

May 21, 2018

Mayor Bennett and City Council
c/o Bryce Bishop
City of Salem
Planning Division
555 Liberty St. SE, Room 305
Salem, OR 97301

Re: Objection to City's Actions and Statements at May 14 Hearing
Case No. CU-ZC 17-14 (Union Gospel Mission)

Dear Mayor Bennett and City Councilors:

On behalf of Mr. Glennie, I am writing to file an objection regarding the city's actions and statements at the May 14 hearing. As you know, at the May 14 hearing, Council voted to approve UGM's application without considering our proposed good neighbor agreement condition. Bryce Bishop showed all of the other proposed conditions, but did not show or refer to our proposed good neighbor agreement condition, which was timely submitted as part of our written rebuttal argument on May 7, 2018. Our proposed good neighbor agreement condition was a material part of our written rebuttal argument, and we have a right to have that condition brought forward by staff for consideration by Council. Failure to do so was an error by the city, and as such, violated Mr. Glennie's substantial rights to a fair hearing.

At the hearing, it was not clear to me why our proposed condition was not considered. Since the May 14 hearing, I have had the opportunity to review the tape of the hearing. The tape clearly shows that in response to a question from Councilor Cook about our proposed good neighbor agreement (which was not included in Bryce Bishop's power point presentation or oral comments) City Attorney Dan Atchison said:

"Because this is [a] quasi-judicial land use [decision] and the record is closed, we can't add new evidence into the record at this time, so the conditions that have already been proposed and the conditions that the applicant is proposing now are all we have on the table."

This statement to Councilor Cook, and the fact that Bryce did not include our proposed good neighbor agreement in his materials and comments to Council regarding proposed conditions that are "on the table", clearly indicated to Council that our proposed good neighbor

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agreement condition was not "on the table" for Council's consideration, and that it should not be considered. Simply put, the actions of staff and statement by the City Attorney in that regard were both misleading and wrong, and had a material impact on the rights of Mr. Glennie to a fair hearing under ORS 197.763.

These actions and statements are misleading because they imply that our proposed conditions cannot and should not be considered by City Council, which in fact is exactly what happened. Based upon my review of the tape, Council did not consider our proposed good neighbor agreement condition because it was under the impression from the actions of staff and the confirming statement of the City Attorney that our condition was "not on the table". These actions and statements are wrong, because as a matter of fact, our proposed conditions of approval were timely submitted on May 7, as part of our written rebuttal argument. Furthermore, pursuant to ORS 197.763, our May 7 written rebuttal argument, which included our proposed good neighbor agreement condition, is part of the record because that document was timely received by the city and was not rejected. In summary, it was prejudicial, unfair, and wrong, for staff and the city attorney to indicate at the May 14 hearing that our good neighbor agreement condition was "not on the table". Our good neighbor agreement condition was on the table, and should have been considered by Council at the hearing.

We are requesting that this objection be included in the record and considered by Council at its upcoming meeting on May 29, when this matter is scheduled for final action by Council. We respectfully request that our objection be considered at the meeting, and that deliberations be reopened to consider our proposed good neighbor agreement condition.

Sincerely,

Davis Wright Tremaine LLP



Phil Grillo

cc: Client