



**City of Portland, Oregon**  
**Bureau of Development Services**  
**Land Use Services**

FROM CONCEPT TO CONSTRUCTION

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**Date:** March 19, 2015  
**To:** Interested Person  
**From:** Mark Walhood, City Planner  
 503-823-7806 / [Mark.Walhood@portlandoregon.gov](mailto:Mark.Walhood@portlandoregon.gov)

**NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD**

The Bureau of Development Services has Denied a proposal in your neighborhood. The mailed copy of this document is only a summary of the decision. The reasons for the decision, including the written response to the approval criteria and to public comments received on this application, are included in the version located on the BDS website <http://www.portlandonline.com/bds/index.cfm?c=46429>. Click on the District Coalition then scroll to the relevant Neighborhood, and case number. If you disagree with the decision, you can appeal. Information on how to do so is included at the end of this decision.

**CASE FILE NUMBER: LU 14-237661 NE**

**GENERAL INFORMATION**

**Applicant:** Kevin White  
 North Pacific Management, Inc. & Heathman Garage Assoc. LLC  
 1905 SE 10th Ave. / Portland, OR 97214

**Property Owner:** Feigenson Investment Company to H Gar LLC  
 1905 SE 10th Ave / Portland, OR 97214-4659

**Site Address:** 907-915 SW 9TH AVE

**Legal Description:** BLOCK 220 LOT 1&2, PORTLAND  
**Tax Account No.:** R667723520, R667723520  
**State ID No.:** 1S1E04AA 01800, 1S1E04AA 01800  
**Quarter Section:** 3128  
**Neighborhood:** Portland Downtown, contact Rani Boyle at 503-725-9979.  
**Business District:** None  
**District Coalition:** Neighbors West/Northwest, contact Mark Sieber at 503-823-4212.  
**Zoning:** **CXd** (Central Commercial base zone with Design overlay zone), **Central City plan district**

**Case Type:** **NE** (Determination of Nonconforming Sign Status Review)  
**Procedure:** **Type II**, an administrative decision with appeal to the Hearings Officer.

**PROPOSAL:** The applicant proposes to legalize a painted area on the west-facing interior side wall of the Heathman Parking Garage at 907-915 SW 9<sup>th</sup> Avenue. The area in question is painted green and measures 39'-11.5" by 39'-11.5" in size, facing west over an abutting surface parking lot at the SE corner of the intersection of SW 10<sup>th</sup> & Taylor. The painted area is larger than allowed under current sign codes, which limit the size of individual signs in the CX zone to no more than 100 square feet. With a surface area of approximately 1,597 square feet, the proposed sign face area is significantly larger than allowed under today's code.

The applicant has submitted a written narrative along with a series of photographs and other documentation for the green-painted area on the west side of the building. The request seeks

legal nonconforming status for the sign as a 'painted wall decoration' and sign that was legal prior to November 18, 1998. Therefore, the applicant has requested the necessary Determination of Nonconforming Sign Status Review.

**RELEVANT APPROVAL CRITERIA:** In order to be approved, this proposal must comply with the approval criteria of Title 32, Signs and Related Regulations. The relevant criteria are found at **32.38.040.D.1-3**, *Determination of Nonconforming Sign Status Review Approval Criteria*.

## ANALYSIS

**Site and Vicinity:** The site is a standard quarter-block downtown parcel at the southwest corner of the intersection of SW 9<sup>th</sup> Avenue and Taylor Street. Developed with the northern half of a half-block mixed-use retail and garage structure originally constructed in 1928, the area of the building in question faces the west lot line internal to the block. The wall in question would be invisible from any street view if a typical building was developed on the quarter-block immediately to the west. Because the property to the west is developed with a low one-story parking structure, the wall area in question is clearly visible from both Taylor and 10<sup>th</sup> Avenue immediately to the west.

The surrounding area has a variety of commercial, civic and residential uses. The southwest quarter of the block of the subject site, with a north wall facing and near the sign area in question, is developed with an older apartment building. Other nearby buildings include office and retail buildings, hotels, and other surface and structured parking lots. The Central Library is located one half-block to the west, and Director Park is located on half-block to the east of the sign. The abutting streets are all improved with paved concrete sidewalks, on-street parking, and one-way vehicle traffic.

**Zoning:** The site has Central Commercial (CX) base zoning, Design overlay zoning, and is within the Central City plan district. The CX zone provides for commercial development within Portland's most urban and intense areas. The Design overlay zone provides for the conservation, enhancement, and continued vitality of areas of the City with special scenic, architectural or cultural value. This is achieved in the Central City through requiring design review to ensure that new development and non-exempt alterations to sites are compatible with the neighborhood and enhance the area. The Central City plan district contains a suite of use regulations and development standards that address unique circumstances in the central city, in keeping with goals and objectives of several adopted plans for the area.

There are no specific zoning-related regulations that impact this application, other than procedural requirements for the land use review itself. No Design Review has been requested or previously approved for the wall area/sign in question, and the applicant seeks to document nonconforming status for a painted wall decoration through provisions in Title 32, Signs and Related Regulations.

**Sign Code:** The Sign Code standards for signs on a site in the CX base zone in the Central City allow a maximum sign area of 100 square feet for any individual sign (32.32.020.A, Table 32.32-2). Both fascia signs and painted wall signs are allowed. The maximum sign area is based on the length of primary building walls on the building. For this quarter-block parcel, which has no freestanding sign on-site and retail entries at grade facing both streets, the maximum sign area allotment for all signs at the site under current regulations is 300 square feet (1.5 times the 200 feet of primary building wall).

At approximately 1,597 square feet in size, the proposed sign is nonconforming with regards to size. Regulations that apply to nonconforming signs are found in Chapter 32.36 (Nonconforming Signs) of the Sign Code. Other pertinent portions of the Sign Code involved in this application include the land use review criteria (32.38.040.D), the CX zone standards (32.32.020), and the definitions section (32.22.020).

**Land Use History:** City records indicate that prior land use reviews include the following:

- LUR 94-00874, Design Review approval of new canopies and wall-mounted fish sculpture;
- LUR 97-01231, Design Review approval of modifications to existing storefront;

- LU 13-108002 DZ: Design Review approval for 14” tall safety railing attached to the interior of the parapet wall on the roof; and
- Three Design Reviews in 1987 approved a variety of exterior alterations on the building, including a storefront remodel (DZ 55-87), a sixth floor addition (DZ 59-87) and new rooftop mechanical (DZ 71-87).

No land use reviews on the site addressed the existing west-facing wall area under consideration in this application, or included a west-facing elevation of the building to show whether or not the subject sign or painted wall area was in place at the time.

**Summary of Applicant’s Statements:** The applicant has submitted their arguments and drawings in two written submittals (Exhibits A.1 and A.2). Exhibit A.1 has a written statement and attached exhibits which include photographs, a prior land use decision, and the materials associated with an application to document the status of the sign (EA 13-194575).

**Agency Review:** A “Notice of Proposal in Your Neighborhood” was mailed **January 29, 2015**. The Development Review Section of Portland Transportation was the only agency notified for this application, and they responded without comment or concern (Exhibit E.1).

**Neighborhood Review:** No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

## ZONING CODE APPROVAL CRITERIA

### 32.38.040 Determination of Nonconforming Sign Status Review.

**A.** Purpose. This review determines if a sign has legal nonconforming sign status.

**D.** Approval criteria. The legal nonconforming status of a sign will be certified if the review body finds that the applicant has shown that the following approval criteria have been met. The applicant must show that the sign meets criteria D.1. and either criteria D.2 or D.3:

1. The sign has not been moved, structurally altered, or increased in size since November 17, 1998; and
2. The sign existed before November 18, 1998; or
3. The sign would have been allowed when established.

**Findings:** The applicant is seeking nonconforming sign status for a painted area on the west façade of the structure, facing an internal lot line. Because the adjacent lot directly to the west is developed with a lower, single-story parking structure the painted area in question is highly visible from adjacent sections of both SW Taylor Street and 10<sup>th</sup> Avenue. The applicant has submitted a photograph of the area in question with written dimensions showing an area 39’-11.5” square, and aligned with the top of the building wall, with an area of approximately 1,597 square feet.

The applicant has submitted written and photographic evidence for this painted area that shows a relatively clear history for the sign (Exhibit A.1, with attached photos and exhibits). A photograph from 1967 clearly shows a painted wall sign at the top of the area in question, with undifferentiated green paint around the sign image itself: an enframed beige background around the words “Medical Arts Parking” near the top of the building. An undated historic photograph shows the same area in question but the sign image near the top of the wall has been painted over with a dark solid color. This same undated historic photograph shows the area below the former sign as being painted in a different, slightly lighter color, which staff assumes is the original wall paint color that was below the historic sign which had been painted over. This undated photograph shows the PacWest Building (built in 1984) along with a dark, unpainted Hilton Hotel in the background (dark concrete was first painted in 1994). Therefore, the time frame of this picture is from 1984 to 1994. Subsequent photographs and the applicant’s own written statements indicate that this paint-only condition existed on the wall in

question from at least the time of the undated photograph taken from 1984-1994 until the wall was pressure-washed in September of 2013, exposing portions of the rounded beige rectangle and text from the previously painted-over historic sign.

There are two ways to document nonconforming signs, including the submission of standard evidence through a Zoning Confirmation process. The applicant pursued this path in 2013 and was denied by the City of Portland (EA 13-194575 PR, attached with Exhibit A.1). In discussing the regulations regarding losing nonconforming sign status, the City response on this earlier request can be summarized by excerpting the final three paragraphs (bold text in first paragraph added by staff for emphasis):

*"In addition, **32.36.020.H states: "Discontinuance. If there is no sign in place on a sign structure or building wall for 6 continuous months, the nonconforming rights are lost and a nonconforming sign may not be re-established. If the sign structure is unused for less than 6 continuous months, a nonconforming sign may be re-established."***

*"The evidence provided in your application and other file photographs of the property show the sign at issue was discontinued. Therefore, there is not satisfactory standard evidence to document the sign has legal nonconforming sign status."*

*"A Determination of Nonconforming Sign Status Review may be requested, as specified in Section 32.38.040. This is a Type II land use review procedure with public notice and discretionary decision by staff that may be appealed to a Hearings Officer. The current fee for this review is \$1,594.00"*

The applicant is confusing both "painted wall decorations" (1997 code) and "painted wall highlights" (today's code) with signage, which is designed to convey a message or image, and not simply be painted areas on a wall. Some definitions from the Sign Code are helpful here (all from 32.22.020, Definitions):

**Painted Wall Decorations.** Displays painted directly on a wall and which are designed and intended as decorative or ornamental feature. Painted wall decorations do not contain text, numbers, registered trademarks, or registered logos. **(1997 code, no longer in effect)**

**HH. Painted wall highlights.** Painted areas that highlight a building's architectural or structural features and that do not convey a message or image. **(current code)**

**II. Painted wall sign.** A sign applied to a building wall with paint or a thin layer of vinyl, paper or similar material adhered directly to the building surface and that has no sign structure. **(current code)**

**YY. Sign.** Materials placed or constructed, or light projected, that (1) conveys a message or image and (2) is used to inform or attract the attention of the public. Some examples of 'signs' are materials or lights meeting the definition of the preceding sentence and which are commonly referred to as signs, placards, A-boards, posters, billboards, murals, diagrams, banners, flags, or projected slides, images or holograms. The scope of the term 'sign' does not depend on the content of the message or image conveyed. **(current code)**

The painted sign area of the building wall in question was a beige rectangle shape around the words "Medical Arts Parking", but this was completely painted over many years prior to the sign being uncovered by pressure-washing in 2013. The painted area which remained, darker near the top of the building in the area covering the old sign, and with lighter paint beneath the old sign, is not a sign because it does not (a) convey a message or image and (b) inform or attract the attention of the public. It is simply an undifferentiated painted wall with no relation to the building's architecture, and with no information or visual attraction for the public. Therefore, based on the above three definitions, the area is not a painted wall sign. It is also only marginally understood as a painted wall highlight, because the paint does not align in any manner with architectural or structural features of the building. It is best classified as simply a painted end wall, as the wall in question has no significant architectural or structural features that are called out with paint color. The applicant claims that the painted

green rectangle itself, almost 40 feet square in size with no recognizable or attractive symbolism, shapes, or imagery involved, qualifies as a sign because it “conveyed the image of a green rectangle” and “was used to attract the attention of the public to the garage wall”: by this logic every blank solid color-painted end wall in the City of Portland would have grandfather rights for signage on the entire painted wall surface, which defies both common sense and the definitions above. There is no inherent design or pattern to the paint color of the end wall on this building beyond the slightly different color on the upper part that was painted over the old sign (before the 2013 pressure-washing).

The pre-1997 Sign Code and today’s Sign Code are similar in that they categorically exempt image- or message-free painted wall areas from the Sign Code and related regulations. In 1997 these were called “painted wall decorations”, and in today’s code they are defined slightly differently as “painted wall highlights”. In both cases the painted walls were not defined or regulated as signs, and therefore obtaining legal nonconforming sign status was irrelevant.

The applicant has included a copy of a prior appeal decision for a Determination of Legal Nonconforming Sign Status Review (LU 08-138536 NE, included with Exhibit A.1). This case was slightly different in that it involved an actual painted wall highlight that was original to the building, and which had been maintained over time. In that case the Hearings Officer found that the area was properly considered grandfathered as a “painted pattern on the south wall face of the Subject Property has Nonconforming Sign Status”. This example is not relevant to the current application in that we are not discussing a painted graphic element that is original to an office building, and which has been maintained over time, but instead a historic sign that was painted over, and therefore both discontinued and no longer in place for many, many years.

The sign under consideration discontinued and no longer in place on the building for many years until the 2013 powerwashing of the wall in question, and because it was discontinued for 6 continuous months or longer there are no legal nonconforming rights that can be established for old sign. Criterion D.1 cannot be met because there has been no legal sign on the site since before November 17, 1998. Criterion D.2 could have been met based on the historic sign photographs, but has no bearing on the decision in this case because the sign was removed and has no current legal status as a nonconforming sign.

Therefore, the sign in question has been discontinued, and has no legal status. It is even a stretch to consider the painted area a painted wall highlight, which is irrelevant to this application because painted wall highlights are exempt from the Sign Code regulations. The applicant’s request to document legal nonconforming sign status must be denied.

## **DEVELOPMENT STANDARDS**

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

## **CONCLUSIONS**

The applicant has requested this land use review in an attempt to document legal nonconforming status, or grandfather rights, for a historic painted wall sign on the building which was uncovered after many years in 2013 during pressure-washing of the building. Because the sign was painted over and gone for 6 continuous months or longer, it lost any grandfather status as a painted wall sign. The side wall in question can be re-painted a solid green color, or be reconfigured into a painted wall decoration that does not convey any image or message, as these are exempt from the Sign Code. However, because the historic sign rights

were lost six months after it was originally painted over some time prior to 1984, this request to establish legal nonconforming rights for a sign must be denied.

## ADMINISTRATIVE DECISION

Denial.

**Staff Planner: Mark Walhood**

**Decision rendered by:** MARK WALHOOD on March 16, 2015.  
By authority of the Director of the Bureau of Development Services

**Decision mailed: March 19, 2015**

**About this Decision.** This land use decision is **not a permit** for development. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

**Procedural Information.** The application for this land use review was submitted on November 14, 2014, and was determined to be complete on **January 21, 2015**.

*Zoning Code Section 33.700.080* states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on November 14, 2014.

*ORS 227.178* states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant did not waive or extend the 120-day review period. Unless further extended by the applicant, **the 120 days will expire on May 20, 2015**.

**Some of the information contained in this report was provided by the applicant.**

As required by Section 33.800.060 of the Portland Zoning Code, the burden of proof is on the applicant to show that the approval criteria are met. The Bureau of Development Services has independently reviewed the information submitted by the applicant and has included this information only where the Bureau of Development Services has determined the information satisfactorily demonstrates compliance with the applicable approval criteria. This report is the decision of the Bureau of Development Services with input from other City and public agencies.

**Conditions of Approval.** If approved, this project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term "applicant" includes the applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

**Appealing this decision.** This decision may be appealed to the Hearings Officer, which will hold a public hearing. Appeals must be filed **by 4:30 PM on April 2<sup>nd</sup>, 2015** at 1900 SW Fourth Ave. Appeals can be filed at the Development Services Center Monday through Wednesday and Fridays between 8:00 am to 3:00 pm and on Thursdays between 8:00 am to 12:00 pm. After 3:00 pm Monday through Wednesday and Fridays, and after 12:00 pm on Thursdays, appeals must be submitted at the reception desk on the 5<sup>th</sup> floor. **An appeal fee of**

**\$250 will be charged.** The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization's boundaries. The vote to appeal must be in accordance with the organization's bylaws. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please call the Request Line at our office, 1900 SW Fourth Avenue, Suite 5000, phone 503-823-7617, to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at [www.portlandonline.com](http://www.portlandonline.com).

**Attending the hearing.** If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Hearings Officer is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 775 Summer St NE, Suite 330, Salem, Oregon 97301-1283, or phone 1-503-373-1265 for further information.

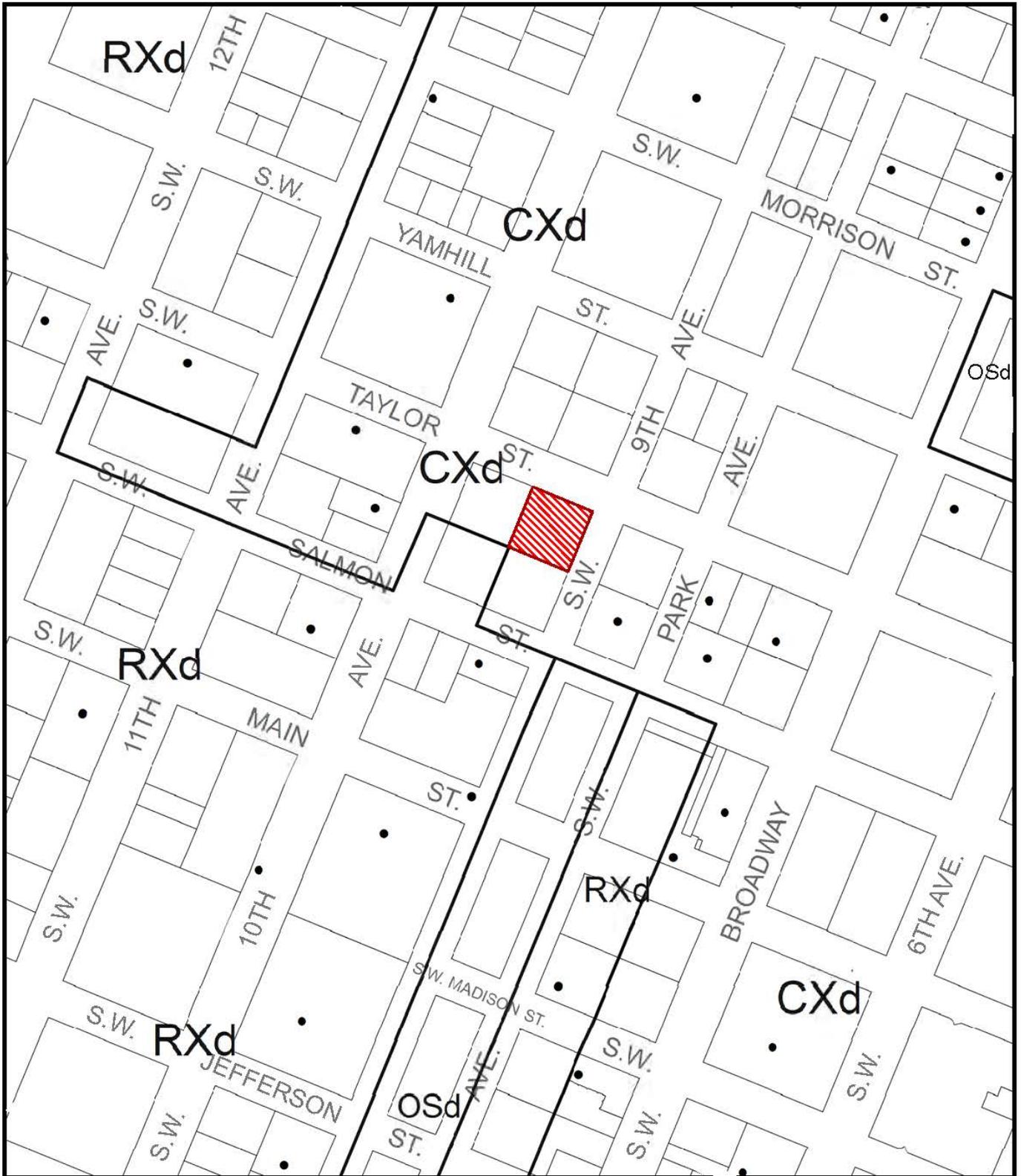
Failure to raise an issue by the close of the record at or following the final hearing on this case, in person or by letter, may preclude an appeal to the Land Use Board of Appeals (LUBA) on that issue. Also, if you do not raise an issue with enough specificity to give the Hearings Officer an opportunity to respond to it, that also may preclude an appeal to LUBA on that issue.

#### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statements
  - 1. Original narrative submittal including written statement, with attached exhibits 1-7 as itemized and listed by applicant
  - 2. Supplemental narrative, site plan and photo with dimensions, rec'd. 1/21/15
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. 8.5" x 11" site plan (attached)
  - 2. 8.5" x 14" site plan
  - 3. Photo with dimensions (attached)
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Bureau of Transportation Engineering and Development Review
- F. Correspondence (*none received at time of decision mailing*)
- G. Other:
  - 1. Original LU Application Form and receipt
  - 2. Incomplete letter from staff to applicant, sent 12/10/14

**The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).**



# ZONING



Site

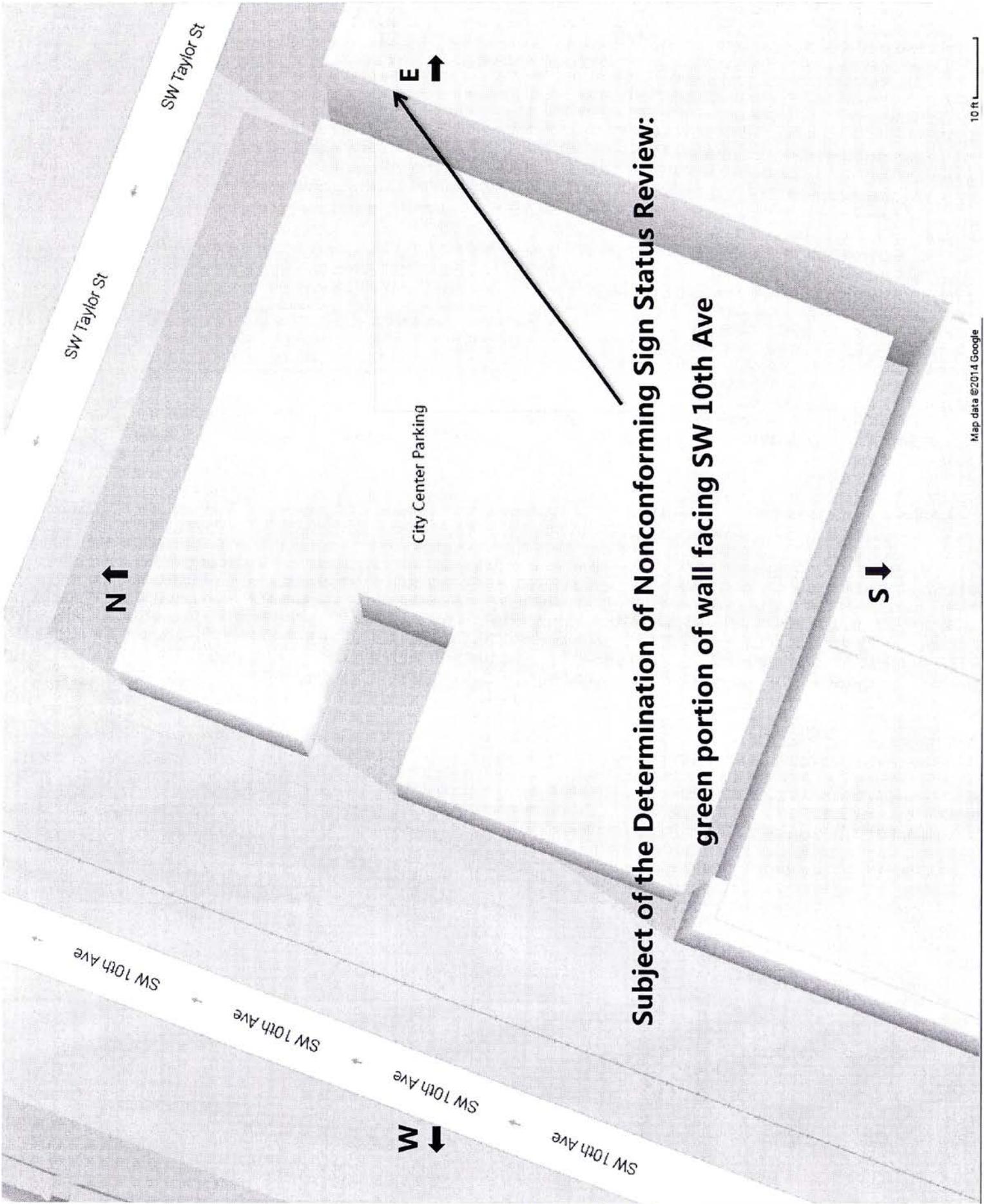


Historic Landmark

This site lies within the:  
**CENTRAL CITY PLAN DISTRICT: DOWNTOWN**  
**Sub Area: WEST END**



File No.	LU 14-237661 NE
1/4 Section	3128.3129
Scale	1 inch = 200 feet
State_Id	1S1E04AA 1800
Exhibit	B (Nov 14, 2014)



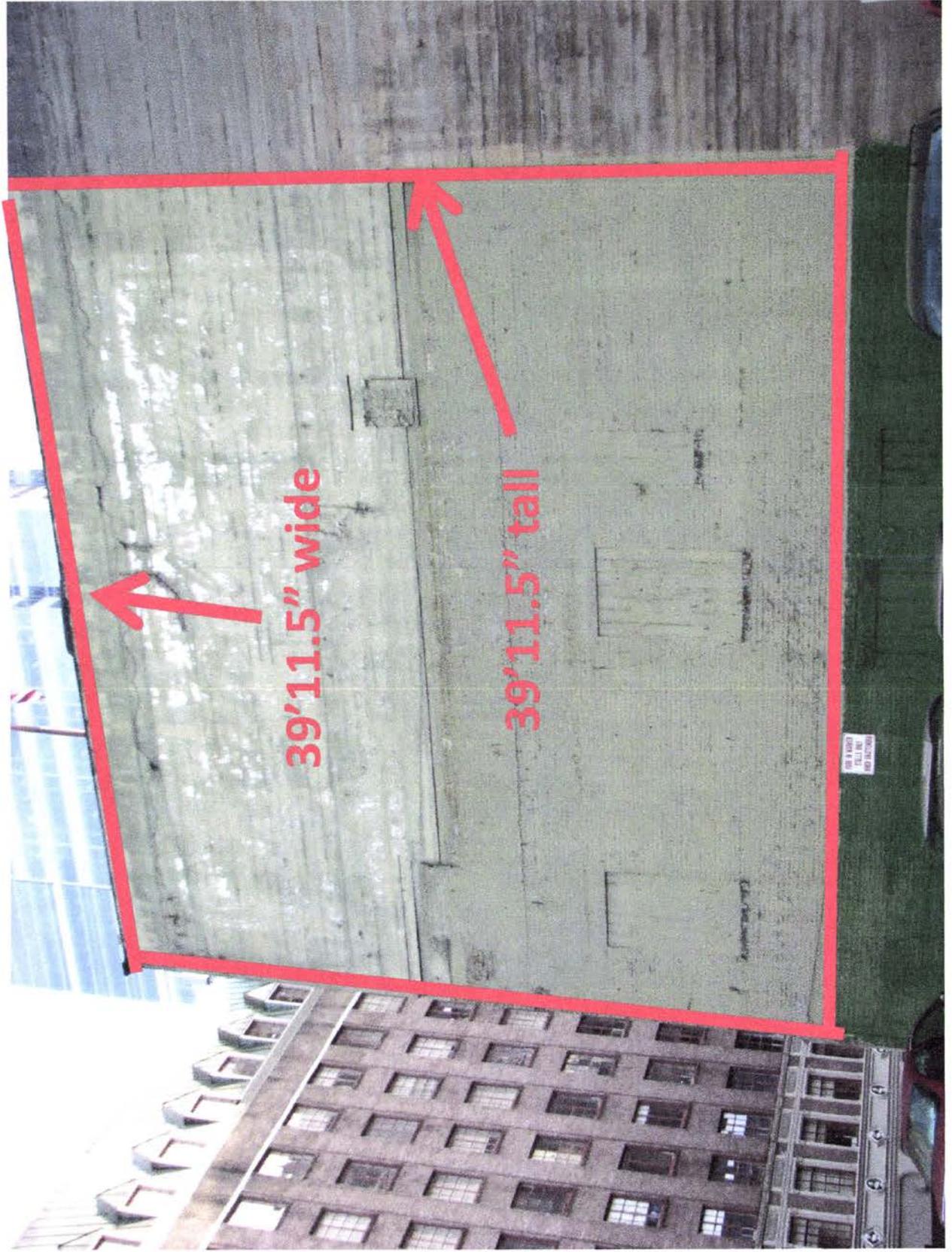
**Subject of the Determination of Nonconforming Sign Status Review:**  
green portion of wall facing SW 10th Ave

CASE NO. W14-237661 NE

EXHIBIT C.1

# 907-915 SW Taylor Sign Area

VIEW FROM WEST e SW 10TH AVE.



CASE NO. LV 14-237661 NE

EXHIBIT C.3