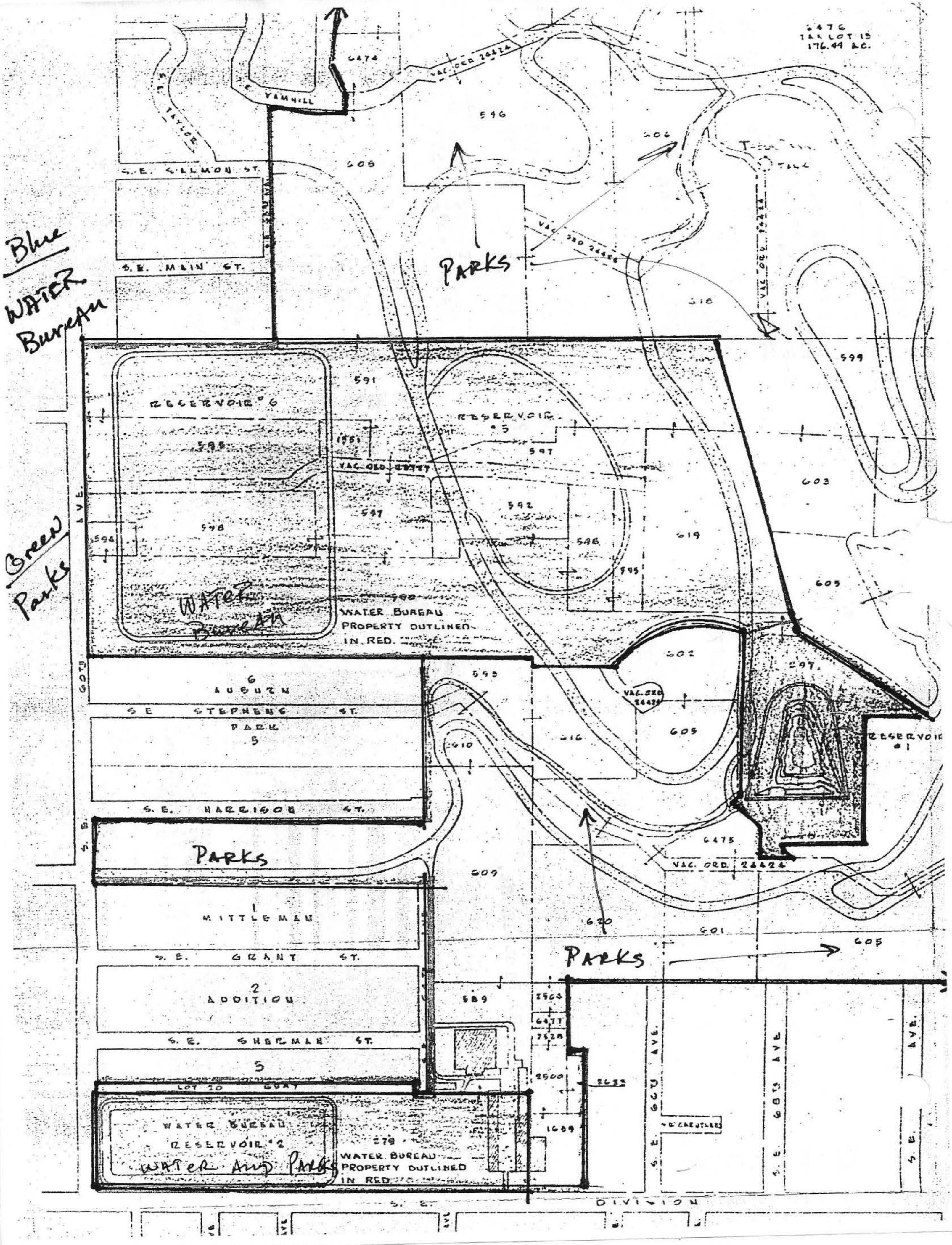
The Council may make transfers between funds in the Water Bureau, but the funds and accounts of the Water Bureau relating to water plant and works shall be separate from other accounts and funds of the City and treated as a separate municipal operation. The Council may impose charges it finds equitable upon the operation of the water system for municipal services of other departments, bureaus and officers, and may impose fees of the same character as for public utilities. Otherwise, money in the Water Fund or the Water Construction Fund shall not be transferred to the General Fund of the City, nor to special funds unrelated to the water works, water system and the sinking funds for water bond debt service. [New sec. Nov. 8, 1966.]


Blue
WATER Bureau
Green
Parks
6476 TAX LOT 13 176.49 AC.
6474
YAMHILL
TAYLOR
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596
606
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S.E. SALMON ST.
S.E. MAIN ST.
PARKS
518
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RESERVOIR #6
RESERVOIR #5
1551
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603
592
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546
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619
605
WATER BUREAU PROPERTY OUTLINED IN RED.
WATER Bureau
602
297
RESERVOIR #1
6 AUBURN
S.E. STEPHENS ST.
PARK 5
610
616
605
S.E. HARRISON ST.
PARKS
609
6475
VAC. ORD. 24424
620
601
PARKS
605
1 MITTLEMAN
S.E. GRANT ST.
2 ADDITION
589
S.E. SHERMAN ST.
5
LOT 10
2500
1689
WATER BUREAU RESERVOIR #2
279
WATER AND PARKS
WATER BUREAU PROPERTY OUTLINED IN RED
S.E. DIVISION

PORTLAND PARKS & RECREATION

Healthy Parks, Healthy Portland

Memorandum

Date: September 15, 2008
To: Eileen Argentina, Parks and Recreation Services Manager
From: Stephen Planchon & Zalane Nunn, Property Management
Re: Mt. Tabor Ownership Research and Recommendations

Introduction

Beginning in the late 1800's, the City acquired the approximately 50 individual parcels of land that now make up the reservoir and park at Mt Tabor (the "Property"). Portions of the Property were obtained as Park land and other portions for Water Bureau purposes. At some point in time, the County Assessor's Office, viewing all of these tax lots as City-owned, consolidated most of the lots into one 190.3 acre tax lot (R332503) with the City's Water Bureau erroneously shown as having sole control of the Property. The City of Portland does not transfer ownership of parcels to a City bureau; rather it transfers management responsibilities to individual bureaus. The County Assessor has no authority to define the ownership or management authority of city land; therefore, the County's consolidation could not have resulted in the Water Bureau becoming responsible for management of the entirety of the Property. Since County tax assessment maps are relied on for making an initial determination as to who controls specific property, the County's consolidation resulted in significant ambiguity regarding which portions of the Property are managed by PPR and which portions are managed by the Water Bureau. The ambiguity has unnecessarily complicated the City's planning and management activities at Mt. Tabor, including PPR's recent redevelopment plans for its Mt. Tabor maintenance yard.

Research Conducted and Conclusions Reached

In an effort to resolve the ambiguities noted above, Glenn Raschke, Business Systems Analyst (Parks), and Dan Combs, Engineering Survey Manager (Water Bureau), researched Parks and Water Bureau property records, interviewed Parks and Water staff, reviewed the City Archives (SPARC), including eFiles, and reviewed title records filed with the Multnomah County Recorders Office. The deeds and ordinances, recovered to date, confirm that most of the Property is to be managed for park purposes, with about two thirds of the lots purchased by the Parks Board or the City of Portland using general funds, Park and Boulevard funds, or Public Recreational Areas funds.

Water Bureau records included a 1959 map depicting Water and Park Bureau ownership at Mt. Tabor Park (attached). The map shows that Water Bureau owned a polygon around the three reservoirs, as well as a parcel along Division Street (originally intended for Reservoir #2). The parcel along Division St. was not a part of the consolidation, and, though part of it was sold in the 1980's, it remains a separate tax lot (R239628), distinct from the large Mt. Tabor tax lot (R332503). The remaining portions of the Property on the map are shown as Park Bureau lands, consistent with deed and ordinance research referenced above. Glenn Raschke and Dan Butts, PPR's surveyor, plotted many of the Parks acquired lands on Multnomah County Tax maps, with the plotting exercise confirming the general reliability of the 1959 map.

As shown on the 1959 map, about half of PPR's main office and maintenance sheds at the Mt. Tabor Yard are on land purchased for Water Bureau purposes, but managed by PPR for park purposes. The presence of Parks and Water Bureau improvements on land assigned to the other party for management purposes appears to indicate historic agreements as to those uses. The agreements have not been recovered to date.

Recommendations:

1. Parks and the Water Bureau should agree that the 1959 map accurately depicts the current management authority status of City lands at Mt. Tabor;

2. Parks and Water should realign its management responsibilities to current or planned uses of City lands at Mt Tabor (e.g. new PPR maintenance facility), with the understanding that the property transferred between bureaus will be of equal value.); and
3. Once Water and Parks have realigned their respective assets at Mt. Tabor, City Council should formally assign management responsibilities at Mt. Tabor in accordance with the Water Bureau/Parks agreement and the City should communicate the outcome to the County Assessor's Office with a request that the County tax assessment maps be revised accordingly.

Subject: FW: Regarding LU 13-236792 and LU 13-240530 EN - Mount Tabor Reservoirs
From: "Adam, Hillary" <Hillary.Adam@portlandoregon.gov>
Date: Tue, 13 Jan 2015 19:41:41 +0000
To: Mark Bartlett <bartlett.m@comcast.net>

Mark,

This is the email exhibited as A-6, which you are referencing.

Hillary Adam
Bureau of Development Services
p: 503.823.3581

From: Carter, Tom
Sent: Thursday, November 20, 2014 1:50 PM
To: Adam, Hillary; Castleberry, Stacey
Subject: Regarding LU 13-236792 and LU 13-240530 EN - Mount Tabor Reservoirs

Dear Hillary and Stacey:

Citizens have inquired about the ownership of the affected land. All the land affected by the proposal is owned by the City of Portland. All City land is held in the name of the City of Portland, a municipal corporation. The City Council assigns management responsibility of City land to various bureaus. On Mount Tabor, the Council has assigned some of the land to Water and some to Parks, most recently in Ordinance 182457 (Dec. 24, 2008).

The applicant in this matter is the City of Portland. The Portland Water Bureau is authorized to make land use applications on behalf of the City for Water Bureau projects. For this project, since it also affects City property managed by the Parks Bureau, the Water Bureau has cooperated with that Bureau in formulating and publishing its application. In addition, the Water Bureau will seek a Non-Parks Use Permit from the Parks Bureau for the work that will be done on the portion of the property that is assigned to Portland Parks & Recreation.

During the past six months PWB has worked closely with PP&R, both during outreach to the community and in developing plans in response to community requests. In particular, we have consulted closely with PP&R in finding suitable trees and other vegetation and appropriate planting locations for the park.

We have asked PP&R staff to provide a letter affirming that we are coordinating with them and will be applying for a Non-Parks Use Permit as described above.

Sincerely,

Tom Carter
Senior City Planner
Portland Water Bureau
1120 SW 5th Avenue, Room 600
Portland, OR 97204
(503) 823-7463
tom.carter@portlandoregon.gov

CITY OF PORTLAND, OREGON
BUREAU OF PLANNING

VERA KATZ, MAYOR
GIL KELLEY, DIRECTOR
1900 S.W. FOURTH AVENUE, ROOM 4100
PORTLAND, OREGON 97201-5350
TELEPHONE: (503) 823-7700
FAX: (503) 823-7800
E-mail: pdxplan@ci.portland.or.us

October 27, 2004

SUBJECT: Historic Resources Code Amendments Project, Phase 2

Dear Interested Citizen:

On October 21, 2004 the City Council approved Ordinance No. 178832, which adopts the *Bureau of Planning Recommended Historic Resources Code Amendments Phase 2* report and its appendices. In adopting this ordinance, the Council specifically:

1. Adopted Exhibit A, the Bureau of Planning Recommended Historic Resources Code Amendments Phase 2 report and its appendices, dated July 16, 2004, and revised September 15, 2004, and as amended by Exhibit B.

2. Amended Title 33, Planning and Zoning of the Code of the City of Portland, Oregon, as shown in Appendix D of Exhibit A, as amended in Exhibit B.

3. Established a new Type IV Demolition Review procedure for applications for demolition review of resources that are: individually listed in the National Register; contributing resources in Historic Districts; resources that have taken advantage of an incentive for historic preservation; and/or resources that have a preservation agreement. The specific amount of the fee is to be set by the Bureau of Development Services (BDS).

4. Adopted the commentary in Exhibits A and B as legislative intent and as further findings.

The Council declared that an emergency existed because important and irreplaceable historic resources could be lost unless the new provisions became effective immediately. Therefore, Ordinance No. 178832 was declared in full force and effect from and after its date of passage on October 21, 2004.

If you are interested in filing an appeal, you should file your request with the Land Use Board of Appeals (LUBA) within 21 days of this letter. The filing requirements are set out in Oregon Revised Statute (ORS) 197.830. Among other things, ORS 197.830 requires that a petitioner at LUBA must have testified or written to the City Council. You may call LUBA at (503) 373-1265 for further information on filing an appeal.

If you would like a copy of the ordinance adopted by the City Council, we can mail it to you; call me at (503) 823-7666. If you want to look at any of the reports or other documents, you may come to our office or view them on the web at www.ci.portland.or.us.

Sincerely,

Liza Mickle
Associate Planner

cc: Steve Dotterrer
Kathryn Beaumont

CITY OF
PORTLAND, OREGON
BUREAU OF WATER WORKS

Dan Saltzman, Commissioner
Morteza Anoushiravani, P.E., Administrator
1120 S.W. 5th Avenue
Portland, Oregon 97204
Information (503) 823-7404
Fax (503) 823-6133
TDD (503) 823-6868

May 28, 2003

State Advisory Committee on Historic Preservation
Attn: James M. Hamrick, Jr.
Assistant Director of Heritage Conservation
Deputy State Historic Preservation Officer
State Historic Preservation Office
1115 Commercial St. NE
Salem, OR 97301-1012

Re: Nominations to the National Register of Historic Places for Mt. Tabor Reservoirs 1, 5 & 6, and Washington Park Reservoirs 3 & 4

Dear Mr. Hamrick:

On behalf of the City of Portland Bureau of Water Works, and Portland Parks and Recreation, I would like to comment on the nomination of the Mt. Tabor and Washington Park reservoirs to the National Register of Historic Places. The City of Portland Water Bureau is the owner of the facilities under review. The facilities are sited within City of Portland parks.

I'd like to provide some brief background context for your interest.

The Portland Water Bureau began bringing Bull Run water to the City in 1895. The City built the first terminal reservoirs, Reservoirs 1 and 2, at Mt. Tabor in 1894, and Reservoirs 3 and 4 at Washington Park. As water demands grew, so did the system. Early in this century the City built Reservoirs 5 and 6 at Mt. Tabor. These reservoirs have been in continuous use since, except for Reservoir 2, which was abandoned in the early 1980's.

Portland reconfigured the reservoir system in the 1980's, transferring "terminal storage" from Mt. Tabor to the new underground reservoir at Powell Butte. The Powell Butte reservoir can hold 50 million gallons of water.

use defined

Currently, the Mt. Tabor and Washington Park Reservoirs are used as "distribution storage." That is, they serve as the entrance and control point for the City water distribution system—the pipes that take the water throughout the City and to individual customers.

bypassed

These reservoirs are both essential to our water system operations and inadequate to meet contemporary needs. While well designed and constructed for their time, and beautiful in their serenity and majesty, Mt. Tabor and Washington Park reservoirs would never be built today.

No major water utility would construct *open* finished water reservoirs. Prudent utility practice and federal and state drinking water regulations require that finished water be stored in fully enclosed structures, such as above or below ground tanks.

Park reservoirs on the National Register of Historic Places. This is discussed in further detail later in this memorandum.

Use Classification

The Mt. Tabor Park reservoirs exists primarily as utility infrastructure that provides water service to Water Works' customers in east Portland. These characteristics place the reservoirs, including the inlet and outlet piping, in the Basic Utilities use category. Specifically, Basic Utilities are described in PCC 33.920.400.A as "infrastructure services which need to be located in or near the area where the service is provided." Among the cited examples of a Basic Utility uses are reservoirs, water conveyance systems, and water pump stations (PCC 33.920.400C).

Mt. Tabor Park is located in an Open Space (OS) zone (Exhibit 2). Basic Utilities are allowed in the OS zone only as a Conditional Use. Because the reservoirs were constructed in 1894 (Reservoir 1) and in 1911 (Reservoirs 5 and 6), and thus predate the Portland Zoning Code, the reservoirs have automatic Conditional Use status (PCC 33.815.030). Subsequent changes to automatic Conditional Uses are regulated by the Conditional Use procedures of PCC 33.815 (Conditional Uses).

Conditional Use Review Procedures

change in use triggers new look and use Determination

Portland City Code 33.815.040 identifies the Conditional Use Review procedures for proposals that affect the use of the site, and that alter the development of an existing Conditional Use. *Based on these procedures, and the facts and information contained in the Bureau of Water Works' Use Determination request, replacing the reservoirs with underground water storage tanks would not require a Conditional Use Review.* This determination is based on the following factors:

1. Proposals Affecting Use of the Site: A Conditional Use Review is required when locating a new conditional use on a site, changing from one conditional use to another conditional use, adding another conditional use, or changing any specifically approved amounts of the use, such as number of students, vehicle trips, etc. The Bureau of Water Works' proposal involves the continued operation of the reservoirs as a Conditional Use. No new or additional Conditional Uses in another use category are proposed. Additionally, there is no previous land use decision affecting the site that specifies any approved amounts related to the reservoirs.

2. Proposals Altering Development of an Existing Conditional Use: Portland City Code 33.815.040.B.1 specifies alterations that may be made to an existing Conditional Use without the need for additional Conditional Use Review. Alterations to development are allowed without additional Conditional Use Review provided the proposal:

   a. Complies with all conditions of approval;

      The Mt. Tabor Park reservoirs have automatic Conditional Use status, and there is no record of subsequent land use decisions containing any valid conditions of approval related to the reservoirs. As such, this requirement is not applicable.

   b. Meets one of the following:
      (1) Complies with the development standards of this Title; or
      (2) Does not comply with the development standards of this Title, but an adjustment or

Auditor Deed No's.

		DATE ord No	Amount	FUND
* *	√279	1893	12,000.00	WM Tabor Committee
* *	289	June 24 1894	1,000.00	SEE # 6477
* *	√297	Aug 21 1896	100.00	City Portland
* *	355	1907	25,000.00	MT Tabor Water Board
	374	2/20/08	9,618.75	Lot 2 MT Tabor
	395	Oct/4/12	2,500	S E S W Hooker
	500	OCT/21/16	100	25' of Lot 5 Blk 3 MT Tabor
	501	same	100	S 25' of Lot 4 Blk W MT Tabor
	502	same	100	S 25' of Lot 1 & 2 Blk W.
	503	same	100	S 25' of Lot 6 Blk W.
	574	MAY 14, 15		ord 30432 Est $2.00 Blk 587 Pg 367
	579	March 10th 1919	100	Easement for H2O on Linton
*	589	SEPT 26 1908	5000.00	City of Portland Blk 472 Pg 86
* *	590	Feb 20 1909	$33,500	To City of Portland Blk 466 pg 280
* *	591	Mar 4 1909	37,500.00	Blk 466 pg 306
	592	may 3 1909	10,000	D D Patterson and Claim Trail Blk 452 Pg 303
	593	April 30 1909	32.00	Lot 12 MT Tabor
* *	594	may 3 1909	1750.00	Blk 469 Pg 224
* *	595	may 5 1909	15,000.00	Blk 469 pg 291 City of Portland Blk 466 Pg 324
	596	April 29th 1909	8,210.00	Lot 14-17 Belmont Blk 453 Pg 302
* *	597	may 6 1909	21,500	City of Portland Blk 466 pg 107
* *	598	may 8 1909	12,700.00	City of Portland Blk 453 Pg 211
	599	MAY 6 1909	23,600.00	Blk 453 Pg 225

$3124 Grover Water

#354 Feb 23 1892

** must have first

*especially needed

	DATE ord No	Amount	FUND
601	MAY 14, 1909	3750.00*	MT Tabor Tract T. Blk 457 Pg 242
602	same	4300.00	Lot 8 MT Tabor Blk 456 Pg 238
603	JUNE 2 1909	5500.00*	Lot 4 MT Tabor Blk 461 Pg 48
605	MAY 29 1909	60.00	MT Tabor (check Title) Blk 458 pg 82 Lot 13 Belmont
606	JUNE 21 1909	6800.00	Blk 463 Pg 20
607	JUNE 19 1909	6832.00	Blk 460 MT Tabor Pg 193 Bk 92 Pg 607
	WATER Committee No		Lot 16 13 17 Belmont
608	AUG 1909	17,192.00	Blk 466 pg 116
610	Sept 11 1909	3700.00	Lot 11 MT Tabor Blk 471 Pg 64
613	Aug 20 1909	9618.75	Lot 4 Belmont Blk 2 MT Tab
614	OCT 8 1909	750.00	Blk 472 Pg 2 Y MT Tabor
615	OCT 12 1909	750.00	Blk 440 pg 462 Blk 4 MT Tabor
616	Nov 22 1909	5460.00	Blk 471 Pg 25 E & E MT Tabor
618	FEB 12 1910	10 251.33	Blk 474 Pg 226 Lot 12-15 Belmont
619	April 11 1910	14,592.50	Blk 486 Pg 221 Lot 2 Linford Blk 487 pg 447
620	Aug 3 1910	14,500.00	G MT Tabor Blk 510 Pg 31

been there in some form since before the OS zoning was applied (1990) and before the City's first complex zoning code (1950), and has been maintained there over time. Situations where a use was in place before the City applied the base zone, and the base zone would prohibit any new use in that same category, are called nonconforming situations. Nonconforming situations are allowed to continue but not to expand within their base zone without a land use review.

The proposed changes to the maintenance yard are not prohibited but will have to be approved through a land use review. This is called a Nonconforming Situation Review and is processed through a Type II procedure. A Type II Land Use Review is processed in approximately 55 to 60 days from the time a complete application is submitted to the City. There is public notice to all property owners within 400 feet of the project site, a 28-day review period, and a 14-day appeal period (see attached process timeline).

Comment [jtm3]: This comment applies in several places: While in-kind redevelopment is the purpose of the project, no actual changes have yet been proposed. I think we need language at this stage that conveys the preliminary status of the project. I don't think this changes the rest of the paragraph here or elsewhere but I don't want anybody thinking that PP&R or the Planning Group have proposed any designs at this stage!

Comment [jtm4]: It's ok that these aren't included in the draft but let's make sure to have a look at them soon.

Clarification of Terminology

There are two types of nonconforming situations that occur at the maintenance yard. First, there is the nonconforming use—the industrial service activities of the yard. Second, there is the nonconforming development—the physical structures that do not meet current code requirements such as access for people with disabilities, parking lot landscaping and dimensions, and stormwater management. The remainder of this technical memorandum is primarily concerned with the nonconforming use aspects of the site and not nonconforming development. Any nonconforming development issues will be called-out specifically as they arise.

Nonconforming Situation Review

The Nonconforming Situation Chapter, 33.258, outlines the circumstances under which a nonconforming situation review is required, describes the procedures of the review, and states the approval criteria that must be met to have the reviewed approved. The nonconforming situation chapter sections relevant to the Mount Tabor Yard that describe when a nonconforming situation review may be required are as follows:

Comment [jtm5]: Is there a word missing here?

33.258.050 Nonconforming Uses

A. Continued operation. Nonconforming uses may continue to operate. Changes in operations are allowed. However, nonconforming uses in residential zones may not extend their hours of operation into the period of 11 pm to 6 am.

B. Change of use. (not applicable)

Comment [jtm6]: Is it useful to explain why it's not applicable or is that a waste of space? I'm more comfortable with a sentence here than a simple assertion.

C. Expansions. Nonconforming uses may expand under certain circumstances. Exterior improvements may expand by increasing the amount of land used. Changing the exterior use, for example from parking to storage, is an expansion of exterior storage. Adding parking spaces to an existing lot is also an expansion. However, increasing the amount of goods stored on an existing exterior storage area is a change in operations, not an expansion. Examples of expansion of floor area include expanding a nonconforming use into a newly constructed building or addition on the site, and expanding the amount of floor area occupied by a nonconforming use within an existing building. Expansion of nonconforming uses and development is generally limited to the area bounded by the property lines of the use as they existed two years before the use became nonconforming. The property lines are the lines nearest to the land area occupied by the nonconforming use and development and its accessory uses and development, moving in an outward direction. Property lines bound individual lots, parcels, and tax lots; a site or ownership may have property lines within it. See Figures 258-1 and 258-2. The applicant must

provide evidence to show the location of property lines as they existed two years before the use became nonconforming.

1. OS and R zones. The standards stated below apply to all nonconforming uses in OS and R zones.

    a. Expansions of floor area or exterior improvements, when proposed within the property lines as they existed two years before the use became nonconforming, may be approved through a nonconforming situation review. The development standards of the base zone, overlay zone, and plan district must be met.

ESA Adolfson's review of this chapter indicates that the maintenance yard improvements proposed by PPR would require a nonconforming situation review. A key section in the code is 33.258.050.C, outlined above. The discussion in 33.258.050.C focuses on the difference between expansions of the nonconforming use and changes in operation of the nonconforming use. The proposed improvements at the yard are a mix of changes in operation and expansions. Overall, the uses and activities at the yard are not expanding and some activities may be dispersed to other sites. For the specific requirements of the zoning code BDS will likely consider some individual activities within the yard to be an expansion and not just a change to operations. This is what will trigger the review.

Comment [jtm7]: Again, nothing has been proposed yet and when something is proposed, it will come from the Planning Group and therefore from both Parks and its partners in the community.

Any floor area or exterior improvement area expansions would be limited to within the current property lines of Mount Tabor Park and limited to the area currently occupied by the maintenance yard. The current property lines of the maintenance yard are likely those that existed at the establishment of the zoning code.

Comment [jtm8]: Because of the zoning distinction between industrial and agricultural, please be extremely clear whether you are referring to one portion or the site in its entirety (yard or yard and nursery)?

The team designing the maintenance yard will have to account for the nonconforming development on the site. BDS will require all redevelopment to meet current code standards since the proposal is for a phased reconstruction of the whole facility. This means that parking areas will have to meet the standards for number of spaces, size of spaces, and landscaping. Other development considerations are stormwater management, site landscaping, disability access, seismic standards, pedestrian circulation, and several others (see 33.258.070.D.2)

Comment [jtm9]: Sorry if this is nit-picky but I think you should employ a headings style that errs on the side of excess – if I understand correctly, you have considerations and alternative options as sub-headings under both the OS and Historic sections?

Considerations

ESA Adolfson believes that it would be highly likely that a nonconforming situation review would be approved for the proposed maintenance yard improvements if presented correctly. This is based on the following aspects of the proposal:

- the activities at the yard would be reduced with some functions being dispersed to other locations
- the yard operations have been in place for a long time period and are recognized and accepted by the neighbors
- the proposed changes will improve the look and function of the facility and improve the aesthetics of the site when viewed from the park and the neighborhood
- additional amenities would be provided to park users and neighbors such as, new visitor parking facilities and park access

Comment [jtm10]: This is one possibility but because 1) it is uncertain and 2) potentially controversial, let's downplay it by putting it lower on the list and saying "might" or "could"

Comment [jtm11]: Again, these are ideas that have been brought up but not vetted in any way. Use them as examples at most and use if/might/could instead of would.

Alternative Options

An alternative to the nonconforming situation review for the maintenance yard is a Comprehensive Plan Map Amendment and Zone Change from the current OS base zone to a base zone that would allow Industrial Service uses. The General Employment (EG1) zone is the least intensive base zone option that would allow an Industrial Service use outright. The EG1 zone allows a wide range of employment uses without potential conflicts from interspersed residential uses. The emphasis of the EG1 zone is on light industrial and industrially related uses.

The negative aspects of a Comprehensive Plan Map Amendment and Zone Change are rather severe. The cost of the land use review application alone is over $20,000. Changing a portion of Mount Tabor Park from an open space zone to an employment zone would likely cause serious concern to many neighbors. Even though the ownership of the property would not change and it would be unlikely that PPR would sell the maintenance yard after investing so much in its renovation, there would still be concern over light industrial or commercial uses moving onto that property in the future. The approval criteria for a Comprehensive Plan Map Amendment and Zone Change would be very difficult to meet because all potential uses allowed in an EG1 zone would be taken into consideration and not just the Tabor maintenance yard.

Some base zones would allow an Industrial Service use through a conditional use review. A General Commercial (CG) base zone is the least intensive option that would allow an Industrial Service use through conditional use. This option is the least favorable of all because two land use review processes would be required to approve the Tabor yard improvements, a comprehensive plan map amendment and zone change and then a conditional use. The only advantage is that a CG zone may be easier to justify in this location than an EG1 zone.

Historic Resources

Mount Tabor Park is a designated City Landmark. Three of the structures within the Mount Tabor maintenance yard are considered to be contributing structures to the Parks historical status. Any alteration of a Historic Landmark requires approval through historic design review. The improvements to the maintenance yard and removal of the contributing structures would be considered alterations to the Landmark and will trigger an historic landmark review as stated in Section 33.445.140. The relevant sections of 33.445.140 are outlined below:

Comment [jtm12]: No mention of the reservoirs as an historic district…perhaps you should acknowledge it even if all you do is explain that it doesn't have legal bearing on the yard.

33.445.140 Alterations to a Historic Landmark
Alterations to a Historic Landmark require historic design review to ensure the landmark's historic value is considered prior to or during the development process.

A. When historic design review for a Historic Landmark is required. Unless exempted by Subsection B, below, the following proposals are subject to historic design review. Some modifications to site-related development standards may be reviewed as part of the historic design review process; see Section 33.445.050:

1. Exterior alteration;
2. Exterior alteration of an accessory structure, landscape element, or other historic feature that is identified in the Historic Resource Inventory, Historic Landmark nomination, or National Register nomination as an attribute that contributes to the historic value of the Historic Landmark;

Comment [jtm13]: Perhaps examples would help a pay person understand some of these principles.

The historic design review would likely be processed through a Type III process, as any alteration that will cost over $339,300 is a Type III. A Type III Land Use Review is processed in approximately 103 days from the time a complete application is submitted to the City. There is public notice to all property owners within 1,000 feet of the project site, a 51-day review period, a

CITY OF

PORTLAND, OREGON

BUREAU OF DEVELOPMENT SERVICES
1900 SW 4th Ave., Suite 5000
Portland, OR 97201

MULTNOMAH COUNTY

RECEIPT #: 1776141 **1/7/2015**

Site Address: **6325 SE DIVISION ST** IVR Number: **3563750**

Permit Number: 15-102031-000-00-PR Public Registry

APPLICANT MARK K BARTLETT & MT.TABOR NEIGHBORHOOD ASSOCIATION Phone: (503) 719-5930

Fee Code	Fee Description	Fee Amount	Paid to Date	Balance	This Transaction	New Balance
2553	Zoning Confirmation Tier 3	$850.00				
Bill #3712884	Sub Total	$850.00	$0.00	$850.00	$850.00	$0.00
	TOTAL	$850.00	$0.00	$850.00	$850.00	$0.00

Shaded items indicate fees not yet calculated.

*** Fees marked with an asterisk are due at application.**

PAYOR MARK K BARTLETT Phone: (503) 719-5930

Payment #: 1776141 Method of Payment: 012010 visa bartlett Receipt By: Ray Galinat

CITY CONTACT Phone:

E-Mail: Fax: (503) 823-4172

Notice: This document is not a permit. This document may not represent all fees owing for this permit. All fees are subject to change based on new or corrected information. For more information, consult your City of Portland Contact listed above.

public hearing before the Landmarks Commission, and a 14-day appeal period of the Commission's decision (see attached process for a detailed timeline).

Because the historic design review will likely be a Type III process, which is more extensive than a Type II, and the nonconforming situation review will be a Type II process, the two reviews could be submitted separately and processed separately. They can also be processed together under the Type III review process but the nonconforming situation review may cause some confusion for the Landmarks Commission who are not used to dealing with those types of reviews. ESA Adolfson recommends submitting the applications separately.

ESA Adolfson also recommends that PPR consider a Design Advice Request. A Design Advice Request essentially allows a prospective applicant to have some open time in front of the Landmarks Commission to discuss ideas. Once a master plan design team is chosen and has developed some preliminary ideas. They would meet with the Landmarks Commission, have a discussion, and get advice on the preliminary design ideas. This could be a very useful process for the design team. There is a small fee required and it may be a few weeks out on the Landmarks Commission calendar for scheduling.

Option

One option to the historic design review is to alter the Landmark nomination to remove the structures as contributing features. This may be the more difficult option since both the City landmark nomination and presumably the national historic designation would have to be modified. Given the time and effort invested by neighbors and advocates in getting the Park nominated, it may be quite difficult to alter the nomination.

Environmental zone

The ec-zone has been applied only to specific locations within the park. These are generally heavily forested areas with native tree species and understory that provide some elements of wildlife habitat. The first 25 feet inside the ec-zone is called the Transition Area and is applied as a buffer around the Resource Area. The Resource Area is where the majority of environmental regulations apply. Regulation within the Transition Area is very limited.

Whether or not the proposed maintenance yard improvements are subject to the ec-zone is based solely on where the improvements occur and how much disturbance occurs to the ground surface and vegetation. If all of the proposed improvements can be accommodated outside of the ec-zone or limited to the Transition Area then no environmental review will be required.

Based on initial discussion of the nature and location of the maintenance yard improvements it is not likely that the ec-zone will be impacted. All of the maintenance yard and nursery activities will likely be outside the environmental zones at the park. The nearest ec-zone is at the extreme northeast corner of the maintenance yard/nursery area. This is illustrated in Figure 1, on the following page.

Comment [jtm14]: A member of the sub-committee has asked that the memo include a bibliography. You have extensive citation of the code in the narrative. If there are documents other than the code that the reader might need to know about (assuming they are brand new to the topic), please indicate them here.

Feb 1957
ORDINANCE 105 389 200.00 Fuqua Property in Utterstrom Hgts

Auditor Deed No's.

must have first * *
especially needed *

	DATE ORD NO	AMOUNT	FUND.
1544	OCT 21 1916	1.00	LOT W MT Tabor BK 714 PG 337
* 1639	NOV 1922	10.00	City of Portland BK 900 PG 403
* 2500	SEPT 20 1927	1350.00	BK 1116 PG 175
* 2528	JAN 26 1928 court order of Sale April 29 1913	400.00	SEE #3550 BK 1119 PG 460 City of Po. BK 1119 PG 462
* 2623	JAN 23 1929	1000.00	BK 1168 PG 310
* 2904	JAN 26th 1935	950.00	BK 211 PG 455
6475	FEB 16, 1910	Judgment	LOT 13 MT Tabor Parks BK PG
6476	JAN 17 1910	15,500.00	LOT 13 MT Tabor
* 6477	March 1938 court award M 6290	$361.86	for Property (SEC 5 1S 2E)
6643	NOV 29 1930		STANTON Yd ALTING Add BK 143 PG 301 Parks
6860	FEB 21 1957	222.50	LOT C UTTERSTROM BK 1830 PG 252
* 6987	July 25 1958 #108356	22.50 –	GENERAL BK 1908 PG 421
9003	DEC 16th 1939	SHERIFFS SALE	Parks –

ORD 26424 PLATS Deed Book 101, 462

PARK Use only - NOT PWB

DEED BOOK 727 PAGE 8

Henry Freeborough and Rose L Freeborough, his wife) to The City of Portland a municipal corporation)

WD
DB 727 Page 8
Dd 5/25/11
Redd 10/21/16
Consideration $1.00 etc.

DESC* * * all the fdrp in the CPMCOSO
All of the S 25' of lt 4 blk "W" in Tabor Heights as per plat.

Covenant* * free from all liens and incumbrances,* * * by through or under them, shall warrant and forever defend* * *

This conveyance is made upon the condition that sd real ppty be used for park purposes other than zoological and upon the condition that that portion of the park in the vicinity of blk "W" be improved with a driveway as shown upon the attached blue print, and upon the further condition that as long as the remaining part of sd lt 4 blk W is used for a private residence, the owners thereof and their agents shall at all times have ingress and egress to and from sd ppty over sd driveway & for all domestic purposes, including foot traffic and vehicles, and the owners of sd ppty shall have the right to construct and use driveways and walks connecting with sd park driveway as shown on the blue print above referred to. In the event of the City of Portland failing to use sd ppty as above specified the same shall revert to the grantors herein.

Sep 13, 1916 Accepted by the City Council by Ordinance No 32116
A L Barbur, Auditor of the City of Portland By E.W. Jones, Deputy
SS ACK in State of Washing County of Pacific.

-oOo-

CITY OF PORTLAND
UNIFORM PUBLIC RECORDS REQUEST FORM

Date of Request: 2-4-15

REQUESTOR INFORMATION

Name: MARK BARTLETT

Mailing Address: 2747 NE 22nd Ave PDX 97212

City, State, Zip: PDX 97212 Daytime Phone: 503 719 5930

E-mail Address: Bartlett.mc@Comcast.Net No fax

Preferred method of contact: ○ Mail ○ Phone ⊘ E-mail ○ Fax

REQUEST DETAILS

1. Is this request related to a lawsuit involving the City of Portland? NO

   If "yes," enter the case name, court docket number, or other identifying information:

   _____

2. Is this request related to a tort claims notice involving the City of Portland? NO

   If "yes," enter the claimant's name and, if known, the incident date:

   _____

3. If you answered "yes" to question 1 or question 2, are you making this request on behalf of a party in the lawsuit or tort claim? _____

   NOTE: If "yes," enter "City Attorney's Office" for question 4 in addition to any other applicable bureaus. This is required by state law (ORS 192.420(2)(a)).

4. Bureau or office, if known (a copy of this form must be submitted to each):
   BDS

5. A fee reduction or waiver may be possible if the custodian determines that this request is primarily in the public interest. Does this request primarily benefit the general public? Please explain.

Yes, For the benefit of All city residents and the hearings before Historic Landmarks and City Council regards LU 14-218444 HR

6. Does this request pertain to personnel records? NO

NOTE: If "yes," please attach a signed release from the employee.

7. How would you prefer to have this request fulfilled?

- ⊘ I would like to inspect the records.
- ○ I would like electronic copies made and sent to me.
- ○ I would like photocopies made and sent to me.
- ○ I would like photocopies made and held for me to pick up.

DESCRIPTION OF RECORDS REQUESTED

Please include the following when describing the materials requested, to the extent known and with as much detail as possible:

- Type of document
- Date
- Author
- Title
- Address of any real property at issue
- Subject matter

NOTE: Additional sheets may be added if necessary.

Description:

Please see ATTACHED E MAIL for specific Request information

- The City will respond to your request as soon as practicable and without unreasonable delay.
- If the estimated costs involved in fulfilling your request exceed $25, the City will advise you of those costs and require your approval before beginning work.
- If the fee estimate exceeds $100, a 50% deposit may be required to begin work.
- Full payment of the total amount of costs incurred is required before the public records may be inspected or copies released.
- NOTE: Police reports cannot be obtained through the use of this form. For these records, please contact the Police Bureau.

I HAVE READ AND AGREE TO COMPLY WITH THE ABOVE CONDITIONS, and further agree to pay the cost of fulfilling this Public Records Request according to the conditions set forth above. These costs may include the cost of searching for records, reviewing records to redact exempt material, supervising the inspection of records, copying records, certifying records, and mailing records. I agree to pay a maximum of $25 without further approval.

Mark Bartlett — Signature of Requestor

2-4-15 — Date

1-12-15
LUR for Mt Tabor Park reservoirs disconnect
Historic Landmarks Commission hearing

Once again we are here debating the correctness of the 2003 use determination, relied on by both BDS and the WB to rationalize their findings and therefore definitions and code sections to apply to the current application to disconnect these reservoirs. As on December 1, I take issue with much of this process in addition to the findings.

I have since February been asking pointed questions about the appropriateness of this LUR application based on that old finding language and BDS has not responded. It is not credible that BDS and the applicant had no discussions about this, since they are the critical first step in determining the feasibility of any proposal. Public records requests for written notes on these conversations were made in October. BDS denies there was any conversation, so there are no notes.

I along with MTNA have requested a new and correct use determination and paid the $850 fee. I request that the HLC require BDS to reexamine then produce a correct use determination and waive the fees paid by citizens for that work. Please hold the record open until that has been completed and we have a proper LUR application to comment on.

Let's first look at that language of that old 2003 use determination. I have cut and pasted sections for your convenience. My comments are in red.

Page 1

"Based on the facts and information provided in Water Works' request, the existing reservoirs are classified as a Basic Utility use, and have the status of an automatic Conditional Use. As detailed below, potential land use reviews for replacing the reservoirs with underground water storage tanks would be limited to an Environmental Review, and Historic Design Review (should the site be placed on the National Register of Historic Places). "

Page 2

"The Mt. Tabor Park reservoirs exists primarily as utility infrastructure that provides water service to Water Works' customers in east Portland. These characteristics place the reservoirs, including the inlet and outlet piping, in the Basic Utilities use category. Specifically, Basic Utilities are described in PCC 33.920.400.A as "infrastructure services which need to be located in or near the area where the service is provided.""

This then identifies these facilities as part of the water delivery system. They no longer are so this interpretation is wrong from this point forward. They have been off line for some time, and disconnection will complete their segregation from active water delivery necessary to be classified as a utility.

I therefore conclude that this invalidates all that comes after in whole. The existing conditional use has changed as acknowledged by BDS in both the preapplication summary and staff report of Dec 1.

This then requires a new conditional use review, since the earlier one was for a functional, connected, and active component of the water delivery system. Also this finding was for demolition not alteration and new construction.

Next, the definitions which follow the improper use determination.

I see this application as having two parts; one, alteration in which pipes will be disconnected and the identified changes to the facilities will occur,
And two, the installation of approximately 900 linear feet of a large new 48" diameter pipe to bypass existing supply and delivery infrastructure. This new pipe would then be subject to different sections of code since it should be considered new development and not alteration. The reservoirs are no longer the recipient of its purpose.

Here are the definitions as relied on in that 2003 finding

Alteration. A physical change to a structure or site. Alteration does not include normal maintenance and repair or total demolition.
Alteration does include the following:
- Changes to the facade of a building;

- Changes to the interior of a building;
- Increases or decreases in floor area of a building;
- Changes to other structures on the site, or the development of new structures;
- Changes to exterior improvements;
- Changes to landscaping; and
-Changes in the topography of the site.

Other associated definitions in PCC 33.910.030 include the following:

Develop. To construct or alter a structure or to make a physical change to the land including excavations and fills.

Development. All improvements on a site, including buildings, other structures, parking and loading areas, landscaping, paved or graveled areas, and areas devoted to exterior display, storage, or activities.
This appears appropriate since the new pipes would fit here as an improvement unless improvements are limited to those above ground. This is a new bypass and not replacement in the maintenance sense.

Development includes improved open areas such as plazas and walkways, but does not include natural geologic forms or unimproved land. See also Exterior Improvements.

Exterior Alteration. A physical change to a site that is outside of any buildings. Exterior alteration does not include normal maintenance and repair or total demolition. Exterior alteration does include the following:
- Changes to the facade of a building;
- Increases or decreases in floor area that result in changes to the exterior of a building;
- Changes to other structures on the site or the development of new structures;
- Changes to exterior improvements;
- Changes to landscaping; and
- ***Changes in the topography of the site.***

Exterior Improvements. All improvements except buildings or other roofed structures. Exterior improvements include surface parking and loading areas, paved and graveled areas, and areas devoted to exterior display, storage, or activities. It includes improved open areas such as plazas and

walkways, but does not include vegetative landscaping, natural geologic forms, or unimproved land.
See also Development._ New Development. Development of a site that was previously unimproved or that has had previously existing buildings demolished.

Both the definitions included in the Zoning Code, and the historical implementation of these provisions, consider the term "alteration" to include all modifications to a site and structures except for "total demolition_/." The term "total demolition," though not specifically defined in the Zoning Code, has consistently been interpreted and implemented as the removal of all structures and associated development on a site. ***Therefore, the proposed work intended to be undertaken at Mt. Tabor Park, where some elements would likely be disturbed or removed but many others would remain, would constitute "alteration," and not "total demolition."***

33.445.140 Alterations to a Historic Landmark Alterations to a Historic Landmark require historic design review to ensure the landmark's historic value is considered prior to or during the development process.*_

A. When historic design review for a Historic Landmark is required. Unless exempted by Subsection B, below, the following proposals are subject to historic design review. Some modifications to site-related development standards may be reviewed as part of the historic design review process; see Section 33.445.050.

2. Exterior alteration of an accessory structure, landscape element, or other historic feature that is identified in the Historic Resource Inventory, Historic Landmark nomination, or National Register nomination as an attribute that contributes to the historic value of the Historic Landmark.

Wouldn't the reservoirs now be an accessory to the park since they no longer serve as a part of the drinking water distribution system?

I have asked this since Feb of both BDS and the Commissioners office.

As noted in PCC 33.445.140, the following relevant exemptions to Historic Design Review of a site on the National Register would also apply:

B. Exempt from historic design review.

3. Changes in landscaping unless the landscaping is identified in the Historic Resource Inventory, Historic Landmark nomination, or National Register nomination as an attribute that contributes to the historic value of a Historic Landmark;

Changes to landscaping in the resource areas are difficult to quantify due to the scale provided on the resource maps. Please note the changes to the overlay zones for the benefit of the applicant.
Note also that the work bisects the historic upper nursery (photo)

Cont from the 2003 findings
Environmental Review Procedures
The existing reservoirs at Mount Tabor are situated entirely outside of the Environmental Conservation overlay zone. Therefore, all new construction activity which would occur within the existing reservoir footprints would not be subject to the Zoning Code regulations in PCC 33.430 (Environmental Zones). However, based upon information presented in Water Works' Use Determination request, new underground piping may be installed partially within the Environmental Conservation overlay zone to serve the replacement underground water storage tanks.
I questioned just how it came to be that the overlay areas were altered between 1998 and 2006 in the park right in the proposed work areas.
See those zoning maps of 1998, 2000, 2006 which I have attached.

Portland City Code 33.430.080.C.1 of the Portland Zoning Code exempts replacement of existing utilities whenever coverage or utility size is not increased.
The bypass will be 48" as compared to the existing 30 and 32" pipes running up to reservoir 1, an increase of more than 50% in size..

Based on information in the Water Works' request, new underground piping would be installed, while leaving the existing piping in place. The new piping would be situated within a separate alignment than the existing piping. * In this situation, the exemption in PCC 33.430.080 C.1 would not apply to the new piping within the resource area of the environmental zone.*
Portland City Code 33.430.080.C.7 exempts development over existing

paved surfaces that are over 50 feet from any identified wetland or water body. This exemption also pertains to development beneath existing paved surfaces, provided all disturbance related to the development occurs within the footprint of the existing paved surface. If the new piping construction area is limited to those portions of the resource area (in the environmental zone) which are paved, the exemption in PCC 33.430.080.C.7 may apply.

BDS acknowledges that at least 350' of the new pipe is installed in the resource area. Not all occurs under roadways. This disturbance area of approximately 35' wide exceeds the development standard allowed unless this is considered an alteration which it is not. **This is clearly is new development, not alteration.**

As new development, this should trigger an additional conditional use review based on those standards for the following items:
the work in area 3-4 is on a slope that exceeds 30% so mandates additional conditions
native trees over 10" will be cut
pipe of 48" will exceed the existing diameter by more than 50%
the disturbances in the resource area exceed the 1500 sq ft in the OS table (referring to both then upper nursery and that pipe running from the road to the reservoir 1 area.

Specific development standards for utility lines are identified in PCC 33.430.150. These standards may apply if the exemptions discussed above do not apply to the new piping. The utility standards apply to "private connections to existing utility lines and the upgrade of existing public utility lines in resource areas." If the construction of the piping is considered an "upgrade of existing public utility lines," these development standards would apply.

What is the definition of private?
See the 2002 BDS opinion below on this.

if using 33.430.150 then:
b the disturbance cannot exceed 15' in width. this would trigger a C U review
d (3) work on a slope exceeding 30%
e (1 and 2) native trees such as firs and cedars will be removed that exceed 12" (or 10" if using that from 2003).

f It also list the replacement schedule

G is this already exempt as a disturbance area?
Does the old use determination identify and determine in any fashion this was part of that existing conditional use, which of course may no longer apply since it was for demolition and facilities that served a different function.

Here we again address the use as an accessory to the park rather than a reservoir. If it is not a utility in part or in whole then how are these standards applied?

Modification of any of these standards requires approval through Environmental Review described in PCC 33.430.210 to 33.430.280. If the following standards apply and are met, the new piping could be approved through an Environmental Plan Check as described in PCC 33.430.120 and 33.430.130.

33.430.150 Standards for Utility Lines
B. The disturbance area for the upgrade of existing public utility lines is no greater than 15 feet wide;
C. The utility construction does not occur within a stream channel, identified wetland, or water body;
D. Disturbance areas must be planted with native species listed in the Portland Plant List according to the following densities:
1. Three different native shrub species are required at a minimum 1 gallon size or bare root, planted at a density of 3 plants per 10 square feet;
2. The remaining area must be planted with native groundcover using a minimum of four inch pots at a density of 8 plants per ten square feet; and*

3. Below the top-of-bank on slopes greater than 30 percent or in riprap areas, live stakes, 2 to 12 inches in diameter, may be substituted for the requirements of D.1 and D.2 above. Stakes must be installed at a density of 2 to 4 stakes per square yard. Detailed specifications for installing live stakes are found in Chapter 18 of the United States Department of Agriculture Engineering Field Handbook (entitled Soil Bioengineering for Upland Slope Protection and Erosion Reduction, October 1992).

E. Native trees more than 10 inches in diameter may not be removed; and

F. Each 6 to 10-inch diameter native tree cut must be replaced at a ratio of three trees for each one removed. The replacement trees must be a minimum one-half inch diameter and selected from the Portland Plant List. All trees must be planted on the applicant's site but not within 10 feet of a paved surface.* /_ Where a utility line is approximately parallel with the stream channel at least half of the replacement trees must be planted between the utility line and the stream channel.

Portland City Code 33.430.140 identifies development standards that would be applied to the new piping within the Environmental Conservation overlay zone, *if the piping does not meet the exemptions listed for replacement of existing utilities listed in PCC 33.430.080.C.1 and C.7, or if they are not considered "upgrades" of existing public utility lines as identified in PCC 33.430.150.*
Modification of any of these standards requires approval through Environmental Review. Based on these standards and the information presented in the Bureau of Water Works' Use Determination request, construction of new piping within the resource area of the Environmental Conservation overlay zone may require Environmental Review. Environmental Review would be required if the following standard applies and is not met:

33.430.140 General Development Standards
A. The maximum disturbance area allowed within the resource area on the site is determined by subtracting all portions of the site outside the resource area from the number listed in Table 430-1.

As the entire Mt. Tabor Park site lies within the OS zone, Table 430-1 limits the maximum disturbance area to 5,000 square feet, minus portions of the site outside the resource area of the environmental zone. Since well over 5,000 square feet of the Mt. Tabor Park site is outside the resource area of the environmental zone, *no disturbance is allowed by standard within the resource area.* *Therefore any amount of disturbance within the environmental resource area resulting from the proposed underground piping would require approval through Environmental Review.

Environmental Review for the new piping within the resource area of the Environmental Conservation overlay zone would be processed through a Type II procedure, as specified in PCC 33.430.230. The approval criteria for Environmental Review of utilities are found in PCC 33.430.250.A.

Once again, the use of Alteration is debatable since a portion is alteration and a portion is new construction as clearly stated by both the applicant and BDS. Different standards apply to each.

Outstanding questions BDS has refused to address beyond the appropriate use determination and findings:

1) How was the use not discussed since all of the application is predicated on that determination and subsequent definitions?

2) How did BDS approve the value of work in that first application for $110,000 when for that very same work it is now valued at $5,000,000?

3) How did BDs accept as complete known and erroneous ownership information in both Feb and October ?
The City may very well have the authority to allow condemnation of those parcels the WB will work on but is not in title to, but that was not the point. Donors in 1894 might have included use restrictions when deeding land to the water board or parks board or city, yet the applicant says not deeds restrictions can be found. Of course if they refuse to research the title documents they will not find encumbrances. Any other applicant would have to provide documents in evidence of clear title ***before*** BBS accepts any application as complete.

When a public record request for the records of just how BDS accepted the above questionable information of missing documents, they denied any intake list existed. On October 27, I visited BDS to review the LUR files and found none, yet Shelley Wilson of BDS who brought those files to me, told me they did in fact exist, but were confidential, for staff only. As this decision is appealable to Council and LUBA, why are these internal acts not available for public review?

These actions by BDS and the applicant create questions on both credibility as well as transparency .

Thank you,

Mark Bartlett

Disposal of Park land

Healthy Parks, Healthy Portland

CONFIDENTIAL

MEMORANDUM **DRAFT**

April 28, 2006

TO: **ROBIN GRIMWADE**
JANET BEBB

FROM: **HENRY KUNOWSKI**

SUBJECT: **MT. TABOR PARK AND MAINTENANCE YARD**

BACKGROUND: Mt Tabor Park and Nursery and Maintenance Yard (Yard) where listed on the National Register of Historic Places in the fall of 2005. Listing on the National Register (NR) carries with it the possibility of a City of Portland Landmark designation. In the recent past, Portland Parks and Recreation (PP&R) did not oppose the local designation of Mt Tabor Park & Yard. The historic status of these designations also contains regulatory impacts that can significantly influence decision-making regarding future actions that may adversely affect the historic character-defining features of the park. In essence, each designation carries the same basic regulatory oversight as defined in the City of Portland Chapter 33.445 – Historic Resource Overlay Zone and, Chapter 33.846 – Historic Reviews. Refer to the April 17, 2006 Memo: *PP&R Historic Resources landmark Status Implications* for a more in depth discussion of regulatory issues concerning PP&R property. The central focus of this memo is the Mt Tabor Yard.

The NR listing of Mt Tabor Park and Yard is framed in a historic period of 1888 to 1939. The Yard portion of the park site is the key factor that led to the late date (1939) for the period of significance due to the 1918 and 1933 date of (3) structures. The NR lists both "contributing" and "non-contributing" resources in the Park and Yard. It is primarily the contributing resources that are subject to regulation however, any significant change on the site can be subject to regulation such as major alteration or demolition. The Yard contains (3) contributing and (7) non-contributing structures. The (3) contributing buildings are; 1) Office-Horticultural Services Building, pre-1918, 2) Administrative Building & Addition, 1938 and, 3) Mechanical Offices Building (Community Garden Building), 1939, see attached map from National Register listing.

ISSUE: PP&R desires to relocate and redistribute the Yard's function to more appropriate locations to provide operational efficiencies and professional office space for Yard staff. Relocation of the Yard to new locations would render the current site operationally obsolete and therefore, subject to consideration for alternative use scenarios. In consideration of relocation, the potential impact on the site's historic designation will need to be addressed. The site's alternative use scenarios could take many forms and the process for landmark review and action varies with each alternative. For the purposes of discussion, 2 alternative uses are explored; each contains some aspect of demolition, rehabilitation and/or development.

1. Removal of all non-contributing buildings and structures
    a. In-fill with developments and building rehabilitation
2. Removal of all buildings and structures
    a. New developments
    b. Non-park related uses (OS Zone related requiring a land-use zone change) NOT DISCUSSED

Administration
1120 SW Fifth Ave., Suite 1302
Portland, OR 97204
Phone: (503)823-PLAY Fax: (503)823-6007

Strategy, Finance and Business Development Division
Phone: (503) 823.5588 Fax: (503) 823.5570
www.PortlandParks.org
Zari Santner, Director

12-24-14

To BDS staff c/o Hillary Adam
Re Mt Tabor disconnect LUR

Comments on the Theresa Elliot and WB response to the Dec 1 HLC hearing

Page 1

Conditions of approval.
Both BDS and the WB have acknowledged that the 2003 use determination is not correct for this body of work yet refer to it as thought it was completed responsive to this application and proposed work. Since the use is the foundation for applying the code, it is critical to get this correct before moving forward.

BDS should voluntarily redo this use determination and the application be corrected to reflect the current use. Simply saying that the use has changed, yet we find no issue with the criteria or determination is not adequate.

Further, by accepting the application as complete and compliant, it causes the public to question the credibility of the bureaus in allowing this to move forward while at the same time acknowledging that the use had changed in both the preapp summary and staff report. There were many additional irregularities during this LUR process. They are addressed below.

Are we to now have confidence going forward that BDS can objectively provide a legally correct use determination?

Relying on the City attorney is not sufficient or practical since they do the bidding of Council and the bureaus, so an outside legal analysis should be obtained. That would be a firm that is not and has not been retained by the City to assist them in any fashion for land use matters. i.e. no Ball Janick ... Miller Nash etc...

In addition to "conditions" mentioned by the applicant, there are others as described in that 2003 use determination that BDS and the WB say did not discuss. We find it questionable that the very foundation of the application of the code was not discussed according to BDS, since that is the starting point for all LURs. Page 2 of the Preapp summary dated March 26, 2014.

See pages 5-6-7 of that old 2003 use document under development standards and conditional use review triggers. We saw no mention of a condition use review that considered these triggers or any response from the applicant. There were no requested adjustments that we could find in the LUR file.

There was also a request from BDS to WB in the March 26 preapp summary page 2 under (d) LT2 rule for a detailed analysis document describing the election of the WB to

move to another system as the preferred option. That analysis has yet to surface for the public or oversight bodies to review.

This would be a document useful to both the HLC and SHPO since it demonstrates why they will be disconnected and moving forward the intent of the bureaus to maintain them and keep water in them, with at this time no written preservation plan.

Page 1 conditions
a) One other noticeable document missing were site plans required by City agencies, to show the infrastructure so future work would not damage existing work. These were publicly available during the first reservoir process as created by Montgomery Watson, dated Jan 1998 and June of 2001.

It is from these existing improvement site plans (as builts) one can see how that conservation overlay was altered in favor of the applicant by reducing and eliminating portions where pipes and proposed work areas were. Compare the 1998, 2000, and 2006 zoning maps and you will see this.

b) The applicant must detail just what is the "normal historic operating range". The City must provide clarity on forward ongoing funding in writing, that will not be subject to political whims or budgeting on a year by year basis.

The code section
33.445.330 Demolition of Historic Resources in a Historic District
(b) Exempt from demolition review ....allows by fiat the director of BDS to declare the facility unsafe for a number of reasons, and subject to demolition bypassing the public notification and process required in a type 4 LUR.

The hedging of language by the applicant here as well as lack of any written preservation plan continues to be a concern for the public since the applicant has declared their intent to demolish and demonstrated they cannot be relied on for maintenance at a level to keep these facilities in good repair.

The code does not differentiate between intentional and natural decay so a very slippery slope that allows demolition when politically desired.

Page 2

Discussion 1) Security, safety….

What are the emergency contingencies for reconnection in the event of a long term power outage? hackers have recently shut down electrical grids which present a more realistic event that does any threat from crypto.

Not specifically mentioned is what plan the applicant has if the electric grid goes off and water formerly distributed by gravity cannot be without pumps. The feared Crypto that

does not exist, can be remedied by boiling, but no water is just that.

2) The applicant should demonstrate and provide in writing what historic normal levels are and what they intend.

Page 3

3) Time frame
Both Citizens and the HLC have asked why the rush and why no plan is in place PRIOR to this LUR. This way if the LUR proposal allowed the work would have to conform to any standard and oversight determined before it begins rather than after damages which may not be repairable are inflicted.

C) interpretive program
This does not replace good stewardship and regular ongoing maintenance as defined in a written preservation plan with an appropriate budget.

Discussion

The WB set their own unrealistic ambitious schedule to meet requirements that other cities have put off until 2028, so they alone are responsible. ***All that was required was to submit a plan. No work was required.***

This process and discussion is not subject to their lack of foresight.

Page 4

Page 5

Responses to comments

1) maintaining the resources
Poor stewardship is evident and the WB cannot undo this with words. A written preservation plan is necessary with an adequate budget and third party oversight after identifying a baseline level of condition. The WB simply cannot be relied on for quality maintenance or even determining what is adequate.

2) The first pre app was held December 13, 2013. When asked in February, why there was not notice to the neighborhoods from either PPR or the WB, we were told that the Commissioner was unaware of the application. I think this speaks loudly to what was intended by both BDS, PPR, and the applicant. This has been a widely contested and controversial matter for more than a decade.

The conflicts of interests are clear and it appears that BDS is providing special treatment to the applicant.

3) More specific clarity in writing please

4) If the basis for that decision by Council was misinformation, then of course it is subject to review. The HLC does not have all of the information and cannot make an informed decision without that.

5) All that was "required" in LT2 was a written plan. Disconnecting was not a requirement. Again without the HLC having the full body of information, they cannot make an informed decision.

Page 6

6) The preapp summary of 26 March requires the WB to provide *a written in depth analysis why keeping the reservoirs as part of the water delivery system was not the preferred option.*
We are still waiting for that analysis to meet the BDS condition of page 2 (d) LT2 rule....

7) back flow devices.... additional research required.

8) MTNA conditions

It is debatable that no other conditions impact the exteriors of improvements or the visible areas.

a) does the proposed disturbance area of 35' not meet this test (when the development standard says not to exceed 15')

b) Damaging the look of the resource by cutting large diameter trees has no visible impact?
WB in their testimony to the HLC says no trees over 14" would be cut and that is simply not true. Trees up to 50" will be impacted as shown on the tree list provided by MTNA from the plans sheets tree audit.

Development standards from the section cited in that 2003 use determination outline that no native tree over ten inches shall be removed and those between 6-10" shall be replaced at a 3:1 ratio.

No disturbance exceeding 15' would be allowed.

Yet we saw no conditional use review triggered by nonconforming proposed work nor any request for adjustment in the LUR file.

Not coincidentally the work will bisect the historic upper nursery which Olmsted selected to grow plants and trees for the City. Both PPR and Council committed to continuing plant production on this upper nursery and the long block.

Accepting the application as complete and compliant is troublesome for the credibility of BDS and any future interpretations of the code in this matter. Clearly there are conflicts of interest between the agencies and citizens, and special treatment has been provided to the applicant in this LUR process.

The HLC was in agreement with citizens in questioning the applicant as to why the rush and why no preservation plan before work starts, outlining conditions and responsibilities, so as to know who would be accountable and any recourse from violating those conditions. Stopping work or pulling the permit will not repair damage to the resource.

9) Title issues

The applicant has a fundamental misunderstanding of this issue.

For this type of LUR, the applicant shall provide documents in evidence of clear and unambiguous title before it is accepted by BDS as complete, yet again they waived this requirement for this applicant.

In 1890s, there was no PPR or WB as we know it, but there was a parks and water board or commission. Their task was to cobble together parcels for a park from which water reservoirs would be distributed to the City.

Donors at that time deeded lands; some to the parks, some to the water board / committees, and some to the City. In these deeds, donors often restricted use knowing and anticipating political shenanigans, with reversion clauses if they should be violated.

The proposed work moves off the recognized WB parcels onto those of PPR and or the City. It makes no legal sense to say title is clear with no use restrictions because they find it convenient to say so. Applicant must provide the deed and a title report which are actual legally recognized evidence of clear title.

The argument that the City owns the land is a nonstarter and does not provide evidence as required. Because anyone says so is not a legally defensible argument when documentation in evidence proof is required to process the application.

We have found no evidence of any conveyance of legal title from those boards and committees of the early 1900s to provide title to the City alone. If there were, this too would be in evidence through title searches and documents rather than by the say so of someone at the City.

Because my property manager has the authority to manage my apartments, that does not give them the right to enter into actions resulting in changes to the land parcels, whether above or below ground. I as owner have that exclusive right.

The applicant says there is no evidence of encumbrances which may be the case, since

you must first research deeds to be able to say there is no evidence. This has not been done, so the application should never have been deemed complete.

Again we take issue with the BDS providing special treatment to this applicant in violation of requirement that other applicant would have to meet.

She also says placing 48" pipes on PPR parcels does not change the land or use of that land when in fact any work of this nature is a defacto easement that in future allows the applicant to at their discretion come to fix, maintain, or remove the improvement without any LUR.

The applicant has conducted extensive deed research on the 51 acres attributable to them, and it was the WB who provided citizens with deed information and maps in 2007. They along with BDS knew this yet proceeded to deem this application complete, because they find it inconvenient to meet the LUR requirements..

Conclusions

The credibility of this entire process is questionable since they refer to the 2003 use determination as valid, yet find and state clearly that this use has changed.

That by the development standards there should have been triggered conditional use review which cannot be found, nor the request for adjustments to those nonconforming items.

That BDS deemed the first application complete relying on the value stated as $110,000 and in this revised application it is now close to $5,000,000. This cannot be a rounding or innocent error. This was known by both BDS and the applicant as wrong yet the application was accepted and has proceeded.

That wide public notice was not provided to the neighborhoods at the start in order to enable the applicant to circumvent public scrutiny and comment, then reducing the appeal prospects by limiting the times and oversight bodies in a type 2 when both the applicant and BDS knew it was a type 3 LUR from the start.

This speaks volumes as to how this application and the bureaus should be viewed in any hearing by an oversight body when considering conditions to be met.

How are we to have any confidence in BDS to update that old use determination, then objectively apply the code and require this applicant to meet the requirement any other applicant would have to meet?

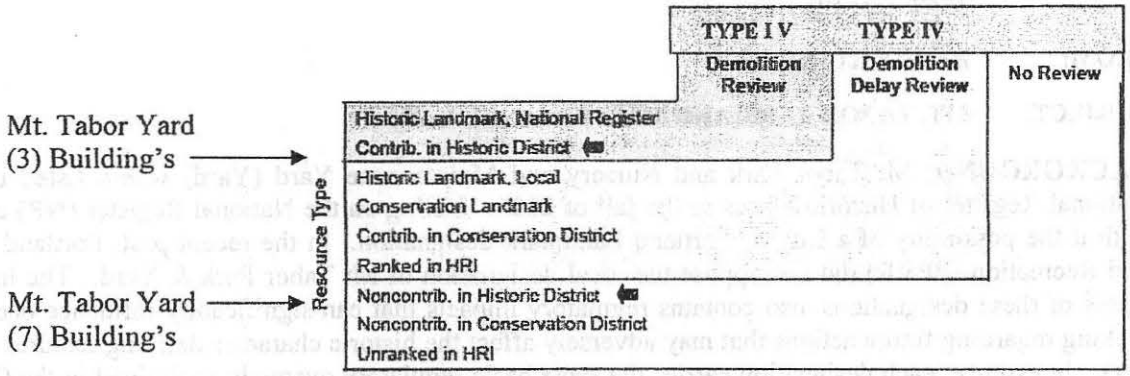
The application should be withdrawn yet again and corrected with a new start.

Thank you,

Mark Bartlett
NE PDX resident

multiple resources, the land-use code review process is evaluated under the perimeters and conditions that would be applied to a Historic District (33.445.330) versus an individual structure (33.450.150).

Demolition or Relocation of Historic Resources
Demolition review protects resources that have been individually listed in the National Register of Historic Places and those that have been classified as contributing in the analysis done in support of a Historic District's creation. It also protects Historic Landmarks and Conservation Landmarks that have taken advantage of an incentive for historic preservation and historic resources that have a preservation agreement. Demolition review recognizes that historic resources are irreplaceable assets that preserve our heritage, beautify the city, enhance civic identity, and promote economic vitality.



Type IV - Demolition/Relocation BDS Staff Recommendation to City Council, appeal to LUBA. The review is a flat fee of $5,438.

Demolition Review. Requests for demolition of resources *individually listed* on the National Register of Historic Places and *contributing structures* in National Register-listed historic districts require this discretionary land use review. However, non-contributing structures do not require review. The City has the authority to deny the request or place conditions on approval. The Demolition Review process also gives the public an opportunity to comment on the proposed demolition and allows for pursuit of alternatives to demolition or actions that mitigate for the loss. In this Type IV land use review, the Historic Landmarks Commission advises City Council, which may either approve, approve with conditions, or deny the request. Council will approve a request to demolish the resource if the applicant can show that *either*:

1. Demolition of the resource has been evaluated against and, on balance, has been found supportive of the goals and policies of the Comprehensive Plan and relevant area plans. Based on taking into account factors such as: the merits of proposed new development on the site, the merits of preserving the resource, and the area's desired character; or;

2. Denial of a demolition permit would effectively deprive the owner of all reasonable economic use of the site. In essence, the applicant must argue that demolition of the resource (and redevelopment of the site) meets a public purpose, as found in applicable adopted plans, that outweighs preservation, or, that preventing demolition creates an unreasonable economic hardship because preservation or rehabilitation is not economically viable. In order to help the City evaluate such a claim, supportive documentation is required, such as studies of the structural soundness of the structure, the economic feasibility of restoration, renovation, or rehabilitation, and a summary of the extent to which the applicant explored the available historic preservation incentives and programs. If City Council approves a request, a demolition permit will not be issued until a permit for a new building is issued for site. This not only prevents replacement of historic resources with surface parking or a vacant lot, but also provides the mechanism for enforcing any conditions placed on the demolition review approval.

Demolition Delay Review
Applicable to locally designated resources, this non-discretionary administrative process requires a 120-day delay period to allow time for consideration of alternatives to demolition, such as restoration, relocation, or salvage. Photographic documentation of the resource and evidence that the applicant responded to any relocation or salvage offers is required. The City has no authority to deny demolition after the delay.

CONCLUSION: YARD and SITE REDEVELOPMENT SCENARIO'S (NOTE: The conclusion presented here are those based on staff interpretation of the land use code. This interpretation has not been vetted by Bureau of Development Services staff at this time although a request for interpretation is pending. For a detailed read of the Land Use Code see attached Appendix A: Chapter 33.445.330 Demolition of Historic Resources in a Historic District

1. Removal of all non-contributing buildings and structures (7). In-fill with developments and contributing building rehabilitation (3). No Demolition Review is required for non-contributing resources in a Historic District however, Historic Design Review is required for new developments. This action is either a Type II; BDS Staff or Type III, Historic Landmarks Commission (HLC) review since the level of adverse effect of the demolition could be viewed as a major alteration in a District. If the review is a Type II or III then the HLC process is open to public comment. This would most likely effect the outcome of the quasi-legislative process through either the HLC action for denial of demolition with possible PP&R appeal to City Council or approval of the action with public appeal to the City Council. If an appeal is put in motion, it could delay any action for 120 days up to 180 days or more. If the demolition request is granted, any new development will be subject to Historic Design Review for design compatibility with the District's remaining (3) resources that are left in place.

2. Removal of all buildings and structures and new developments. Demolition reviews are processed through a Type IV procedure. Proposals to demolish a historic resource will be approved if the review body finds that one of the following approval criteria is met:
(The review is a flat fee of $5,438)

1. Denial of a demolition permit would effectively deprive the owner of all reasonable economic use of the site; or
2. Demolition of the resource has been evaluated against and, on balance, has been found supportive of the goals and policies of the Comprehensive Plan, and any relevant area plans.

The evaluation may consider factors such as:

a. The merits of demolition;
b. The merits of development that could replace the demolished resource, either as specifically proposed for the site or as allowed under the existing zoning;
c. The effect demolition of the resources would have on the area's desired character;
d. The effect that redevelopment on the site would have on the area's desired character;
e. The merits of preserving the resource, taking into consideration the purposes described in Subsection A; and
f. Any proposed mitigation for the demolition.

PP&R and the City Council could find support for this proposal in various Comp Plan and relevant internal PP&R policies, particular as they deal with infrastructure and the recent 2006-07 budget note for the feasibility of a new set of Zone Management and City Nature operational facilities, the public interpretation may not be as supportive.

APPENDIX
A

33.445.330 Demolition of Historic Resources in a Historic District

Historic Landmarks in a Historic District are subject to the regulations of Section 33.445.150. Demolition of other historic resources within a Historic District requires demolition review to ensure their historic value is considered. The review period also ensures that there is an opportunity for the community to fully consider alternatives to demolition.

(MEMO NOTE: No Demolition Review is required for non-contributing resources in a Historic District however, Historic Design Review is required for new development)

A. Demolition review.

1. When demolition review is required. Unless exempted by Subsection B, below, demolition of a historic resource in a Historic District is subject to demolition review if:

a. It is a structure that was classified as contributing in the analysis done in support of a Historic District's creation; or

b. There is a covenant with the City that requires the owner to obtain City approval before demolishing or relocating the historic resource.

2. Issuance of a demolition permit after demolition review. If the review body for demolition review approves demolition of the resource, a permit for demolition will not be issued until the following are met:

a. The decision in the demolition review is final;

b. At least 120 days have passed since the date the Director of the Bureau of Development Services determined that the application was complete; and

c. A permit for a new building on the site has been issued. The demolition and building permits may be issued simultaneously.

B. Exempt from demolition review. Historic resources in Historic Districts are required to be demolished because of the following are exempt from demolition review:

1. The Bureau of Development Services requires demolition due to an immediate danger to the health, safety, or welfare of the occupants, the owner, or that of the general public, as stated in Section 29.40.030 of Title 29, Property Maintenance Regulations; or

2. The Code Hearings Officer requires demolition, as provided for in Section 29.60.080 of Title 29, Property Maintenance Regulations.

33.445.800 Types of Reviews.

There are two types of review that may be required before a historic resource is demolished. Other sections of this chapter describe when each review is required. The types of review are: **Demolition Delay Review.** See Section 33.445.810 & **Demolition Review.** See Section 33.846.080.

33.445.805 Supplemental Application Requirements.

A. Applicability. In addition to the application requirements of Section 33.730.060, a demolition review application requesting approval based on criterion 33.846.080.C.1, or on both 33.846.080.C.1* and 33.846.080.C.2,* (see page #XX) requires two copies of a written statement that includes the information listed in Subsection B. An application requesting approval based solely on criterion 33.846.080.C.2 requires two copies of a written statement that includes the information listed in Paragraphs B.1 through B.4. Applicants may also submit any additional information relevant to the specific review and approval criteria.

B. Application requirements.

t. A statement that a demolition permit may be issued 120 days after application was made for demolition, and the date that the permit will be issued.

(3) Removal of the posted notice. The posted notice must not be removed until the demolition permit is issued. The posted notice must be removed within 30 days of the issuance of the demolition permit.

a. Mailed notice.

(1) Notice to recognized associations. Within 14 days of receiving the application for a demolition permit, the Director of BDS will mail a notice of the proposed demolition to all recognized organizations within 1,000 feet of the site of the resource and to the State Historic Preservation Office. If the proposal is to demolish a resource in a Conservation District or Historic District and the district has a Historic Advisory Committee that has been recognized by the neighborhood association, notice will also be sent to the Historic Advisory Committee. The notice will include the same information as in Subparagraph B.1.b, above.

(2) Notice to other interested parties. The Director of BDS will maintain a subscription service for organizations and individuals who wish to be notified of applications for demolition of historic resources subject to demolition delay review. There is a fee for this notification service. Within 14 days of receiving the application for a demolition permit, the Director of BDS will mail a notice of the proposed demolition to all subscribers. The notice will include the same information as in Subparagraph B.1.b, above. 3. Decision. The Director of BDS will issue the demolition permit 120 days after receiving the application if the following requirements have been met:

a. Photographic documentation. The applicant must submit photographs of the features of the resource that were identified when the resource was nominated, designated, placed within a Historic District or Conservation District, or placed on the Historic Resource Inventory. BDS will retain a copy of the documentation for the purpose of public information.

b. Response to offers of relocation or salvage. The applicant must submit a letter stating that the applicant responded to all offers to relocate the resource, or to salvage elements of the resource during demolition. The letter must also identify those who submitted offers, and the applicant's response to those offers.

33.846.060 Historic Design Review (should the site continue to be considered historic)

A. Purpose. Historic design review ensures the conservation and enhancement of the special characteristics of historic resources.

B. Review procedure. Procedures for historic design review are as follows:

1. Neighborhood Contact Requirement. Proposals listed in Subparagraph B.1.a, below, must complete the steps in Subparagraph B.1.b before applying for historic design review.

a. Proposals subject to the Neighborhood Contact Requirement. The following proposals are subject to the Neighborhood Contact Requirement, as specified in Subparagraph B.1.b, below, if they are in the

b. Alternative Design Density Overlay Zone; in the Albina Community Plan area shown on Map 825-2; or in the Outer Southeast Community Plan area shown on Map 825-3:

(1) Proposals that create more than three new dwelling units. Dwelling units are created:

* As part of new development;
* By adding net building area to existing development that increases the number of dwelling units;
* By conversion of existing net building area from nonresidential to residential uses; and

(2) Proposals that create more than 10,000 square feet of gross building area for uses in the Commercial or Industrial use categories; or

(3) Proposals in the IR zone where the site is not covered by an Impact Mitigation Plan or Conditional Use Master Plan.

b. Steps. The steps are:

(1) The applicant must contact the neighborhood association for the area, by registered or certified mail, to request a meeting. The neighborhood association should reply to the contact within 14 days and hold a meeting within 30 days of the date of the initial contact.

If the neighborhood association does not reply to the applicant's letter within 14 days, or hold a meeting within 30 days, the applicant may apply for historic design review without further delay. The

restoration, or rehabilitation as to the structural soundness of the structure and its suitability for continued use, renovation, restoration, or rehabilitation;
2. Statements from developers, real estate consultants, appraisers, or other real estate professionals experienced in rehabilitation as to the economic feasibility of restoration, renovation, or rehabilitation of existing structures or objects;
3. All studies commissioned by the owner as to profitable renovation, rehabilitation, or utilization of any structures or objects for alternative use, or a statement that none were obtained;
4. A summary of the historic preservation incentives and programs available and the extent to which they were explored by the applicant;
5. The amount paid for the property by the owner, the date of purchase, and the party from whom purchased, including a description of the relationship, if any, between the owner and the person from whom the property was purchased;
6. The current balance of any mortgages or any other financing secured by the property and the annual debt service, if any, for the previous two years;
7. All appraisals obtained within the previous two years by the owner or applicant in connection with purchase, offerings for sale, financing or ownership of the property, or a statement that none were obtained;
8. All listings of the property for sale or rent, price asked and offers received, if any, within the previous four years, or a statement that none were obtained;
9. Itemized income and expense statements for the property for the previous two years;
10. Estimate of the cost of the proposed demolition; and
11. Form of ownership or operation of the property, whether sole proprietorship, for-profit or not-for-profit corporation, limited partnership, joint venture, or other.

C. Exceptions. The Director of BDS may waive items listed if they are not applicable to the specific review and the applicant may choose not to submit any or all missing information requested by the Director of BDS, as specified in Section 33.730.060.

33.445.810 Demolition Delay Review.

A. Purpose. Demolition delay allows time for consideration of alternatives to demolition, such as restoration, relocation, or architectural salvage.

B. Procedure for Demolition Delay Review. Demolition delay review is a non-discretionary administrative process with public notice but no hearing. Decisions are made by the Director of BDS and are final.
1. Application. The applicant must submit an application for a demolition permit.
2. Notice of application.
a. Posting notice on the site. Within 14 days of applying for a demolition permit, the applicant must post a notice on the site of the historic resource proposed for demolition. The posting must meet the following requirements:
(1) Number and location of posted notices. Notice must be placed on each frontage of the site occupied by the historic resource proposed for demolition. Notices must be posted within 10 feet of the street lot line and must be visible to pedestrians and motorists. Notices may not be posted in a public right-of-way;
(2) Content of the posted notice. The notice must include the following information:
a. The statement, "Structure to be demolished;"
b The statement, "Demolition of this structure has been delayed to allow time for consideration of alternatives to demolition. Alternatives to demolition might include restoration, relocation, or architectural salvage;"
c. The address of the structure proposed for demolition;
d. The name, address, and telephone number of the owner or the party acting as an agent for the owner;
e. The date of the posting; and

neighborhood may schedule the meeting with its board, the general membership, or a committee. The purpose of the meeting is to allow neighborhood residents and the developer to discuss concerns about the design of the proposal. The focus of the meeting should be the design of the proposal and not whether the proposal will be built. The discussion at the meeting is advisory only and is not binding on the applicant.

(2) After the meeting and before applying for historic design review, the applicant must send a letter to the neighborhood association. The letter will explain changes, if any, the applicant is making to the proposal's design.

c. Copies of both letters required by this paragraph must be submitted with the application for historic design review.

2. For Historic Landmarks, including those in Historic Districts or Conservation Districts:

a. Proposals for alterations of a landmark-designated interior public space if the value of the alteration is more than $325,600 are processed through a Type III procedure.

b. Proposals for alterations of a landmark-designated interior public space if the value of the alteration is $325,600 or less are processed through a Type II procedure;

c. Proposals for the installation of mechanical equipment on the exterior of a building are processed through a Type I procedure;

d. Proposals for the installation of new or replacement awnings are processed through a Type I procedure; and

e. The following proposals in C, E, I, and RX zones are processed through a Type I procedure:

(1) Signs less than 150 square feet in area; and

***33.846.080 Demolition Review**

A. Purpose. Demolition review protects resources that have been individually listed in the National Register of Historic Places and those that have been classified as contributing in the analysis done in support of a Historic District's creation. It also protects Historic Landmarks and Conservation Landmarks that have taken advantage of an incentive for historic preservation and historic resources that have a preservation agreement. Demolition review recognizes that historic resources are irreplaceable assets that preserve our heritage, beautify the city, enhance civic identity, and promote economic vitality.

B. Review procedure. Demolition reviews are processed through a Type IV procedure.

C. Approval criteria. Proposals to demolish a historic resource will be approved if the review body finds that one of the following approval criteria is met:

1. Denial of a demolition permit would effectively deprive the owner of all reasonable economic use of the site; or

2. Demolition of the resource has been evaluated against and, on balance, has been found supportive of the goals and policies of the Comprehensive Plan, and any relevant area plans. The evaluation may consider factors such as:

a. The merits of demolition;

b. The merits of development that could replace the demolished resource, either as specifically proposed for the site or as allowed under the existing zoning;

c. The effect demolition of the resources would have on the area's desired character;

d. The effect that redevelopment on the site would have on the area's desired character;

e. The merits of preserving the resource, taking into consideration the purposes described in Subsection A; and

f. Any proposed mitigation for the demolition.

W-23

OFFICE MEMORANDUM

Write It — Don't Say It

TO:
1. Dick
2. Eric
3.

Asbest I. Coll
4/28/86

SUBJECT: Mt. Tabor Research

- [ ] Your Information
- [ ] Please Reply
- [ ] See Me
- [ ] Prepare Report
- [ ] Please Comment
- [ ] Per Your Request
- [ ] Investigate
- [ ] Initial and Forward
- [ ] Return by:
- [ ] For Necessary Attention

Attached is a list of the Auditor's Deed File Numbers for all property on Mt. Tabor owned by the City.

(1) For each Deed No., I need the corresponding Ordinance No., from the Auditor's Cross-Reference Index.

(2) For each Ordinance No., I then need:

A. Date of Ordinance;
B. Amount of purchase price for land authorized;
C. Fund Source for purchase (Water Fund, General Fund, Parks Recreational Areas Fund, etc.).

I need this info by noon Tuesday, April 22. Let me know beforehand if it will take longer than this! Thanks!

FROM: Dan

Date 4/17/86

Phone

Auditor Deed No's.

#354 Feb 23 1892 $3124 Grover Water

** must have first

* especially needed

		No.	DATE ord No	Amount	Fund
*	*	√279	1893	12,000.00	Water Committee
*	*	289	Jan 24 1894	1,000.00	SEE # 6477
*	*	√297	Aug 21 1896	100.00	City Portland
*	*	355	1907	25,008.00	Mt Tabor Water Board
		374	2/20/08	9,618.75	Lot 2 Mt Tabor
		395	oct/4/12	2,500	SE SW Hooker
		500	oct/21/16	1.00	25' of Lot 5 Blk B Mt Tabor
		501	same	1.00	S 25' of Lot 4 Blk W Mt Tabor
		502	Same	1.00	S 25' of Lot 1&2 Blk W.
		503	Same	1.00	S 25' of Lot 6 Blk W.
		574	May 14, 15		ord 30432 E 58 ft & E 28 ft Bk 587 Pg 367
		579	March 10 1919	1.00	Easement for H2O on Linton
	*	589	Sept 26 1908	5000.00	City of Portland Bk 472 Pg 86
*	*	590	Feb 20 1909	$33,500	To City of Portland Bk 446 pg 280
*	*	591	Mar 4 1909	37,500.00	Bk 444 pg 306
		592	May 3 1909	10,000	DD Petygrove Land Claim Fred Vail Bk 453 Pg 303
		593	April 30 1909	3,200.00	Lot 12 Mt Tabor Bk 443 Pg 224
*	*	594	May [illegible] 1909	1750.00	[illegible] Bk 449 pg 291
*	*	595	May [illegible] 1909	15,000.00	City of Portland Bk [illegible] pg 324
		596	April 1909 1909	8,210.00	Lot 14-17 Belmont Bk 453 Pg 302
*	*	597	May 6 1909	21,500	City of Portland Bk 456 pg 187
*	*	598	May 8 1909	12,500.00	City of Portland Bk [illegible]
		599	May 6 1909	23,600.00	Bk 453 Pg 325

[redacted]	DATE ord No	Amount	Fund
601	May 14, 1909	3750.00	Mt Tabor Tract T. Bk 457 Pg 242
602	Same	4300.00	Lot D Mt Tabor Bk 456 Pg 238
603	June 3 1909	5500.00	Lot H Mt Tabor Bk 461 Pg 48
605	May 29 1909	10.00	Mt Tabor (check Trico) Bk 458 pg 83
606	June 21 1909	6800.00	Lot 13 Belmont Bk 463 Pg 20
607	July 14 1909 Water Committee No	6832.00	Bk 460 Mt Tabor Pg 193 Bk 92 Pg 607
608	Aug 1909	17,192.00	Lot 16 13 17 [illegible] Bk 466 pg 116
610	Sept 11 1909	3700.00	Lot 11 Mt Tabor Bk 471 pg 64
613	Aug 20 1909	9,648.75	Lot A Belmont Blk 2 Mt Tab. Bk 472 pg 2
614	Oct 8 1909	750.00	Y Mt Tabor Bk 440 pg 462
615	Oct 12 1909	750.00	Blk Y Mt Tabor Bk 471 pg 25
616	Nov 22 1909	5460.00	K & E Mt Tabor Bk 474 pg 226
618	Feb 12 1910	10 756.33	Lot 12-15 Belmont Bk 486 Pg 221
619	April 11 1910	14,592.50	Lot 3 [illegible] Bk 487 pg 407
620	Aug 3 1910	14,500.00	G Mt Tabor Bk 510 pg 36

12-1-14

LU 14-21844 HR EN

Notes to the Landmarks Commission from Mark Bartlett

Mt Tabor resident for 18 years, living 4 blocks from reservoirs

Years on MTNA and sat in CAC meets with WB

Worked with PPR and citizen group on Mt Tabor Park master plan update of 2008

28 years of work in land development and real estate in Portland

Questions and comments on the LUR and staff report

(A) Definitions and use determination

1) WB relies on the Aug 20, 2003 use determination for this LUR when both the use and definition have changed. Page 8 pre app summary of 3-26-14.
BDS staff also noted this determination; yet say no discussion was held about this when the entire LUR relies on these definitions for application of the code.
Under this outdated determination pages (1-7) they were still reservoirs, therefore the use remained the same, and the work was classified as an alteration not new construction.

See BDS Staff report
Record of its time
1) Does the application of 33.430.150 standards for Utility lines still apply?
    a) The work alters the reservoirs, but the pipe installation is new construction
2) Page 11 of the staff report… Staff concedes the change in use yet does not alter the application of the code instead allowing an interpretive program completed at a later date with an unknown outcome to substitute rather than applying the code as written. Is this the legal and proper interpretation of the code?
Or simply a concession allowing the applicant to prevail on this critical issue?

3) As a further concession to the applicant staff requires as a condition that water be kept in for an undetermined period of time. Please qualify and clarify.

B) Title concerns

BDS demonstrates preferential treatment of this applicant.

It is the responsibility of the applicant to provide legal evidence of clear unambiguous title for all parcels on which work will be done.
They have not done so yet BDS accepted the application as complete?

1) For both this and the earlier LUR application, BDS accepted as complete the applicant representations for ownership, yet changed it from WB property to City property when neither is completely accurate.
2) The applicant represents ownership of all parcels where work is to be done. Work crosses off acknowledged WB owned parcels onto PPR parcels.

Has the WB provided and BDS confirmed title research of deeds, for restrictions or encumbrances on use as required by donors, for those parcels?

No, they simply find it convenient to ignore the rule they apply toward every other applicant.

a) Copy of 1959 parcel map showing park is 51 parcels: Park is owned by WB, PPR, and City. Donors specified parcels to parks board and water commission between 1895 and 1915, as well as the City.

There has been No known conveyance of those parcels in question to the City for purposes of this application

These maps, deed research, and title documents were supplied to both Commissioners Fritz and Fish by me personally long before this application, and were a product of research by the WB. They know they do not own the entire Park.

b) 9-15-2008 memorandum from PPR on parcels issue explaining the assessor did this without regard for legal concerns about deeds.

c) WB employee Dan Coombs narrative, maps, and deed research provided to BDS staff before their report was written yet ignored in the narrative.

C) Other questions and concerns

1) Refusal to respond to public records requests and filtering what the public sees

   a) On page 10 of the staff report BDS states there was no intake checklist.

On Nov 17, I went to BDS and for three hours reviewed the files for both earlier LURs and the recent one from October 2014, expecting to find this list and the application to see just how they determined that the applicant met their requirements for the application to be deemed complete and compliant.

Shelley Wilson of BDS who provided the documents for me confirmed my expectation there would be such a list but told me it was confidential, for staff only, yet this decision can be appealed to Council, then LUBA, so all documents should be a part of the records available to the public yet they elected to keep some secret?

I questioned this since BDS had accepted the January applications as complete using $110,000 as the value of work making it a type 2, limiting the public from; having this hearing, reasonable public notice (18 days rather than 51) and any appeal to LUBA. The value now it exceeds $5 million for the very same work in the words of BDS. See page 1 of the preapp summary dated 3-26-14.

BDS also accepted the applicant's representation that the WB owned the entire park when I provided to all parties, clear evidence to the contrary prior to this application. The zoning map and assessor's maps incorrectly show the park, yet BDS knowing this accepted the incorrect information deeming the application complete.

I also requested the entire file from the WB and was told there were no notes or conversations between BDS staff and the applicant about the definition and use determination upon which all else follows. I found this incredible as one who has completed all types of LURs myself. I understood there would be notes and correspondence between the applicant and consultants such as historical and preservation advisers that BDS would not have in their file. They denied such exchanges occurred.

When I wrote to Nick Fish's staff member Sonia Schamanski, requesting the complete file. I was told the applicant Tom Carter, would provide all substantive records according to what he determined as substantive. That meant the applicant was determining what documents they considered necessary for the public to see.

My inquiry and request to BDS staff for records about any early assistance or DAR notes or records for the reservoirs in this LUR or earlier applications was ignored.

Because these among other records have been denied the public I request this hearing record be kept open until that time they are made available for review and a response to this hearing body can be made. This may exceed the 7 day period stated for rendering a decision, but that will be dependent on cooperation from the applicant and the bureau. I would ask that the hearing board demand from the bureaus their cooperation in providing the complete records of these LURs.

b) In that the applicant has as their stated goal, to demolish these reservoirs, and have for more than a decade been deceiving the public frequently about their intentions and plans, I am uncomfortable with them overseeing any work related to historical conservation or preservation. They simply cannot be trusted to do so without a third party oversight that clearly has no conflict of interest.

I would ask the same for tree preservation and the PPR staff who we as a neighborhood have dealt with over these past 14 years. An outside arborist should create, then oversee the tree preservation delineation of drip circles and root preservation.

I find it unfortunate but not atypical that bureaus select and choose which documents to provide the public when it comes to land use in Portland. Public records requests are not

seriously taken by either of the bureaus except to respond as if they are complying,

C) Other concerns

3) The Applicant continues to claim LT2 requires this work when it does not.

4) On page 2 of the pre app summary of 26 March 2014. WB is required to show why the treatment of water in the existing reservoirs was not the preferred option... as a BDS condition of acceptance. Where is that document?

5) Cost of reversal... What is the cost of reversal and who determines how the work is done to minimize that cost?

6) Lack of any preservation plan per ORS 358... How is it that this plan will be done after the work and not before providing guidance for both the applicant and the construction workers?

7) What precisely is the current condition of the listed facilities as referred to by BDS in the staff report that the applicant must maintain? ie… applicant will maintain current condition of listed assets…?

a) What is the standard to meet when referring to keeping the Historical Character? The Rob Dortignacq Historic Structures report of 2009?

b) Who determines if the work meets that standard?

D) Requested actions

1) Require that BDS and WB as applicant provide all requested documents prior to the decision by the Hearings Commission in this matter so the public may view and comment as the land use rules intended.
2) Require BDS to waive the fee of $850 for a new use determination so that the public has an assurance using the old outdated one was correct. Or we will ask for one before the record closes, and we can have this hearing again at a later date once Council has approved that finding, the appeal period has lapsed, and the LUR process begins again.
3) Provide a preservation plan clarifying the water in the reservoir issue before work begins to ensure that the protected assets remain in their current or better condition.
4) Condition any approvals on a third party oversight for both the arborist work and historic preservation planning and oversight. Neither bureau can be trusted to act without a conflict of interest in this matter.
5) Hold the record open until these issues are corrected and resolved.

Thank you

12-5-14

To SHPO and the HLC
Comments on the proposed Mt Tabor disconnect LUR

First I feel I need to address concerns that may make the BDS staff report invalid

BDS relies on a use determination dated 20 August 2003, in which the proposed work was to demolish these reservoirs. The findings and described work differ significantly today from that used in 2003, to then be able ton apply the zoning and code sections under which the application would be reviewed.

I have asked BDS since February to reexamine those findings since they appeared to not be correctly used in the first LUR of Jan 27, nor for the current one. I wrote to Commissioners Fritz and Fish, their staff, and the BDS staff, and have no response on this matter. I have those e mails if one would like to read them.

Clearly this is a problem that should have been addressed before now, but for political reasons has not been. This entire issue has been fraught with politics as you see.

I asked the HLC to be aware of this conflict of the use for these reservoirs changing, since all else in the code interpretation and application follows defining and use.

I have made know I was going to request a new use determination if BDS staff did not do so voluntarily and that the HLC staff assist me by requesting a fee ($850) waiver. I understand the City attorney may be reviewing the language but am concerned about the conflict of interest since they generally support Council's wishes regardless it seems of whether this was legal or appropriate.

I feel only an independent review would be correct, but again since BDS has put forward the incorrect findings and carried it this far knowing they had a problem, I don't know then how the public can best be reassured that they will do so honestly and diligently.

I leave those matters to the oversight bodies, in the hope they can rein them in and compel them to provide an honest interpretation of the code, before resubmitting an LUR that actually addresses the current situation.

I will address each document separately below:

Concerns with that use determination

page 2
use classification... are these still reservoirs since they have for some time been disconnected from the water delivery system?
If not then what are they?

Conditional use procedures

1) **Proposals affecting use...**
"a conditional use review is required when changing from one use to another..." BDS staff in their own report on pages 11 and 12 acknowledge the use has changed. They also in the pre app summary point this out yet they continued relying on this old determination... while ignoring my questioning their going forward in February. So their deductions that follow would also be in question...

page 5
B (3) Changes in landscaping There is some disagreement between citizens and staff about this in that the historic look will be impacted by the cutting of trees for example that cannot be mitigated. That change will take 60-70-80 years to recover.
In his testimony before the HLC, Tom Carter as applicant said no trees over 14" would be cut and that is not true.
Please examine the attached tree inventory and see the construction sheet with the tree survey. There are trees as large as 50" in diameter that will be cut or are in danger due to work in the root protection zone. I have attached the schedule of trees done during the first application. Some changes have been made, but still significant trees will be cut or within the work zone in both the OS and OSc zones
See trees 13563 a 50" fir, (13547 and 8) 34 and 36" firs, 12300 a 38" cedar, 12834, a 40" fir and numerous more.

I would add my concerns about the applicant's reliance on City staff to oversee all aspects of the tree questions. As an applicant myself, I would have to do the survey, have an independent arborist write a report or plan to be approved before any work could begin. Then during that work, a continuous on site inspection of the work, during excavation and backfilling / compaction, and finally a report to BDS assuring compliance with the approved plan before the work was approved by inspection for final.

Page 6
The proposed work amounts to new construction placing a new line in areas not adjacent to existing work. ? The size will also be larger according to schematic sheets made public during the period this use determination was written. Montgomery Watson sheets of June 2001 and 1999 showing the installed pipe configuration.

There is then a question to be decided by others as to whether this constitutes an upgrade. Or this simply new construction? These new pipes will be 48" rather than those now listed as 20, 30 and 32".

It then follows on that page that if an upgrade the certain utility standards apply
b) 'the disturbance area cannot exceed 15' in width ' … when the applicant requests 35'
c) lists landscaping requirement
(e and f) requires that native trees of more than 10" not be cut and those between 6-10" be replaced at a 3:1 ratio.

Under 33.430.140
the maximum disturbance area in the proposed work will exceed the 5000 sq ft threshold under this standard.

These are all concerns about the BDS interpretation of the use from 2003 which I don't believe would hold as applied to the proposed work in question, yet BDS staff knowing these concerns proceeded to accept the application as complete and complying with the code and bring it forward to both SHPO and the HLC for review.

This was one reason I asked for the BDS intake check sheet to see just how they overcame this conflict?
And further approved the application as complete knowing the conflicts?

Comments on the pre app summary of 3-26-14

Page 1) BDS staff clearly indicates this proposal is for new construction of pipes and larger than existing

page 2) BDS requires a site utility plan which I could not find in my 11-27 review of the LUR files. Where is that document?

page 3) There were questions about storm water, in that inside the OSc zone some work will take place on 3:1 slopes or even greater. BES reported they had no storm water or erosion control. Concerns.

Note the pending tree regulations beginning Jan 2015. If this LUR is deemed invalid due to the reliance on an old and incorrect use determination, then the new LUR and tree preservation plan would have to comply with any new regulations.

Pages 4 and 5

Scale of maps and source of documents

I expressed concerns about the integrity of the maps since the scales were 500=1 and 100=1. The boundaries of the NHL are drawn at that scale. I also questioned the data source and its accuracy.
Who do we rely on for correct maps at a reasonable scale?

Hopefully not the applicant.

Zoning map. I brought to the HLC hearing my copy of the dated and stamped property control map from 1959 showing the park was made up of 51 individual parcels not 2 as shown by the assessors map. This discrepancy was widely known to all BDS staff and Commissioner Fritz as well as the WB since it was the WB who provided me with the title and deed information, yet they on their application misrepresented this. No amount

of questioning to BDS staff on this matter was ever acknowledged when this alone could render the application unacceptable for review.

The proposed work will in both the OS and OSc zone be off WB parcels and park parcels. The applicant then changed ownership on the application from the WB to the City, which does not resolve anything. Donors in 1894 - 1915 may have encumbered their donations with restrictions on use which would only be clarified with deed research. For this application it is a BDS requirement for the applicant before their application is deemed complete show documents that provide evidence of ownership and clear title which the WB nor the City has done.

There is some controversy about title of public lands that we addressed in the master plan update. The City tries to pose that legally it matters not, that it owns all public land and can do as it wishes, when that is not legally accurate. These parcels were donated to the water and parks board and /or commission at the turn of the century and may have restrictions on use regardless of who is in title. There are three owners: WB, PPR, and the City.

I have yet to find in my research any conveyance of title to the City from those boards originally set to acquire land for the park.

I have attached a 1902 map showing the early lot partitions that complements the 1959 map. I also have quite a bit of research on this deed and title issue if more information is required.

BDS response to the preapp conference

BDS notes that the first application which they deemed complete valued the work at $110,000 and now in the new application the value of that same work is $5,000,000 in round numbers. This speaks to the integrity of both the WB as applicant and BDS in their responsibility to confirm representations on applications are correct.

Page 1) It appears that BDS is relying on the applicant to correctly place map boundaries on the construction sheets. What source materials are they relying on?

Page 2)

2. **Conditional use status**

BDS notes the reliance on the old 2003 use determination, yet does not discuss this most critical aspect of any LUR application. My requests for notes and any conversations about this to both BDS and the WB have been met with a denial that any conversation took place. That is simply not credible since as an applicant that is the very first and most critical aspect of any LUR. It determines the feasibility of any proposal and would be widely discussed. in detail. The applicant must know the use and definitions before proceeding.

3. **Historic Resources**

a) **Presentation**
I requested a photo shop comparison of before and after conditions where significant trees would be removed. This request was ignored, yet the applicant provided numerous other views of the work areas.

b) **Integrity**
The stated goal of the applicant has for more than ten years now to demolish the reservoirs. The public cannot rely on this Bureau to oversee any work, be it disconnecting from the reservoirs or preservation without an independent third party oversight. They have proven over a long period they cannot be trusted and are intentionally allowing the assets to decay.

In the code there is a section that allows demolition of listed assets, if certain conditions are met and then the director can make that decision without the normal process and right to appeals.

In 2006, PPR was on this path to demolish the listed assets in the maintenance yard. The proposed secret sale to Warner Pacific was discovered, but not before PPR had moved far along that list to enable them to be declared derelict and bypass the normal demolition procedures.

I cannot say for certain that the WB is on this path, but it is clearly a concern of mine that they may be. That the OSc zone shrank significantly around the time Commissioner Leonard was in charge of the WB and BDS so to allow less problems with any demolition LUR at that time concerns me.

SHPO and the HLC must require a preservation plan, and require independent oversight of the work, and consultants such as preservationists, archaeologists, and arborist. Both bureaus involved have shown their hands and history is the best indicator of future behavior.

c) **Historic character**
This addresses water which all agree must be kept in these reservoirs for both aesthetic reason as well as to prevent further decay.

What is not mentioned is that the work bisects the historic upper nursery which was used until recently for plant production. This growing resource provided plant throughout the entire City. The *master plan and Council resolution #36539 require that PPR continue this activity* and PPR has stopped which impacts the look to change. I attached excerpts from those documents and an overhead photo showing that growing area under cultivation from 2008.

These is some concern that the long block which was used for tree growing will be used for material storage, when it too was required to continue functioning as a tree

growing location.

d) **LT2**
LT2 did not require Portland to do anything except submit a plan. The applicant alone has offered to construct tanks and disconnect these reservoirs.

As a condition in the preapp summary BDS required that the applicant provide a written analysis showing why this disconnect was the preferred option.
I could not find this document on Nov 27 during my review of the LUR files, and requests for this have not been responded to.

Page 5
I have requested the EA and any DAR documents with notes and comments from both LURs, to understand how BDS could deem the application complete with all of the conflicts and concerns I have shared with first them and now you.

I also requested the written application from the WB and the intake check sheets used by BDS to confirm all of their conditions have been met for them to deem the application complete and compliant with the code.

A BDS staff confirmed that this check sheet did exist, yet told me it was confidential, for staff only...

The Applicant has told me that all relevant documents he determined were necessary for the public to see would be on the WB website. The applicant is filtering and deciding what the public sees. That represent for me all I need to know about both the integrity of this LUR process and those participants who believe they alone decide what is acceptable and legal.

Please feel free to ask any questions,

Thank you,

Mark Bartlett

NE Portland resident