Housing Land Advocates

February 11, 2014

Portland City Council
c/o Council Clerk
1221 SW Fourth Avenue, Room 130
Portland, OR 97204

Re: Park Avenue West Casefile LU 13-214772 DZ/MS/AD
De Novo Hearing February 12, 2014

Dear Mayor and Commissioners:

Housing Land Advocates (HLA), a non-profit organization, advocates for land use policy and practices that support the development of affordable housing in sustainable communities. HLA supports the appeal in this case. The master plan proposal to transfer density, in the form of FAR credits owned by the City, should not be approved unless the new development includes some level of affordable housing in compliance with the policies adopted by the City for this area, the Central City Plan and the 2011 Analysis of Impediments

The City's use of its FAR credits for other city programs, such as the development of new parks, may support laudable goals but results in a lack of compliance with prior enacted policies that support and require the development of affordable housing in the Central City District. Density transfers of city-owned property should be limited to the achievement of policy goals involving housing and not treated as a fungible asset to be used in achieving any goal. In the absence of a formal plan implementing the policies within the Central District, including those addressing affordable housing, the City Council should review all developments for compliance with those policies.

STANDING

HLA has standing to participate in this hearing because it may be adversely affected or aggrieved by the city's decision. HLA is a 501(c) (3) organization comprised of land use planners, attorneys, housing advocates and practitioners that advocates for land use policies and practices that ensure an adequate supply of safe, decent and affordable housing for all Oregonians. Because the city has both a regulatory role in deciding whether to approve the master plan and a proprietary role as owner of the development rights that would be transferred, this case presents a rare opportunity for the City of Portland to take affirmative action to increase the supply of affordable housing in the downtown core. The city's failure to capitalize on this opportunity would adversely affect HLA's efforts to provide more affordable housing.

NEED FOR AFFORDABLE HOUSING

The Portland downtown core is especially underserved by affordable housing. Both residential sale prices and rents are higher than in the city at large. This forces lower wage workers who

work downtown to live farther from work. As a result, the lower wage workers experience higher transportation costs, are segregated into areas of lower opportunity and do not experience the benefit of public investment in an equitable manner. The lack of affordable housing has a disproportionate impact on racial minorities and the disabled. (2011 Analysis of Impediments p. 144-148)

THE RATIONALE FOR AFFORDABLE HOUSING IN THIS CASE

The transfer of floor-area ratio (FAR) across a right of way in the Downtown district is only allowed as part of an approved master plan. This application is therefore subject to the approval standards for master plans in 33.510.255.E, which require the applicant to show that "the proposed plan is consistent with the policy objectives of the Central City Plan." Those Plan policies include Housing Policy 3.C, "*Encourage the development of housing in a wide range of types and prices and rent levels*."

When it approved the application, the Design Commission adopted a finding that this housing policy was "aspirational," stating that "these aspirational statements using wording such as 'encourage', 'promote' and 'foster' are not meant for each and every development project and every City regulation to fully meet." Notwithstanding the Design Commission's finding, even if the policies are "aspirational", the policies clearly define the City's goal for the district—a wide range of types and prices and rent levels. As such, all developers are on notice of this goal. The legal issue appears to be whether and when the City may require a developer to include affordable housing in project.

The applicant has sought and apparently received a significant public benefit from the City, a density transfer. The granting of the density transfer, a benefit that is solely within the City's control, is rationally related to promoting the housing policies within this district. In the absence of any specific administrative rule governing the use density transfers, the City is required to use them to achieve the housing policies it has adopted for the district. It is required to do so because the use of the City's property and assets should only be used to achieve a public goal or benefit. Use of the density transfer for any use other than housing actually defeats the Housing Policies and would therefore be contrary to the public benefit or goal identified in the Central City Plan.

THE IMPACT OF NOT REQUIRING AFFORDABLE HOUSING

The city is the recipient of millions of dollars annually in federal block grants and other funds that require compliance with the federal Fair Housing Act. As a recipient, the city must certify that it is working to affirmatively further fair housing, promote integration and reduce segregation, not just in its public housing programs but in all its programs that affect housing, including planning and zoning.

The lack of an equitable distribution of affordable housing in Portland is acknowledged as an impediment to fair housing. (2011 Analysis of Impediments p. 144-148) The City is legally

obligated to act, when it can act, to affirmatively further fair housing. In this specific instance, the granting of a density transfer for a residential development, in an area of the City that lacks affordable housing, presents an opportunity to address proactively an impediment to fair housing. In the absence of any significant barrier to doing so, the City must require some level of affordable housing in the applicant's project or risk violating its obligation to affirmatively further fair housing.

The City lacks a comprehensive policy that would guide its staff in the use of density transfers to promote actions that would comply with its obligation to affirmatively further fair housing. HLA recommends the City adopt such a policy for use in the future.

CONCLUSION

This application should be denied because it is not consistent with the City's policies addressing affordable housing. In the alternative, any approval should require an affordable housing component.

Sincerely,

Board Member

cc: David Noren