



CITY OF PORTLAND

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Hearings Office

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DECISION OF THE HEARINGS OFFICER ON APPEAL OF ADMINISTRATIVE DECISION

I. GENERAL INFORMATION

File No.: LU 13-231651 NU (Hearings Office 4150001)

Owner: Terry W. Emmert
11811 SE Highway 212
Clackamas, OR 97015-9038

Applicant: Steve Suttich
Eastmoreland Racquet And Courts Club
3015 SE Berkeley Place
Portland, OR 97202

Appellants: Lisa Gunion-Rinker
Ardenwald-Johnson Creek Neighborhood Association
3012 SE Balfour Street
Portland, OR 97222

Gene Albrecht
1007 Inspiration Way
Ventura, CA 93001

Hearings Officer: Gregory J. Frank

Bureau of Development Services (BDS) Representative: Sylvia Cate

Site Address: 3015 SE Berkeley Place

Legal Description: TL 1400 2.36 ACRES, SECTION 24 1S 1E; TL 2200 0.14 ACRES,
SECTION 24 1S 1E; TL 1500 1.81 ACRES, SECTION 24 1S 1E; TL
1600 3.53 ACRES, SECTION 24 1S 1E

Tax Account No.: R991240170, R991240380, R991240830, R991241000

State ID No.: 1S1E24DC 01400, 1S1E24DC 02200, 1S1E24DC 01500,
1S1E24DC 01600

Quarter Section: 3834

Neighborhoods: Ardenwald-Johnson Creek
Eastmoreland

District Coalition: Southeast Uplift

Plan District: Johnson Creek Basin

Zoning: R5c,p R7c,p: Single Dwelling Residential 5,000 and Single Dwelling Residential 7,000 with a 'c' Environmental Conservation overlay and a 'p' Environmental Protection overlay

Land Use Review: Type II, Nonconforming Situation (NU)

BDS Administrative Decision: Approval with conditions

Public Hearing: The hearing was opened at 8:39 a.m. on February 2, 2015, in the 3rd floor hearing room, 1900 SW 4th Avenue, Portland, Oregon, and was closed at 11:55 a.m. The record remained open until 4:30 p.m. on February 9, 2015 for new evidence from anyone. The record was open until 4:30 p.m. on February 18, 2015 for responsive evidence for anyone. Finally, the record was open until 4:30 p.m. on February 25, 2015 for rebuttal evidence from the Applicant/Appellants only. The record closed at 4:31 p.m. on February 25, 2015.

Testified at the Hearing:

- Sylvia Cate
- Chris Koback
- David Hyman
- Lisa Gunion-Rinker
- Gene Albrecht
- Marianne Colgrove
- James Dunn
- Maureen Fallt
- Eric Westerfeld
- Rex Gilley
- Catherine Goode
- Sallee Humphrey
- Phil Stanford
- Karen Weaver
- George Regan
- Hollis McMilan
- Steve Suttidge
- Terry Emmert

- Michele Matesi

II. ANALYSIS

Historical Overview:

The case before the Hearings Officer is a result of a land use application (Exhibits A.1 and G.1 – the “Application”) filed by Mr. Steve Suttich on behalf of owner Terry W. Emmert (“Applicant”) related to real property generally referred to as 3015 SE Berkeley Place, Portland, Oregon (the “Subject Property”). The City of Portland Bureau of Development Services (“BDS”) issued an administrative decision, on December 22, 2014, approving the application (Exhibit H.2 - the “Administrative Decision”). Ms. Lisa Gunion-Rinker, on behalf of the Ardenwald-Johnson Creek Neighborhood Association, and Mr. Gene Albrecht (collectively referred to as the “Appellants”) submitted appeals contesting the validity of the Administrative Decision.

The Subject Property, in a 1976 Land Use Hearings Officer decision (CU 54-76 – see Exhibit H.29x), received conditional use approval to operate as a tennis club. At the time of the 1976 decision, the Subject Property was zoned R5. The R5 zone, in 1976, allowed “community clubs” only if approved as a conditional use.

The Portland City Council (“Council”), in 1991, approved changes to the Portland Zoning Code (“PCC”) removing the ability to have a “community club” approved as a conditional use in the R5 zone. The Subject Property “community club” or tennis club, as a result of the 1991 PCC changes, became a nonconforming use. Subsequent to the 1976 decision to allow a “community club” or tennis club at the Subject Property, the tennis court surface was replaced by a basketball/volleyball surface, clay tennis courts were covered with sand for use as sand volleyball courts, and the use of the facilities shifted from primarily tennis to providing a venue for basketball/volleyball practices, tournaments and clinics. No land use reviews were sought or conducted for the change in surface (tennis to basketball/volleyball) or changes in use (basketball/volleyball practices, tournaments and clinics) at the Subject Property.

BDS staff, in Exhibit H.2, listed a number of post-1976 land use applications related to the Subject Property. BDS staff concluded, in the Administrative Decision, that the subsequent land use applications were either void or expired.

Nature of the Application:

The Applicant, in Exhibit G.1, requested a Non-Conforming Situation review related to the Subject Property. The Applicant characterized the application as an expansion of the nonconforming use at the Subject Property (Exhibit H.41). BDS Staff, in the Administrative Decision, characterized the proposal as follows, “to utilize two existing tennis courts on the site as temporary overflow parking areas when events at the facility draw more visitors to the site than during typical business hours.”

The Hearings Officer did not find any evidence in the record to suggest the above characterization of the application request was incorrect. For the purposes of this decision, the Hearings Officer considers the Applicant's request to be as follows:

Nonconforming situation review of a request to utilize two existing tennis courts on the Subject Property as temporary overflow parking areas when events at the facility draw more visitors to the Subject Property than during typical business hours.

Relevant Approval Criteria:

To approve the Applicant's proposal, the Hearings Officer must find that the Applicant provided substantial evidence into the record of this case sufficient to persuade the Hearings Officer that all relevant approval criteria have been met. BDS staff, in the Administrative Decision, indicated that the relevant approval criteria were found in PCC 33.258.080 B.1.-3. Nonconforming Situation Review. The Hearings Officer finds PCC 33.258.080 B.3. is not applicable to this case as the Subject Property is not in a C, E or I zone. The Hearings Officer finds PCC 33.258.080 B. 1. & 2. are relevant to this case and are set forth below:

"B. Approval criteria. The request will be approved if the review body finds that the applicant has shown that all of the following approval criteria are met:

1. With mitigation measures, there will be no net increase in overall detrimental impacts (over the impacts of the last legal use or development) on the surrounding area taking into account factors such as:
 - a. The hours of operation;
 - b. Vehicle trips to the site and impact on surrounding on-street parking;
 - c. Noise, vibration, dust, odor, fumes, glare, and smoke;
 - d. Potential for increased litter; and
 - e. The amount, location, and nature of any outside displays, storage, or activities; and
2. If the nonconforming use is in an OS or R zone, and if any changes are proposed to the site, the appearance of the new use or development will not lessen the residential character of the OS or R zoned area. This is based on taking into account factors such as:
 - a. Building scale, placement, and façade;
 - b. Parking area placement;
 - c. Buffering and the potential loss of privacy to abutting residential uses; and
 - d. Lighting and signs;"

Interpretation of PCC 33.258.080 B.1:

The Hearings Officer finds that the PCC 33.258.080 B.1 statement, “there will be no net increase in overall detrimental impacts (over the impacts of the last legal use or development) on the surrounding area” requires the Hearings Officer conduct a three step review.

- Step 1:** The Hearings Officer must decide what uses are properly included in the last legal use or development. The Hearings Officer shall, throughout this decision, refer to the PCC 33.258.080 B.1 “last legal use or development” as the “*Last Legal Use*.”
- Step 2:** The Hearings Officer must determine what is to be included in the Applicant’s request.
- Step 3:** The Hearings Officer is required to compare the detrimental impacts created by the Applicant’s request to the detrimental impacts created by the *Last Legal Use*.

As will be seen, in the findings for Step 2 below, there have been use changes at the Subject Property. The Applicant and BDS staff argue that those use changes should be considered as part of the *Last Legal Use*. The Appellants argue that the use changes should be considered as part of the Applicant’s request. Therefore, in this case the Hearings Officer adds:

Step 2A: The Hearings Officer will determine whether the use changes are to be included in the *Last Legal Use* or as part of the Applicant’s request.

If the Hearings Officer finds the Applicant’s request does not result in increased overall detrimental impacts on the surrounding area over the *Last Legal Use*, then the application meets the requirements of PCC 33.258.080 B.1.

Step 1 - Determination of the PCC 33.258.080 B.1 *Last Legal Use*:

The Applicant and BDS staff believe the current use of the Subject Property is the *Last Legal Use* (Exhibit H.41).¹

The Appellants disagree that the current use represents the *Last Legal Use* of the Subject Property. The Appellants assert that the Subject Property was approved, in 1976, as a “private tennis club” and that a number of changes/expansions have occurred at the Subject Property that are not consistent with the 1976 approved use. The Appellants argue that the changes in use or expansion of use were required to undergo legal land use review per PCC 33.258.050 B. and C. respectively. The Appellants argue that because the changes/expansions

¹ “On January 1, 1991, City Council adopted revisions to the Portland Zoning Code via Ordinance #163608. The revisions removed the ability to have a ‘community club’ in a residential zone approved as a Conditional Use; the use is prohibited in a residential zone and therefore, per Portland Zoning Code 33.700.B.2.c, the use became a Nonconforming Use and subject to the regulations found in Chapter 33.258, which governs nonconforming situations” (Exhibit H.2, page 7).

did not undergo legal land use reviews, they cannot be included within the *Last Legal Use* (multiple exhibits make this assertion, see for example H.5, H.38 and H.40).

What normally would have been a straightforward and simple analysis, to determine the *Last Legal Use*, has become a significant area of dispute between the Applicant, BDS staff and the Appellants. The Hearings Officer, in this case, needs to review the record to determine the *Last Legal Use* of the Subject Property.

In 1976, the City addressed the following land use proposal for the Subject Property: "conditional use request to construct a private tennis club for recreational use by neighborhood residents" (Exhibit H.29x, page reference at bottom right of page is 15 – Report and Decision of the Hearings Officer).²

The Hearings Officer Decision for CU 54-76 included three conditions of approval. The Hearings Officer notes that land use applications related to the Subject Property were considered by the City in 1978 and 1979. The 1978 application related to "covers" over the swimming pool and two additional tennis courts and reaffirmed the CU 54-76 conditions of approval. The 1979 application related to "covers" over two additional tennis courts.

PCC 33.700.110 A. states, in relevant part, the following:

"Conditions of approval for a land use review applied for prior to 1981 no longer apply to the site, except for conditions on all types of land divisions, Planned Unit Developments (PUD), or any other quasi-judicial review approved in association with a land division or PUD."

The Hearings Officer finds the conditions of approval for CU 54-76 the 1978 and 1979 land use decisions no longer apply to the Subject Property.

BDS described post-1981 land use applications related to the Subject Property (see Administrative Decision, pages 3 and 4). In summary, the post 1981 land use applications were determined by BDS, for various reasons, to have lapsed or became void and therefore have no current legal force and effect. The Hearings Officer agrees the post-1981 land use applications related to the Subject Property lapsed or became void. The post-1981 land use applications/decisions are not considered as legal uses; therefore, not part of the *Last Legal Use*.

² The Staff Report and Recommendation to Hearings Officer, in the Findings section, includes the following statement, "The membership of the facility will be limited to 300 families or individuals and will be solicited from the surrounding neighborhood." The Staff Report and Recommendation, in the Conclusions section, stated the following, "As the proposed Eastmoreland Tennis Club facility is geographically separated from adjacent residential uses, will be provided with urban services, will be protected from flood potential, will provide tennis and swimming recreational facilities for neighborhood residents, it is felt that there will be minimal adverse impacts on existing development and will be in the interest of the public." The Hearings Officer finds these historical comments, related to CU 54-76, give context to the intent of the Hearings Officer in granting approval for a "private tennis club for recreational use by neighborhood residents."

Based upon the above referenced land use decisions related to the Subject Property, the Hearings Officer finds the *Last Legal Use* (per PCC 33.258.080 B.1.) is the use described in CU 54-76 without any conditions of approval. The Hearings Officer, therefore, finds that last legal use for the Subject Property, is a:

“private tennis club for recreational use by neighborhood residents.”
(Quoted from Hearings Officer’s decision in CU 54-76.)

Step 2 – Description of the Applicant’s request:

The Applicant’s request is to “utilize two existing tennis courts on the site as temporary overflow parking areas when events at the facility draw more visitors to the site than during typical business hours.” As noted above, in the Interpretation of PCC 33.258.080 B.1 findings, the Applicant believes the Hearings Officer must limit the Applicant’s request to that set forth in the immediately preceding sentence. The Appellants argue that certain use changes that have occurred at the Subject Property should also be included as part of the Applicant’s request. The Hearings Officer will address this dispute in the findings for Step 2A below.

Step 2A – Did one or more PCC 33.258.050 B. “Change in Uses” occur and if the answer is yes, should the “Change in Uses” be considered as part of the Applicant’s Request?

PCC 33.258.050 B. “Changes in Use”

Typically the determination of what is included in an Applicant’s proposal would be uncomplicated. However, in this case Appellants’ raised concerns about the operation of the facility at the Subject Property. Appellants allege that the facility at the Subject Property has been physically changed (tennis court surface replaced with basketball/volleyball court surface) and uses made of the facility have changed. The Appellants argue that physical changes and the use changes made at the Subject Property required formal land use reviews and decisions. The Appellants allege that no land use review applications were ever filed nor any land use decisions rendered for the use changes. Appellants suggest that the use changes should either be analyzed as part of the Applicant’s proposal in this case or the application must be denied until a time when the use changes are approved. The Appellants’ concerns require the Hearings Officer to consider what changes have been made at the Subject Property in the context of PCC 33.258.050 B.

The Hearings Officer first looked at the Subject Property’s current uses. The Hearings Officer found the best evidence of the current uses of the Subject Property is an email from the Applicant to a City Bureau of Transportation representative (Exhibit H.43). While quoted material below is lengthy, the Hearings Officer finds the information in the email to be highly relevant and necessary to making a decision in this case. The email, in part, stated the following:

Question by the City:

"In as much detail as possible, a description of the regular activities at the club (x number of tennis courts, y number of basketball courts, z number of volleyball courts, indoor facilities (weight room, spa, pool, sauna), etc. Please include normal hours of operation as well as a general membership number."

Applicant's response:

"Facilities

Fitness area (12 weight machines and 6 fitness machines)

Pool area (30/70 pool and kiddie pool)

Lobby

Locker Rooms

Upstairs meeting room

Outdoor tennis courts (4 hard surface courts – the area which Applicant desires to use as temporary parking under this application)

Outdoor volleyball courts (6 sand courts replaced 3 clay tennis courts)

Indoor Courts (6 basketball/volleyball courts replaced 6 tennis courts)

Hours of Operation

Monday through Friday hours of operation are 8AM till 10PM

Weekend hours are typically 8AM until 9PM

Membership

We have 3 different types of memberships. Fitness, Summer and Sports. See Membership Flyers attached.

Each membership type has a couple of different levels, Family, Individual, Couple and Executive. We are also working with the senior market as a Silver Sneaker membership facility.

The facility has more membership now that it has had in the last 10 years with over 500 members. A large number of these are family memberships that have kids that play both Basketball and Volleyball.

Family members use the facility to workout/practice as individuals and as teams. Just as with tennis leagues sponsored by the USTA, there are Basketball and Volleyball leagues that our members play in and that we host events. USA Volleyball and USA Basketball and AAU sanction these

leagues. Our membership-based teams use the facility as their home court for leagues and local, regional and national events.

Our Fitness membership is 29 as members come and go during operational hours. Our summer family membership is 87 and those run from Memorial weekend thru Labor Day. Current Family Sports memberships are 447.

We do not see the Sports family membership growing much. But the summer membership and Fitness members is where we project growth. This puts us at about 60% capacity and is far below the 1,000 membership that is our ceiling.

Current Member Activities

Basketball:

Our members play in a Fall, Winter, Spring and Summer USA Basketball or AAU evening and weekend leagues. This includes boys and girls from 4th grade thru HS. We have 8 weekend tourneys that have take place that are Regional and National events sponsored by UA Basketball. The typical tourney will utilize 4-6 courts over the weekend. Each team will play 3-4 games over the weekend. Our teams typically have 10 players, 1-2 coaches. Each game will have 2 officials who will be there for most of the day working games. Our attendance records show that we get about 8-10 fans per team as these are mostly moms and dad. A typical league day is from 8am to 8pm as teams come and go over the course of the day.

Our adult members also ply in year round evening leagues that are Monday thru Thursday nights.

Volleyball:

Our members play in a league that is sponsored thru USA Volleyball and the indoor league runs from November thru April. The outdoor Beach league runs May thru Sept. This includes 12u, 14u, 16u, 18u boys and girls along with Men's and Women's leagues. We have 6 Weekend Regional tourneys that have taken place that are also sanctioned by USAV. These tourney are for local and regional teams (Oregon/SW Wash). The typical tourney will utilize 4-5 courts. Each court will have 3-4 teams that will play over the course of the day. 16-20 teams in the facility has been the average this year. Each team will have 8-10 players 2 coaches and 1 official per court. Spectators vary by age, the older the event the fewer the fans. Our attendance records show that we get about 10-12 fans per team as these are mostly moms and dad. A typical day is from 8am-7pm with players and fans coming and staying most of the day.

Our adult members also play in midweek leagues that are evening based times.

Addition activities

Pickleball has been added as a sport because we have former Tennis members that enjoyed playing as an alternative to tennis. It is a very small element of the club and is a sport that can be played on a indoor or outdoor tennis court as the surface is the same. There is/has actually been an outdoor pickleball court in place for the last 10 years, but it has not been utilized by members due to lack of upkeep. As the weather gets better and members desire to play outside increases we will be cleaning up the present court and making that available. We currently have 4 temporary courts that we can set up inside on a court. Pickleball is played on Monday and Thursday mornings and on every other Friday night. We are not planning or know of any pickleball tourneys.

Summer Camps

During the Summer we host between 6-8 weeks of sports camps. Camp sizes range from 35-100 players and are member and non-Member registration. Camps run from 9am-4pm and are typically Monday thru Thursday.

Typical Day

Monday thru Friday

8am	*	Open for Membership use. Members drop in at their leisure
4:30-7pm	*	Youth Member Practices Basketball and/or Volleyball 4-5 courts 10 players per court. Typically 1.5 to 2 hours practices
7:00pm-10pm	*	Youth member practices Basketball or Volleyball 1-3 courts
	*	Adult member leagues * Basketball and/or Volleyball 7-9 players per team Activities are typically one to 1.5 hours

Sat/Sunday/Holidays

8am	*	Open for Membership use. Members drop in at their leisure
	*	Scheduled leagues and tourneys
10pm	*	Closed"

Question by the City:

"In as much detail as possible, a description of the types and number of events at the club (tennis tournaments, basketball tournaments, volleyball tournaments, etc.). Please include typical number of participants (if possible), time and duration of events, etc."

Applicant's response:

"Just as with Tennis (USTA), both basketball and volley ball membership host events that are sponsored by their National Governing Body (NGB)...AAU and USA Basketball, USA Volleyball. Our youth and adult members play in weekend leagues and tournaments that are sponsored by USAV, USAB along with AAU. This includes Local, Regional and National events.

In Indoor Volleyball it is for 12u, 14u, 16u, 18u and Adults. Indoor Volleyball members activities (practices and leagues/Tourneys) run from October thru Mid May. We will typically have league play in Jan-May for both Youth Members and adult membership. The beach season starts in Mid May and will end in late August for both Youth and Adult. 8am to 7pm is a typical tourney schedule.

A typical League/Tourney will utilize 4-5 courts and 3-4 teams per court. A typical member team and visiting team will have 9-11 players per team along with 1-2 coaches. Our attendance numbers show that we get about 10-13 spectators per team. With League staff and officials adding another 10-12 people. A typical League/Tourney would have about 200 players and 240-300 fans (moms and dads). Well below the fire marshals occupancy of 884 in the Gym area.

For Basketball members, the Local, Regional and National events are 10 months out of the year. August and September are the slower months. Basketball members has member teams from 4th thru HS in both boys and girls and Adults. The Basketball numbers are very similar to the Volleyball leagues/Tourneys. A typical team will have 8-10 players, 1-2 coaches that are usually parents and 2 officials. A typical schedule for Bball league will be that a team plays 2 games in a day in a back to back schedule. So over the course of the day players and fans are typically here for 3-4 hours.

Again far below the fire Marshall occupancy.
See attached schedule for current calendar."

Question by the City:

"In as much detail as possible, a description of the Portland Chinooks IBL basketball league and any other leagues/teams that may utilize the club. Please include the number of (home) games, typical number of fans that attend and schedules, etc."

Applicant's response:

"The Portland Chinooks use the club as their home site. Typically the Chinooks play between 9 and 12 home games in April, May and June. Games are typically played on Friday Saturday and Sunday evenings. These games start at 7PM in the evening and typically take 1.5 hours. The average attendances for the games are between 40 and 50 paying customers. The team practices 1 to 2 times per week between 3pm and 5pm. This year the Chinooks will play 3 Friday, 2 Saturday, 2 Sunday and 3 Tuesday games between May 9th and June 24th."

The Hearings Officer finds that minor league basketball practices and games have occurred at the Subject Property. Based upon the Applicant's Exhibit H.43 quotes above, minor league basketball practices and games still occur at the Subject Property. The Hearings Officer finds that hosting minor league basketball practices and games would not likely have been anticipated when the Subject Property was approved, by CU 53-76, as a "private tennis club for recreational use by neighborhood residents." The Hearings Officer finds that using the Subject Property as a venue for the minor league basketball practices/games does not involve tennis. The Hearings Officer finds that using the Subject Property as a venue for the minor league basketball practices/games is not primarily directed towards recreational use by local neighborhood residents. The Hearings Officer finds the use of the Subject Property as a venue for minor league basketball practices/games is a PCC 33.258.050 B. change in use of the Subject Property.

The Hearings Officer finds that the Subject Property is currently used to host regional and national basketball and volleyball tournaments.³ The Hearings Officer finds hosting regional and national basketball/volleyball tournaments, on a routine and regular basis, is a utilization of the Subject Property that would not likely have been anticipated when the Subject Property was approved as a "private tennis club for recreational use by neighborhood residents." The Hearings Officer finds that uses, such as regional and national basketball/volleyball tournaments, are not directed towards tennis or the recreational use of neighborhood residents. The Hearings Officer finds that routinely and regularly hosting basketball/volleyball tournaments for teams not associated with the neighborhood is a PCC 33.258.050 B. change of use of the Subject Property.

³ The Applicant's comments, as quoted from Exhibit H.43 above, indicate that there are 8 weekend [basketball] tournaments that are regional and national events sponsored by UA basketball. The Applicant, in Exhibit H.43, also indicates the typical regional/national basketball tournaments run from 8 a.m. to 8 p.m. The Applicant did not, in Exhibit H.43, indicate how many teams typically are involved in basketball tournaments but did say that a typical tournament team would include 10 players, 1-2 coaches, 2 officials per game and 8-10 fans per team in attendance. The Applicant indicated, in Exhibit H.43, that in addition to the regional and national basketball tournaments hosted by the Subject Property, the Subject Property also is used for "6 Weekend Regional [volleyball] tournaments... These tournaments are for local and regional teams (Oregon/SW Wash)." The Applicant estimated that a typical regional volleyball tournament would draw 16-20 teams with 8-10 players per team. Also in attendance at the regional volleyball tournaments are one official per game, 1-2 coaches per team, and between 240 and 300 fans per tournament. Based upon the Applicant's statement, there may be between 369 and 502 persons at a regional volleyball tournament.

The Hearings Officer finds the regular utilization of the Subject Property for basketball/volleyball clinics for non-neighborhood residents as well as neighborhood residents would not likely have been anticipated when the Subject Property was approved as a "private tennis club for recreational use by neighborhood residents." The Hearings Officer finds that uses, such as basketball/volleyball clinics directed to both neighborhood and non-neighborhood individuals/teams, does not involve tennis and is not primarily directed towards the recreational use of neighborhood residents. The Hearings Officer finds that regularly hosting basketball/volleyball clinics for neighborhood and non-neighborhood residents is a PCC 33.258.050 B. change of use of the Subject Property.

The Hearings Officer finds utilization of the Subject Property sand volleyball courts, during summer months for sand volleyball clinics and tournaments for non-residents as well as neighborhood residents, would not likely have been anticipated when the Subject Property was approved as a "private tennis club for recreational use by neighborhood residents." The Hearings Officer finds that uses, such as sand volleyball clinics and tournaments directed to both neighborhood and non-neighborhood individuals/teams does not involve tennis and is not limited to recreational use of neighborhood residents. The Hearings Officer finds that regularly hosting sand volleyball clinics and tournaments for neighborhood and non-neighborhood residents is a PCC 33.258.050 B. change of use of the Subject Property.

The Hearings Officer notes, at this juncture, that the use of the Subject Property as a venue for minor league basketball practices/games, regional and national basketball/volleyball tournaments and basketball/volleyball clinics would not likely have occurred but for the conversion of the tennis courts (flooring) to basketball/volleyball courts (flooring). The Hearings Officer finds impacts from the above-referenced uses (minor league basketball, basketball/volleyball tournaments and basketball/volleyball clinics) are directly and inextricably related to the replacement of the tennis court surface with a basketball/volleyball surface. The Hearings Officer finds the conversion of the tennis court surface to the basketball/volleyball surface is a PCC 33.258.050 B. change in use.

The Applicant may argue that the minor league basketball practices/games, regional and national basketball/volleyball tournaments and basketball/volleyball clinics are for the benefit of the recreational use of neighborhood residents. This argument may be based upon an expansive interpretation/definition of "neighborhood." The Hearings Officer's response to this argument would be twofold. First, the Hearings Officer believes that the Applicant should be responsible to defining the boundaries of neighborhood (or "surrounding area" from PCC 33.258.080 B.1) in the context of PCC 33.258.080 B.1. Second, the Hearings Officer finds it unlikely that regional (Oregon and southwest Washington according to the Applicant in Exhibit H.43) and national events could plausibly be interpreted to be part of the neighborhood (or "surrounding area" from PCC 33.258.080 B.1). The Hearings Officer finds the minor league basketball practices/games, regional and national basketball/volleyball tournaments and basketball/volleyball clinics marketed regionally/nationally, are not uses directed to any reasonable definition of neighborhood or "surrounding area."

In summary, the Hearings Officer finds the following represent PCC 33.258.080 changes in use to the *Last Legal Use*:

- (1) minor league basketball practices and games,
- (2) hosting regular regional and national basketball/volleyball tournaments,
- (3) hosting clinics for non-neighborhood residents,
- (4) hosting sand volleyball clinics/tournaments for non-neighborhood residents, and
- (5) conversion of the tennis courts surface to a basketball/volleyball surface.

Should the Applicant's Request include the "Changes in Use?"

The Applicant's request, in this nonconforming situation review, is to "utilize two existing tennis courts on the site as temporary overflow parking areas when events at the facility draw more visitors to the site than during typical business hours." The Applicant and BDS staff both believe that the PCC 33.258.080 B.1 approval criterion detrimental impacts comparison should be limited to the Applicant's request for parking on two tennis courts and the current use of the Subject Property.

The Hearings Officer finds that to agree with the Applicant and BDS staff would ignore the "change in uses" described above. The Hearings Officer cannot say, at this time, whether the "change in uses" described above are legal or otherwise; they simply have not been reviewed in a formal land use process. The Hearings Officer finds that the "change in uses" described above need to be addressed in one or more formal land use review process. To compare the Applicant's request for parking on two tennis courts against the current use would likely be improperly granting approval status to the "change in uses."

The Hearings Officer finds that but for the PCC 33.258.050 B. "change in uses," there would be no need for the proposal to park vehicles on the tennis courts. Restated, if the Subject Property were used in conformance with the *Last Legal Use* (private tennis club for recreational use by neighborhood residents), it is unlikely that there would be a need for additional parking on the two tennis courts. While unusual, the Hearings Officer finds the PCC 33.258.050 B. "change in uses" must be considered part of the current application/request. To conduct the detrimental impacts comparison without including the PCC 33.258.050 B. "change of uses" would be to ignore reality and reward non-compliance with the PCC.

Step 3 – Comparison of the detrimental impacts created by the Applicant's request to the detrimental impacts created by the *Last Legal Use*.

The Hearings Officer finds the Applicant did not provide evidence of impacts created by the current use (including the PCC 33.258 B. "change in uses") and the proposal to add parking on two tennis courts. The Hearings Officer finds the only detrimental impact evidence in the record relates to the Applicant's request to add parking on two tennis courts in comparison to the current use of the Subject Property. There is no detrimental impact evidence related to the addition of minor league basketball, basketball/volleyball tournaments and clinics, sand volleyball

tournaments and clinics or the replacement of the tennis surface with a basketball/volleyball surface.

The Hearings Officer finds that without evidence in the record addressing the detrimental impacts of the current use of the Subject Property, the Hearings Officer is unable to conduct the required PCC 33.258.080 B.1 analysis. The Hearings Officer finds the Applicant has failed to carry its evidentiary burden of proof with respect to PCC 33.258.080 B.1.

Additional Findings related to PCC 33.258.050 B.

PCC 33.258.050 B. states, in part, the following:

"A change in use to another use in the same use category is allowed by right, provided that the off-site impact standards of Chapter 33.262, Off-Site Impacts, are met. The applicant must document in advance that the nonconforming use will meet the off-site impacts standards. For changes of use within the same use category which do not meet the off-site impact standards, the change may be allowed through a nonconforming situation review."

BDS staff, in Exhibit H.27, stated the following:

"For the subject site, the use has remained as a sports/health club related venue in the entertainment oriented subcategory of the Retail Sales and Service use category. Therefore, per Zoning Code Section 33.258.050 B, the additional activities occurring at the site are allowed by right, and the application of the off-site impact standards is not required."

The Appellants disagree with the BDS staff contention quoted above. The Appellants, in Exhibit H.38 (pages 6 and 7), states the following:

"Here, the plain language of the provision in the context of the nonconforming situation regulations compels the hearings officer to reject staff's offered interpretation. The text plainly states that any change in use within a use category is allowed provided the off-site impact standards are met. The code contains a number of use categories for properties with different zoning. For example, there are use categories that apply to properties zoned residential, commercial, industrial and institutional. All told the code lists thirty (30) different use categories. The plain text of PCC 33.258.050 B mandates that if an owner of a nonconforming use that falls within one of those categories proposes to change to another use within that same category, the owner must show that the off-site impact standards will be met. There is no text that allows the hearings officer to accept staff's interpretation that only a change between the lists of examples triggers the need to address off-site impacts."

PCC 33.700.070 A. mandates that, "Literal readings of the code language will be used. Regulations are no more or less strict than stated." The Hearings Officer finds that the Appellants' interpretation of PCC 33.258.050 B. is consistent with PCC 33.700.070 A. The Hearings Officer finds that if there is a PCC 33.258.050 B. "change of use," even if within the same use category, a PCC 33.262 Off-Site Impacts standards review must be conducted. Further, the Hearings Officer finds that the clear language of PCC 33.258.050 B. requires the PCC 33.262 Off-Site Impacts standards analysis to be done "in advance." The Hearings Officer finds, if there was a "change of use" within the same use category, then a PCC 33.262 Off-Site Impact standards analysis is required. The Hearings Officer finds that until the PCC 33.262 Off-Site Impact analysis is completed and, if necessary, a PCC 33.258 Nonconforming Situation Review is approved, the PCC 33.258 B. "change in uses," as described in this decision, cannot be considered as part of the *Last Legal Use*. Further, even if the Hearings Officer is in error in characterizing the "change in uses" as PCC 33.258.050 B. "change in uses," the Hearings Officer finds that the Applicant's proposed use of two tennis courts for parking must, in advance, undergo the PCC 33.262 Off-Site Impact standards analysis.

The Hearings Officer finds the Applicant has not undertaken a PCC 33.262 Off-Site Impact analysis for the above-referenced PCC 33.258.080 B. "change in uses." The Hearings Officer finds no evidence in the record that would allow the Hearings Officer to undertake the PCC 33.262 Off-Site Impact analysis for the PCC 33.258.080 "change in uses." The Hearings Officer finds it is premature to address the Applicant's parking on two tennis court proposal because the Applicant has not addressed PCC 33.262 Off-Site Impact standards for the above-stated PCC 33.258.080 "change in uses."

The Hearings Officer finds the Applicant's failure to adequately address PCC 33.262 Off-Site Impact standards is an independent basis for denial of the Applicant's proposal in this case.

Findings related to PCC 33.258.050 C.

BDS staff processed the Applicant's request to approve parking on two tennis courts as a PCC 33.258.050 C. "Expansion." The Hearings Officer agrees with BDS staff that the addition of parking spaces is a PCC 33.258.050 C. "Expansion." The Hearings Officer, however, as set forth in the findings above, disagrees with BDS staff that a proper PCC 33.258.080 B.1 detrimental impacts comparison was conducted. The Hearings Officer finds the Applicant's failure to provide adequate evidence in the record to properly conduct a PCC 33.258.080 B.1 detrimental impacts comparison is, by itself, an independent basis to deny the Applicant's proposal.

Findings related to "change to another use in the same use category"

The Appellants argued that a LUBA holding in *River City Disposal and Recycling v. City of Portland*, 35 OR LUBA 360 (1998) was relevant to the BDS staff decision that the Applicant's proposed use (parking on two tennis courts) and/or the above-referenced PCC 33.258.050 B. "change in uses" were "to another use in the same category" (Exhibit H.2)

The Appellants, in Exhibit H.5, described the applicability of *River City Recycling* to this case. The Appellants, on page 4, stated:

"In *River City*, the subject property was occupied to two businesses. The property owner, Lind, operated a sewer contracting business since 1926. In 1995, he leased part of the property to River City which operated the disposal/recycling business. Both businesses were in the Industrial Service use category in the City Code. The City required the owner to process a Type II nonconforming situation review to determine whether both uses were lawfully established nonconforming uses. The local hearings officer decided that the sewer contracting business was lawfully established, but denied status to River City's business.

LUBA upheld that aspect of the hearings officer's decision. Similar to BDS staff's flaws reasoning here, at LUBA, the owner argued that the nonconforming situation review was the Industrial Service Use established by Lind and continued by River City. He argued further that the Industrial Service Use was allowed when established, the approval criterion in the City Code was met by River City. The owner relied on PCC 33.910 which stated at the time a nonconforming situation may be nonconforming in more than one way.

LUBA rejected the owner's argument stating:

'We fail to see how the fact that a nonconforming situation may be composed of multiple nonconforming uses obviates the requirement that each of those nonconforming uses would have been allowed when established under PCC 33.258.075(D)(1)(a). Petitioners' argument appears to be that it is the Industrial Service use category that is the nonconforming use and that whatever Industrial Service use is legally established may subsequently be changed to, or joined by, any other Industrial Service use, as a matter of right. It is that is petitioners' argument, it is without merit and was correctly rejected by the hearings officer.'

Consistent with *River City*, the City was required to determine in 2005 and 2012 exactly what uses were being made on the property at the time of the code change in 1991. Then, *River City* compels that the City had to examine each and every use being conducted on the property in 2005 and 2012 to determine whether those uses were lawfully existing in 1991. The City was not permitted to simply treat the nonconforming use as a Retail Sale and Service use that could be increased by adding any additional use within the same category."

The Hearings Officer agrees with the Appellants' *River City Recycling* argument, as set forth above. The Hearings Officer finds that the PCC 33.258.050 B. "change in uses," while arguably in the same use category, still were required to be processed through a PCC 33.258.075 or PCC

33.258.080 land use review. The Hearings Officer finds no evidence in the record to suggest the PCC 33.258.050 B. "change in uses" underwent a PCC 33.258.075 or PCC 33.258.080 land use review process. The Hearings Officer finds, based upon *River City Recycling* findings above, that the PCC 33.258.050 B. "change in uses" described in Step 2A findings are not legally recognized nonconforming uses at the Subject Property.

III. CONCLUSIONS

The Applicant applied for a Nonconforming Situation Review. The relevant approval criteria are found in PCC 33.258.080. The Applicant and BDS staff argued that the PCC 33.258.080 B.1 described *Last Legal Use* includes all current uses of the Subject Property. The Appellants disagreed contending that the *Last Legal Use* of the Subject Property is set forth in a 1976 City Hearings Officer land use decision (CU 54-76). The Hearings Officer concluded that the *Last Legal Use* is the CU 54-76 decision but not including the conditions of approval. For the purposes of this decision, the Hearings Officer found the *Last Legal Use* to be: a private tennis club for recreational use by neighborhood residents.

The Hearings Officer found the current use of the Subject Property includes minor league basketball practices/games, regional/national basketball/volleyball tournaments, clinics attracting non-neighborhood resident participants and sand volleyball tournaments attracting non-neighborhood resident participants. The Hearings Officer found the tennis court surface was replaced, in approximately 2012, by a basketball/volleyball surface. The Hearings Officer found that no land use review process had approved minor league basketball, regional/national basketball/volleyball tournaments, basketball/volleyball clinics attracting non-neighborhood participants, sand volleyball tournaments attracting non-neighborhood participants, or the replacement of the tennis court surface with a basketball/volleyball surface.

The Hearings Officer found that PCC 33.258.080 B.1 required the Hearings Officer to undertake a comparison of impacts between the *Last Legal Use* and the Applicant's request. The Hearings Officer found the Applicant's request included all current uses at the Subject Property; not just the proposed parking on the two tennis courts. The Hearings Officer found to ignore the current uses, such as minor league basketball, regional/national basketball/volleyball tournaments, sand volleyball tournaments attracting non-neighborhood resident participants and basketball/volleyball clinics attracting non-neighborhood resident participants would be to ignore the reality of the operation at the Subject Property.

The Hearings Officer found it plausible to characterize addition of minor league basketball, regional/national basketball/volleyball tournaments, sand volleyball tournaments attracting non-neighborhood resident participants and basketball/volleyball clinics attracting non-neighborhood resident participants at the Subject Property as PCC 33.258.050 B. Use Changes or PCC 33.258.050 C. Expansions. The Hearings Officer found that the Applicant did not provide substantial evidence in the record to describe the impacts of the minor league basketball, regional/national basketball/volleyball tournaments, sand volleyball tournaments, basketball/volleyball tournaments and parking on the two outdoor tennis courts upon the

surrounding area. The Hearings Officer found that without such evidence, the PCC 33.258.080 B.1 comparative analysis could not be done. The Hearings Officer found the Applicant did not carry its burden in providing substantial evidence to demonstrate satisfaction of PCC 33.258.080 B.1 or B.2.

The Hearings Officer also found that because the minor league basketball, regional/national basketball/volleyball tournaments, sand volleyball tournaments attracting non-neighborhood resident participants and basketball/volleyball clinics attracting non-neighborhood resident participants and the replacement of the tennis court surface with a basketball/volleyball surface constituted PCC 33.258.050 B. Changes of Use, the Applicant was required, in advance, to provide evidence that PCC 33.262 Off-Site Impacts standards were met. The Hearings Officer did not find substantial evidence in the record to allow a PCC 33.262 Off-Site Impacts standards analysis. The Hearings Officer found the Applicant's request, in this case, must be denied on the basis that PCC 33.262 Off-Site Impacts standards analysis could not be completed.

The Hearings Officer found the Applicant's request "to utilize two existing tennis courts on the site as temporary overflow parking areas when events at the facility draw more visitors to the site than during typical business hours" must be denied because the Applicant failed to provide evidence in the record to show PCC 33.258.080 B.1 and B.2 were met. In addition, the Hearings Officer found the Applicant's request, in this case, must be denied because the Applicant did not provide evidence in the record to allow the Hearings Officer to conduct a PCC 33.262 Off-Site Impact standards analysis.

IV. HEARINGS OFFICER'S DECISION

The Appellants prevailed in this appeal.

Denial of the Applicant's Request for:

- An expansion of a nonconforming use to allow two tennis courts to function as overflow parking lots as necessary to accommodate additional parking on-site.



Gregory J. Frank, Hearings Officer

MARCH 12, 2015

Date

Determined Complete:	June 11, 2014
Staff Decision to Hearings Officer:	January 23, 2015
Decision Mailed:	March 13, 2015
Last Date to Appeal:	April 3, 2015

Appealing this decision. The Hearings Officer's decision is final and takes effect on the day the notice of decision is mailed. The decision may not be appealed to City Council, but may be appealed to the Oregon Land Use Board of Appeals (LUBA), as specified in the Oregon Revised Statute (ORS) 197.830. Among other things, ORS 197.830 requires that:

- an appellant before LUBA must have presented testimony (orally or in writing) as part of the local hearing before the Hearing's Officer; and
- a notice of intent to appeal be filed with LUBA within 21 days after the Hearings Officer's decision becomes final.

Please contact LUBA at 1-503-373-1265 for further information on filing an appeal.

EXHIBITS
NOT ATTACHED UNLESS INDICATED

A. Applicant's Statement

1. Applicant's narrative, October 3, 2014 describing the proposal, on-site parking management, revised parking space count, and attached photographs
2. Lancaster Engineering Memo
3. June 10, 2014 narrative submittal describing activities, hours, memberships and events
4. June 11, 2014 email from applicant requesting the application be deemed complete and the 120-day clock extended by 30 days to provide additional information submittals.
5. September 25, 2014 Extension of 120 day clock until November 8, 2014
6. October 14, 2014, Extension of 120 day clock for the full 245 day extension through June 12, 2015.

B. Zoning Map (attached)

C. Plans/Drawings

1. Site Plan
2. Tennis Court parking layout
3. Tennis Parking 1: detail
4. Tennis Parking 2: detail
5. Side Lot: detail
6. Back Lot: detail

D. Notification information

1. Mailing list
2. Mailed notice

E. Agency Responses

1. Bureau of Environmental Services
2. Bureau of Transportation Engineering and Development Review
3. Water Bureau
4. Fire Bureau
5. Site Development Review Section of BDS
6. Bureau of Parks, Forestry Division
7. Life Safety Plans Examiner Section of BDS

F. Correspondence

1. Julie McMurchie, November 18, 2014; *in opposition*
2. Sylvia Gray & Viktors Berstis, November 28, 2014; *in opposition*
3. Lisa Bunion-Rinker, Ardenwald/Johnson Creek, Land Use Chair; November 30, 2014; *in opposition*
4. Jaclyn & Gary Wampler, December 1, 2014; *in opposition*
5. David Hyman, President; Eastmoreland Racquet Club Estates Home Owners Association; with 25 attached photographs; December 1, 2014; *in opposition*
6. Phil Stanford, December 1, 2014; Certified Letter *in opposition*
7. Maureen Fallt, December 1, 2014; *in opposition*
8. Jill Schwie & David Jursik, December 1, 2014; *in opposition*

9. Morris H. Erickson, December 1, 2014; *in opposition*
10. Rex & Marlyne Gilley, December 1, 2014; *in opposition*
11. Eric Westerfeld, December 1, 2014; *in opposition*
12. David Stabler, December 1, 2014; *in opposition*
13. Bob Waver, with 13 labeled 4x6 color photographs, December 2, 2014; *in opposition*
14. James Dunn, with 8 attached color photographs, December 2, 2014; *in opposition*
15. Sallee Humphrey, December 2, 2014; *in opposition*
16. Cindy Gunderson, December 3, 2014; *in opposition*
17. Terry Walton, with 4 attached color photographs, December 3, 2014; *in opposition*
18. Catherine Goode, with attached meeting minutes and B&W photos, December 4, 2014; *in opposition*
19. Amy Osterlund, December 4, 2014; *in opposition*
20. Marianne Colgrove, Friends of Tideman Johnson/Ardenwald Johnson Creek, December 5, 2014; *in opposition*
21. Gene H. Albrecht, December 5, 2014; *in opposition*

G. Other

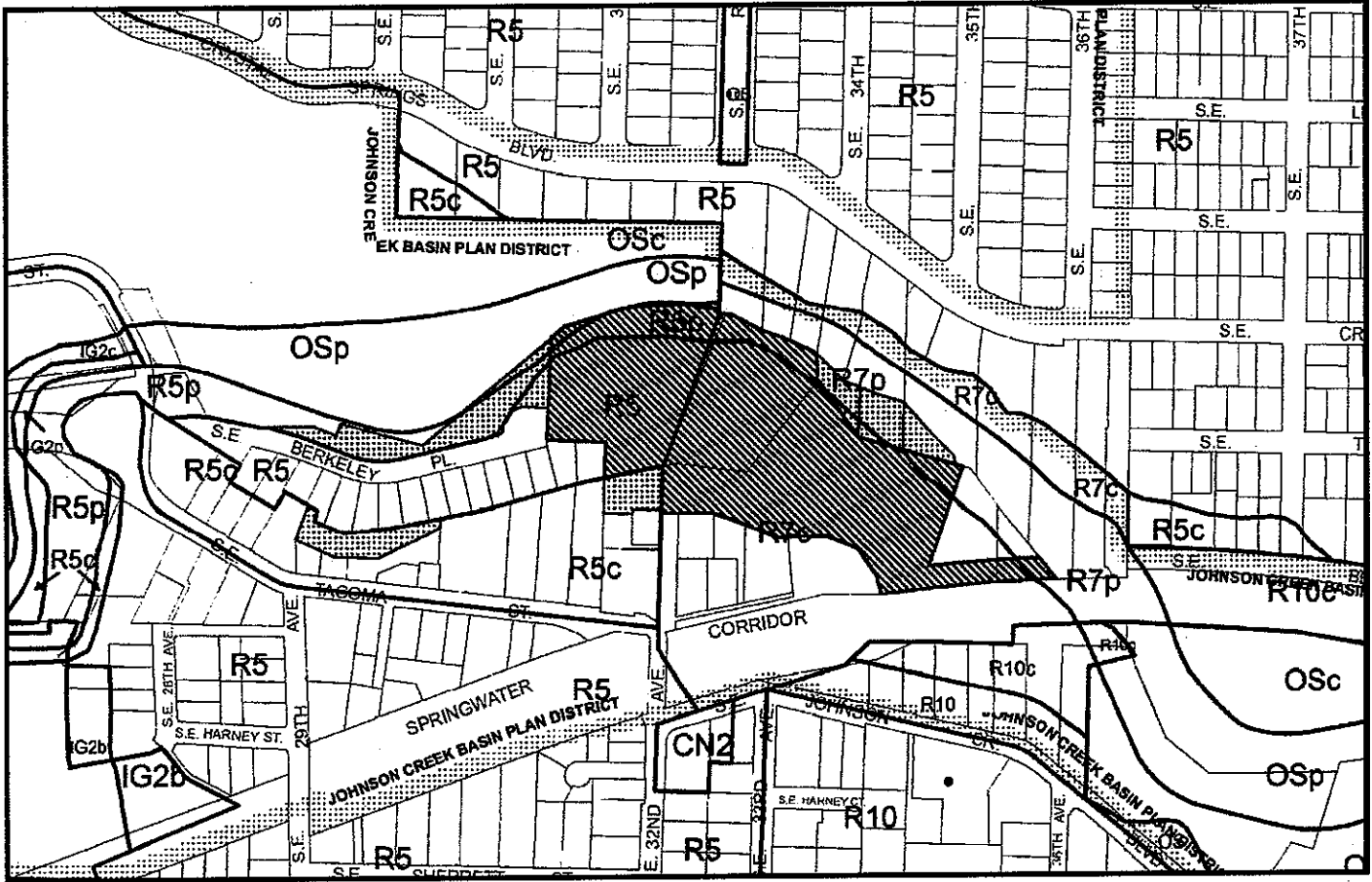
1. Original LU Application
2. Incomplete letter,
3. Incomplete letter
4. Incomplete letter
5. Tax Lot 1S1E24DC 1400: Property Information
6. Tax Lot 1S1E24DC 1500: Property Information
7. Tax Lot 1S1E24DC 1600: Property Information
8. Tax Lot 1S1E24DC 2200: Property Information
9. Topography North of the Courts
10. Topography South of the Courts
11. Code Compliance Determination Letter to property owner, April 29, 2005
12. Code Compliance Administrative Review Decision; October 24, 2013
13. Approved site plan for 'side parking lot' to remain unpaved, LUR 92-00768 AD

H. Received in the Hearings Office

1. Hearing Notice -- Cate, Sylvia
2. Notice of Decision -- Cate, Sylvia
3. PowerPoint presentation printout -- Cate, Sylvia
4. Written testimony -- Gunion-Rinker, Lisa
5. 2/2/15 Letter -- Koback, Chris
6. 2/1/15 Letter -- Colgrove, Marianne
7. 12/1/14 Letter to Cate -- Fallt, Maureen
8. Written testimony -- Westerfeld, Eric
9. 1/30/15 Letter from Ronald E. Daniels -- Gilley, Rex
10. 2/2/15 Letter -- Gilley, Rex and Marlyne
11. Audubon flyer -- Goode, Catherine
12. Written testimony -- Stanford, Phil
13. 2/2/15 Letter from Bob and Karen Weaver -- Weaver, Karen
14. E-mail -- Dunn, James

15. CD by Sallee Humphrey -- Hyman, David
16. 12/3/14 Letter to Cate from Rod Merrick -- Hyman, David
17. Testimony printout -- Hyman, David
18. Written testimony (in notebook) -- Hyman, David
19. 2/2/15 Letter from Morris Erickson -- Hyman, David
20. Record Closing Information -- Hearings Office
21. Email from Schwie/Jursik -- Cate, Sylvia
22. 2/4/15 Fax -- Weaver, Bob and Karen
23. 2/4/15 Letter from Stoll -- Cate, Sylvia
24. 2/6/15 Fax -- Mintkeski, Walter
25. Written statement with attachments -- Dunn, James
 - a. Tree Cutting Permit Application -- Dunn, James
 - b. 2/7/13 Notice of Additional Zoning Violation -- Dunn, James
 - c. Photos -- Dunn, James
26. Letter with attachments -- Walton, Terry
 - a. Photos - Walton, Terry
27. 2/9/15 Memo -- Cate, Sylvia
28. Letter with attachment -- Hyman, David
 - a. E-mail string -- Hyman, David
29. Notebook (without the notebook) - Section 1 - Albrecht Appeal -- Hyman, David
 - a. Hearing PowerPoint -- Hyman, David
 - b. Arguments & Evidence -- Hyman, David
 - c. Exhibit I -- Hyman, David
 - d. Exhibit II -- Hyman, David
 - e. Exhibit III -- Hyman, David
 - f. Exhibit IV (just divider, no supplemental documents) -- Hyman, David
 - g. Exhibit V -- Hyman, David
 - h. Exhibit VI -- Hyman, David
 - i. Exhibit VII -- Hyman, David
 - j. Exhibit VIII -- Hyman, David
 - k. Exhibit IX -- Hyman, David
 - l. Exhibit X -- Hyman, David
 - m. Exhibit XI -- Hyman, David
 - n. Exhibit XII -- Hyman, David
 - o. Exhibit XIII -- Hyman, David
 - p. Exhibit XIV -- Hyman, David
 - q. Exhibit XV -- Hyman, David
 - r. Exhibit XVI -- Hyman, David
 - s. Exhibit XVII -- Hyman, David
 - t. Exhibit XVIII -- Hyman, David
 - u. Exhibit XIX -- Hyman, David
 - v. Exhibit XX -- Hyman, David
 - w. Exhibit XXI -- Hyman, David
 - x. Exhibit XXII -- Hyman, David (attached)
 - y. Exhibit XXIII -- Hyman, David
 - z. Exhibit XXIV -- Hyman, David
 - aa. Exhibit XXV -- Hyman, David
 - ab. Exhibit XXVI -- Hyman, David
 - ac. Exhibit XXVII -- Hyman, David

- ad. Exhibit XXVIII -- Hyman, David
- ae. Exhibit XXIX (just divider, no supplemental documents) -- Hyman, David
- af. Exhibit XXX -- Hyman, David
- ag. Exhibit XXXI -- Hyman, David
- ah. Exhibit XXII - Exhibit XXXV (just dividers, no supplemental documents) --Hyman, David
- 30. Letter -- Koback, Chris
- 31. Letters (same except for signatures) - 5 parts -- Pacatoce, Ross
- 32. 2/2/14 Letter from Sallee Humphrey -- Hyman, David
- 33. 2/4/15 Letter -- Stoll, Russ
- 34. 2/5/15 Letter -- Lieberman, Donna and David
- 35. 2/5/15 Letter -- Jursik, David
- 36. 2/9/15 Letter -- Osterland, Amy
- 37. 2/9/15 Memo with attachments -- Eastmoreland Racquet and Courts Club
 - a. 2/9/15 Letter from Michael Ard/Lancaster Engineering to Fabio de Freitas -- Eastmoreland Racquet and Courts Club
 - b. Court Usage -- Eastmoreland Racquet and Courts Club
 - c. 2/8/15 Letter -- Eastmoreland Racquet and Courts Club
 - d. 5/1/13 Letter, Hollis K. McMilan to Michael Liefeld with attachments -- Eastmoreland Racquet and Courts Club
 - e. LUR 92-00768 AD Application & Administrative Findings -- Eastmoreland Racquet and Courts Club
 - f. CU 90-90 Hearings Officer Decision and documents -- Eastmoreland Racquet and Courts Club
 - g. CU 51-82 Order of City Council -- Eastmoreland Racquet and Courts Club
 - h. CU 60-79 Recommendation to the Hearings Officer & HO's decision -- Eastmoreland Racquet and Courts Club
 - i. CU 54-76 Hearings Officer Decision -- Eastmoreland Racquet and Courts Club
- 38. Rebuttal to Staff Memorandum -- Koback, Chris
- 39. Appellants' Responses -- Koback, Chris
- 40. Appellants' Final Argument -- Koback, Chris
- 41. 2/25/15 "Sumnation Statement" -- Emmert, Terry W.
- 42. Regulatory Improvement Requests printout -- Hearings Office
- 43. Subset of Exh. A-3 – Hearings Officer (**attached**)



ZONING

	Site
	Also Owned



This site lies within the:
JOHNSON CREEK BASIN PLAN DISTRICT

File No.	LU 13-231651 NU
1/4 Section	3833.3834
Scale	1 inch = 300 feet
State Id	1S1E24DC 1600
Exhibit	B (Dec 18, 2013)

RECEIVED
FEB 09 2015
HEARINGS OFFICE

CITY OF PORTLAND
HEARINGS OFFICE
Exhibit #H-29x
Case # 4150001
Bureau Case # 13-231651 NU

Exhibit XXII

CU 54-76: Private Neighborhood Tennis Club (1976)

This exhibit has the few surviving documents related to the conditional use land review CU 54-76 to construct on R-5 zoned residential property a private tennis club for recreational use by neighborhood residents with membership limited to 300 individual and families.

1. *Staff Report and Recommendation to Hearings Officer* for CU 54-76 provided to the hearings officer on 7/2/76 (3 pages).
2. *Report and Decision of the Hearings Officer* for CU 54-76 dated 7/20/76 (6 pages).

Also see Exhibit XXI-5 for description of site and development by one of the original owner/developers.

Portland Bureau of Planning
424 SW Main
Portland, Oregon 97204
248-4250

File Number - CU 54-76
Hearing Date - July 13, 1976
Application Date - 5/24/76
Request - Recreation facility
Quarter Section 3833-34

STAFF REPORT AND RECOMMENDATION TO HEARINGS OFFICER

FACTS

APPLICANTS - Beatrice P. Katz, 3980 NW Elwood Drive, Corvallis, Oregon, 97330
Ronald and Dorothy Daniels, 3340 SE Crystal Springs Blvd. (775-2915)
Gary and Mary Leaverton, 3414 SE Crystal Springs Blvd (775-9991)
Robert Hazelett, 6801 SW Burlingame
Richard Hazelett, 2943 Kalahaua, #301, Honolulu, Hawaii
Donald Hazelett, 3808 SW Jerald Way, (227-4056)
Peter and Naydena Brix, 3520 SE Crystal Springs Boulevard
David Krieger, 3328 SE Crystal Springs Boulevard (775-1243)
Rosemary Merrifield, 6015 SE 36th Avenue

Richard Brainard, agent, 1308 SW Bertha Boulevard (245-5310)

LEGAL DESCRIPTION - Tax Lots 17, 61, 70, 81, 83, 100 and 182, Section 24, 1S, 1E

LOCATION - along the south side of Johnson Creek between SE Tacoma Street to the west and SE Berkeley to the east

PROPOSAL - conditional use request to construct a private tennis club for recreational use by neighborhood residents. This request has been submitted in conjunction with a subdivision request for 18 single-family lots that would be located west of the proposed recreation facility

ZONE - R5, single-family residential, allows athletic clubs as conditional uses

SITE DESCRIPTION - Parallels Johnson Creek primarily utilizing the relatively flat alluvial plain bounded on the south by a steep 50 foot bank. This bank has a "moderate" landslide potential. The site is surrounded by deciduous trees with the interior of the lot being a vacant grassy area. The western half of the site lying on the alluvial plain is subject to flooding by 25 year floods amounting to a water coverage of a depth of 1 ft. The applicant proposes filling to accommodate this potential. There are presently no structures on the site.

SURROUNDING CONDITIONS - To the north lies Johnson Creek and Eastmoreland Golf Course, to the south are existing residences (also zoned R5), to the west is a dwelling and across Tacoma Street is a manufacturing firm.

SERVICE CONSIDERATIONS - The applicant has secured approval from the City Engineer to traverse City property for Berkeley Place at its intersection with Tacoma Street at Tax Lot 152. The City Engineer further requests that the private one-way loop road to the proposed tennis court area be used as a turnaround for emergency vehicles without liability to the City. The proposed roadway and right-of-way widths meet with the City Engineer's approval. Water service, sanitary sewers and storm sewer arrangements have been agreed upon by the appropriate bureaus. The Fire Bureau has contacted the applicant and he is aware of the Bureau's requirements. The Bureau reserves the right of final approval subject to receiving the final plans.

SITE HISTORY - In April of 1973, a PUD request for 91 dwelling units was denied by the Planning Commission. The appeal to City Council was also denied. In addition to the strong neighborhood remonstrances (342 people), the proposal for diking and the potential of the "Johnson Creek Freeway" were the significant negative factors.

ECONOMIC INDICATOR - This area is within Census Tract 3.02. According to the 1970 census information, the median housing value for Tract 3.02 was \$21,000.

AGENCIES CONTACTED - Fire Bureau, Traffic Engineer, Bureau of Water, Bureau of Buildings, City Engineer, Bureau of Neighborhood Environment, Tri-Met, Park Bureau, Eastmoreland Community Club, Southeast Uplift

EXHIBITS

- 1 - Applicant's statement
- 2 - Vicinity map
- 3 - Subdivision 20-76 (submitted to the Hearings Officer). This exhibit may be read at the Office of the Hearings Officer, Room 211, City Hall Annex, 424 SW Main, Portland, 97204).
- 4 - Proposed subdivision plat map

FINDINGS

CODE CONSIDERATIONS - The pertinent Code requirement regarding the subject request is as follows:

4

- (1) Minimum side or rear yards: Club houses, swimming pools, stadiums and any other structure dispensing refreshments or food shall not be closer than 100 feet to interior lot lines bordering or within an R or A zone.

The submitted plan complies with this requirement.

No City bureau has expressed objection to the request.

Urban services are available to the proposed recreation facility.

The membership of the facility will be limited to 300 families or individuals and will be solicited from the surrounding neighborhood.

The applicant has indicated in Exhibit 1 that flood potential has been investigated and will provide protective berming against the 100 year flood frequency.

Access to the facility will be via SE Berkeley Place that will be improved to provide access to the proposed 18 lot subdivision located west of the subject facility.

The existing residential development to the north and south is geographically separated from the proposed facility by substantially higher grade elevations.

CONCLUSIONS

As the proposed Eastmoreland Tennis Club facility is geographically separated from adjacent residential uses, will be provided with urban services, will be protected from flood potential, will provide tennis and swimming recreational facilities for neighborhood residents, it is felt that there will be minimal adverse impacts on existing development and will be in the interest of the public.

RECOMMENDATION

Approval subject to approval of Subdivision 20-76 and on the condition that the lighting for the outside tennis courts be so shielded to minimize adverse lighting exposure to the residential areas to the north and south.

TS/sg

5



REPORT AND DECISION OF THE HEARINGS OFFICER

GEORGE H. FLEERLAGE
HEARINGS OFFICER

File No.: CU 54-76

424 S.W. MAIN ST.
PORTLAND, OR. 97204
503/248-4594

Applicant: Beatrice P. Katz, deedholder; Ronald and Dorothy Daniels, deedholders, contract purchasers and optional purchasers; Gary and Mary Leaverton, deedholders; Robert Hazelett, deedholder; Richard Hazelett, deedholder; Donald Hazelett, deedholder; Peter and Naydena Brix, contract purchasers; David Krieger, contract purchaser; Rosemary Merrifield, deedholder.

Represented by: Ronald Daniels, 3340 S.E. Crystal Springs Boulevard, 97202; Richard Brainard, 1308 S.W. Bertha Boulevard, 97219.

Staff Representatives: Ken Hampton, Chief Planner, Bureau of Planning; Terry Sandblast, City Planner, Bureau of Planning; Bud Dunnigan, Building Permit Supervisor, Bureau of Buildings.

Summary of Request: Conditional Use request for construction of a private tennis club, located along the south side of Johnson Creek west of S.E. Tacoma and east of S.E. Berkeley.

Date Application Filed: May 24, 1976

Report to Hearings Officer: July 2, 1976

Decision Rendered: July 20, 1976

Filed: July 23, 1976

Last Date to Appeal: August 6, 1976

Summary of Decision Recommendations:

Bureau of Planning Initial:	Approval with conditions
Bureau of Planning Final:	Approval with conditions
Hearings Officer:	Approval with conditions

Public Hearing: The hearing was opened in the Auditorium of the Water Service Building, 510 S.W. Montgomery Street, on July 13, 1976 at 1:40 p.m. and closed at 3:00 p.m. An oral decision was announced at that time.

Summary Sheet

13
Attachment

Report and Decision of the Hearings Officer
CU 54-76
Page Two

Speaking in Support of the Request: Leonard Girard, 7132 S.E.
35th Avenue, 97202.

Speaking in Opposition to the Request: Herbert Davis, 3043
S.E. Tacoma, 97202; Loren Wyss, 3028 S.E. Crystal Springs Blvd.,
97202; Aaron Pfaff, 3612 S.E. Crystal Springs Blvd., 97202.

Summary Sheet

14

REPORT AND DECISION OF THE HEARINGS OFFICER

I. FACTS

A. General Information

Location: Along the south side of Johnson Creek between S.E. Tacoma Street to the west and S.E. Berkeley to the east.

Proposal: Conditional Use request to construct a private tennis club for recreational use by neighborhood residents. This request has been submitted in conjunction with a subdivision request for 18 single-family lots that would be located west of the proposed recreation facility.

Zone: R5, allows athletic clubs as Conditional Uses.

Legal Description: Tax Lots 17, 61, 70, 81, 83, 100 and 182, Section 24, 1S, 1E.

B. Site Description

Parallels Johnson Creek primarily utilizing the relatively flat alluvial plain bounded on the south by a steep 50 foot bank. This bank has a "moderate" landslide potential. The site is surrounded by deciduous trees with the interior of the lot being a vacant grassy area. The western half of the site lying on the alluvial plain is subject to flooding by 25 year floods amounting to a water coverage of a depth of 1 foot. The applicant proposes filling to accommodate this potential. There are presently no structures on the site.

C. Surrounding Conditions

To the north lies Johnson Creek and Eastmoreland Golf Course, to the south are existing residences (also zoned R5), to the west is a dwelling and across Tacoma Street is a manufacturing firm.

Service Considerations: The applicant has secured approval from the City Engineer to traverse City property for Berkeley Place at its intersection with Tacoma Street at

Tax Lot 152. The City Engineer further requests that the private one-way loop road to the proposed tennis court area be used as a turnaround for emergency vehicles without liability to the City. The proposed roadway and right-of-way widths meet with the City Engineer's approval. Water service, sanitary sewers and storm sewer arrangements have been agreed upon by the appropriate bureaus. The Fire Bureau has contacted the applicant and he is aware of the Bureau's requirements. The Bureau reserves the right of final approval on receiving final plans.

Site History: In April of 1973, a PUD request for 91 dwelling units was denied by the Planning Commission. The appeal to City Council was also denied. In addition to the strong neighborhood remonstrances (342 people), the proposal for diking and the potential of the "Johnson Creek Freeway" were the significant negative factors.

Economic Indicator: This area is within Census Tract 3.02, with a 1970 census median housing value of \$21,000.

D. Agencies Contacted

Fire Bureau, Traffic Engineer, Bureau of Water, Bureau of Buildings, City Engineer, Bureau of Neighborhood Environment, Tri-Met, Park Bureau, Eastmoreland Community Club, and Southeast Uplift.

E. Exhibits (Numbers refer to exhibits originally part of the Planning Staff Report. When unnecessary to this Report, they are not attached hereto.)

- 1 - Applicant's statement (not attached)
- 2 - Vicinity Map
- 3 - Subdivision 20-76. This exhibit may be read at the Office of the Hearings Officer, Room 211, City Hall Annex, 424 S.W. Main, Portland, 97204) (not attached)
- 4 - Proposed subdivision plat map (not attached)

II. FINDINGS

- A. Code Considerations: The Code requires club houses, swimming pools, stadiums and any other structure dispensing refreshments or food not be closer than 100 feet to interior lot lines bordering or within an R or A zone.
- B. The submitted plan complies with this requirement.



REPORT OF HEARINGS OFFICER DECISION

JULY 20, 1976

ORGE H. FLEERLAGE
HEARINGS OFFICER

File No.: CU 54-76

424 S.W. MAIN ST.
PORTLAND, OR. 97204
503/248-4594

Applicant: Beatrice P. Katz, deedholder; Ronald and Dorothy Daniels, deedholders, contract purchasers and optional purchasers; Gary and Mary Leaverton, deedholders; Robert Hazelett, deedholder; Richard Hazelett, deedholder; Donald Hazelett, deedholder; Peter and Naydena Brix, contract purchasers; David Krieger, contract purchaser; Rosemary Merrifield, deedholder.

Request: Conditional Use request for construction of a private tennis club, located along the south side of Johnson Creek between S.E. Tacoma Street to the west and S.E. Berkeley to the east.

Zone: R5

Legal Description: Tax Lots 17, 61, 70, 81, 83, 100 and 182, Section 24, T1S, R1E.

Decision: To approve the Conditional Use request, subject to the following conditions:

1. Any lighting for outside tennis courts shall be so shielded to minimize adverse lighting exposure to residential areas on the north and south.
2. Appropriate city and other public departments shall closely evaluate flood plain requirements in order to determine whether the project can itself be adequately protected, and whether such protection can be achieved without adverse impacts to other property.
3. That the applicants shall cooperate with appropriate city departments and other public agencies as necessary to effectuate a pedestrian and bike path from the residential area of primary service to the facility in order that automobile traffic shall be limited insofar as possible. To implement this condition,

Report of Hearings Officer Decision
CU 34-76
Page Two

the Chief Planner of the Land Use Control Section of the Bureau of Planning is designated as the Convenor of a committee composed of representatives of the Land Use Control Section of the Bureau of Planning, the City's Bicycle Pathway Program, and a city staff member representing the Park Bureau. This committee shall work with applicants' representatives for implementation of this condition.

Authority for Decision: Code of the City of Portland Chapter 33.114.

From: de Freitas, Fabio [mailto:Fabio.deFreitas@portlandoregon.gov]
Sent: Tuesday, May 13, 2014 5:49 PM
To: Terry W. Emmert
Cc: Cate, Sylvia; Hardy, Douglas; Seward, Michelle
Subject: LU 13-231651 NU

Terry:

Thank you for the conversation this afternoon, it was good to talk to you again after many years.

We'd like to request the following information from you so that we can identify the level of analysis that we'll need you to prepare in order for City staff to review your land use case noted above. Please understand that the more information that you provide, the better understanding we'll have in terms of what's happening out at your club. The better informed we are will allow us to proceed with our formal review of your proposal.

Please provide us with the following:

1) In as much detail as possible, a description of the regular activities at the club (x number of tennis courts, y number of basketball courts, z number of volleyball courts, indoor facilities (weight room, spa, pool, sauna), etc. Please include normal hours of operation as well as a general membership number.

Facilities

Fitness area	No change to the 12 weight machines and the 6 fitness machines (33 occupancy)
Pool Area	No Changes..... 30 x 70' pool and kiddie pool (65 Occupancy)
Lobby area	No Changes (85 occupancy)
Locker Rooms	No Changes (30 occupancy)
Upstairs Meeting room	No Changes (114 occupancy)
Outdoor Hard Courts	Still have 4 Hard Tennis Courts. Nets are put up during summer months and taken down during the winter months.
Clay tennis courts	The three clay tennis courts have been replaced with six sand volleyball courts. These are used from Mid May thru early Sept.
Indoor courts	The 6 tennis courts have been replaced by six basketball/volleyball courts. (884 occupancy)

Hours of Operation

Monday through Friday hours of operation are 8 AM till 10 PM

Weekend hours are typically 8 AM until 9 PM

Membership

We have 3 different types of memberships. Fitness, Summer and Sports. See Membership Flyers attached

Each membership type has a couple of different levels, Family, Individual, Couple and Executive. We also are working with the senior market as a Silver Sneaker membership facility.

CITY OF PORTLAND HEARINGS OFFICE Exhibit #H-43 Case # 4150001 Bureau Case # 13-231651 NU
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The facility has more membership now than it has had in the last 10 years with over 500 members. A large number of these are family memberships that have kids that play both Basketball and Volleyball.

Family members use the facility to workout/practice as individuals and as teams. Just as with tennis leagues sponsored by the USTA, there are Basketball and Volleyball leagues that our members play in and that we host events. USA Volleyball and USA Basketball and AAU sanction these leagues. Our membership-based teams use the facility as their home court for leagues and local, regional and national events.

Our Fitness membership is 29 as members come and go during operational hours.

Our Summer family membership is 87 and these run from Memorial weekend thru Labor Day.

Current Family Sports memberships are 447.

We do not see the Sports family membership growing much. But the summer membership and Fitness membership is where we project growth. This put us at about 60% capacity and is far below the 1,000 memberships that is our ceiling.

Current Member Activities

Basketball:

Our Members play in a Fall , Winter, Spring and Summer USABasketball or AAU evening and weekend leagues. This includes boys and girls from 4th grade thru HS. We have 8 weekend tourneys that have take place that are Regional and National events sponsored by USA Basketball. The typical tourney will utilize 4-6 courts over the weekend. Each team will play 3-4 games over the weekend. Our teams typically have 10 players, 1-2 coaches. Each game will have 2 officials who will be there for most of the day working games. Our attendance records show that we get about 8-10 fans per team as these are mostly moms and dad. A typical league day is from 8am to 8pm as teams come and go over the course of the day.

Our adult members also play in year round evening leagues that are Monday thru Thursday nights.

Volleyball:

Our members play in a league that is sponsored thru USA Volleyball and the indoor league runs from November thru April. The outdoor Beach league runs May thru Sept. This includes 12u, 14u, 16u, 18u boys and girls along with Men's and Women's leagues. We have 6 Weekend Regional tourneys that have taken place that are also sanctioned by USAV. These tourney are for local and regional teams (Oregon/SW Wash). The typical tourney will utilize 4-5 courts. Each court will have 3-4 teams that will play over the course of the day. 16-20 teams in the facility has been the average this year. Each team will have 8-10 players 2 coaches and 1 official per court. Spectators vary by age, the older the event the fewer fans. Our attendance records show that we get about 10-12 fans per team as these are mostly moms and dad. A typical day is from 8am-7pm with players and fans coming and staying most of the day.

Our adult members also play in midweek leagues that are evening based times.

Addition activities

Pickleball has been added as a sport because we have former Tennis members that enjoyed playing as an alternative to tennis. It is a very small element of the club and is a sport that can be played on a indoor or outdoor tennis court as the surface is the same. There is/has actually been an outdoor pickleball court in place for the last 10 years, but it has not been utilized by members due to lack of upkeep. As the weather gets better and members desire to play outside increases we will be cleaning up the present court and making that available. We currently have 4 temporary courts that we can set up inside on a court. Pickleball is played on Monday and Thursday mornings and on every other Friday night. We are not planning or know of any pickleball tourneys.

Summer Camps

During the Summer we host between 6-8 weeks of sports camps. Camp sizes range from 35-100 players and are member and non-Member registration. Camps run from 9am-4pm and are typically Monday thru Thursday

Typical Day

Monday thru Friday

8am	*	Open for Membership use. Members drop in at their leisure
4:30-7pm	*	Youth Member Practices Basketball and/or Volleyball 4-5 courts 10 players per court. Typically 1.5 to 2 hours practices
7pm-10pm	*	Youth member practices Basketball or Volleyball 1-3 courts
	*	Adult member leagues
	*	Basketball and/or Volleyball 7-9 players per team. Activities are typically one to 1.5 hours.
Sat/Sunday/Holidays		
8am	*	Open for Membership use. Members drop in at their leisure
	*	Scheduled leagues and tourneys
10pm	*	Closed

2) In as much detail as possible, a description of the types and number of events at the club (tennis tournaments, basketball tournaments, volleyball tournaments, etc.). Please include typical number of participants (if possible), time and duration of events, etc.

Just as with Tennis (USTA), both basketball and volleyball membership host events that are sponsored by their National Governing Body (NGB)... AAU and USA Basketball, USA Volleyball. Our youth and adult members play in weekend leagues and tournaments that are sponsored by USAV, USAB along with AAU. This includes Local, Regional and National events.

In Indoor Volleyball it is for 12u, 14u, 16u, 18u and Adults. Indoor Volleyball member activities (practices and leagues/Tourneys) run from October thru Mid May. We will typically host league play in Jan-May for both the Youth Members and adult membership. The beach season starts in Mid May and will end in late August for both Youth and Adult. 8am to 7pm is a typical tourney schedule.

A typical League/Tourney will utilize 4-5 courts and have 3-4 teams per court. A typical member team and visiting team will have 9-11 players per team along with 1-2 coaches. Our attendance numbers show that we get about 10-13 spectators per team. With League staff and officials adding another 10-12 people. A typical League/Tourney would have about 200 players and 250-300 fans(moms and dads). Well below the fire marshals occupancy of 884 in the Gym area.

For Basketball members the Local, Regional and National events are 10 months out of the year. August and September are the slower months. Basketball membership has member teams from 4th thru HS in both boys and girls and Adults. The Basketball numbers are very similar to the Volleyball leagues/Tourneys. A typical team will have 8-10 players, 1-2 coaches that are usually parents and 2 officials. A typical schedule for a Bball league will be that a team plays 2 games in a day in a back to back schedule. So over the course of the day players and fans are typically here for 3-4 hours.

Again far below the fire Marshal occupancy.

See the attached schedule for current calendar.

3) In as much detail as possible, a description of the Portland Chinooks IBL basketball league and any other regular leagues/teams that may utilize the club. Please include number of (home) games, typical number of fans that attend and schedules, etc.

The Portland Chinooks use the club as their home site. Typically the Chinooks play between 9 and 12 home games in April, May and June. Games are typically played on Friday Saturday and Sunday evenings. These games start at 7 PM in the evening and typically take 1.5 hours. The average attendances for the games are between 40 and 50 paying customers. The team practices 1 to 2 times per week between 3pm and 5 pm. This year the Chinooks will play 3 Friday, 2 Saturday, 2 Sunday and 3 Tuesday games between May 9th and June 24th

4) In as much detail as possible, please provide a description of the number of current on-site parking spaces that you have on your site. Also, please provide the number of parking spaces that you anticipate providing on the tennis courts (referring to the parking dimensions that we talked about that come out of the parking chapter of the Zoning Code [33.266]). A scaled plan of the parking area on the tennis courts should accompany the description.

Currently the club uses 4 areas as parking.

Front lot	This lots hold 65 cars
Side lot	The Side lot hold up to 75 cars
Back Lot	The Back of the facility can hold another 35 cars**

** These lots are very rarely utilized during the Monday thru Friday members usage.

Proposed Overflow/Temp parking

The two areas that we are currently being used as overflow parking would give us additional 91 parking spots. The 2 sites are 120' x 130' (42 spots) and 129 x 138' (49 Spots). These additional spots will minimize the parking on the street and curtail the number of ins and out of cars looking for parking as cars will only go in and out 1 time

For every activity:

- * Local, Regional and National we send out the attached information about parking.
- * This information is also on our website to make sure members and guest have been informed about our parking and working with our neighbors. (See attached Rules and Parking Doc.) Cars that are blocking access or illegally are towed.
- * We have staff in the parking lot to make sure that member and guest are using all on site spots on property before moving to the street.

5) Any other information that you may think would be helpful to us to describe everything that occurs at the facility, especially how that information may translate into vehicle trips to/from the site and/or parking demand.

The Club and it's members and teams have made a huge difference in the youth sports. With our member programs many more Portland area families (youth and Adults) have been given a opportunity to play in healthy and safe environment. Local Portland members do not have to travel to far away facilities.