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March 16, 2009

VIA HAND DELIVERY

Members of the City of Tukwila City Council
c/o City of Tukwila City Clerk
6200 Southcenter Blvd.
Tukwila, WA 98188

Re: Comments on City of Tukwila Shoreline Master Program Update
(for Council Committee of the Whole/March 23, 2009)

Dear City Council Members:

We represent the James Campbell Co. LLC and The Realty Associates Fund VII, L.P., both of which own property in the City of Tukwila along the Green/Duwamish River. We also represent International Airport Centers LLC, which owns property in the City's annexation area along the river. All of our clients' properties are developed with existing commercial/light industrial buildings occupied by a variety of tenants. Our clients are very concerned that the City's update to its Shoreline Master Program ("SMP") not unduly interfere with the continued operation of their existing developments.

We submitted comments and testimony to the City of Tukwila Planning Commission regarding the SMP update and appreciate the substantial progress made by the Planning Commission in revising the draft SMP to address the concerns of property owners with existing developments. However, there is one area where additional revision is needed to prevent potentially serious interference with the viability of existing commercial/light industrial uses.

As you know, the draft SMP proposes a substantial increase in the width of required buffers along the Green/Duwamish River. Proposed buffers for our clients' properties range from 100 to 125 feet. In many cases, the proposed buffer line runs right through our clients' existing buildings. The Planning Commission's proposal (appropriately) provides that pre-existing structures that do not comply with the new buffer requirements may continue as allowed, legal structures as long as certain conditions are met. See SMP, Section 14.6.B.

Unfortunately, however, there is the potential for ambiguity in the treatment of uses within such structures given the way that the draft SMP addresses allowable uses. Specifically, the draft SMP allows only very limited uses in the buffer area, which do not include typical commercial/light industrial uses. See SMP, Sections 8.3.A, 8.4.A. By contrast, in the area subject to SMP jurisdiction outside of the buffer area, the draft SMP allows all uses that are allowed in the underlying zoning district. See SMP, Sections 8.3.B, 8.4.B. This means that the

EXHIBIT 1 DATE 3-16-09
PROJECT NAME Shoreline Master Program Update
FILE NO

existing use of the portions of our clients' buildings that lie within the proposed buffer arguably could become nonconforming under the proposed SMP.

Under the Planning Commission's proposal, a property owner with a "pre-existing" (e.g., nonconforming) use that comes to an end (for example, because a tenant leaves) has 24 months in which to resume the use before the "pre-existing" status is lost (such that future use must comply with the SMP). *See* SMP, Section 14.6.A.3. However, where a property owner proposes to change a "pre-existing" use that falls within one use category in the zoning code, to a new use that falls within a different use category, the new use must comply with the SMP. *See* SMP, Section 14.6.A.4. That is, the property owner loses his "grandfathered" use rights.

Unfortunately, the use categories listed in the City's zoning code are extremely narrow. For example, in the Commercial/Light Industrial District, the following are all separate use categories: printing, laundries, manufacturing of mechanical equipment, food processing, repair of electronic equipment, and warehousing and/or wholesale distribution. All of these uses are ones to which any given light industrial building potentially could be devoted. Thus, under the Planning Commission's proposal, a property owner with a building lying partially within a required buffer could re-lease a space used by a printing operation to another printing company, but could not re-lease the space (or, more specifically, the portion of that space lying within the required buffer) to a food processing company.

Such an approach makes no sense, is unduly harsh and would have severe negative economic consequences. We understand City staff's desire to gradually phase out nonconforming uses. However, this should occur primarily at the time of redevelopment; it makes no sense to limit use of a portion of an existing building in the manner that the Planning Commission's proposal arguably does. Since the City is (appropriately) willing to allow existing structures to remain despite being partially within the required buffer, there is no reason to unduly limit the uses to which the portion of the building in the buffer may be devoted, when the rest of the building may lawfully be used for any use allowed in the underlying zoning district. No beneficial purpose is served by the Planning Commission's approach; rather, that approach will only prevent reasonable re-leasing of existing buildings, with consequent loss of jobs and tax revenues to the City.

One of our clients' properties provides an excellent illustration of this issue. The James Campbell Co. LLC owns tax parcel 7888900120, which lies on the east bank of the Green River. The property is developed with a commercial/light industrial building (the "Glacier Building"), a photo of which is attached hereto as Exhibit A. This building is occupied by three tenants: a computer repair company, a wholesale flooring distributor, and a printing company. Collectively, these tenants have 26 employees.

As illustrated on Exhibit B, the proposed 125' buffer runs right through the existing building. Thus, the proposed SMP would appear to render the existing use of the portion of the building within the buffer nonconforming. Under the Planning Commission's proposal, the owner could change the use of that portion of the building only to uses within the same use category as the existing use. Thus, if the computer repair company vacated, the owner would need to find another similar company but could not re-lease the space to a warehousing company or biotech firm. Obviously, this would make re-leasing the space problematic in the best of

circumstances and, in the current economic climate, the owner would be put in an impossible position.

Ultimately, if the owner could not re-lease this building because the available new tenant(s) were in different use categories than the existing tenants, the building would no longer be economically viable and would need to be removed. In that case, the value of the improvement would no longer be available to generate property tax revenue for the City (similarly, the value of the land within the buffer area would also no longer be available). The impact on the City would be substantial, as the value of the improvement alone is \$3.5 million, with the land being valued at \$1.5 million. For the 2009 tax year, the City's share of the property tax paid for this property is over \$12,000. And, of course, the 26 jobs would leave the City and would not be replaced until the property was redeveloped (which would be highly unlikely given the location and the SMP's restrictions on a substantial portion of this property).

We believe that any ambiguity regarding the foregoing issue can be addressed by a single, simple change to the Planning Commission's proposal. Our proposed change (in redline form) is attached hereto as Exhibit C. We believe this is a very narrowly-tailored change. Our language does not change the Planning Commission's approach to uses occurring independent of pre-existing structures, nor are we changing the Planning Commission's approach in a situation where a pre-existing building lies entirely within a required buffer. Nor do we challenge the concept that redevelopment should trigger full applicability of the SMP. Our proposed change simply makes clear that, where a pre-existing building lies partially within and partially outside of a required buffer, use of the portion of the building within the buffer is not subject to the use regulations for the buffer area, but rather simply to the same use regulations as apply to the rest of the building within the shoreline jurisdiction.¹

We appreciate your consideration of this issue and will be available at the public hearing to answer any questions that you may have.

Very truly yours,

GORDONDERR LLP.

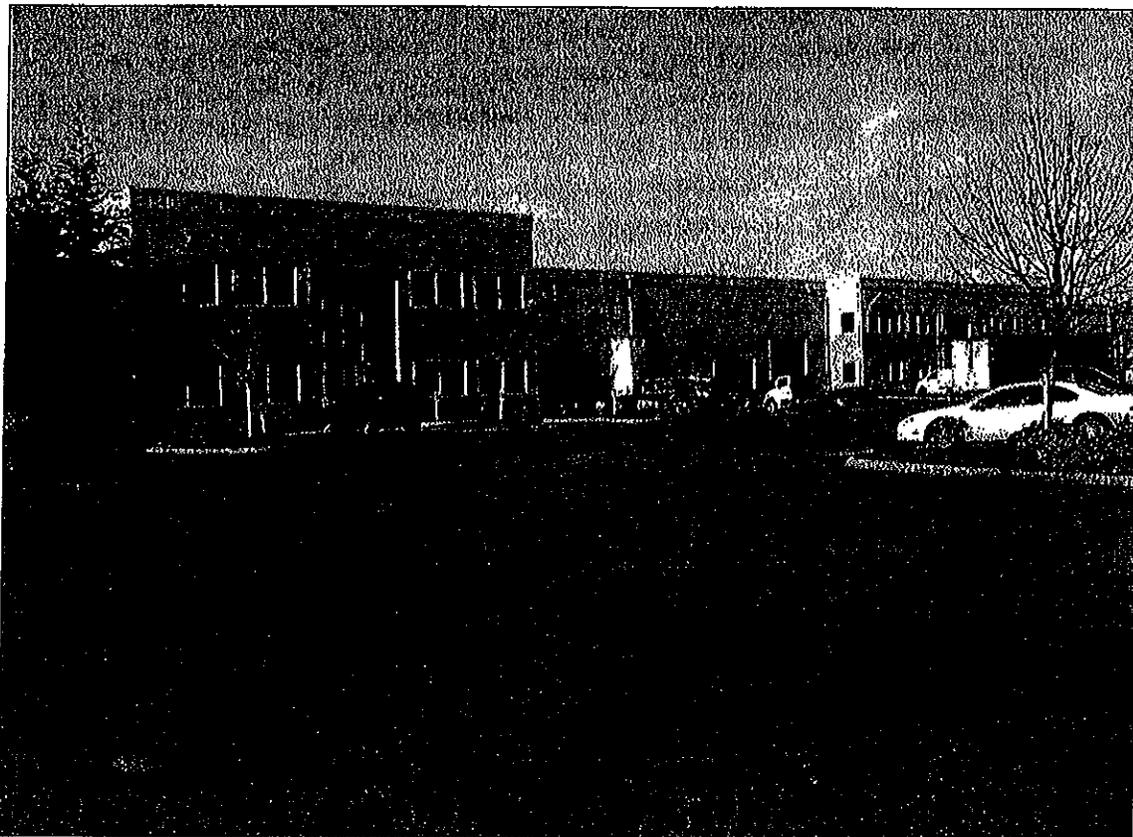


Jeff S. Weber

cc: John Wanamaker

¹ We note that, as currently drafted, Section 14.6.A.4 makes no sense on its face, as it refers to a change of use "to a use determined to be pre-existing," with "pre-existing" being defined (in Section 3 of the SMP) to mean a use that was legally established *prior to* the effective date of the SMP. To aid in trying to arrive at a workable SMP, we are assuming that the Planning Commission in Section 14.6.A.4 is attempting to address the question of changing a pre-existing use to another use, and have proposed a revision to the language in that spirit. However, because of this and other ambiguities in the SMP (as noted above), we do not concede that, in the event that the City Council adopted the Planning Commission's proposal unchanged, Section 14.6.A.4 would restrict our clients in changing the use of their existing buildings within the buffer area. Our goal is obviously to ensure that the reasonable operation of our clients' existing developments is unambiguously protected by the SMP.

The Glacier Building
(James Campbell Co. LLC)



The Glacier Building
(James Campbell Co. LLC)
Tax Parcel No. 7888900120

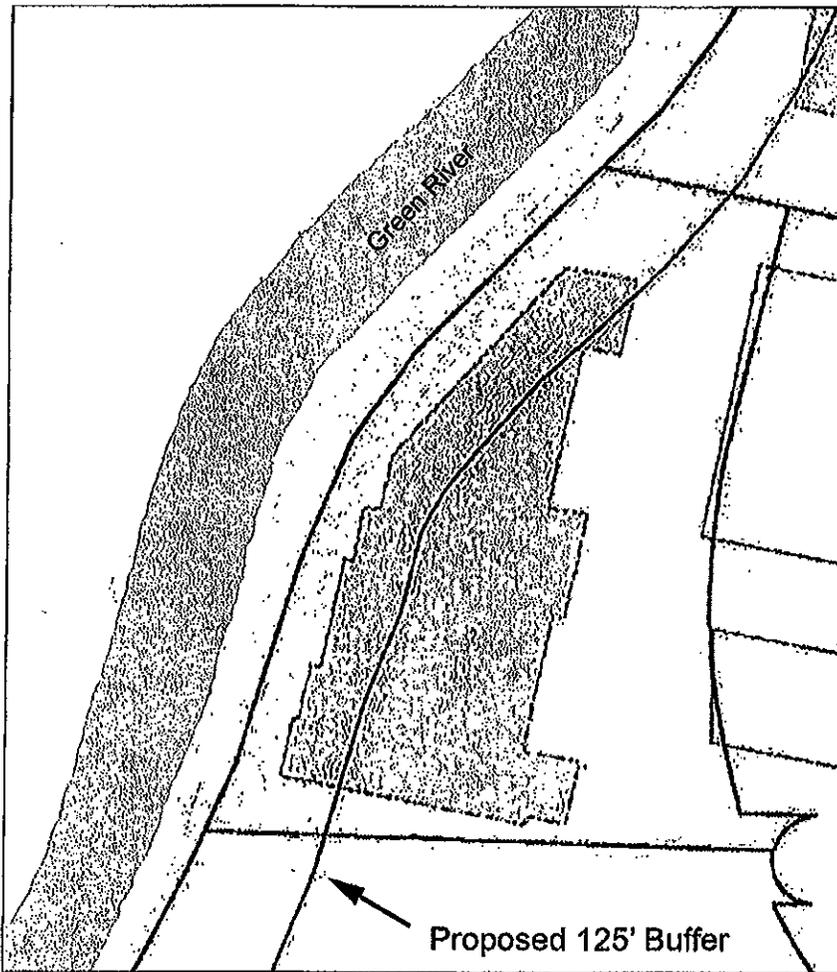


Exhibit B

If a change of use is proposed to ~~from~~ a use determined to be pre-existing by application of provisions in this SMP, the proposed new use must be a permitted use in the SMP or a use approved under a Conditional Use or Unclassified Use Permit process, provided that, where a pre-existing use is located within a pre-existing structure that is located partially within and partially outside of a required buffer, the new use need not comply with the SMP's use regulations for the buffer area but rather must comply with the use regulations that apply in the applicable shoreline environment outside of the buffer area, so long as the structure complies with section 14.6.B below. For purposes of implementing this section, a change of use constitutes a change from one Permitted, Conditional or Unclassified Use category to another such use category as listed within the zoning code.