

RESOLUTION NO. PC 474-08

A RESOLUTION UPHOLDING APPEAL #17-08 OF A MINISTERIAL
DECISION FOR A PROPOSED CHANGE OF USE FOR THE
PROPERTY LOCATED AT 3000 WEST SECOND STREET

WHEREAS, on April 22, 2008, Kay Tenold, the owner of the real property located at 3000 West Second Street in The Dalles, Oregon, and Pacer Propane, acting as the Applicant, submitted an application for a proposed change of use upon the property, to establish a wholesale propane distribution business upon the property; and

WHEREAS, on April 23, 2008, Dick Gassman, Senior Planner for the City's Community & Economic Development Department, issued a letter to the property owner's representative advising that the application for the proposed change of use was being denied; and

WHEREAS, on April 30, 2008, the property owner filed a notice of appeal of the ministerial decision denying the application for the proposed change of use; and

WHEREAS, on May 15, 2008, the Planning Commission conducted a de novo hearing upon the appeal; and

WHEREAS, following the close of the public hearing, the Planning Commission voted 3 to 2 to uphold the appeal and reverse the decision of City staff to deny the application for the proposed change of use; and

WHEREAS, at the suggestion of City staff, a written resolution summarizing the appropriate findings of fact and conclusions of law has been prepared for the Planning Commission's review and approval;

NOW, THEREFORE, THE PLANNING COMMISSION MAKES THE FOLLOWING FINDINGS OF FACT:

1. The application seeks a proposed change of use for the property located at 3000 West Second Street, which would include establishment of a wholesale propane distribution business on the property. The property is identified as Assessor's Map 2N 13 E 33BB Tax Lot 200. The property is located within the "CLF" Commercial Light Industrial zoning district.

2. City staff issued a written letter denying the application for a proposed change of use. The staff took the position that the operation of the business fell within the land use category of bulk fuel stores for petroleum, propane and gasoline. The staff noted that under Section 5.090.030(B) of the City's Land Use and Development Ordinance (hereinafter "LUDO"), the LUDO allowed this type of use under the conditionally allowed uses in the Industrial Zoning District. The staff interpreted the LUDO to limit this type of use to the zoning district where the use was allowed, which meant the use could only be allowed in the Industrial Zoning District with

a Conditional Use Permit. The staff also determined that the proposed use was not similar to any of the types of previous uses that had occurred on the property.

3. Testimony was presented on behalf of the applicant that the site of the proposed use had been previously used as a retail manufactured home dealership, a construction company, and a retail nursery. The applicant presented testimony that three delivery trucks and a small office would be placed on the site, along with two 30,000 gallon tanks and one 500 gallon tank which would contain the propane.

4. Testimony was presented on behalf of the applicant that the proposed change of use was similar in nature to several types of permitted uses allowed in the "CLP" Commercial Light Industrial zone under Section 5.070.020, including agricultural sales and service under subsection (1); a service station under subsection (3), retail uses under subsection (23); wholesale uses under subsection (26); and other uses determined to be similar by the Director under subsection (27). The applicant presented several letters of support written by local orchardists stressing the importance of having a propane distributor who could fill the needs for propane to protect the orchardist's crops during times of freezing weather. Testimony was also presented on behalf of the applicant that the business was finding it increasingly difficult to handle the increased volume of customers on the applicants current site, which was located adjacent to Second Street which is a very busy street, and that relocation of the business to the proposed site would actually enhance the ability of the business to serve its customers from a much safer location.

5. A letter of opposition written by William Reid, President and CEO of Northwest Aluminum Specialties was received into the record. The letter raised three areas of concern: (1) endangering the safety of employees at Northwest Aluminum Specialties; (2) Endangering the facilities of Northwest Aluminum Specialties and potentially impacting their insurability, and (3) potentially impacting the environment through contamination of the soil, water and air.

6. In response to the letter from Mr. Reid, the applicant presented testimony that the business seeking to relocate to the proposed site was purchasing two of the tanks from Northwest Aluminum, which company is located directly across the street from the property located at 3000 West Second Street. The Applicant presented testimony that the tanks which were scheduled for removal would be upgraded to comply with current fire code and other safety provisions, which would actually enhance the safety of the employees at the Northwest Aluminum Specialties facility and the insurability of the tanks. The Applicant asserted that improving the condition of the tanks would not pose a risk of harm to the facilities of Northwest Aluminum and could not affect the company's ability to insure its assets. The Applicant presented testimony to establish the propane is a non-toxic material and that it does not contaminate the environment.

BASED UPON THE FOREGOING FINDINGS OF FACT, THE PLANNING COMMISSION ADOPTS THE FOLLOWING CONCLUSIONS OF LAW:

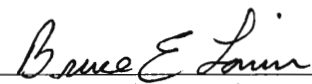
7. The appeal of the staff's denial of the proposed change of use for the property located at 3000 West Second Street, which was assigned Appeal #17-08, is hereby upheld, and the staff's decision is reversed.

8. The Planning Commission notes that Section 5.090.030(B) lists bulk fuel stores (petroleum, methane, propane, and gasoline) as a conditional use permitted in the "I" Industrial District. The Planning Commission also notes that the City's LUDO does not contain a definition for a "bulk fuel store". Based upon the testimony presented by the applicant as to the retail nature of the business which is sought to be relocated onto the property at 3000 West Second Street, the Planning Commission finds and concludes that the nature of the business is similar in use to that of a service station. The Planning Commission finds and concludes that many service stations have tanks on their sites which sell propane to customers, similar to the type of activity engaged in by the business which seeks to relocate to the property at 3000 West Second Street. The Planning Commission finds and concludes there is substantial evidence in the record to establish that the business which is sought to be relocated is similar in nature to the type of service station use allowed by Section 5.070.020(A)(3) and the retail uses allowed by Section 5.070.020(A)(23) and the wholesale uses allowed by Section 5.070.020(A)(26).

APPEALS: Any party of record may appeal a decision of the Planning Commission to the City Council for review. Appeals may be made according to Section 3.020.080 of the Land Use and Development Ordinance, and must be filed with the City Clerk within ten (10) days of the date of mailing of this resolution.

The Secretary of the Commission shall (a) certify to the adoption of the Resolution; (b) transmit a copy of the Resolution to the applicant.

APPROVED AND ADOPTED THIS 5TH DAY OF JUNE, 2008.



Bruce Lavier, Chairman
Planning Commission

I, Dan Durow, Community Development Director for the City of The Dalles, hereby certify that the foregoing Resolution was adopted at the regular meeting of the City Planning Commission, held on the 5th day of June, 2008.

AYES: Wilcox, Zukin, Lavier, Hoey

NAYS: None

ABSENT: Poppoff, Hiser

ABSTAINING: Ahlberg

ATTEST: 

Dan Durow, Community Development Director
City of The Dalles