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VIA EMAIL

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

Re: Composite Zoning Proposal - Mixed Use Zones Project
Pliska Investments LLC & Space Age Fuel, Inc.

Dear Commissioners:

This firm represents Pliska Investments LLC and Space Age Fuel, Inc. (“Space Age Fuel”). Pliska Investments LLC owns several properties in which Space Age Fuel operates gas stations/convenience stores/service garages throughout the City. The Mixed Use Zones Project currently proposes to rezone the following Space Age Fuel properties as follows: (1) 16431 SE Foster Rd. from CG to CE; (2) 8410 SE Foster Rd. from EX to CM3; (3) 12920 SE Stark St. from CG to CM2; and (4) 11214 SE Powell Blvd. from CN2 to CM1. All of these properties have gas stations and convenience stores, and the 8410 SE Foster Rd. and 12920 SE Stark St. properties have vehicle repair shops as well. On behalf of Space Age Fuel, we are submitting the following comments and concerns regarding the Composite Zoning Proposal.

Space Age Fuel continues to be concerned about the proposed zoning for its properties and current draft Mixed Use Zones Project because it will render the gas stations and vehicle repair shops on at least three of these properties nonconforming uses and will make it virtually impossible to modernize or upgrade these sites. A gas station or “Quick Vehicle Servicing” use is prohibited in the CM1, CM2 and CM3 zones.¹ The only mixed use zone that would allow a gas station is the CE zone. With the exception of the 16431 SE Foster Rd. property, none of the remaining Space Age Fuel properties are proposed to be zoned CE. As a result of this proposed zoning, the gas stations and vehicle repair shops on three of Space Age Fuel’s properties will be nonconforming uses and will be prohibited from being remodeled, modernized or redeveloped with another gas station. While we understand that the mixed use zones are intended to be more pedestrian friendly, there is still a substantial public need for accessible gas stations throughout the City since automobiles are the primary mode of transportation for the vast majority of Portland residents and

¹ Gas stations qualify as “Quick Vehicle Servicing” uses under the PCC. PCC 33.920.220(A).

will continue to be so for decades to come. Not only will the proposed mixed use zones impact the existing uses, but they will substantially reduce the value of these properties since it is extremely difficult to redevelop a site that was previously occupied by a gas station.

To avoid converting these existing gas stations into nonconforming uses and significantly reducing the value of these properties, Space Age Fuel requests that the Planning and Sustainability Commission zone all of Space Age Fuel's properties CE for the reasons set forth in Section A below. Based on recent conversations with Barry Manning at the City, the City staff supports a CE zone for the 16431 SE Foster Rd. and 12920 SE Stark St. properties. Space Age Fuel explains below why the other two properties should be similarly zoned CE. Additionally, Space Age Fuel supports City staff's proposal to allow existing gas stations to redevelop in all of the mixed use zones regardless of whether or not such uses are allowed in the underlying zone.

A. All of Space Age Fuel's properties should be zoned CE.

The easiest and most effective way to ensure that Space Age Fuel is not adversely impacted by the Mixed Use Zones Project is to zone all of its properties CE. When selecting the appropriate mixed use zone for a particular property, the existing use should weigh heavily in that consideration and the City should avoid imposing a new mixed use zone that will cause the existing use to become nonconforming. Since the CE zone is the only new mixed use zone that allows gas stations, the City should select the CE zone for all of Space Age Fuel's properties that have existing gas stations and/or vehicle repair shops. Not only would zoning these properties CE avoid converting the existing gas stations into nonconforming uses, but there are compelling reasons for changing the zoning to CE.

For the 12920 SE Stark St. property, the CE zone is more appropriate than the proposed CM2 zone. This particular CM2 zoned area is relatively small and is just outside the town center located along SE 122nd Ave. The CM2 zone is intended for "smaller mixed use areas that are well served by frequent transit," but this section of SE Stark St. is not well served by frequent transit. Additionally, this CM2 zoned area is practically adjacent to a CE zoned area that extends west along the south side of SE Stark St. The City could simply extend the CE zoned area to the east.

For the 11214 SE Powell Blvd. property, the CE zone is more appropriate than the proposed CM1 zone given the existing uses and the characteristics of the surrounding area. The proposed CM1 zoning applies to a small area around the intersection of SE Powell Blvd. and SE 112th Ave. that has predominately auto-oriented uses. This small area includes Space Age Fuel's gas station and convenience store, a quick service automobile battery and repair shop across the street at 11207 SE Powell Blvd. (Battery Specialist) and another gas station on the same block at 11421 SE Powell Blvd. (Leather's Oil), as well as restaurants. Given the predominant auto-oriented uses in this area, the proposed CM1 zone is inappropriate since it is intended to accommodate small scale "pedestrian oriented" development. The City should not impose a new pedestrian-oriented zone on an area that is predominately auto-oriented. In contrast, the CE zone is "intended for sites along corridors in areas between designated centers, especially along Civic Corridors that are also major truck streets." This area is not within a town center, SE Powell Blvd. is a Civic Corridor and this section of SE Powell Blvd. is between designated centers, and therefore the CE is appropriate in this area.

For the 8410 SE Foster Rd. property, the CE zone is more appropriate than the proposed CM3 zone. The immediate surrounding area includes a number of automobile oriented uses, such as Space Age Fuel's gas station, convenience store and vehicle repair shop, an automobile tire service center at 8530 SE Foster Rd. (Premium Tire Service), an automobile service center at 8324 SE Foster Rd. (Automotive Outfitters), and a gas station at the corner of SE Foster Rd. and 82nd Ave. (Shell). Given the predominant auto-oriented uses in this area, the proposed CM3 zone is inappropriate since "development is intended to be pedestrian oriented." The City should not impose a new pedestrian-oriented zone on an area that is predominately auto-oriented. In contrast, the CE zone is "intended for sites along corridors in areas between designated centers, especially along Civic Corridors that are also major truck streets." SE Foster Rd. is a Civic Corridor and this section of SE Foster Rd. is between designated centers, and therefore the CE is appropriate in this area.

To the extent the City does not want to make larger changes to the proposed mixed use zoning in these areas, the City can and should change the proposed zoning for just Space Age Fuel's properties given the existing uses on those properties. The Mixed Use Zones Project is proposing single CE zoned properties that are surrounded by other mixed use zones in order to accommodate existing uses in other instances.² The City should provide similar accommodations to Space Age Fuel's properties.

Finally, it is important to note that the Mixed Use Zones Project includes proposals to change some residentially zoned properties with established commercial use to a mixed use commercial zone so the existing uses can become legally conforming. If the City is rezoning residential properties to mixed use commercial in order to conform existing nonconforming uses, it should be willing to change the type of mixed use commercial zone for a particular property in order to avoid converting the existing commercial use into a nonconforming use.

B. The Commission should support the City staff's proposal to broaden the nonconforming use accommodations for these types of uses.

Although Space Age Fuel has not yet reviewed the City staff's specific code revisions, it supports the City staff's general proposal to broaden the nonconforming use accommodations for existing gas stations, quick vehicle servicing and drive through facilities in the other mixed use zones. The City staff has indicated that it is drafting code revisions that would allow existing gas stations, quick vehicle servicing and drive through facilities to redevelop and modernize even if they are located in one of the mixed use zones that does not allow these types of uses. As an alternative to zoning its properties CE, which is still Space Age Fuel's preferred outcome, it supports the City staff's efforts to minimize the impact of converting this large category of existing uses to

² The following are examples of the City proposing a single CE zoned properties surrounded by other mixed use zones in order to accommodate an existing use. The Mixed Use Zones Project proposes a CE zone for the gas station and vehicle repair shop located at 9808 SE Division St. notwithstanding the fact that it is surrounded by CM1 and CM2 zoned properties. The Mixed Use Zones Project proposes a CE zone for the Fabric Depot property located at 700 SE 122nd Ave. notwithstanding the fact that it is surrounded by CM2 and CM3 zoned properties.

nonconforming and allow these properties to be redeveloped or modernized. The Commission should support this as well for multiple reasons.

The City should not prohibit or discourage the modernization and redevelopment of these uses. Space Age Fuel is objecting to the City's mixed use zoning proposals for its properties in large part because it wants to redevelop and modernize these facilities in the near-term future. Some of these facilities are older facilities that would greatly benefit from modernization. The City should encourage this type of investment and improvement to these facilities, not preclude it.

Prohibiting or discouraging the modernization and redevelopment of these uses will not lead to these sites being redeveloped with different uses. As discussed at the July 12, 2016 hearing and work session, past experience shows that converting existing uses to nonconforming uses through these types of zoning amendments does not lead to redevelopment. Rather, it incentivizes the property owner to continue with the existing development as is and not invest in improving the site. That is particularly the case for a gas station site because it is extremely challenging and cost prohibitive to redevelop a former gas station use into another type of use due to environmental issues.

The City needs to ensure that gas stations are reasonably accessible to the public throughout the City. Although we recognize that the City wants the new mixed use zones to be more pedestrian friendly, there is still a substantial public need for gas service stations throughout the City as we explained in our May 10, 2016 comment letter. Given the limited areas that are proposed to include CE zoning, there are simply not enough properties zoned to accommodate the gas stations necessary to serve the growing population. At a minimum, the City should reasonably accommodate the existing gas stations in the other mixed use zones so they can continue to serve the population in those areas.

The City should not adopt new regulations that undermine a specific category of uses and reduce the property values of these properties. One of the stated goals of the Mixed Use Zones Project is to retain and match the use allowances of the zones being replaced and not cause existing uses to become nonconforming. The current draft Mixed Use Zones Project is clearly not adhering to this principle with respect to gas stations and similar drive through facilities because they appear to be one of the few use categories that will be converted to nonconforming uses on a broad scale. While we understand that the mixed use zones are intended to be more pedestrian friendly, the Mixed Use Zones Project does not similarly impact other automobile-intensive uses, including some uses that generate far more traffic than a gas station (i.e. big box retail, grocery store, etc.). At a minimum, the City should provide some accommodations for those existing uses that will be uniquely and disproportionately impacted by the new mixed use zoning standards.

Conclusion

For the reasons provided above, the Commission should zone all of Space Age Fuel's properties CE and should support the City staff's proposal to broaden the nonconforming use accommodations for these types of uses in the other mixed use zones. We appreciate your consideration of our comments. We look forward to working with the City further on this matter.

Very truly yours,

HATHAWAY KOBACK CONNORS LLP

A handwritten signature in blue ink that reads "E. Michael Connors". The signature is written in a cursive style with a large initial "E".

E. Michael Connors

EMC/pl
cc: Clients