

MAYOR'S SCRIPT FOR PUBLIC HEARING ON TYPE II LAND USE APPEAL

[READ ALOUD ALL BLUE TEXT HIGHLIGHTED IN YELLOW]

[IN CASE OF ABSTENTION OR DISCLOSURE OF BIAS, CONFLICT OR EX PARTE CONTACT, FOLLOW ITALICIZED INSTRUCTIONS HIGHLIGHTED IN GRAY AND READ BLUE TEXT HIGHLIGHTED IN GRAY]

1. CALL TO ORDER

The Public Hearing is now open. This is a hearing for City Council to listen to and consider an appeal “on the record” of the Planning Commission’s approval of Planning Action Number PA-T2-2018-00002, a request for Site Design Review approval to construct a 15-unit apartment complex consisting of six buildings, a separate laundry facility and 30-space parking lot for the property at 880 Park Street. The application includes requests (1) for Exception to the Street Standards to retain the existing asphalt multi-use path along Siskiyou Boulevard and to construct a meandering sidewalk along Park Street frontage rather than installing new city standard sidewalks and parkrow planting strips, and (2) for a Tree Removal Permit to remove five trees. An existing approximately 895 square foot shop building on the property would also be demolished as part of the proposal.

This is an appeal “on the record” of a Type II land use procedure. 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.

Rules for the conduct of the hearing are in the Public Hearing Format for Land Use Hearings – A Guide for Participants and Citizens and are available on the wall in the back of this room. Please note that the only persons permitted to make presentations to the Council at this hearing are staff, the applicant, the appellant, and persons who participated in the Planning Commission hearing process AND submitted written arguments prior to this hearing.

For those of you who intend to participate, your evidence must be in written or spoken testimony. If you intend to speak, you must fill out the yellow speaker request form located at the back of the room and give it to the City Recorder. Within about 10 minutes we will begin the hearing, and I will call you when it is your turn to present your evidence. Now, if you have not done so already, this is your time to provide your request forms and any written evidence to the City Recorder.

This appeal “on the record” will be processed according to AMC 18.5.1.060.I. This means the Council may not re-examine issues of fact and must limit its review to determining whether there is substantial evidence to support the findings of the Planning Commission and determining whether errors in law occurred at the Planning Commission level.

The identified grounds for the appeal, which were set forth in the notice of appeal, are shown on the screen now and will be read aloud by the City Recorder.

[City Recorder reads appeal grounds.]

The Council’s consideration of the appeal is limited to these five grounds. A speaker’s testimony or evidence must be limited to issues that (1) were already addressed in the existing record; (2) were raised before the Planning Commission with sufficient specificity to enable the Commission and the parties to respond; and (3) must relate to these five appeal grounds. If you get off track or your testimony does not relate to those five appeal grounds, I will stop you in order to avoid confusion and wasting time. Any questions from the Council will not count against a speaker’s allotted time.

In your testimony or evidence, if you fail to raise an issue that is within the scope of those five appeal grounds, then you cannot argue that issue later 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 to the City Recorder any written challenges to Council members for bias, prejudice or conflict of interest.
3. Planning staff will present the staff report.
4. The applicant and the appellant will each have ten minutes to present their arguments.
5. Parties who participated in the Planning Commission hearing process AND submitted written arguments in advance of this hearing have three minutes to summarize their arguments.
6. The Applicant will have the opportunity to take up to five minutes for rebuttal of points made by those questioning or opposing the application.
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 decide based on the law because of that conflict, bias, or prior contract.

If, however, you feel you cannot decide based solely on the applicable decision 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 requires 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 a member discloses ex parte contacts conflicts or bias, consider the following:

Ex-parte communications: If a member has had ex parte communication 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 complete disclosure (point of order). Legal counsel will also monitor the disclosure.

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.

Actual personal bias, prejudice: If a member is 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 room to avoid accusations of non-verbal communication. (See also "Challenges" below.)

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 (see statement in red font at top of page 3), 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 written challenges to members of this hearing body for bias, prejudice or conflict of interest? [If no challenge is made, proceed to "Staff Report."]

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, if appropriate, make the affirmative statement of impartiality (at top of page 3) or abstain and not participate further.

3. STAFF REPORT

At this time, I call for the staff to summarize the applicant's proposal and summarize the five appeal grounds and staff's evaluation of them. Bill and Derek...

4. APPLICANT'S PRESENTATION

Would the applicant or the applicant's representative please come to the podium. You will have 10 minutes to make any comments you may have regarding the application; at 9 minutes you will be asked to conclude your remarks. Please state your name and address and proceed.

5. APPELLANT'S PRESENTATION

Would the appellant COLBY MORGAN please come to the podium? You will have 10 minutes to make any comments you may have regarding the application; at 9 minutes you will be asked to conclude your remarks. Please state your name and address and proceed.

6. PARTIES' ORAL ARGUMENTS

Would the following parties please come to the podium., state your name, address and make any comments you may have for the Council regarding the application?

- VIRGINIA DUGAN
- DAVID & LAUREN HALL
- KEN & MIA MORRISH
- TIM & JANET TURK

You will have 3 minutes to make any comments you may have regarding the application; when the 3 minutes are up, you will be asked to conclude your remarks. When it is your turn to speak, state your name and address and proceed.

7. REBUTTAL BY APPLICANT

Now the applicant may, if he/she wishes, provide up to five minutes of rebuttal to arguments presented by those questioning or opposing the application.

8. CLOSE PUBLIC HEARING

Now, I close the public hearing. The record is now also 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

Council may affirm, reverse, modify, or remand the Planning Commission's decision. The Council may not re-examine issues of fact and must limit its review to determining whether there is substantial evidence to support the findings of the Planning Commission and determining whether errors in law occurred at the Planning Commission level.

How would the Council like to proceed?