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## Legal Memorandum

**To:** Portland City Council  
**From:** William L. Rasmussen, on behalf of Portland Playhouse  
**Case #:** LU Case # 11-187799; HO Case # 4110034  
**Matter:** Portland Playhouse CUP Appeal  
**Subject:** Legal Authority for City to Approve Portland Playhouse as a Community Arts Center  
**Date:** February 28, 2012

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### INTRODUCTION

This memorandum analyzes the applicable use categorization law and concludes that the City Council can lawfully approve the Portland Playhouse's CUP application, including the performance of plays, as a Community Service Use. Nothing in state law or the Portland City Code (the "PCC") prohibits the City from authorizing the performance of plays as part of the Community Service Use, as proposed in the Playhouse's CUP. In fact, as discussed in the Analysis section below, the text of the PCC's use category chapter (PCC 33.920) indicates that the Community Service Use is the most accurate use category for describing the Playhouse's proposed use.

At a minimum, it is well within the Council's discretion to approve the proposal as a "community center" rather than a commercial "theater" because neither of these terms is defined, and local jurisdictions are given a healthy amount of discretion by the courts in interpreting their local codes.

## **LEGAL ANALYSIS OUTLINE**

I. The Playhouse Is Properly Categorized as an Institutional Community Service Use Rather Than a Commercial Retail Sales and Services Use.

A. The Playhouse is More Accurately Categorized As An Institutional Community Service Use Than a Commercial Retail Sales and Service Use.

1. The Community Service Use Characteristics Accurately Describe the Playhouse's CUP Proposal.

2. The Commercial Retail Sales and Service Use Characteristics Do Not Accurately Describe the Playhouse's CUP Proposal.

3. The Additional Considerations for Use Classification Found in PCC 33.920.030.A.2 Further Indicate That The Proposed Use is a Community Service Use.

B. Using the Examples in the PCC's Use Category Chapter, "Community Center" (Community Service Use) More Accurately Describes the Proposed Use Than "Theater" (Retail Sales and Services Use).

C. The Playhouse is Willing to Accept Conditions of Approval Requiring it to Meet the Four Characteristics of a Community Center That Were Identified by Staff in Staff's January 6, 2012, Memorandum.

II. LUBA Precedent Interpreting the Use Categorization Methodology of PCC Chapter 33.920 Indicates That the City is to Make a Primary Use Determination, and That the City Should Not Bifurcate the Primary Use Here By Treating Plays As a Separate and Distinct Primary Use.

III. Even If a Distinct "Theater" Use Was Contemplated in the Playhouse Proposal, It Would Be More Accurately Classified As An Accessory Use to the Primary Community Service Use, Than a Distinct Primary Commercial Retail Sales and Services Use. Portland Has Precedent For Allowing Plays in Conjunction With a Community Center CUP Approval.

## ANALYSIS

### I. The Playhouse Is Properly Categorized as an Institutional Community Service Use Rather Than a Commercial Retail Sales and Services Use.

This section assesses the PCC's categorization of Community Service Uses versus Retail Sales and Service Uses, and concludes that the Playhouse's proposal is best categorized as a Community Service Use. The proposed use is most accurately described by the Community Service Use characteristics, and is not accurately described by the Retail Sales and Service Use characteristics. Furthermore, Community Service Uses fall within the "institutional" section of the Use Category chapter, which more accurately describes the nature of the Playhouse's proposed use than the "Commercial" section, under which Commercial Retail Sales and Services is located.

For ease of the Council's review, the PCC text regarding Retail Sales and Service Use and Community Service Use is reproduced in its entirety below:

Code Text: **"Commercial Use Categories**

\* \* \*

Code Text: **"33.920.250 Retail Sales and Service**

**"A. Characteristics.** Retail Sales and Service firms are involved in the sale, lease or rent of new or used products to the general public. They may also provide personal services or entertainment, or provide product repair or services for consumer and business goods.

**"B. Accessory uses.** Accessory uses may include offices, storage of goods, manufacture or repackaging of goods for on-site sale, and parking.

**"C. Examples.** Examples include uses from the four subgroups listed below:

"1. Sales-oriented: Stores selling, leasing, or renting consumer, home, and business goods including art, art supplies, bicycles, clothing, dry goods, electronic equipment, fabric, furniture, garden supplies, gifts, groceries, hardware, home improvements, household products, jewelry, pets, pet food, pharmaceuticals, plants, printed material, stationery, and videos; food sales, and sales or leasing of consumer vehicles including passenger vehicles, motorcycles, light and medium trucks, and other recreational vehicles.

"2. Personal service-oriented: Branch banks; urgency medical care; laundromats; photographic studios; photocopy and blueprint services; hair, tanning, and personal care services; business, martial arts, and other trade schools; dance or music classes; taxidermists; mortuaries; veterinarians; kennels limited to boarding, with no breeding; and animal grooming.

"3. Entertainment-oriented: Restaurants, cafes, delicatessens, taverns, and bars; indoor or outdoor continuous entertainment activities such as bowling alleys, ice rinks, and game arcades; pool halls; indoor firing ranges; theaters, health clubs, gyms, membership clubs, and lodges; hotels, motels, recreational vehicle parks, and other temporary lodging with an average length of stay of less than 30 days.

"4. Repair-oriented: Repair of TVs, bicycles, clocks, watches, shoes, guns, appliances and office equipment; photo or laundry drop off; quick printing; recycling drop-off; tailor; locksmith; and upholsterer.

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## ***Institutional Use Categories***

\* \* \*

### **33.920.420 Community Services**

**"A. Characteristics.** Community Services are uses of a public, nonprofit, or charitable nature generally providing a local service to people of the community. Generally, they provide the service on the site or have employees at the site on a regular basis. The service is ongoing, not just for special events. Community centers or facilities that have membership provisions are open to the general public to join at any time, (for instance, any senior citizen could join a senior center). The use may provide mass shelter or short term housing where tenancy may be arranged for periods of less than one month when operated by a public or non-profit agency. The use may also provide special counseling, education, or training of a public, nonprofit or charitable nature.

**"B. Accessory uses.** Accessory uses may include offices; meeting areas; food preparation areas; parking, health and therapy areas; daycare uses; and athletic facilities.

**"C. Examples.** Examples include libraries, museums, senior centers, community centers, publicly owned swimming pools, youth club facilities, hospices, ambulance stations, drug and alcohol centers, social service facilities, mass shelters or short term housing when operated by a public or non-profit agency, vocational training for the physically or mentally disabled, crematoriums, columbariums, mausoleums, soup kitchens, park-and-ride facilities for mass transit, and surplus food distribution centers.

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#### **A. The Playhouse is More Accurately Categorized As An Institutional Community Service Use Than a Commercial Retail Sales and Service Use.**

In categorizing a use, PCC 33.920.030.A.1 directs that "[u]ses [be] assigned to the category whose description most closely describes the nature of the primary use." It then points users to the characteristics section of each category to assess which of the characteristics descriptions most closely fits the proposed use. "The 'Characteristics' subsection of each use category describes the characteristics of each use category." Id.

The Playhouse's proposed use is most accurately described by the Community Service Use characteristics quoted above, and is not accurately described by the Retail Sales and Service Use characteristics. This section is split into three subsections. The first subsection analyzes the proposed use in relation to the Community Service Use characteristics; the second subsection analyzes use in relation

to the Retail Sales and Service Use characteristics; and the third subsection discusses additional considerations for use classifications provided by the PCC.

**1. The Community Service Use Characteristics Accurately Describe the Playhouse's CUP Proposal.**

Every component of the Playhouse's proposed use meets every characteristic in every sentence of the Community Service Use category (of which "community center" is an example) section. Each sentence of the Community Service Use characteristics is listed and discussed below:

Community Service Use Characteristic Sentence #1: *"Community Services are uses of a public, nonprofit, or charitable nature generally providing a local service to people of the community."*

As the record shows, the Playhouse is a local nonprofit 501(c)(3) organization whose sole purpose is to make the arts accessible to all people in our community. Extensive testimony has been submitted regarding the culturally relevant arts made available by the Playhouse to the King neighborhood, an area that otherwise has limited live performance arts. The Playhouse engages its community through a number of innovative mediums, all of which fall within its "public, nonprofit, [and] charitable" nature. Many of the Playhouse's activities are provided to the public free of charge. Every activity of the Playhouse is of a not-for-profit character and for the public's enrichment. The Playhouse uses the old church building as a community arts and cultural center, at which it conducts nonprofit classes, holds workshops, hosts community discussion panels, holds art exhibits, facilitates mentorship programs, and hosts plays. The Playhouse's proposed use is "of a public, nonprofit, or charitable nature." This sentence of the Community Service use characteristic accurately describes the Playhouse's proposed use.

Community Service Use Characteristic Sentence #2: *"Generally, they provide the service on the site or have employees at the site on a regular basis."*

As indicated on page 15 of applicant's original submittal, Playhouse staff are on site from at least 9 a.m. to 5 p.m., Monday through Friday, year-round. They provide space for classes, workshops, practice opportunities, and educational opportunities at the church building from 1 p.m. to 6 p.m., Monday through Saturday, year-round. Because the Playhouse provides its services and has employees on site year-round, this sentence of the Community Service Use characteristic describes the Playhouse's proposed use.

Community Service Use Characteristic Sentence #3: *"The service is ongoing, not just for special events."*

As indicated on page 1 of applicant's original submittal, the Playhouse conducts nonprofit classes, holds workshops, hosts community discussion panels, holds art exhibits, facilitates mentorship programs, and hosts plays. Its services are available

to the public year-round. The church building is staffed from at least 9 a.m. to 5 p.m., Monday through Friday. It provides space for classes, workshops, practice, and educational purposes at the church building from 1 p.m. to 6 p.m., Monday through Saturday. Because the Playhouse provides its services on an ongoing basis and not just for special events, this sentence of the Community Service Use characteristic describes the Playhouse's proposed use.

Community Service Use Characteristic Sentence #4: *“Community centers or facilities that have membership provisions are open to the general public to join at any time, (for instance, any senior citizen could join a senior center).”*

Of the various examples within the use categories in the PCC, the Playhouse is best described as a community center because of the range of services that it provides at the church building and the community space function that it serves for the King neighborhood. The Playhouse provides a gathering place for the community where classes, forums, and workshops regularly take place. It is a community center that is open to the whole community, and requires no membership to take advantage of the cultural and educational opportunities that it provides. Because the Playhouse has no exclusive membership requirements, this characteristic accurately describes the Playhouse's proposed use.

Community Service Use Characteristic Sentence #5: *“The use may provide mass shelter or short term housing where tenancy may be arranged for periods of less than one month when operated by a public or non-profit agency.”*

This characteristic underscores the need to distinguish Commercial uses from Community Service uses, and how a term appearing in one use category example list is not by itself sufficient to disqualify that example from being more accurately categorized in another use category. Depending on the purpose and nature of the agency providing short-term housing, the use can be of either Community Service or Retail Sales and Services. If the housing is operated by a nonprofit, it is classified as a Community Service Use. This is analogous to the need to distinguish the Playhouse, a local nonprofit that provides community cultural and educational opportunities, from Regal Cinemas and other for-profit theaters. While this characteristic does not pertain to the Playhouse's particular Community Service use, it suggests that nonprofit agencies such as the Playhouse are more often Community Service uses than their for-profit counterparts.

Community Service Use Characteristic Sentence #6: *“The use may also provide special counseling, education, or training of a public, nonprofit or charitable nature.”*

As shown throughout the record, the Playhouse provides educational opportunities at the church building as part of its public service. Workshops and art classes are hosted on a regular basis. Many of these provide interested persons with the opportunity to learn about and practice arts. This is another way that the Playhouse

fulfills its mission of being a cultural hub for the King neighborhood. Because the Playhouse provides special educational opportunities of a nonprofit or charitable nature, this characteristic describes the Playhouse's proposed use.

To summarize, every single characteristic of the Community Service Use category in the PCC describes or supports the Playhouse's categorization as a Community Service use.

## **2. The Commercial Retail Sales and Service Use Characteristics Do Not Accurately Describe the Playhouse's CUP Proposal.**

In contrast, the characteristics of the Retail Sales and Service Use category (of which "theater" is an example) fail to accurately or adequately describe the Playhouse's use. PCC 33.920.250.A provides only two sentences describing the characteristics of Retail Sales and Service uses. Neither sentence accurately or adequately describes the Playhouse's proposed use. The characteristics are quoted and discussed below.

Retail Sales and Service Use Characteristic Sentence #1: *"Retail Sales and Service firms are involved in the sale, lease or rent of new or used products to the general public."*

The Playhouse's activities generally do not involve the sales, rent, or lease of products. The nonprofit classes, workshops, community discussion panels, art exhibits, and mentorship programs that take place at the Playhouse are noncommercial and do not involve the sale of products. Many of the Playhouse's activities are free of charge. The Playhouse does recoup a portion of the cost of its plays by charging a fee, but the Playhouse participates in the Arts for All program so that low-income persons can view plays for a nominal sum. Within the Playhouse's nonprofit model, the plays would not be possible without this partial recovery of play expenses (less than half) through ticket sales. The King neighborhood would not have access to this cultural opportunity if this partial recovery of expenses were not allowed.

In any event, the plays that the Playhouse performs are not a "product," as that term is used in the use category chapter of the PCC. The term "Products" is used uniformly in the use category chapter to refer to physical goods, or occasionally digital goods, as opposed to services or other intangible things, such as a play. See, e.g., PCC 33.920.240.A; PCC 33.920.250.A; PCC 33.920.310.A; PCC 33.920.310.C; PCC 33.920.350.A.

This characteristic does not accurately or adequately describe the Playhouse's proposed use because many of the Playhouse's activities do not involve sales. Activities that are provided for a fee are greatly subsidized, and the Playhouse does not generally engage in the sale, lease, or rent of products.

Retail Sales and Service Use Characteristic Sentence #2: *"They may also provide personal services or entertainment, or provide product repair or services for consumer and business goods."*

The Playhouse does not provide any personal services, product repair, or services for consumer and business goods through any of its activities in the church building or otherwise. The proposed use contemplates nonprofit classes, workshops, community discussion panels, art exhibits, mentorship programs, and plays taking place on site. All its activities fall within its nonprofit arts and cultural mission.

The only word in this use characteristic sentence that potentially applies to a portion of the Playhouse's use is "entertainment." Some of the Playhouse's activities are no doubt entertaining to community members who participate in them, but the word "entertainment" is an inaccurately narrow and almost demeaning term to describe the Playhouse's primary use. The Playhouse exists to bring the arts to all people in the King neighborhood community, and it does this through mediums that rise above the description of mere "entertainment."

The visionaries and volunteers who have given the last three years of their lives to make the Playhouse a reality did not do so to become another retail entertainment outlet. They created the Playhouse to be a model for making nonprofit arts and culture accessible on the neighborhood level. Pigeonholing the Playhouse into the Retail Sales and Service Use category by describing its use as mere "entertainment" ignores the breadth of public service that the Playhouse provides, and does an injustice to the people who have fought for this unique community space.

No sales of any kind take place during the Playhouse's classes. No sales take place during its workshops. No sales take place while Playhouse staff and volunteers make the church building accessible to the King neighborhood community. No sales take place during the Playhouse's community discussion panel. No sales take place though the mentorship programs of the Playhouse. The use proposed by the Playhouse is just like that of other Portland community arts centers.

While portions of the Playhouse's activities are entertaining, it would be inaccurately narrow to classify the Playhouse's primary use as "entertainment," and thereby a Retail Sales and Services Use, particularly when the Community Service Use characteristics so accurately describe the Playhouse's use.

### **3. The Additional Considerations for Use Classification Found in PCC 33.920.030.A.2 Further Indicate That The Proposed Use is a Community Service Use.**

The PCC provides a list of 12 items to consider in helping to determine which use category the proposed use is in. These 12 items give context to the direction in that "[u]ses [be] assigned to the category whose description most closely describes the nature of the primary use." PCC 33.920.030.A.1. The 12 items to consider are quoted and discussed below.

- *"The description of the activity(ies) in relationship to the characteristics of each use category"*



The preceding two subsections give a detailed discussion of the Playhouse's proposed activities in relation to the Community Service and Retail Sales and Service Use characteristics. Each sentence of these two use categories' characteristics is quoted, analyzed, and applied to the proposed use above. That discussion is not repeated here. The Community Service Use characteristics most accurately describe the Playhouse's proposed use. This factor suggests that the proposed use is a Community Service use.

- *"The relative amount of site or floor space and equipment devoted to the activity"*

None of the structure of the church building is dedicated exclusively to the performance of plays. As proposed, the plays would occur on approximately one day in every four or five days over the course of the year in space that is also used for classes, workshops, community discussion panels, and community-oriented events. The church building comprises three classrooms, one assembly hall, four bathrooms, and a kitchen. The parcel on which the church is sited is approximately 10,000 square feet. The church building itself contains approximately 6,500 square feet of usable space. Of this, approximately 3,000 square feet is for the assembly hall, 1,300 square feet for the classrooms, 1,200 square feet for storage, 300 square feet for bathrooms, 400 square feet for the kitchen, and 300 square feet for miscellaneous hallways. These areas are used for various Playhouse activities to different degrees at different times. Below is a table of the rooms used by the various activities.

Activity	Rooms Used	Frequency of Use
<b>Outreach/Planning/Maintenance</b>	Classrooms	Daily, Year-round
	Assembly Hall	Daily, Year-round
<b>Classes</b>	Classrooms	Daily, Year-round
	Assembly Hall	Daily, Year-round
<b>Workshops/Training</b>	Classrooms	Daily, Year-round
	Assembly Hall	Weekly, Year-round
<b>Community Discussion Panels</b>	Assembly Hall	Monthly, Year-round
<b>Art Exhibition</b>	Classrooms	Continuous, Year-round
	Assembly Hall	Continuous, Year-round
<b>Mentorship Activities</b>	Classrooms	Intermittent
	Assembly Hall	Intermittent
<b>3 or 4 Plays Per Year</b>	Assembly Hall	Intermittent
<b>Community-Oriented Events</b>	Classrooms	Intermittent
	Assembly Hall	Intermittent
<b>Summer Art Camp</b>	Classrooms	Intermittent
	Assembly Hall	Intermittent

As can be seen from the table above, all of the church building is used primarily for various Community Service activities on a daily basis, year-round. This factor suggests that the proposed use is a Community Service use.

- *“Relative amounts of sales from each activity”*

As discussed extensively before the hearings officer, well over half of the Playhouse’s “sales” come from donations and grants. Less than 40 percent of the Playhouse’s revenues come from the performance of plays, and those revenues are insufficient to cover the costs of the plays. This factor suggests that the proposed use is a Community Service use.

- *“The customer type for each activity”*

The users of the Playhouse are persons interested in exploring and/or developing the arts. It is not accurate to describe them as “customers,” as that term is typically used in conjunction with business operations, since many activities at the Playhouse do not involve an exchange of money. The Playhouse’s typical user is consistent in this regard throughout the various activities that occur in conjunction with the proposed use. In reality, many, if not most, of the Playhouse’s users participate in more than one activity offered by the Playhouse. For example, many community members attend workshops or classes regularly, attend a couple of plays a year, and attend a couple of community discussion panels per year. To the extent that this factor is relevant, it suggests that the proposed use is a Community Service use.

- *“The relative number of employees in each activity”*

The Playhouse has four part-time paid staff. To be clear, these four people generally work full time for the Playhouse, but are paid part time. Brian Weaver is the Artistic Director. He is responsible for coordinating all programming activities at the church building, including orchestrating the various community service activities that occur on the site. He coordinates with artists regarding the ongoing exhibits on the site, leads workshops, introduces community discussion panels, organizes volunteers, directs plays, and sweeps floors. Neville Wellman is the Executive Director for the Playhouse. He manages volunteers, prepares newsletters, plans community-oriented events, and does everything that nobody else wants to do. Aiyana Cunningham is the Community Outreach Director for the Playhouse. She schedules classes, workshops, answers inquiries about the Playhouse, and acts as a liaison between artists, teachers, area non-profits, Neighborhood Associations, and the Playhouse. Elena Hein is the development director. She writes grants, reaches out to the community, seeks support from individuals, and handles administrative tasks. Every staff member at the Playhouse supports multiple, if not all, activities at the church building. Dozens of volunteers also support the various activities at the Playhouse. This factor suggests that the proposed use is a Community Service use.

- *“Hours of operation”*



The Playhouse's staff is on site from at least 9 a.m. to 5 p.m., Monday through Friday, year-round. It provides class, workshop, practice, and educational space at the church building from 1 p.m. to 6 p.m., Monday through Saturday, year-round. Plays are sporadic, but typically occur from 7:30 p.m. to 9:30 p.m. on weekdays and 2:00 p.m. to 4:00 p.m. on weekends. Over the course of the year, plays may be performed approximately one night out of every four or five nights. Even if the time that plays are showing was considered "tainted" and commercial Retail Sales and Services, the vast majority of hours of operation are unquestionably for community service-oriented uses. Commercial theaters do not keep open hours for the general public, whereas community centers typically do have such hours. This factor suggests that the proposed use is Community Service use.

- *"Building and site arrangement"*

The church building is arranged like a church that, like Community Service uses, is an institutional use category under the PCC. There is a large assembly hall and several smaller rooms, which the Playhouse uses for classes, workshops, and other meetings. The site is arranged much like a typical community center, with space for group meetings of various sizes. The site is not arranged to facilitate retail sales and services. The church's built environment does not look like a theater or any retail outlet. There is no cash register area or designated space for sales to occur. This factor suggests that the proposed use is not Retail Sales and Service use.

- *"Vehicles used with the activity"*

None of the activities at the Playhouse involve vehicles. This factor is unhelpful in categorizing the use of the Playhouse.

- *"The relative number of vehicle trips generated by the activity"*

Activity	Frequency	Participants Per Day	Estimated Avg. Trips Per Month
<b>Outreach/Planning/Maintenance</b>	Daily, Year-round	2 to 8	150
<b>Classes</b>	Daily, Year-round	10 to 15	300
<b>Workshops/Training</b>	Daily, Year-round	10 to 25	450
<b>Community Discussion Panels</b>	Monthly, Year-round	20 to 90	50
<b>Art Exhibition</b>	Continuous, Year-round	0 to 50	80
<b>Mentorship Activities</b>	Intermittent	0 to 10	40
<b>Three or Four Plays Per Year</b>	12 to 24 performances per play	40 to 90	425

<b>Community-Oriented Events</b>	4 to 6 Per Year	50 to 90	35
<b>Summer Art Camp</b>	15 to 25 summer days	12 to 24	60

The table above is an estimate of the vehicle trips generated by the proposed use, sorted by activity. This data is based on the participation in various activities over the past three years and the Playhouse's plans for the upcoming years.

As the table demonstrates, only about a quarter of the anticipated vehicle trips to be generated by the Playhouse relate to the performance of plays. Regular workshops create the most trips, at approximately 450 trips per month; while community-oriented events create the least, at 35 trips per month. No particular use activity creates a disproportionate amount of trips compared to the other activities. Generally speaking, the varying vehicle trips per activity look typical of a community-center-type use at which larger and smaller community-oriented events and workshops are held. This factor suggests that the proposed use is a Community Service use.

- *"Signs"*

The Playhouse has no signs. Typically, retail sales and service companies have signs promoting and locating their businesses. This is particularly true for commercial theaters that often rely on neon signs and large facades to attract customers to their commercial enterprises. It is common for community centers and other community services uses to not have signs identifying the use. Because such uses emphasize community engagement as opposed to commercial sales, signs are less relevant. This factor suggests that the proposed use is a Community Service use.

- *"How the use advertises itself"*

The Playhouse advertises itself as a local nonprofit that makes arts locally accessible to all people. It advertises its activities through various means, including postings on public bulletin boards, notices in arts and cultural organizations, the Internet, and word of mouth. Several of the Playhouse's past advertisements are included in the record. The Playhouse does not advertise itself as retail sales and service companies do. It promotes itself as most community service organizations do, by promoting its various community engagement opportunities.

The Playhouse does have a Web site, [www.portlandplayhouse.org](http://www.portlandplayhouse.org), at which it posts information about the organization and upcoming events. The Playhouse also posts fliers on public bulletin boards and other free spaces, letting the community know about workshops and other events at the Playhouse. How the Playhouse advertises itself suggests that the proposed use is a Community Service use.

- *"Whether the activity would be likely to be found independent of the other activities on the site"*



The Playhouse's activities in the church building are integrated through the Playhouse's mission to bring the arts to all people in the community. None of the activities on the site would be found there but for the Playhouse's community-based mission to make the arts available locally to all people. As with most community-center-type uses, the unifying component of the activities is their use of public-oriented spaces in which a variety of related but different activities can occur.

The plays, in particular, would not be likely to be found independently of the Playhouse's other community service activities on the site. As far as the Playhouse is aware, no other church or church building hosts plays in its gathering spaces. Plays would not likely be found on this site absent the Playhouse's unique model to create a neighborhood community arts center here. Stated another way, without the Playhouse's other activities on the site, plays would not be performed here. This factor suggests that the proposed use is a Community Service use.

In summary, all of the additional items in PCC 33.920.030.A.1 that are relevant suggest that the Playhouse's proposed use is best classified as a Community Service use. The proposed use should be categorized as a Community Service use because the characteristics of the Community Service Use category most accurately describe the proposed use. The activities on the site are most analogous to a community center, and the characteristics of the Retail Sales and Service Use category would inaccurately and inadequately describe the proposed use.

**B. Using the Examples in the PCC's Use Category Chapter, "Community Center" (Community Service Use) More Accurately Describes the Proposed Use Than "Theater" (Retail Sales and Services Use).**

Neither "Community center" nor "theater" is defined by the PCC. As such, both terms have the generic common meaning of the term pursuant to PCC 33.920.030.D. Typically, words not defined in the PCC have their general dictionary meaning. PCC 33.910.010. Webster's Third New International Dictionary defines "community center" as "a building or group of buildings for a community's educational and recreational activities." <http://www.merriam-webster.com/dictionary/community%20center> (retrieved February 27, 2012). Dictionary.com defines "community center" as "a building or other place in which members of a community may gather for social, educational, or cultural activities." <http://dictionary.reference.com/browse/community+center> (retrieved January 9, 2012).

As mentioned in applicant's initial narrative submittal, the old church building has been a gathering place in the King neighborhood for over 100 years. Information in the record clearly indicates that the applicant proposes and intends to use the site as a gathering place for social, educational, and cultural purposes. Every activity proposed by the Playhouse on page one of its initial narrative submittal contemplates a gathering for social, educational, or cultural activities, including the nonprofit plays.

The fact that there were no public comments recommending denial of the application or questioning whether the proposal was in fact a community center, while three neighborhood associations submitted letters in support of the application, suggests that the neighborhood itself considers the proposed use of the church to be a community center and a Community Service use.

Conversely, as the hearings officer noted, Webster's Third New International Dictionary defines "theater" as "a building for dramatic performances in modern times usu. including a stage with side wings and flies and with dressing rooms for actors and an auditorium often with balconies and boxes." Likewise, dictionary.com defines "theater" as "a building, part of a building, or outdoor area for housing dramatic presentations, stage entertainments, or motion-picture shows." (Retrieved February 27, 2012).

While the Playhouse proposes to use the gathering hall of the old church for the performance of plays on one out of every four or five days over the course of the year, the old church is not a building for housing dramatic presentations. It was designed as a church, and is proposed to be used as a community center. The old church building does not have a stage with side wings and flies. It has neither a dressing room nor an auditorium with balconies and boxes. The average, ordinary person viewing the old church building would not say that they are looking at a theater. In considering the common dictionary definitions of "theater" and "community center," the Playhouse's proposed use fits more accurately within the meaning of community center.

**C. The Playhouse is Willing to Accept Conditions of Approval Requiring it to Meet the Four Characteristics of a Community Center That Were Identified by Staff in Staff's January 6, 2012, Memorandum.**

In its memorandum dated January 6, 2012, staff lists four characteristics that it says are indicative of community centers. These four characteristics are not drawn from the general meaning of the phrase "community center," but are instead characteristics that staff finds present in almost all of Portland's community centers. The Playhouse thinks that it meets each of these characteristics, and would even be willing to accept conditions of approval requiring that the Playhouse provide these four features to ensure that each of these characteristics are present in their proposed use. Staff's four characteristics are listed and discussed below.

- *“A staffed front desk during all open office hours, where information on classes and activities can be received, classes can be paid for, etc.”*

As indicated on pages 19 and 20 of applicant’s narrative, applicant proposes to have staff on site from at least 9 a.m. to 5 p.m., Monday through Friday, year-round, and provide class, workshop, practice, and educational space at the church building from 1 p.m. to 6 p.m., Monday through Saturday, year-round. As indicated in that submittal, the Playhouse has generally provided these services to the public free of charge. Playhouse staff has and would continue to provide information on classes and activities upon request.

The Playhouse’s January 9 submittal indicates that the Playhouse has sometimes set up a kiosk in the entry room to the church building to greet the members of the public and provide information. At other times, it has had staff in the classroom space across the assembly hall from the entryway. Playhouse staff gladly provides information on classes and activities in response to public inquiries. If the Council decided that a staff member being located at the entrance (as opposed to across the assembly hall) was determinative for deciding whether the proposed use is a community service use, the Playhouse would accept a condition that a staff member be located in the entry room during open office hours. This characteristic is present in the proposed use.

- *“Multi-purpose structures with some combination of classrooms, performance spaces, gyms, office space, pools, public restrooms, etc.”*

The church building is a multi-purpose structure with classrooms, a performance space (the assembly hall), office space, and public restrooms. The spaces and use of the structure are discussed in the applicant’s initial narrative at page 18. This characteristic is present in the proposed use.

- *“Unstructured lobby or other space where community members can come in and socialize, play games (most have at least one foosball table) in a staff-supervised space, or visit open galleries, etc.”*

As discussed in the Playhouse’s January 9 submittal, it has used its entry room and art exhibition area in the past for community space, and proposes to continue these unstructured spaces moving forward. As noted above, Playhouse staff has been present during all open hours and is proposed to be present during all open hours moving forward. Community members are generally welcome to socialize in the entry room, assembly hall (when not reserved by others), and art exhibition area. This characteristic is present in the proposed use.

- *“Ability for members of the general public to use portions of the space for their own special events, recitals, neighborhood or family gatherings, etc., provided reservations are made and fees are paid.”*

The public is welcome to rent any of the classrooms and assembly hall for their own special events. This has taken place in the past on an informal basis, but the Playhouse would be glad to formalize the process if the Council decided that public rental of space was determinative for finding the proposed use a Community Service use. These types of gatherings fall within the narratives discussion of classes, workshops/training, art exhibitions, and community-oriented events. This characteristic is present in the proposed use.

If the Council decided that these four characteristics identified by staff are necessary to demonstrate that the Playhouse is proposing a community center, the Playhouse would accept conditions of approval requiring that it provide these four features as part of its proposed use.

## **II. LUBA Precedent Interpreting the Use Categorization Methodology of PCC Chapter 33.920 Indicates That the City is to Make a Primary Use Determination, and That the City Should Not Bifurcate the Primary Use Here By Treating Plays As a Separate and Distinct Primary Use.**

The hearings officer notes three LUBA cases in which the court applies the City's use categorization methodology of PCC Chapter 33.920, but misapplies the law of those cases. In each of the cited decisions, the court found a singular primary use (not two primary uses), and in one of the cases explicitly rejected arguments from petitioners that a proposed primary use should be split and processed as two primary uses. Each of the three decisions is discussed below, and a copy of each decision is attached to aid the Council in review.

In Wilson Park Neighborhood Association v. City of Portland, 24 Or LUBA 98, LUBA No. 92-042, (May 16, 1992), the court upheld a city decision categorizing a development as an Essential Service Provider (an emergency shelter), against a challenge from neighbors who argued that the use should have been categorized as a multi-family apartment building, which was not allowed in the zone. In Wilson Park, both LUBA and the city considered both the use characteristics and examples in PCC Chapter 33.920 to determine the appropriate primary use category of the proposal. Wilson Park, LUBA No. 92-042, at pages 13-16.

The hearings officer cites to dicta in a footnote of the decision that when read in isolation sounds as though a use categorization can be made by consideration of the examples in PCC Chapter 33.920 by themselves. LUBA did not do that in Wilson Park, and as the more recent decisions from LUBA discussed below make clear, LUBA does not consider it appropriate to disregard to use characteristics where the examples at issue are not defined by the PCC. Furthermore, Wilson Park did not involve an example that appears in multiple use categories as is the case here with “theater” being



listed both as a primary use in the Retail Sales and Services Use category and as an ancillary use in at least one (college) institutional use.

Next, LUBA decided Glisan Street Associates, Ltd. v. City of Portland, 25 Or LUBA 116, LUBA No. 92-154 (March 26, 1993), in which the court upheld a determination that office space for the Boys and Girls Aid Society ("BGAS") was properly categorized as office use instead of a community service use because their community service activities were not primarily provided at the office location. The use category issue was summed up by the city with the text below, which provides two important lessons: (1) various activities at a site that can be described in very different use categories can be combined into one primary use and (2) the court gives substantial deference to local jurisdictions in categorizing proposed uses:

"The [BGAS] used this site as their state headquarters; with approximately 100 employees, all administrative functions occurred here, along with some services. A description of the functions and purpose of the site could fall under either the Office category or the Community Services category. However, because the primary function of this site was for headquarters' office use, with services provided both on-site and off-site, the Office category appears more appropriate. Additionally, it should be noted that the client services provided here - counseling and food distribution - fit within the description of the Office category; they are professional or medical services. Conversely, the description of the Community Service category refers to the offices as an accessory use, with the service provision appearing to be the primary function. On this site, offices were the predominant use." Glisan Street Associates, Ltd., LUBA No. 92-154, at pages 8-9.

Regarding the city's justification for its decision quoted above, LUBA held that:

"The city's explanation of its interpretation of its code is adequate and acceptable. The city concedes the BGAS use does not fit neatly into any definitional category. The city then provides a reasonable explanation for its decision that the use best fits the Office category, based on the primary use. Even if we were persuaded that petitioners' characterizations of the BGAS use under the 1981 and 1991 Zoning Codes are more correct or supportable, which we are not, this Board may not second guess reasonable local government interpretations of code language." Glisan Street Associates, Ltd., LUBA No. 92-154, at page 9.

Glisan Street Associates, Ltd. stands for the proposition that various activities in different use categories do not need to be bifurcated when one primary function of the site pervades the application. In Glisan Street Associates, Ltd., the community service functions of the agency were primarily provided at other sites, while office space for over 100 persons was provided at the development site. The situation is flipped in the application at hand. The Playhouse proposes to perform all of its community service functions at the site, while occasionally (about one in four or one in

five days over the course of the year) performing plays on site. It would be most appropriate to categorize the Playhouse's primary use as a Community Service use under the reasoning in Glisan Street Associates, Ltd.

Also, as in Wilson Park, both LUBA and the city considered both the use characteristics and examples in PCC Chapter 33.920 to determine the appropriate primary use category of the proposal. Glisan Street Associates, Ltd., LUBA No. 92-154, at pages 7-8.

In 2010, LUBA heard a fairly analogous case, in which petitioners explicitly argued that a proposed development should be bifurcated and categorized as two primary uses. Waverly Landing Condominiums v. City of Portland, 61 Or LUBA 448, LUBA No. 2010-026 (July 12, 2010). In Waverly Landing Condominiums, a sewage utility project that included a pump station and 1,670 linear feet of pipe crossing four city blocks was approved as a Basic Utility Use. Project opponents argued that the project actually contemplated two primary uses—a Basic Utility for the pump station and a Utility Corridor for the pipe. LUBA rejected the invitation to insert two primary uses into one proposal for one project by one applicant. The court seriously questioned the petitioner's assertion that the proposal should have been viewed as a collection of primary uses rather than as a single primary use. Waverly Landing Condominiums, LUBA No. 2010-026, at page 10. LUBA quoted the language regarding multiple primary uses in PCC 33.920.030(B) that the hearings officer cites in rejecting an argument to bifurcate the use into multiple primary uses. Id., at footnote 6.

Conveniently, Waverly Landing Condominiums also expresses the highly deferential standard under which LUBA reviews the decision of local elected officials in interpreting their local code. LUBA will not overturn that interpretation unless the decision of the local elected officials is not "plausible" under the interpretive principles that ordinarily apply to the construction of ordinances. Waverly Landing Condominiums, LUBA No. 2010-026, at pages 6-7 (citing Siporen v. City of Medford, 231 Or App 585, 599, 220 P3d 427 (2009)). Given the unique nature of the proposal, the Council can, at the very least, lawfully allow the proposed use by interpreting the meaning of community center and Community Service use to include the proposed use.

In none of the three cases cited by the hearings officer did LUBA support splitting a proposed development into multiple primary uses. In fact, in Waverly Landing Condominiums, LUBA expressed serious concern in response to petitioner's invitation to consider a project's various components as separate primary uses. Allowing such bifurcation would render the PCC's zoning chapter exceedingly difficult to administer, as multiple and sometimes conflicting provisions would apply to the same application. Absent a clear case of multiple primary uses in one application, the City should follow LUBA's lead and not bifurcate components or aspects of an application that can be characterized as part of a single primary use.

In the Playhouse's application, it is clear that the Community Service use is primary, and that plays are a component of that use. This is analogous to the grouping of various functions of the BGAS's proposal into office use in the Glisan Street Associates, Ltd. decision, the only difference in this case being that all the Community

Service uses are all provided on the site, and the potentially non-Community Service use is periodic and related to the primary Community Service function.

None of the space at the Playhouse is exclusively used for theatrical performances. In fact, over the course of the year, a play would occur at the Playhouse in only one out of every four or five days. In comparison, the facility is used daily for uses that are clearly Community Service-oriented, such as classes, workshops, and community discussion panels. Also, none of the Playhouse's four part-time employees are dedicated to the performance of plays. They all contribute to the Playhouse's other community service activities.

Likewise, as the vehicle trip generation table on page 20 of applicant's original narrative submittal shows, only about a quarter of the anticipated vehicle trips to be generated by the Playhouse relate to the performance of plays. Regular workshops create the most trips, at approximately 450 trips per month; while community-oriented events create the least, at 35 trips per month. Generally speaking, the varying vehicle trips per activity look typical of a community-center-type use at which larger and smaller community-oriented events and workshops are held.

### **III. Even If a Distinct "Theater" Use Was Contemplated in the Playhouse Proposal, It Would Be More Accurately Classified As An Accessory Use to the Primary Community Service Use, Than a Distinct Primary Commercial Retail Sales and Services Use. Portland Has Precedent For Allowing Plays in Conjunction With a Community Center CUP Approval.**

Even if the Playhouse was not proposing just a community center and was, in fact, proposing a "theater" in conjunction with their CUP application for a community arts center, the PCC indicates that theaters can be approved as an accessory component to institutional uses like community centers. In fact, the City has precedent for approving the performance of plays in conjunction with a community center CUP application.

Oregon's laws regarding construction of a local ordinance are summarized below and then applied to the City's use category code language. The analysis makes it clear that not all "theaters" are classified as Retail Sales and Services under the PCC, and that if any theater use exists here, it is allowed under the PCC as an accessory use.

When construing a local ordinance, local government decision-makers follow the rules of construction set out in the Oregon Supreme Court's decision in PGE v. Bureau of Labor and Industries, 317 Or 606, 859 P2d 1143 (1993). GloryBee Foods, Inc. v. City of Eugene, 56 Or LUBA 729, 733 (2008). PGE lays out a three-step methodology for construction of legislative provisions.

The first step of the three-part PGE methodology directs decision-makers to consider the text and context of the provision in question. If the text and context make the meaning of the provision clear, the analysis ends. A subsequent state statute and subsequent case law clarify that local decision-makers may consider the legislative

history of the subject provision in the first step of the PGE analysis if the decision-maker finds such history helpful. ORS 174.020(1)(b); State v. Gaines, 346 Or 160, 170, 206 P3d 1042, 1049 (2009).

If the meaning of the provision is still unclear after considering the text and context, the second step requires the decision-maker to consider any legislative history presented to it regarding the subject provision. If the legislative history makes the intent of the provision clear, then the analysis ends. If the meaning of the provision remains unclear after considering text, context, and legislative history, the third step is for the decision-maker to consider maxims of statutory construction to interpret the provision. PGE, 317 Or at 610-12.

In addressing the “theater” example at issue—i.e., whether all theaters are Retail Sales and Services—the first step of the PGE analysis compels consideration of the text and context of the word “theater” in PCC Chapter 33.920. The text indicates that not all theaters are commercial Retail Sales and Services under the City’s use categories. This is clear from the use of “theater” throughout that chapter of the PCC. “Theater” is also listed as an example of an accessory use for College uses. PCC 33.920.410. Both College uses and Community Services uses fall within the “Institutional Use Categories” of the PCC. This means that, at the very least, theaters can be equally classified as an accessory use to institutional uses. Retail Sales and Services fall within the Commercial Use categories.

It intuitively makes sense that some theaters are commercial and others are institutional. The term “theater” is not defined in the PCC, but it is commonly used to describe many different activities. Some theaters are primarily concerned with making money, while others are more community or educationally focused. Regal Cinemas, drive-in theaters, and other for-profit theaters are very different from a theater hall attached to a college or the part-time use of a community center or church for a nonprofit play. The PCC explicitly recognizes this distinction by listing “theaters” as examples of a use in both Commercial and Institutional use categories.

Inspection of the various examples in PCC Chapter 33.920 reveals that several uses require a threshold determination of whether the use is better categorized as Commercial or Institutional. Schools and Colleges can be either an Institutional use or a Commercial use, depending on whether they are classified as businesses or trade schools. PCC 33.920.410.D; PCC 33.920.480.D. Museums are listed as examples of a Community Service use, but they can alternatively be a Retail Sales and Service use if the museum is deemed “commercial.” PCC 33.920.420.D.1. A museum use is the most analogous to a theater use in that it pertains to the arts and can be run for either Commercial or Community Service purposes.

Similarly, an assessment of the commercial nature of the use must be made for short-term housing—some are considered Retail Sales and Services, while others are considered a Community Service use. PCC 33.920.250.D.6. Medical centers can also be either a Community Service use or a Retail Sales and Service use. PCC 33.920.450.D. It is common in the PCC for an assessment to be necessary to

determine whether a use better falls within a Commercial use category or an Institutional use category.

The text and context surrounding the word “theater” in PCC 33.920.420.C and PCC 33.920.410.B make it clear that a theater can be either classified as a Commercial use or as an accessory Institutional use. Given the nonprofit nature of the Playhouse and the primary noncommercial use proposed in conjunction with the Playhouse’s CUP, it is more fitting to classify the proposed use as an institutional Community Service use than a Commercial Retail Sales and Services use.

The City of Portland even has precedent regarding its ability to approve plays in conjunction with community centers. The City approved theater uses in conjunction with the community center CUP application by the Northwest Community Service Center, Inc., at NW Everett and NW Flanders Streets. In this community center CUP approval in a residential zone, the City authorized theater/stage performances in an old church’s existing auditorium that seats over 1,000 people, so long as parking impacts were appropriately mitigated. A copy of the Northwest Community Service Center, Inc., approval is attached. In the Playhouse’s proposal, only one play is contemplated every four or five days out of the year and the attendance is limited to approximately 100 people total.

## CONCLUSION

The proposed use properly fits the common dictionary meaning of community center and is best described by the use category characteristics for a Community Service Use. The Council should find that the entire proposed use is a Community Service Use because that use category characteristics and examples best describe Portland Playhouse’s proposed use of the old church building.

cc: Brian Weaver, Portland Playhouse  
Mark Walhood, City of Portland Planner

attachments:

1. City of Portland Approval of CU 3-77. approving plays in conjunction with Community Service Use
2. Wilson Park Neighborhood Association v. City of Portland, 24 Or LUBA 98, LUBA No. 92-042, (May 16, 1992).
3. Glisan Street Associates, Ltd. v. City of Portland, 25 Or LUBA 116, LUBA No. 92-154 (March 26, 1993).
4. Waverly Landing Condominiums v. City of Portland, 61 Or LUBA 448, LUBA No. 2010-026 (July 12, 2010)

Bureau of Planning  
424 SW Main  
Portland, Oregon 97204

File Number - CU 3-77  
Hearing Date - January 13, 1977  
Application Date - November 23, 1976  
Quarter Section - 3028

STAFF REPORT AND RECOMMENDATION TO HEARINGS OFFICER

FACTS

APPLICANTS - First Church of Christ, Scientist, 1819 NW Everett Street, Portland, Oregon 97209, deedholder. Northwest Community Service Center, Inc., c/o George Sheldon, president, 123 N.W. 2nd Avenue, Portland, Oregon 97209, Contract Purchasers.

PROPOSAL - Conditional use for a Community Club (Center) in an A0 Zone.

DESCRIPTION OF PLAN - To use the existing church structure for a multi-purpose community facility. The applicant indicates the following uses:

Basement or First Level -

Kitchen - (for Meals on Wheels, Hot Lunch programs, etc.)  
Multi-purpose room/area- (dining area, meeting area for social groups, classes, etc.)  
Caretaker apartment

Second Level -

Large reception area  
Large closet  
Office area - (Board meeting room, one manager's office, <sup>+</sup> three social program offices)  
Two large meeting spaces (including fireplaces)

Third Level -

Majority of this floor is the large auditorium  
5-6 small rooms behind auditorium will be used as preparation rooms for auditorium productions.

The applicant's site includes a 10,000 sq. ft. parking lot north of the building. The applicant indicates 34 off-street parking spaces.

LOCATION - N.W. Everett to N.W. Flanders Streets, N.W. 18th to N.W. 19th Avenues.

LEGAL DESCRIPTION - Lots 1,2,3,4,6 and 7, Block 172, Couch's Addition

ZONE - A0, high-density apartment zone permits single-family dwellings and apartment buildings. Community (clubs) centers are regulated by conditional use in an A0 zone.

4

SITE DESCRIPTION - This site contains 30,000 square feet. The existing structure occupies the southern portion of the site. The building contains approximately 11,000+ square feet on three floors for a total of 34,000± square feet gross floor area. The northern 10,000 square feet of the site is improved with a 34-space off-street parking lot.

The site slopes gently down to the northeast. There are a few trees on the site.

VICINITY DATA -The general nature of this mixed-use neighborhood is apartment and institutional. To the north are residential uses including two apartment buildings on the block with the applicants' site. To the northeast are residential, commercial and light manufacturing uses in Zone C2. To the east are residential (apartment) and office uses. To the south are apartment, church-school uses with some commercial uses zoned A0. To the west are apartments (including high-rise) and a synagogue.

SERVICE CONSIDERATIONS - Urban services have been installed. The streets are fully improved including sidewalks. Vehicular access to the site is available from N.W. Flanders and N.W. 19th Streets. There are several bus lines that serve the area. The four abutting streets are local streets except N.W. 19th Avenue is a major city transit street according to the proposed Arterial Streets Policy.

Couch School (MLC) and Park are north of this site; Cathedral School is south of this site. There are a number of religious institutions in the area.

ECONOMIC INDICATORS - This request is within Census Tract 49. According to the 1970 Census information, the median housing value for this tract was \$13,600 as compared with a city median of \$14,400.

RESPONSES REQUESTED - City Engineer, Traffic Engineer, Water Engineer, Bureau of Neighborhood Environment, District Planning, Historic District Planning, Bureau of Buildings, Tri-Met, Northwest District Association.

#### EXHIBITS -

- 1 - Applicants' submittal
- 2 - Vicinity Map
- 3 - Land Use - Zoning Map
- 4 - Northwest District Policy Plan excerpt for the eastern edge
- 5 - Traffic Engineer Response

#### FINDINGS

POLICY PLAN CONSIDERATIONS - This request is within the adopted Northwest District Policy Plan eastern edge policy 2A area (see exhibit 4). There appears to be no conflict with the plan.

5

HISTORIC DISTRICT CONSIDERATIONS - This request is within an area under consideration for a Historic District designation.

CODE CONSIDERATIONS - Community clubs (centers) are regulated by conditional use in an AO zone. The applicant indicates a seating capacity of 1200. The code requires 100 off-street parking spaces; 34 are available. Thus, a variance would be required.

AGENCY RESPONSES - The City Engineer, Water Engineers and Bureau of Neighborhood Environment indicate no problems. The Historic District planner indicates support for the proposed use. The Traffic Engineer response is attached as Exhibit 5.

#### CONCLUSIONS

Parking seems to be a concern as on-street parking is somewhat limited. The traffic pattern for this includes three one-way streets which limit circulation around the site to a counter-clockwise direction only.

The preservation of the structure, along with the community use of the building, appears to be beneficial to the neighborhood.

#### RECOMMENDATION

Approval of the community center with a variance to reduce the off-street parking from the required 100 spaces to 34 spaces.

NW/nla



INITIAL USE RECOMMENDATIONS

In a community as varied and unique as that of Northwest Portland, there are many unfulfilled needs which are worthy of both public exposure and support. The Building Use Committee, in its meetings and community contacts, has begun to define certain areas of concern which we feel should determine the primary uses of the Northwest Community Service Center.

The population of the northwest breaks down into several major categories, among which are; senior citizens, young adults (18-35), unemployed persons and those on limited income, gay persons, college students, artists and craftsmen, young persons and an increasing number of middle-income families.

In order to be a full-service community center we should provide programs that will be attractive to, and encourage active participation by, these various segments of the community.

One of the most important areas, capable of attracting the widest use by the largest number of people, would be flexible, multi-purpose assembly spaces. These kinds of areas could be used, on a temporary basis, for meetings, seminars, social functions, workshops, etc. This need in particular has been emphasized by virtually all of our contacts.

The building could also be effectively used as a place where various people-oriented services could operate from a central location. This concept obviously would benefit both the agencies involved and the people they serve.

Possible types of services that could be offered are counseling, child care, resource referral, senior citizen and youth activities and recreational facilities.

The auditorium has the greatest potential to serve both the Northwest community and the City of Portland at large. We recommend the broadest use possible not only as a way to draw income to help subsidize the maintenance of the building, but also to fill a gap in Portland's cultural life—the need for a medium capacity auditorium.

With adequate renovation, this facility could be the focal point for the community's rich cultural spectrum as well as draw to the Northwest a variety of activities which are not presently served by adequate or convenient space.

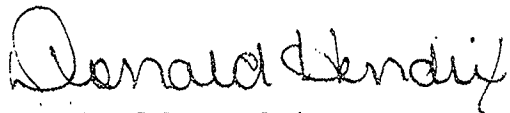
Besides using the auditorium for actual theater/stage performances other uses could include; lectures, films and large meetings. The foyer space, when not in use in conjunction with the auditorium, could serve as a gallery/exhibit space as well as an area for smaller performances which would require a more intimate atmosphere than provided by the stage and auditorium proper.

INITIAL USE RECOMMENDATIONS

Page 2

The need for a small auditorium facility in Portland is critical. Certainly we have an opportunity with this building to satisfy that need and at the same time benefit the cultural environment of the community.

The committee feels these three primary building uses—having space available on a temporary basis, housing permanent, people-oriented services, and providing a forum for cultural activities—are the main goals of the founders of this project. The committee is trying to meet these goals by contacting various service and arts groups, city-wide, to establish their interest and desire to employ these facilities for their specific needs.



Donald Hendrix  
Co-Chairperson



Errol Rich  
Co-Chairperson

NW GLISAN

NW 17TH AV.

NW 18TH AV.

NW 17TH

NW 18TH AV.

NW FLANDERS

N.W. EVERETT

N.W. DAVIS

N.W. TRINITY PL.

N.W. 19TH AV.

N.W. COUCH

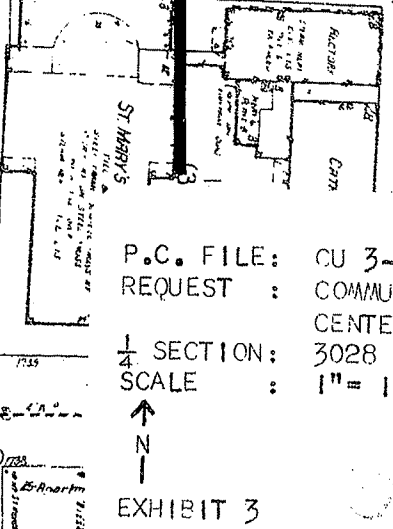
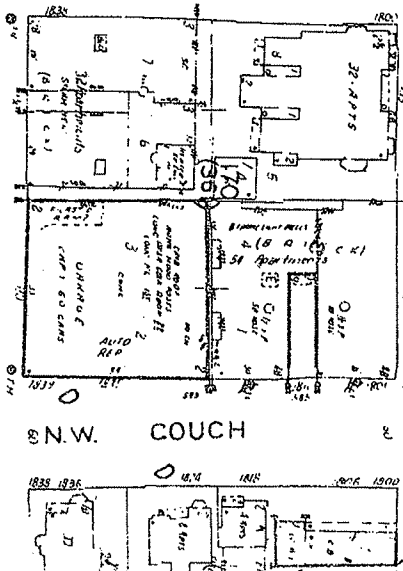
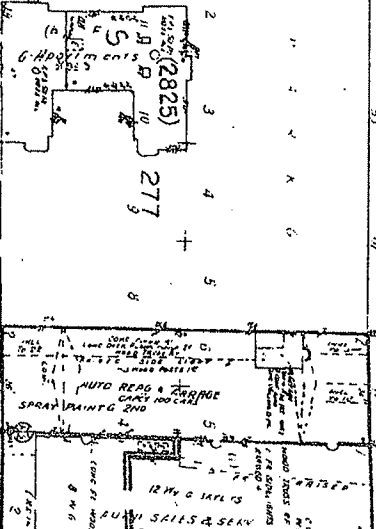
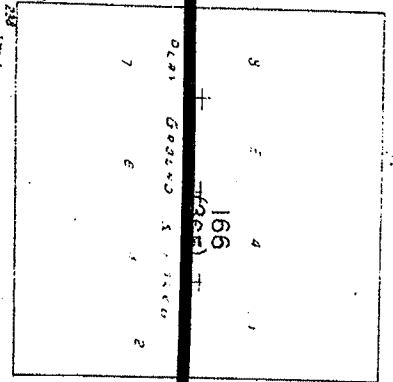
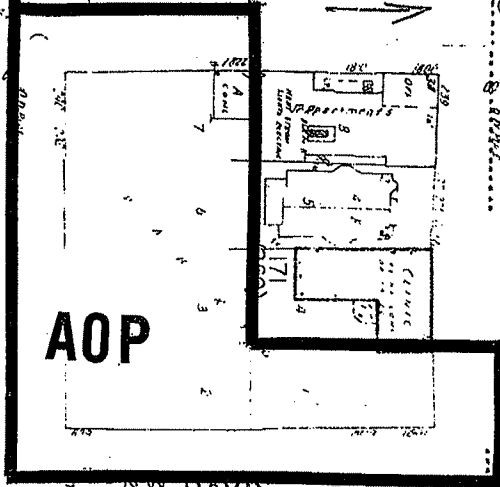
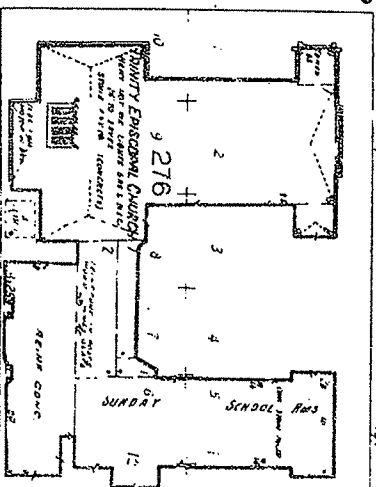
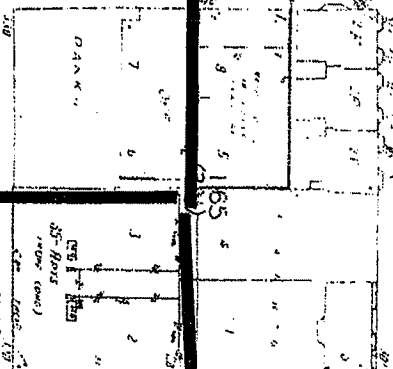
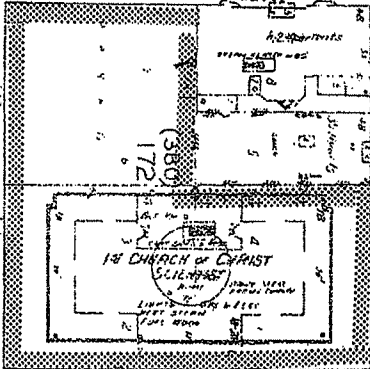
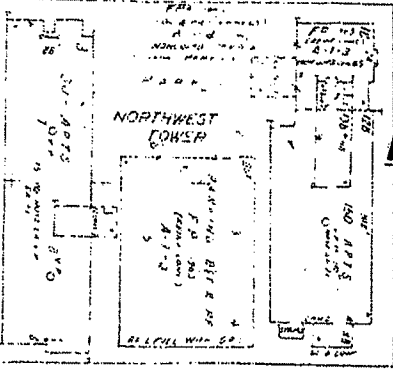
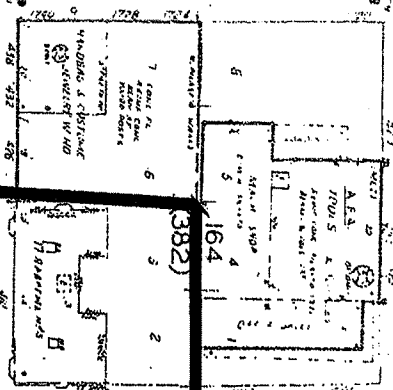
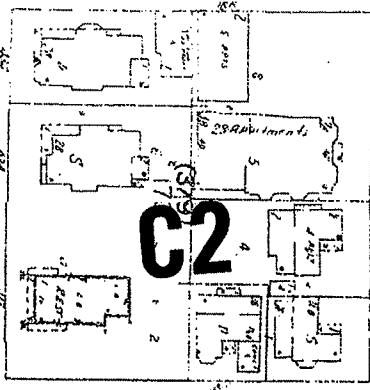
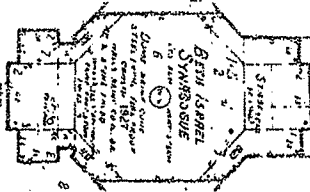
P.C. FILE: CU 3-77  
REQUEST: COMMUNITY CENTER  
SECTION: 3028  
SCALE: 1" = 100'

EXHIBIT 3

C2

A0

AOP





## REPORT AND DECISION OF THE HEARINGS OFFICER

GEORGE H. FLEERLAGE  
HEARINGS OFFICER

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

File No.: CU 3-77

Applicant: First Church of Christ, Scientist, deedholder;  
Northwest Community Service Center, Inc., contract purchaser.

Represented by: Robert Denton, 2727 N.W. Pettygrove, 97210.

Staff Representatives: Nancy Weisser, Assistant Planner, Bureau of Planning; Bud Dunnigan, Building Permit Supervisor, Bureau of Buildings.

Summary of Request: Conditional Use request to use existing church structure for a multi-purpose community facility in an AO zone; located at N.W. Everett to N.W. Flanders, N.W. 18th to N.W. 19th Avenues.

Date Application Filed: November 23, 1976

Report to Hearings Officer: January 3, 1977

Decision Rendered: January 19, 1977

Filed: January 21, 1977

Last Date to Appeal: February 4, 1977

Summary of Decision Recommendations:

Bureau of Planning: Approval with variance.

Hearings Officer: Approval with condition and variance

Public Hearing: The hearing was opened in Room 200, City Hall Annex, 424 S.W. Main Street, Portland, Oregon, on January 13, 1977 at 1:36 p.m. and closed at 1:52 p.m. An oral decision was announced at that time.

Speaking in Support of the Request: None.

Speaking in Opposition to the Request: None.

REPORT AND DECISION OF THE HEARINGS OFFICER

I. FACTS

A. General Information

Proposal: Conditional Use for a Community Club (Center) in an AO zone.

Description of Plan: To use the existing church structure for a multi-purpose community facility. The applicant indicates the following uses:

Basement or First Level - Kitchen (for Meals on Wheels, Hot Lunch programs, etc.), Multi-purpose room/area (dining area, meeting area for social groups, classes, etc.), Caretaker apartment.

Second Level - Large reception area, large closet, office area (Board meeting room, one manager's office, approximately three social program offices).

Third Level - Majority of this floor is the large auditorium, 5-6 small rooms behind auditorium will be used as preparation rooms for auditorium productions.

The applicant's site includes a 10,000 sq. ft. parking lot north of the building. The applicant indicates 34 off-street parking spaces.

Location: N.W. Everett to N.W. Flanders Streets, N.W. 18th to N.W. 19th Avenues.

Legal Description: Lots 1, 2, 3, 4, 6, and 7, Block 172, Couch's Addition.

Zone: AO. Community (clubs) centers are regulated by Conditional Use in an AO zone.

B. Site Description

This site contains 30,000 square feet. The existing structure occupies the southern portion of the site. The building contains approximately 11,000 square feet on each of its three floors for a total of 34,000 square feet gross floor area. The northern 10,000 square feet of the site is improved with a 34 space off-street parking lot.

The site slopes gently down to the northeast. There are a few trees on the site.

25

C. Vicinity Data

The general nature of this mixed-use neighborhood is apartment and institutional. To the north are residential uses including two apartment buildings on the block with the applicant's site. To the northeast are residential, commercial and light manufacturing uses in Zone C2. To the east are residential (apartment) and office uses. To the south are apartment, church-school uses with some commercial uses zoned A0. To the west are apartments (including high-rise) and a synagogue.

Service Considerations: Urban services have been installed. The streets are fully improved including sidewalks. Vehicular access to the site is available from N.W. Flanders and N.W. 19th Streets. There are several bus lines that serve the area. The four abutting streets are local streets except N.W. 19th Avenue is a major city transit street according to the proposed Arterial Streets Policy.

Couch School (MLC) and Park are north of this site; Cathedral School is south of this site. There are a number of religious institutions in the area.

Economic Indicators: This request is within Census Tract 49. According to the 1970 Census information, the median housing value for this tract was \$13,600 as compared with a city median of \$14,400.

D. Agencies Contacted

City Engineer, Traffic Engineer, Water Engineer, Bureau of Neighborhood Environment, District Planning, Historic District Planning, Bureau of Buildings, Tri-Met, and the Northwest District Association.

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 submittal
- 2 - Vicinity Map
- 3 - Land Use - Zoning Map
- 4 - Northwest District Policy Plan excerpt for the eastern edge (not attached)
- 5 - Traffic Engineer Response (not attached)

II. FINDINGS

- A. Policy Plan Considerations: This request is within the adopted Northwest District Policy Plan eastern edge Policy 2A area. There appears to be no conflict with the plan.

- B. Historic District Considerations: This request is within an area under consideration for a Historic District designation.
- C. Code Considerations: Community clubs (centers) are regulated by Conditional Use in an AO zone. The applicant indicates a seating capacity of 1,200. The code requires 100 off-street parking spaces; 34 are available. Thus, a variance would be required.
- D. At the hearing, applicant presented evidence that for large scale functions using the auditorium in excess of 275 parking spaces would be available from nearby institutional uses if applicant's functions are scheduled not to conflict with functions of those institutional uses.
- E. Agency Responses: The Historic District Planner indicates support for the proposed use. The Traffic Engineer notes minor on-street parking and traffic volume problems.

### III. CONCLUSION

These facts and findings support the conclusion that the need identified by the Zoning Code in conditionally allowing this use in this zone is reasonably addressed by this proposal. These facts, findings, and conclusions support the ultimate conclusion that this use at this particular location is desirable to the public convenience and welfare and is not detrimental or injurious to the public health, peace or safety, or to the character and value of the surrounding properties, if properly conditioned.

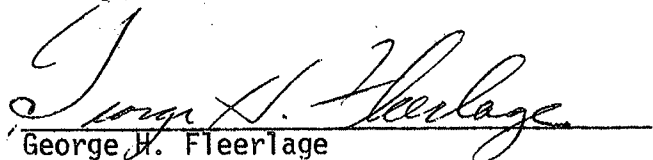
### IV. DECISION

It is therefore the decision of the Hearings Officer that the Conditional Use permit be approved and that a Conditional Use permit shall issue for it, subject to the following condition:

- A. Applicant must schedule auditorium use in sufficient concert with the schedule of other institutions whose off-street parking supplements
  - that of applicant to assure actual availability of sufficient off-street parking to support such auditorium use.

It is the further decision of the Hearings Officer, based on implementation of the above condition, that a variance reducing the off-street parking requirement to 34 is granted.

Decision rendered this 19th day of January, 1977.

  
George W. Fleerlage  
Hearings Officer

Report and Decision of the Hearings Officer  
CU 3-77  
Page Five

Unless appealed, this decision of the Hearings Officer shall be final fourteen days after the decision is filed with the Office of the City Auditor and Planning Commission in accordance with City Code Section 33.114.060(e).

THEREFORE, ANY APPEAL IN THIS MATTER MUST BE FILED NO LATER THAN FEBRUARY 4, 1977.

Information and assistance in filing an appeal can be obtained from the Bureau of Planning at 424 S.W. Main Street, Portland, Oregon, 97204, 248-4250.

29







Accepted..... **FEB 23 1977**  
Recorded..... **FEB 23 1977**

REPORT OF HEARINGS OFFICER DECISION

JANUARY 19, 1977

GEORGE H. FLEERLAGE  
HEARINGS OFFICER

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

File No.: CU 3-77

Applicant: First Church of Christ, Scientist, deedholder;  
Northwest Community Service Center, Inc., contract purchaser.

Request: Conditional Use request to use existing church  
structure for a multi-purpose community facility in an A0  
zone.

Location: N.W. Everett to N.W. Flanders, N.W. 18th to N.W.  
19th Avenues.

Zone: A0.

Legal Description: Lots 1, 2, 3, 4, 6, and 7, Block 172,  
Couch's Addition.

Decision: To grant the Conditional Use, subject to the  
following condition:

1. Applicant must schedule auditorium use in sufficient  
concert with the schedule of other institutions whose  
off-street parking supplements that of applicant to  
assure actual availability of sufficient off-street  
parking to support such auditorium use.

It is the further decision of the Hearings Officer, based  
on implementation of the above condition, that a variance  
reducing the off-street parking requirement to 34 is granted.

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

34