

Memorandum

To: Tex Haeuser AICP, Planning Director

From: Natalie West 

Date: 6/20/2013

Re: SoPo Municipal Code 27-1322.D.5 & 7 as applied to Portland Pipeline

ISSUE

Do existing South Portland Municipal Code §§ 27-1322.D.5&7 apply to Portland Pipeline's Pier 2, and prohibit the construction of stacks and vapor transfer arms exceeding 20'?

CONCLUSION

Based on my review of the zoning ordinance, it appears that the existing South Portland zoning ordinance prohibits Portland Pipeline from constructing structures and stacks such as those requested in its 2009 submission.

APPLICABLE FACTS

In 2009, Portland Pipeline applied for a Site Plan for flow reversal of 18" pipeline. The company's site plan application included various equipment and structures to be located on Pier 2. That application was granted but the permit expired in 2012. Many people in the community anticipate that Portland Pipeline will submit a similar application in the future.

ANALYSIS

Portland Pipeline's Pier 2 is located in the Shoreland Area Overlay District, as that District is defined in SPMC§27-1311. "The provisions of this Article also apply to any and all buildings or structures built on, over or abutting a dock, wharf or pier..." (page XIII-6, Exhibit 1)

The word "structure" is defined to mean "Anything that is built or constructed by a person or persons." (SPMC§27-201, page II-26, Exhibit 2.) The 2 breasting dolphins, 24 pilings, 2 new above pier vapor transfer arms, and 2 vapor combustion units are "structures" as defined in the zoning ordinance.

Land uses in the Shoreland Area Overlay District must comply with performance standards set forth in SPMC§27-1322. (page XIII-11, Exhibit 3.) Paragraph D of that section sets forth performance standards for "[p]iers, docks, wharves... and other

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structures and uses extending over or beyond the normal high-water line of a water body” (Page XIII-18-19, Exhibit 4.). Pier 2 is such a pier.

There are two paragraphs in this section that seem particularly relevant. Paragraph 27-1322.D.7 prohibits any structure higher than 20 feet on the wharf. This paragraph appears to prohibit the vapor transfer arms and vapor recovery units that were included in the 2009 application.

Paragraph 27-1322.D.5 is also relevant. That paragraph sets forth a limited exemption for expansion of “non-water dependent structures existing as of 2/27/01 and located in the Shipyard District S... are permitted to expand up to a size that is less than 30% of the floor area or volume, as those terms are defined in Section 27-1306 (*sic*) during the life time of the building.”

If the sentence applies, it would be necessary to determine whether the proposed structures are less than 30% of the floor area or volume of the existing structure. While one might argue about what constituted the “existing structure” it seems clear that the vapor recovery arms and vapor recovery units exceeded 30% of the volume of any existing structure. Moreover, the exemption does not apply the structure existed on 2/27/01. In that regard, Portland Pipeline’s Pier 2 was upgraded in 2002, so it is not clear that any proposed structure actually existed in 2001.

If the proposed structures are not covered by the 30% exemption, they are prohibited “unless the structure requires direct access to the water body as an operational necessity.” Whether or not the a vapor recovery unit or vapor transfer arm requires direct access to the water body may be a question of fact, but it seems apparent that there vapor recovery systems are not inherently water related so that direct access to the water is an “operational necessity.”

For these reasons, it seems apparent that Portland Pipeline’s project does not comply with South Portland’s existing ordinance, both paragraphs 5 and 7 of section 27-1322.D, irrespective of whether the Waterfront Protection Ordinance is approved by the voters.

PLEASE REVIEW THIS MEMORANDUM AND CALL ME AT YOUR EARLIEST CONVENIENCE TO DISCUSS.

We would like to clarify the issues raised in this memo as soon as possible. You can reach me at 207-400-1782.

It is very important for us to know how the City interprets and applies its current ordinance before we meeting with local officials and community groups.

Thank you.