NAIOP
COMMERCIAL REAL ESTATE DEVELOPMENT ASSOCIATION
OREGON CHAPTER

Officers

President, Steve Barragar
Harsch Investment Properties

Pres.-Elect, Eric Castle
Shorenstein Realty Services

Treasurer, Brad Miller
Brix Law

Secretary, Stuart Skaug
CBRE, Inc.

Past-Pres., Kirk Olsen
Trammell Crow

Board of Directors

Evan Bernstein
Pacific NW Properties LP

J. Benjamin Chessar
PacTrust

Sean Colletta
Prologis

Brent Hedberg
Specht Development

Blake Hering, Jr.
Norris Beggs & Simpson

Al Kennedy
Melvin Mark Brokerage Company

Sue Kerns
ZGF Architects LLP

Eddie La Berge
Turner Construction

MK Long
US Bank

Jody Patton
Lawyers Title

Dr. Gerard Mildner
Portland State University

Joe Mollusky
Port of Portland

Dietrich Wieland
Mackenzie

Executive Director

Kelly Ross

August 9, 2016

Portland Planning and Sustainability Commission
1900 SW 4th Ave, Suite, 700
Portland, OR 97201

Re: Central City Zoning Code Update (CC2035 Proposed Draft)

Dear Chair Schultz and Commissioners:

NAIOP, the Commercial Real Estate Development Association, is one of the leading organizations for developers, investors, owners & operators, brokers, and related professionals in office, industrial and mixed-use real estate throughout the United States, Canada, and Mexico. The Oregon Chapter's members represent a broad and diverse range of companies involved with commercial real estate activities in the Portland metropolitan area, including developers, owners, brokers, and managers, along with other professionals providing legal, finance, title, engineering, architectural, construction, and other services.

First, I would like to extend our deep appreciation to Planning & Sustainability Bureau staff Rachael Hoy and Troy Doss for giving of their time to have two briefing sessions with our members last month on the Central City Zoning Code Update Project. This was very effective in identifying issues of concern and answering questions.

After reviewing the Proposed Draft before you, we have a number of concerns and recommendations. We urge you to give serious consideration to these points and to take more time for additional analysis and work to address them.

I. Need to consider overall context of proposed changes, additional costs that will be imposed, and significant development fee increases that recently went into effect.

We urge the Commission to be extremely sensitive to any changes being proposed that would impose additional costs on new commercial development, and to be aware of recent significant increases of total

6745 SW Hampton, Suite 101 Portland, OR 97223 Tel: (503) 223-1766 Fax: (503) 597-3668

impact fees currently being paid by all commercial construction projects that are having a major impact on market dynamics.

A major increase in the park SDC increase went into effect on July 1st, with the fee more than doubling in the Central City and nearly tripling elsewhere for commercial construction. Also, the new 1% of value Construction Excise Tax became effective on August 1st. The combination of these two, along with a likely increase to the transportation SDC and a new 1.5% of assessed value fee for traffic signal modifications being considered by PBOT, will move Portland near the top ranking of total development fees charged by jurisdictions across the region.

Taken all together, the changes described above will have significant impacts on new commercial development and, indeed, the entire Portland commercial real estate market. There will be tremendous upward pressure on rents for new construction, which will in turn put upward pressure on all commercial rental rates. Such increases may also have the effect of driving new development to less costly suburban locations.

The City Council has been pledging for the last three years (the last time in May of 2015 when the Parks SDC increase was approved) that a comprehensive study of the full range of development fees was very much needed and would be initiated soon. To date, no such study has begun.

We urge the Commission to be mindful of this overall picture when considering regulatory changes in the draft before you, and encourage you to recommend to the City Council that a fee study be initiated before additional costly regulations are placed on development.

II. Eco-Roof Requirement

One provision of the Proposed Draft that will have serious cost impacts—during both the construction phase and ongoing maintenance—is the requirement that all new construction of more than 20,000 square feet have an eco-roof that covers at least 60% of the net roof area (exclusive of solar panels, skylights or mechanical equipment, or areas used for fire evacuation routes).

We urge the Commission to consider the alternative of white roofs to the strict eco-roof requirement, and would refer you to an extensive 2014 study conducted by researchers at the Lawrence Berkeley National Laboratory (Berkeley Lab) that was published in the March/2014 edition of *Energy & Buildings*.[1]

[1] Julian Sproul, Man Pun Wan, Benjamin H. Mandel, Arthur H. Rosenfeld, "Economic comparison of white, green, and black flat roofs in the United States," *Energy & Buildings*, Volume 71, March 2014, Pages 20–27.

One of the study's major findings was that, per unit area, white roofs cool temperatures three times more effectively than green roofs, directly reducing global warming impacts. Other highlights of the study's findings were:

- The life-cycle costs of white roofs are less than those of black roofs.
- Green roofs are more expensive over their life-cycle than white or black roofs.
- Green roofs' high installation/replacement costs outweigh their long service lives.

Also relevant for your consideration is a 2013 study by scientists at the Universities of Manchester and Leicester that found polluting particles absorbed from the air by eco-roofs and retained in the soil layer and the vegetation, could leak out into rainwater as it runs off the roof.[2]

"The rainwater runoff from the green roof was green and yellow in colour, so we sent samples for analysis of the heavy metal and nutrient concentrations," said Andrew Speak, a PhD student at the University of Manchester and lead author of the study. "Some heavy metals were found to be quite high. Copper, lead and zinc all exceeded environmental quality standards."

"The biggest discovery in this paper is that while green roofs do reduce air pollution, the pollution may accumulate and cause a problem in the future with reduced water quality of runoff," concluded Speak. "We shouldn't put green roofs next to busy motorways, or inner city motorways, basically anywhere where vehicle derived pollution could affect runoff in the future."

If the primary goal of the eco-roof requirement is stormwater management, there are much more effective ways to do so and we would strongly encourage you to allow alternate methods that are less costly and require less maintenance.

III. FAR Changes

We recommend an amendment allowing FAR that has been legally memorialized on a property (through a covenant or declaration approved by the City) to be able to be transferred under the current FAR transfer rules for up to two years after the rules change. We also recommend that FAR to be able to be used on any receiving site it is transferred to during the two-year period before the public benefit 3:1 FAR must be used.

This piggy-backs on the regulation that is already proposed which will allow FAR that was already transferred to be used for two years after the regulations change. We think allowing the transfers to continue is important because many projects plan to use transferred FAR, but close the FAR transaction long after the City review process begins. Thus, a developer could know that it plans to transfer FAR, have a transfer site identified, and not be able to close the transaction and move the FAR until a much later time (often at the building permit stage). An additional issue is that most developers do not know exactly how much FAR will need to be transferred until the Design Review process is complete, as even small design changes can alter the amount of FAR. The ability to transfer FAR under the current rules for up to two years after

---

[2] A.F. Speak, J.J. Rothwell, S.J. Lindley, C.L. Smith (2014) "Metal and nutrient dynamics on an aged intensive green roof," *Environmental Pollution*, Volume 184, Pages 33-43

the rules change allows projects that will be proceeding under the old rules to complete transfers needed for those projects.

Second, we think it is important that the current FAR rules remain in place until the full Comprehensive Plan package is implemented (Jan 1, 2018) and that these not be eliminated when the inclusionary zoning rules go into effect. From discussions of the Inclusionary Housing Experts Panel, we understand that the City's proposed approach will be to provide 3:1 FAR to a development that meets the inclusionary housing mandates under the new regulation by implementing a new affordable housing FAR bonus. We agree that it is important to provide the affordable housing bonus FAR at the time that the inclusionary housing mandates become effective. A new affordable housing bonus for meeting the mandate would not conflict with current bonus options (and would not "double-bonus" applicable sites since most are limited to a total of 3:1 additional FAR from any source). However, Staff has also stated that the City may push forward its changes to the other FAR bonus and transfer rules at the time of the inclusionary housing changes (eliminating most current bonus and transfer options). We do not support that change. The changes to FAR bonuses and transfers are part of CC 2035 which includes a host of additional code changes. The development community is aware of the pending inclusionary housing changes, but those developing non-housing projects are expecting all other changes to become effective almost a year after the inclusionary housing regulations. The current bonuses should be left in place until the full package of code changes is adopted.

IV. Elimination of Density Bonuses

We share the concerns of the eleven developers who signed the July 26th letter presented to you by Noel Johnson of Killian Pacific at your last public hearing. We agree that there should be a postponement of eliminating the nineteen existing Central City Density Bonus Options from current zoning code until the work of the Inclusionary Housing Program Panel of Experts (the Panel) is complete and all the impacts of affordable policy changes are evaluated to ensure robust multifamily development at all levels of affordability.

As the developers' letter noted, "density bonuses are a proven zoning tool to make significantly more housing units pencil out; now is not the time to restrict housing creation by limiting the residential 3:1 density bonus only to Inclusionary Housing program development. Additionally, the existing density bonuses in current zoning code create incentives for the creation of multiple public benefits, including but not limited to daycare centers, retail establishments, green spaces, and mixed-use neighborhoods. These elements are important to our urban fabric and should not be jettisoned without careful consideration of their utilization, public value or the alternative ways to incentivize their development. As was discussed at the Panel's Tuesday, July 19 meeting, the Bureau of Planning and Sustainability has not provided any data related to the utilization or effectiveness of the nineteen existing Central City Density Bonus Options being proposed for elimination."

V. Reduced Parking Ratios

We are still analyzing the likely impacts of the reduction in allowed parking ratios, but do raise this as a possible serious concern and urge you to resist requests from some interests for further reductions.

VI. LEED Gold Requirement

We have concerns that the requirements for low-carbon buildings (33.510.244) are limited to one certification program, LEED, and would strongly urge that additional certification programs of a similar nature be also integrated into this section.

VII. Transit Demand Management Requirements

We strongly support the elimination of TDM requirements from the Proposed Draft and urge the City to work with stakeholders before implementing any TDM requirements for the Central City.

Thank you for your consideration of these comments. Because of the timing of the hearing schedule during the summer and a relatively short time between release of the current draft and the hearings, it has been difficult to get input from industry members. For this reason, and in anticipation that Commission members are likely to have numerous questions and editing suggestions, we would recommend that the public record be left open and an additional public hearing be scheduled so follow-up input can be provided on these very significant changes to the development code.

Please let us know if we can provide any additional information.

Sincerely,

Kelly Ross
Executive Director