

PROCEDURE FOR PUBLIC HEARING FOR LAND USE HEARINGS
[MAYOR: READ ALOUD ALL HIGHLIGHTED IN YELLOW
FOLLOW THE STEPS AND ASK EACH QUESTION IN FULL]

1. CALL TO ORDER

The public hearing is now open. This is a hearing for the City Council to listen to and consider an appeal “on the record” of the Planning Commission’s approval of a request for Outline Plan Subdivision and Site Design Review to construct a 12-unit, 13-lot Cottage Housing Development at 210 Alicia Avenue, and a Tree Removal Permit to remove two trees.

This is a quasi-judicial land use hearing which requires the observance of certain procedural formalities. We’ll take a few moments to cover some preliminary matters and required statements. This is an appeal “on the record” of a Type II land use decision by the Planning Commission.

Rules for the conduct of “on the record” appeal hearings are detailed in the Ashland Municipal Code section 18.5.1.060.I and were distributed with the Notice of Appeal mailed to qualified parties. Please note that the only persons permitted to make presentations to the Council at this hearing are staff, the applicant, the appellant, and qualified parties who participated in the Planning Commission hearing process **AND** submitted written arguments ten days prior to this hearing. It should also be noted for clarity that in an “on the record” appeal, the Council’s role is limited to determining whether a factual or procedural error occurred in the original hearing before the Planning Commission. The Council will not revisit the facts of the application, but is instead to consider whether there is evidence in the existing record to support the Planning Commission’s original decision with regard to each of the five grounds for appeal.

For those parties qualified to participate, your oral arguments tonight are to be confined to the substance of your previously submitted written arguments and are limited to the five identified points of appeal. Qualified parties wishing to present oral arguments have made prior arrangements with staff to participate tonight via Zoom. Within about 10 minutes we will begin the hearing, and I will call you when it is your turn to present your arguments.

OPEN RECORD

This appeal “on the record” will be processed according to AMC 18.5.1.060.I. The identified grounds for the appeal are shown on the screen now and will be read aloud by the City Recorder.

[**City Reorder reads appeal grounds: 1)** The Planning Commission and Planning Department failed to provide an adequate public hearing as required in AMC 18.5.1.060 and the Governor’s Executive Order #20-16. **2)** The Planning Commission erred in failing to mitigate a non-conforming development. The existing driveway is closer to the neighbor’s driveway than allowed by code, and use by 12 units rather than only one will intensify the use of the non-conforming driveway without mitigation. **3)** The Planning Commission decision fails to meet the purpose and intent of the Cottage Housing Ordinance. **4)** The Planning Commission erred in finding that the proposed development complies with city street standards. **5)** The Planning Commission erred in finding that the proposed development will not cause a city facility (sewer) to operate beyond its capacity.]

SCOPE OF APPEAL

The Council’s consideration of the appeal is limited to these five grounds. A speaker’s oral testimony must be limited to points already addressed in written argument and based on the existing record and must relate to these five appeal grounds. If you get off track or your testimony does not relate to these five appeal

grounds, I will stop you in order to avoid confusion. Any questions from the Council will not count against a speaker's allotted time.

In your oral testimony, if you fail to raise an issue that is within the scope of the five grounds for appeal, then you cannot argue that issue later on in an appeal of the Council's decision.

The remainder of this hearing process will consist of the following elements

1. I will ask Council members for applicable preliminary disclosures.
2. Persons permitted to make presentations to the Council at this hearing may submit any challenges to Council members for bias, prejudice or conflict of interest.
3. Planning staff will present the staff report.
4. The applicant and the appellants will each have ten minutes to present their arguments.
5. Qualified parties who participated in the original Planning Commission hearing process AND subsequently submitted written arguments in advance of this hearing will have three minutes to summarize their written arguments.
6. The applicant will have 5 minutes for rebuttal, if requested.
7. I will then close the appeal hearing, and, after any advice from Legal Counsel or City staff, the Council will deliberate to a decision.

2. ABSTENTIONS, CONFLICTS, EX PARTE CONTACTS

This is the time for any members of the Council to declare any conflict of interest or bias and to report any ex parte contact on this matter. If you declare a bias, conflict or ex parte contact, you may still participate in the hearing provided your conflict or bias is not so material or deeply held that you cannot make a decision based on the law because of that conflict, bias, or prior contract. If, however, you feel you cannot make a decision based solely on the applicable approval criteria and the facts and evidence in the record, you may choose to abstain by stating that it is your choice and stepping down from your chair. However, if your presence is required for a quorum, you should stay but not participate or vote. Do any members of the Council wish to declare a personal bias or conflict of interest or report any ex parte contact on this matter?

IF contacts are reported, consider the following:

- a. **Ex-parte Communications:** *If a member has had ex parte communications, the substance of the contact must be disclosed. The presiding officer should question the member if the disclosure of the written or oral communication is not complete. If the presiding officer fails to do so, a member may request a more full disclosure (point of order). Legal counsel will also monitor the disclosure.*
- b. **Conflict of Interest:** *If a member has an actual or potential Conflict of Interest, the member must both announce the conflict and explain the nature of the conflict. If the Conflict is only a potential conflict the member may participate and vote after making an affirmative statement of impartiality (see below). If the Conflict is an actual conflict, the member must then announce that the member will not be participating or voting.*
- c. **Actual personal bias, prejudice:** *If a member is actually personally biased, (that is, the member cannot make the decision based upon applying the relevant Code standards to the evidence and argument presented), the member must announce the nature of the bias and also announce that he/she will not be participating or voting. The member should leave the hearing to avoid accusations of non-verbal communication. (See also "Challenges" below.)*
- d. *After disclosure of an ex parte contact, (or potential conflict of interest or after a challenge for bias (see below) the member should either abstain or make the following affirmative statement of impartiality:*

“I have not prejudged this application and I am not prejudiced or biased by my prior contacts or involvement; I will make this decision based solely on the application of the relevant Code standards to the facts and evidence in the record of this proceeding.”

After disclosure of any ex parte a contact or potential conflict of interest and any affirmative statement of impartiality, the presiding officer must make the following announcement:

Any person has the right to rebut the substance of the evidence or information disclosed. Please present your rebuttal evidence on the substance of any ex parte contacts, bias, or actual conflict of interest during the normal time allowed for testimony which has been established for this proceeding. Please reduce any bias, conflict of interest, and prejudgment challenges to writing with supporting evidence and provide these to the City Recorder.]

2. CHALLENGES

City Recorder, do we have any challenges to members of this hearing body for bias, prejudgment or conflict of interest?

IF a challenge is made, the challenge needs to be entered into the record and summarized by the presiding officer.

If a member is challenged for bias, the member should make the above statement of impartiality or abstain and not participate further.

3. STAFF REPORT

At this time, I call for staff to summarize the application and grounds for appeal and present staff’s recommendation. Bill and Derek...

4. APPLICANT’S PRESENTATION

Applicant **Amy Gunter** of Rogue Planning and Development Services, LLC, you will have 10 minutes to present oral testimony. At 9 minutes you will be asked to conclude your remarks. Ms. Gunter, please begin by stating your full name and mailing address for the record and proceed.

5. APPELLANT’S PRESENTATION

Now the appellants, **Dan and Claudia Van Dyke** will have 10 minutes to present your oral arguments. At 9 minutes you will be asked to conclude your remarks. Mr. & Mrs. Van Dyke, please begin by stating your full names and mailing address for the record and proceed.

6. PARTIES’ ORAL ARGUMENTS

Now each of the qualified parties who participated in the original hearing **and** submitted written arguments in advance of this hearing will have up to 3 minutes to present oral testimony summarizing their written arguments; when the 3 minutes are up, you will be asked to conclude your remarks. When it is your turn to speak, please begin by stating your name and mailing address for the record and proceed.

Qualified Parties List

- First up is **Michael Goldman**...
- And now **Sue Jaffe**...
- And finally, **Kent Patrick-Riley**...

7. REBUTTAL BY APPLICANT

If the applicant has any rebuttal to the evidence presented by those questioning or opposing the application, you

will have five minutes for your rebuttal.

8. CLOSE PUBLIC HEARING

At this time, I close the public hearing. The record is now closed.

9. ADVICE FROM LEGAL COUNSEL AND STAFF

Does the Council have any questions of Legal Counsel or Planning staff, or does the staff have any matters they wish to address?

10. COUNCIL DELIBERATION AND DECISION

How would the Council like to proceed?

GROUNDNS FOR APPEAL

- 1) The Planning Commission and Planning Department failed to provide an adequate public hearing as required in AMC 18.5.1.060 and the Governor's Executive Order #20-16.
- 2) The Planning Commission erred in failing to mitigate a non-conforming development. The existing driveway is closer to the neighbor's driveway than allowed by code, and use by 12 units rather than only one will intensify the use of the non-conforming driveway without mitigation.
- 3) The Planning Commission decision fails to meet the purpose and intent of the Cottage Housing Ordinance.
- 4) The Planning Commission erred in finding that the proposed development complies with city street standards.
- 5) The Planning Commission erred in finding that the proposed development will not cause a city facility (sewer) to operate beyond its capacity.