

Ross A. Day

LICENSED IN OREGON
AND WASHINGTON



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March 14, 2023

via electronic mail and first-class mail

The Honorable Ted Wheeler
Mayor, City of Portland
1221 SW Fourth Avenue
Room 340
Portland, Oregon 97204
mayorwheeler@portlandoregon.gov

The Honorable Carmen Rubio
Portland City Commissioner
1221 SW Fourth Avenue
Room 220
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Comm.rubio@portlandoregon.gov

The Honorable Mingus Mapps
Portland City Commissioner
1221 SW Fourth Avenue
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The Honorable Dan Ryan
Portland City Commissioner
1221 SW Fourth Avenue
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The Honorable Rene Gonzalez
Portland City Commissioner
1221 SW Fourth Avenue
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RE: Union Station Parcel A North
Partition Plat 2001-69, Lot 2
Assessor Number R649812750
(herein “Real Property”)

Mr. Mayor and Commissioners:

My name is Ross Day, I represent a group of citizens who are concerned about the proposal currently being considered by the City of Portland (herein “City”) to locate a “Safe Rest Village” (herein “SRV”) on the above-referenced Real Property. For the reasons that follow, we ask the City to seek a more suitable location to better serve the most challenged homeless population

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while not continuing to unduly burden a residential neighborhood with a second no/low barrier shelter.¹

As an initial matter, this letter is the result of frustration my clients have towards the entire decision-making process which ultimately led to choosing the Real Property as a location for the proposed SRV. My clients have been intentionally excluded from the decision-making process by the City's staff; the few times my clients have had an audience with either the City Commission or especially City staff, my clients' concerns were not taken seriously, and the City has stonewalled my clients' efforts to obtain any information related to the proposed SRV.

More specifically, my clients' concerns raised with City staff were dismissed as nothing more than NIMBYism, which is particularly disrespectful. The City's homeless problem needs to be addressed by the entire City, and Portlanders should equally share in the burden of resolving the crisis. And, in fact, there is already a homeless shelter operating *immediately adjacent* to the Real Property, the Navigation Center operated by Oregon Harbor of Hope, which was welcomed by the Pearl District Neighborhood Association in 2019.²

For several years since the Navigation Center opened in my clients' neighborhood, my clients have seen an increase in drug use, trash, property damage, and even violent crime. In December of 2022, my clients appeared before the City Commission and provided the Commission with evidence of property damage as well as evidence of the physical assaults my clients have endured.

As my clients' concerns are falling on deaf ears in the City, the purpose of this letter is to put the City and the owner of the Real Property on notice that my clients object to the siting of the proposed SRV on the Real Property and they intend to protect themselves and hold the City, the operator of the proposed SRV, and the owner of the Real Property accountable for any damage my clients suffer at the hands of the City's "invitees".³

¹ For purposes of this letter, "Safe Rest Villages" refers to alternative shelters that serve as improved points of entry for Portlanders on the continuum from living on the streets to finding stability in permanent housing. They range from a safe park program for people living in RVs or alternative, outdoor structures. All Safe Rest Villages include case management with wraparound behavioral and mental health services. This is the definition of "Safe Rest Villages" used on Commissioner Ryan's website. See <https://www.portland.gov/ryan/safe-rest-villages> (last visited November 17th, 2022).

² "Proposed Homeless Village Perplexes Pearl Neighborhood," NW Examiner, June 29th, 2022.

³ An example of how the City is not prioritizing the public's safety can be found in a document entitled "NW Naito Safe Rest Village – Frequently Asked Questions, September 23rd, 2022". The very first question relates to safety. Importantly, the answer to the question posed focuses on the safety of the "unsheltered", and not the surrounding community. The answer concludes: "The Safe Rest Village team meets routinely with the Street Services Coordination Center, and along with other partners, will bring up community safety concerns around Villages if they come up." <https://www.portland.gov/ryan/documents/responses-community-questions-about-nw-naito-srv-92322/download> (last visited: February 15th, 2023). This wet-fish response does not mention involving the surrounding neighborhoods in the discussions, and questions whether a decline in safety will occur with the siting of a safe rest village in my clients' neighborhood. This dismissive response from the City only further cements my clients' belief that the City does not take my clients' safety seriously.

For the reasons that follow, my clients request the City “go back to the drawing board” and find a new location for the proposed SRV.

The Real Property is not Zoned For Camping

The Real Property is zoned Central Employment. “Employment and industrial zones” are areas in the City that are reserved for industrial uses and for areas that have a mix of uses with a strong industrial orientation. Portland Zoning Code (herein “PZC”), §33.140.010

Further, in the Central Employment zone, Residential uses are allowed, but are not intended to predominate or set development standards for other uses in the area. PZC, §33.140.030(B). Locating the proposed SRV on the Real Property is not consistent with the intent and purpose of the Central Employment zone.

Further, in the Central Employment zone, a maximum of sixty (60) individual “shelters” are allowed. In my experience, these types of encampments swell well beyond the limits of the property itself. Who at the City is going to ensure that the proposed SRV is in compliance with the City’s zoning code?

In the alternative, more than sixty (60) individual “shelters are allowed in the Central Employment zone, but only as a conditional use. Is the City planning on allowing more than sixty (60) individual “shelters” on the Real Property? If so, when is the conditional use permit application going to be filed? When were the neighbors of the Real Property going to be notified of the conditional use permit application? These are the questions my clients have concerning the proposed SRV which have either been ignored or disregarded by City staff.

Next, the PZC requires the proposed SRV to be open 24 hours and have a designated supervisor. PZC, §33.285.050(C)(3) & (4). Does this mean there must be always a designated supervisor on the property? If so, where is the designated supervisor going to stay, seeing as how there are no structures on the Real Property? How can the Real Property be used for an SRV given the Real Property’s current limitations?

But more importantly – has the City asked these questions and, if so, what are the answers to these questions? Why has the public been largely kept in the dark about these important issues? My clients have asked many of these questions, only to receive silence from the City in response. The only reasonable conclusion one can reach is that the City either (a) does not know the answers to these questions, or (b) knows the answers and does not want to provide the answers to the public. Either conclusion is untenable.

The Real Property is Unsafe For Use as a SRV

According to the Oregon Department of Environmental Quality (DEQ), the Real Property has residual soil contamination which poses a risk to both the public and the environment. The Real Property is contaminated with arsenic, lead, and other cancer-causing hydrocarbons. The fact the City is considering the using this contaminated property as an encampment for the City’s most vulnerable reflects the City’s valuation of the homeless population.

The Real Property is immediately adjacent to the Oregon Harbor of Hope Navigation Center (herein “Navigation Center”). Like the Real Property, the property where the Navigation Center is located was also contaminated with cancer-causing carcinogens. The Navigation Center sits atop a “temporary cap”, which provides a buffer between the contaminated soil and the people using and working at the Navigation Center. It took the Navigation Center over a year to install the “temporary cap”, and that was without public opposition to the Navigation Center proposal.

The City has not yet even *begun* the process of applying to the DEQ for approval of a remedial action plan, let alone begun implementation of such a plan. At the earliest, based upon the Navigation Center’s timeline, the City would not be able to use the Real Property as an SRV until late spring/early summer of 2024.

If the purpose of the SRVs is to provide immediate, transitional help to the homeless, placing an SRV on the Real Property will fall well short of this purpose. An application with DEQ to approve a temporary cap on the Real Property will take a considerable amount of time for approval. Further, assuming a temporary cap on the Real Property is approved by DEQ, I suspect the approval will be appealed – further delaying the operation of the SRV on the Real Property. The point is this: It will likely be years before the Real Property is eligible for use as an SRV.

The City is Bringing ANOTHER Nuisance to the Area

Ultimately, my clients are concerned about their safety, the safety of their neighbors, family members and visitors. My clients have suffered physical assaults and property damage – all for doing nothing more than living in their homes. And, of course, the City, Multnomah County, and the Multnomah County District Attorney have done absolutely nothing to protect my clients. Instead, the “government” in Portland is more concerned about the unsheltered than those who are suffering the assaults and property damage caused by the homeless.

As explained above, the opening of the Navigation Center brought with it a substantial increase in physical assaults and property damage to my clients. My clients have not asked for any of this. The addition of the proposed SRV to the area will certainly increase the assaults and other criminal activity in the area, making my clients’ homes unusable, unsafe, and virtually worthless.

My clients live within roughly 350 feet of the Real Property. A recent study in the city of Portland determined that crime is 2.9 times more likely to occur within roughly 350 feet of a homeless encampment, such as the proposed SRV.⁴ In other words, by locating the proposed SRV so close to my clients’ homes, the City is placing my clients at 2.9 times the risk of suffering property damage or physical injury.

Accordingly, when the inevitable occurs and my clients suffer additional physical abuse and property damage at the hands of the City’s “invitees”, my clients will hold the City, the operator

⁴ Russell, Kortney Lynn, "Crime Risk near Reported Homeless Encampments: a Spatial Analysis" (2020).

of the SRV, and the owner of the Real Property accountable by seeking compensatory damages, punitive damages, and declaratory and injunctive relief.

As the Oregon Supreme Court said in *Thornburg v. Port of Portland*:

The proper test to determine whether there has been a compensable invasion of the individual's property rights in a case of this kind is whether the interference with the use and enjoyment is sufficiently direct, sufficiently peculiar, and of sufficient magnitude to support a conclusion that the interference has reduced the fair market value of the plaintiff's land by a sum certain in money. If so, justice as between the state and the citizen requires the burden imposed to be borne by the public and not by the individual alone.

Thornburg v. Port of Portland, 244 Or. 69, 73, 415 P.2d 750 (1966).

The City, the owner of the Real Property, and the operator of the proposed SRV are well aware that with homeless encampments come criminal activity including but not limited to assaults, drug use, property crimes, public health violations, and public safety violations. My clients have borne their fair-share of the “public burden” when the Navigation Center was located in their neighborhood. They will not accept any more of the burden of a problem that is citywide, emergent, and caused by “leaders” who refuse to hold people accountable for their actions.

How Many Homeless Encampments Can One Neighborhood Support?

As noted above, there exists already in the neighborhood a homeless service provider. The Navigation Center has brought with it sidewalk tents, property crime, and physical assaults to the neighborhood.

Ordinarily, when a property owner is considering a new use on a piece of property, in addition to use review, the City would conduct site plan review, which would also consider whether the proposed new use is compatible with the surrounding uses, and whether the infrastructure can support the proposed new use. Is the City planning on engaging in such a review of the proposed new SRV on the Real Property?

If the City engages in such a review, the results of such a review (assuming the review is conducted objectively and impartially) are predictable: The neighborhood surrounding the Real Property cannot support yet another homeless encampment. And this says nothing about the City's mismanagement of the Old Town SRV and Water Street SRV that were forced to close. Nothing in the plan regarding the NW Naito SRV suggests it would be any different than Old Town or Water Street.

My clients have already suffered physical assaults and property damage. I am certain that a survey of property owners, residents, and others who work or visit the area will reveal additional instances of assault, property crimes, harassment, drug use and other threatening behavior. The City's police department attempts to control the illegal activity that comes with these

encampments, but the police can only do so much with their limited resources and the limitations imposed on the police by the City Commission.

While my clients support efforts to help those dealing with homelessness, addiction, mental health issues, and other hardships, from their perspective it appears that the City is prioritizing the concerns of the “homeless community” over the safety and security of the rest of the citizens of Portland. The decision to locate another homeless service provider in my clients’ neighborhood is indicative of where the City’s priorities lie.

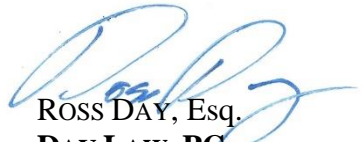
Conclusion

First and foremost, my clients are concerned for their safety – and for good reason – the establishment of the Navigation Center in their neighborhood has brought increased drug use, property crime and worst – an increase in physical assaults to the area.

The City’s concern, from my clients’ perspective, seems to be focused on placating the homeless and their advocates, rather than ensuring the safety of all the citizens of Portland. I have cited examples in this letter where the communication coming from the City ignores, glosses over, or whitewashes the public safety concerns of my clients.

My clients have been intentionally excluded from the discussions relating to locating the proposed SRV on the Real Property by the City. “Internal discussions” have taken place with “stakeholders”, none of whom have been any one of my clients or their neighbors. Their exclusion only further raises suspicions about the proposed SRV.

Since the City seems intent to disregard the concerns raised by my clients, they have been forced to hire an attorney to protect their right to be safe and secure in their home. My clients have instructed me to take whatever lawful actions are necessary to protect themselves from the location of the proposed SRV on the Real Property. If and when the City decides to reverse course and involve my clients and their neighbors in a community-wide discussion about the proposed SRV, we are open to having those discussions. Until then, I am afraid my clients’ relationship with the City will be an adversarial one.


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