

B L A C K

H E L T E R L I N E LLP

ATTORNEYS AND COUNSELORS AT LAW

PHILIP J. WUEST
DIRECT DIAL: (503) 417-2152
E-mail: pjw@bhlaw.com
Oregon and Washington

May 9, 2016

VIA E-MAIL ONLY TO: PSC@PORTLANDOREGON.GOV

Mixed Use Zone Testimony
1900 SW Fourth Ave., Ste. 7100
Portland, OR 97201

Reference: Mixed Use Zoning Project Proposals No. 1501 and No. 1107

Dear Mr. Manning:

I represent Mr. Thomas Brown. Mr. Brown owns all of the property at the southwest corner of Bybee and Milwaukie in Westmoreland (the "Brown Property"), the area bounded by Bybee to the North, Rural Street to the South, 16th Avenue to the West, and Milwaukie to the East which amount to approximately 54,000 square feet. The Brown Property is proposed for significant and economically damaging downzoning from CS to CM1 (the "Proposal"). This letter requests that the City of Portland abandon its current and patently unfair Proposal and, rather than apply a punitive downzone, treat the Brown Property the same as all other properties currently in the CS zone on Milwaukie in Westmoreland and apply the newly created CM2 zone.

Mr. Brown has been working and investing since the 1980s to assemble the property now proposed for downzoning by the City of Portland. It was Mr. Brown's intentional strategy to invest in CS-zoned property and, after years of hard work and perseverance, Mr. Brown has assembled ownership of all seven parcels that make up the Brown Property. Some of that property is mortgaged with mortgages that are based on the value of the property with CS zoning. All of the buildings on the Brown Property, with the exception of one new building constructed by Mr. Brown at the corner of 16th and Bybee, are so old that the only real value is in the land itself.



805 SOUTHWEST BROADWAY • SUITE 1900 • PORTLAND OREGON 97205-3359
TELEPHONE 503.224.5560 FACSIMILE 503.224.6148 WWW.BHLAW.COM

Mr. Brown manages and maintains the buildings on the Brown Property and has done so for years as a family business which Mr. Brown's son now helps to manage and which the family intends to own for generations. It is and has been the Browns' intention to someday redevelop the property. The Browns are heavily invested in Westmorland in every sense and have long been dedicated to its success as good neighbors and citizens. Now, the City's proposed reversal of the current CS zoning, which amounts to a reversal of long-standing City policy of encouraging density and redevelopment, singles out Mr. Brown (and a very few other similarly situated property owners) for economically adverse downzoning and threatens to undercut Mr. Brown's many years of hard work and investment.

The City's foundation for the Proposal is thin, apparently based on some (but not a lot) of testimony expressing concern about the character of Neighborhood Centers. While the underlying concern expressed in that testimony may be valid, the City, apparently for the sake of convenience or expediency, has selected the wrong tool to address those concerns. In a city like Portland, using downzoning to preserve neighborhood character is like using a six pound sledgehammer to drive a three penny nail. It is simply the wrong tool; it may get the job done, but will almost certainly cause a lot of collateral damage. We expect Portland, with a long tradition of smart planning and a long-standing policy of accommodating growth and density through redevelopment, to develop and implement smarter and better tools to get the job done, not to simply pull out the biggest hammer that happens to be in reach.

The proposed downzoning is drastic. Today, under the CS zone, the FAR is 3 to 1 and the base maximum height is 45 feet. Exhibit A attached here is a rendering of a building that could be built on the site under the current zoning. The proposed CM1 zoning, with the Main Street Overlay, proposes a maximum 2 to 1 FAR and a 35 foot maximum height. The difference in development capacity and land value from the proposed zone change for the Brown Property is staggering. Over the entire Brown Property, the reduction of 1 FAR amounts to a 54,000 square foot reduction in development capacity (reduced from a total potential of 161,866 sqft down to a total potential of 107,923 sqft). At the commercially reasonable rate of \$165/square foot, the City is proposing, in a single punitive stroke, to sever nearly \$3,000,000.00 of potential value from the Brown Property.¹ Loss of even half of that value would be staggering, yet even the CM2 zone proposes to reduce maximum FAR from the current 3:1 in CS to 2.5:1.

The Brown Property is also included in the Bybee Light Rail Station Area because it is within ½ mile of the Bybee Light Rail Station. Page 44 of the September 2009 *Portland to Milwaukie LRT Station Area Best Practices Assessments and Recommendations* lists

¹ Loss of land value is: \$165/SF * 53,962 = \$8,903,730, Loss of 33% of FAR due to proposed rezone = \$8,903,730 * .33 = \$2,938,231; Loss is \$2,938,231.



as one of the Transit Supporting Land Uses the fact that “The far western edge of the one-half-mile station area captures the intersection of SE Bybee and SE Milwaukie, the heart of the Westmoreland business district.” Now that the light rail line is open, the City is proposing to downzone commercially-zoned land in a light rail station area in the heart of the Westmoreland business district. It is inconceivable that the proposed downzoning is consistent with City of Portland and Metro transportation and land use plans and policies.

The Proposal is clearly inconsistent with Comprehensive Plan Policies. For example, *Policy 3.13* describes the role of centers as follows: “Enhance center as anchors of complete neighborhoods that include **concentrations of commercial and public services**, housing, employment, gathering places, and green spaces.” The proposed downzoning would deconcentrate development. *Policy 3.36* states “In Neighborhood Centers, provide for **higher concentrations of development**, employment, commercial and community services . . .” Here the City is proposing to lower concentrations of development in a neighborhood center. The Proposal is similarly inconsistent with the *Sellwood-Moreland Neighborhood Action Charts*, adopted by City Resolution No. 35663. Action BG 11 sets forth as an ongoing action to “Strengthen **urban design and economic function of core intersections**,” including the intersection of Milwaukie and Bybee. *Comprehensive Plan Policy 3.42* provides direction on how to maintain and enhance district identities: “Use historic preservation and design review tools to **accommodate growth** in ways that preserve historic resources and enhance the distinctive characteristics of Inner Ring Districts, especially in areas experiencing significant development.” Here, rather than implementing the City’s policy with carefully considered design standards to accommodate growth, the Proposal seeks to simply limit growth. The Proposal, therefore, is flatly inconsistent with the City’s land use planning principles, plans and policies.

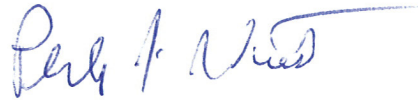
For the reasons set forth above, we request that the City discontinue further consideration of the Proposal to downzone as a means of maintaining neighborhood center character because it is punitive and inconsistent with the City’s transportation and land use policies. As described above, even a change from CS to CM2 would still deprive Mr. Brown of hard-earned value, but would not be nearly as damaging as the proposed change from CS to CM1. Moreover, a change from CS to CM2, rather than CM1, would treat Mr. Brown the same as all other CS-zoned property owners in the area rather than singling out Mr. Brown and a few others for disparate and unfair treatment.

If, despite the problems with the Proposal identified in this letter, the City persists in its current course, we recommend the City invest the time and resources necessary to develop design standards to accommodate growth rather than use the sledgehammer of downzoning to limit growth. If an applicant can demonstrate compliance with such design standards in a Neighborhood Center, they should be allowed to develop under the CM2 code as a matter of



right. With design standards in place, the City could achieve its purported policy objective of retaining the character of Neighborhood Centers without having to ignore other comprehensive land use and transportation policies which support accommodating, but not limiting, growth.

Very truly yours,



Philip J. Wuest

PJW:pjw
Attachment
1152026_3



