

**ASHLAND CITY COUNCIL
BUSINESS MEETING MINUTES
October 3, 2023**

Executive Session

Mayor Graham, Councilor Hyatt, Bloom, Dahle, Kaplan, DuQuenne and Hansen were present. Police Chief Tighe O'Meara, Deputy City Manager Sabrina Cotta, Interim Human Resources Director Molly Taylor and Acting City Attorney Doug McGeary were present. Items discussed were:

1. Deliberations with persons designated by the governing body to carry on labor negotiations, pursuant to ORS 192.660(2)(d).
2. City Manager Review, pursuant to ORS 192.660(2)(i).

I. CALL TO ORDER

Mayor Graham called the meeting to order at 6:09 p.m.

1. Land Acknowledgement

Councilor Hanson read the land acknowledgement.

II. PLEDGE OF ALLEGIANCE

Mayor Graham led the pledge of allegiance.

III. ROLL CALL

Mayor Graham, Councilor Hyatt, Dahle, Kaplan, DuQuenne and Hansen were present. Councilor Bloom was absent.

IV. MAYOR'S ANNOUNCEMENTS

1. Indigenous Peoples' Day Proclamation

Mayor Graham read the proclamation. She announced 2023 Pride Weekend was this weekend starting with events Thursday October 5, 2023, through Saturday October 7, 2023. The parade on Saturday would start at noon.

V. APPROVAL OF MINUTES

1. Minutes of the September 18, 2023 - Study Session-Business Roundtable
2. Minutes of the September 19, 2023 - Business Meeting

Council Hyatt noted a correction in the Study Session-Business Roundtable minutes on page 1. The word "even" should be "event."

Councilor Hyatt/Hanson m/s to approve the minutes of the September 18, 2023, Study Session-Business Roundtable as corrected and the minutes of September 19, 2023, Business Meeting. Roll Call Vote: Councilor Hansen, Dahle, Hyatt, DuQuenne, and Kaplan, YES. Motion passed.

adequately protected, the state was not allowed to do a more extensive remedial. In this case, public comment might adjust the cleanup plan. The original plan was to use dump trucks to remove the soil, but DEQ altered the plan based on community feedback. Mr. Nemeth confirmed UPRR would be responsible for weed abatement on the three acres with the soil cap and natural vegetation planted.

Ms. Turnbolm addressed multifamily residential in an area with urban residential standards. In an apartment complex it is assumed people will not be digging in gardens or playing on the land. Mr. Nemeth added people typically lived in a single family for 30 years. Exposure would be greater in that circumstance.

Mr. Hanson clarified that once DEQ certified a cleanup, if new information was discovered they could open the case again.

Barry Thalden/Ashland/Had initially opposed the cleanup plan but this plan reversed his position. DEQ could not force UPRR to clean this up to higher standards. Almost nine acres could be available for mixed use development or urban residential. Ashland needed additional housing. UPRR would coordinate and pay for the work.

Councilor Hansen/Hyatt m/s the city council formally request the Department of Environmental Quality to approve the recommended revision and remediation action plan for the Union Pacific Railyard, ECSI #1146 as proposed with the condition that the 11.7 acres are clean to the urban residential standard and the remaining three acres are encapsulated and deed restricted to protect public health. We believe this approach strikes a balance between development interests and safeguarding the wellbeing of our community while ensuring that the site is developed responsibly. DISCUSSION: Councilor Hansen appreciated Mr. Thalden's comments. Housing was important for the city to help facilitate and he was eager to invite new neighbors into the city of Ashland. This was also an economic development he strongly supported. It was not something he wanted to compromise safety on. DEQ had listened to the community and stopped the cleanup due to truck traffic. Councilor Hyatt supported the motion for two reasons. Currently, they have been living under option one to do nothing for over a decade. This plan provides a level of protection, and no plan is perfect. This council has verbalized values of reducing greenhouse gas emissions and increasing housing and housing affordability. By making those eight acres available, we go directly to working those values. We can start to further address housing needs and affordability needs. She thanked Mr. Thalden for his testimony and supported the motion. Councilor DuQuenne supported the motion. Nothing had been done since 1993 and to prolong the situation was not in the city's best interest. This was buildable property in the urban growth boundary. They needed housing and needed to expand the tax base. She was eager to hear from the community and was glad they had until October 31, 2023, to comment. Councilor Kaplan clarified the motion should read 11.7 acres cleaned up to urban residential. Councilor Hansen confirmed he intended it to be 11.7 acres. Councilor Kaplan wanted to see high density development to meet several council objectives for

Mr. Goldman responded no. The Planning Commission had determined an exception was needed. It had gone to council who affirmed an exception to on-street parking.

Councilor Kaplan asked if this two-part process was unusual. Mr. Goldman replied it was common for a subdivision greater than three units. The applicants had not done all the final civil engineering showing where all the utility locates are and had not looked at all the dimensions of the property in detail. They wanted an approval for the outline plan which shows the dimensions of the lots. They will do all the engineering and come back to demonstrate that the final plan does not deviate from the outlines plans that were presented and approved. The final plan would be a Type I planning action that will include noticing the neighborhood to comment on any revisions made between the outline plan and the final plan.

Councilor Kaplan/DuQuenne m/s to continue the public hearing beyond 8:00 p.m.

Roll Call Vote: Councilor Kaplan, Hansen, Hyatt, Dahle and DuQuenne, YES. Motion passed.

Applicants Report

Robert Kendrick/Kendrick Enterprise/Casita Developments/Mr. Kendrick clarified the thirty 250 square foot (sf) units were supplementary to be affordable components of thirty-eight units. They were there to meet a market range that was below the affordable units they were required to build under the ordinance. They were never meant to be HUD compliant studio units. Staff made conditions of approval that they comply with HUD requirements of 350 sf. HUD compliant one-bedroom units are 500 sf. They left all the units noted at 499.9 sf because they did not know which buildings the units were going in. But they know they could push the threshold one inch for 500 sf. They were making the 350 sf units 499 sf and throwing in another thirty 250 sf units.

This was the third hearing. He described how the project was intended to meet the community's development and health. The 230 units proposed would pivot continued rent increases to lower rents. It would drive rents to normalcy. Typically, rents increase 9.6% every year. Last year, it was 16.9%. Rents had increased 60% since he submitted this project in 2019. There was no public good made by Rogue Advocates to our community by the constant appeals and delays of needed housing. The only benefits go to Craig Anderson and Rogue Advocates. Rogue Advocates was in Williams, OR They claim to protect farms, streams, and support housing. Before Grand Terrace, they were collecting less than \$10,000 a year. Craig Anderson and Rogue Advocates attacks on Grand Terrace in 2021 made their revenue grow over 900% to \$90,000. By the second application appealed in 2022, their revenue increased 130% and they received \$134,000. He questioned where this money was coming from and where it was going. Craig Anderson's employment was exclusively spent on Grand Terrace, attacking him, the city, and its members on social media of being in bed with each other. It has nothing to do with farms, streams, or Grand Terrace. He thought it was about keeping money coming in from rents on property worth less, so rents are allowed to keep increasing. He supported the fee staff proposed tonight on another application. However, due to information from his attorney that night, and with respect to staff, he withdrew

departments and divisions. The contract was for the biennium. Mr. Fleury planned to send Evan Brooks the CIP book so they could look for grants for the high priority projects.

Councilor Kaplan/Hansen m/s to approve a Legal Department approved professional services contract with Evan Brooks Associates Inc. for Grant Support Services in the amount of \$150,000.

DISCUSSION: Councilor Kaplan thought this would create a better use of staff resources. Councilor Hansen agreed. It looked like a great organization with expertise and staff. Councilor DuQuenne had mixed feelings because it was not budgeted. She knew the grants were out there but was not comfortable supporting the motion. Mayor Graham commented on the difficulty of scanning the federal system looking for funding through hundreds of programs and writing grants. This was the best investment they could make. She was glad to see it in front of the council.

Roll Call Vote: Councilor Hansen, Dahle, Hyatt, and Kaplan, YES; Councilor DuQuenne, NO. Motion passed 4-1.

3. Approval of multiple Public Contracts for internet Bandwidth

IT Director Jason Wegner and AFN Operations Manager Chad Sobotka provided information on contracts expiring at the end of October 2023. Staff purchased bandwidth from organizations around Oregon to ensure carrier and path diversity. Mr. Sobotka provided a presentation included in the packet:

- Current Usage/Cost
- New Bandwidth Contract
- Internet Bandwidth Goals
- Questions?

Mr. Sobotka explained Cogent was a Tier I provider the city had partnered with in the past. He had talked to Hunter who was working on a path to San Jose. Once it was completed, he would research that for the city. He confirmed customer speeds would remain fast and these changes would not impact customer service.

Councilor Hyatt/Dahle m/s approval of bandwidth contracts, with the following providers: Hunter Communications, LS Networks and Cogent, for the term of November 1, 2023, through October 31, 2025 (including three 1-year options to extend after 10/31/2025) in the combined total of \$180,552.

DISCUSSION: Councilor Hyatt thanked staff. Councilor Dahle added how path diversity was critical to network structure. **Roll Call Vote: Councilor Hyatt, Hansen, Dahle, DuQuenne and Kaplan, YES. Motion passed.**

XIV. OTHER BUSINESS FROM COUNCIL MEMBERS/REPORTS FROM COUNCIL LIAISONS

Councilor Hansen shared information from the Transportation Advisory Committee's meeting on September 21, 2023. He went on to announce the Ashland Mountain Challenge would happen on September 30, 2023. They were expecting four hundred riders. Also, Mt. Ashland Ski was getting a new lift from a donation made by the DeBoer's.

Councilor Kaplan announced the Climate and Environment Policy Advisory Committee scheduled public hearings for October 18, 2023, and October 26, 2023, regarding greenhouse gas from burning methane gas and new residential construction. The Housing and Human Services Committee announced the annual rent burden forum November 9, 2023, at the Public Library.

Councilor DuQuenne announced they were short members on the Social Equity and Racial Justice Committee and invited people to apply. She welcomed Councilor Dahle as the second liaison on the committee. She announced the Chamber and Travel Ashland annual dinner Thursday, October 5, 2023, at the Ashland Hills Hotel.

Councilor Hyatt noted the Early Learning Ad Hoc Committee had two local preschool advisors attend a meeting on small scale models that typically provided for ten students or less.

Councilor Dahle announced the Historic Preservation Advisory Committee was updating their work plan, continuing a discussion on marking Ashland Places, and working on a plaque highlighting Siskiyou Boulevard.

XV. ADJOURNMENT OF BUSINESS MEETING

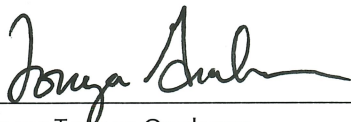
Councilor DuQuenne/Hyatt m/s to adjourn the meeting at 9:26 p.m. Voice Vote: ALL AYES. The meeting adjourned at 9:26 p.m.

Respectfully Submitted by:



Clerk of the Council Pro Tem Dana Smith

Attest:



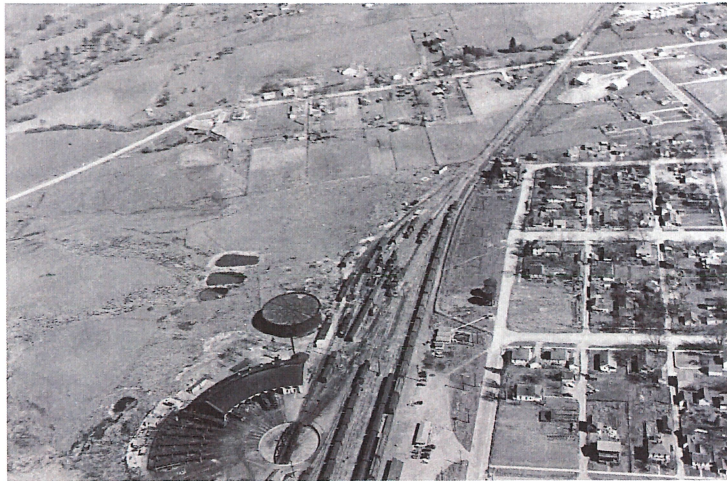
Mayor Tonya Graham

Site History and Revised Cleanup Plan

Union Pacific Railroad – Former Ashland Rail Yard

ECSI #1146

Ashland City Council Meeting
Oct. 3, 2023



Outline



Site background

Location
Photos
History



New cleanup plan

Supplemental Remedial Investigation/Feasibility Study
Impacted Areas
Cleanup considerations



Estimated project timeline



Questions

Site vicinity map



Total historic Southern Pacific parcel was approximately 21 acres.

Former rail yard parcel is 11.7 acres.



Photo of Site – Facing southeast from Clear Creek Drive

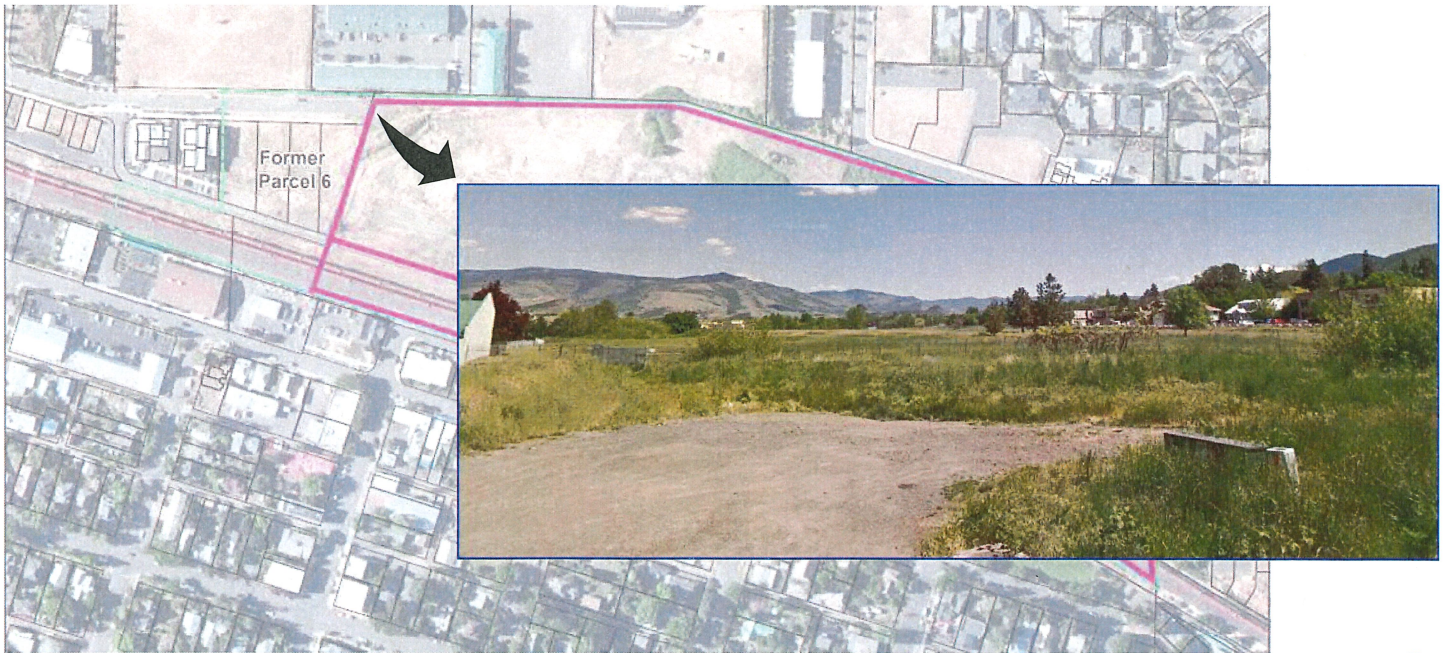


Photo of Clear Creek Drive – Facing east



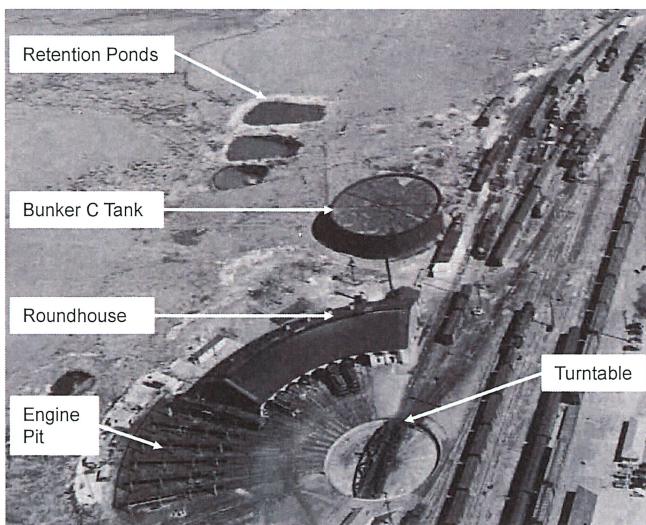
Photo of Williamson Way – Facing west



Photo North of A Street – Facing west-northwest



Site use



- 1887-1986 Locomotive fueling, maintenance, and railcar repair.
 - Petroleum hydrocarbons, polycyclic aromatic hydrocarbons (PAHs), metals
- 1980s Most buildings removed.
- Railroad is currently active but the rail yard is undeveloped and inactive.



DEQ Voluntary Cleanup Program

Releases

- Contaminants released and reported.
- Responsible party works under DEQ oversight.

Exposure

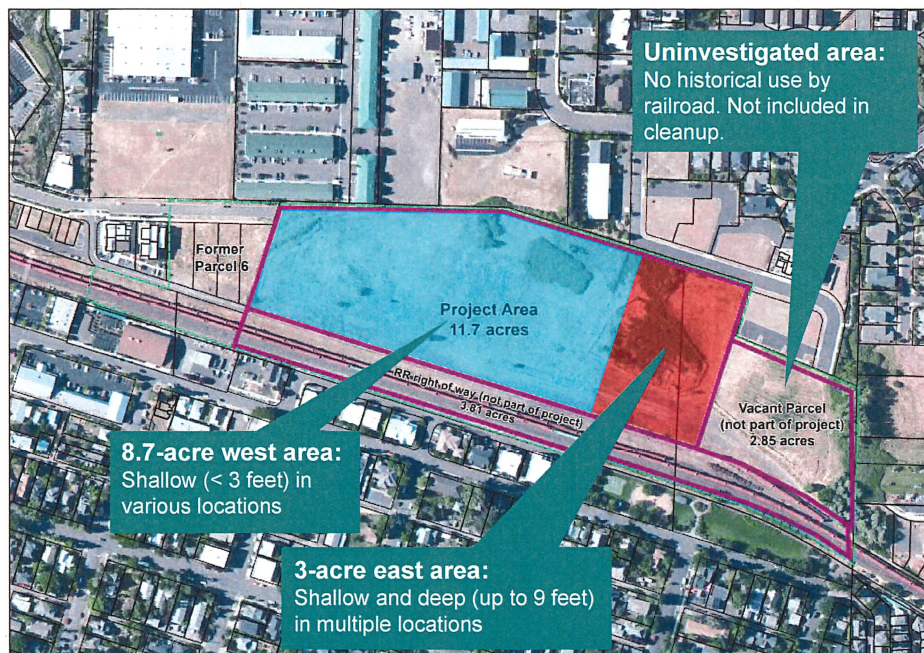
- Extent of contamination is determined.
- Contaminants of concern are identified.
- Risks to human health and environment are evaluated.

Solutions

- Protective cleanup levels are determined.
- Cleanup plans are evaluated and selected.
- DEQ confirms when cleanup is complete.



Impacted areas



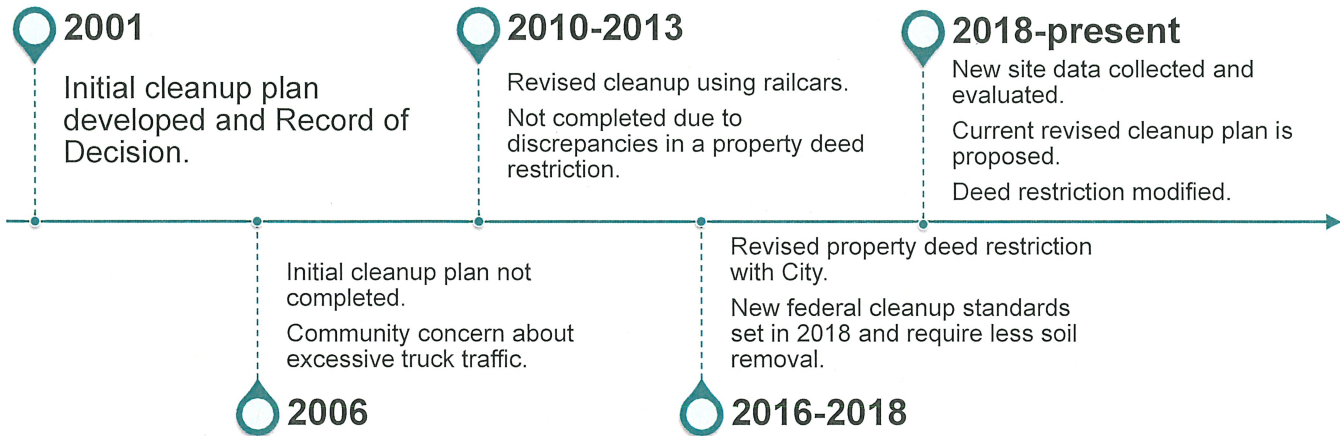
LEGEND
Previous Identified Property Boundary
Property Boundary
Parcels

- Soil
 - Petroleum compounds from bunker C fuel and diesel
 - Lead and arsenic
 - PAHs
- Shallow groundwater
 - Petroleum compounds from bunker C fuel and diesel
 - arsenic

1 inch = 200 feet



Cleanup history



2021 Supplemental Remedial Investigation/ Feasibility Study (RI/FS)

- Re-evaluated risks based on new site data, current toxicity values, and likely future exposure area settings.
- Defined areas where cleanup is required.
- Established objectives of the clean-up based on likely future use.
- Evaluated cleanup alternatives.
- Recommended a preferred cleanup alternative for the site.



Four cleanup plan options

Alternative 1 – No Action

- Required to consider by rule.
- No action to reduce contaminants.
- Not protective.

Alternative 2 - Excavation and Offsite Disposal of Shallow and Deep Soil

- Excavate and remove soil from entire 11.7 acres exceeding site-specific screening levels.
- Removal by rail car.
- No engineering controls.
- Deed restriction for single-family residential use.



Four cleanup plan options (cont'd)

Alternative 3 – Excavation and Offsite Disposal of Shallow Soil and Institutional Controls

- Excavate and remove shallow soil from entire 11.7 acres exceeding site-specific screening levels.
- Deed restriction for site use.
- Deep impacted soil left on eastern 3 acres.
- Additional deed restrictions required on eastern 3 acres.

Alternative 4 – Excavation, Consolidation, Vegetated Soil Cap and Institutional Controls

- Shallow soil exceeding site-specific screening levels excavated from western 8.7 acres.
- Deed restriction for site use.
- Excavated soil placed in low areas on eastern 3 acres.
- Soil and vegetated cap on eastern 3 acres.
- Additional deed restrictions required on eastern 3 acres.



Evaluated 6 balancing factors

1) Effectiveness

- Alt. 2 – Shallow and deep soil removal - most effective at providing protection.
- However, all alternatives adequately manage risks.

2) Long-term reliability

- Alt. 2 is most reliable because less reliance on institutional controls.
- Alt. 4 – Excavation, consolidation, soil cap – relies more on engineering and institutional controls.
- However, these types of controls are common at former commercial sites.

3) Implementability

- Alt. 4 is easiest to implement.
- Requires less soil removal and no export off site.



Evaluation of 6 balancing factors (cont'd)

4) Implementation Risks

- Alt. 2 and Alt. 3 (shallow soil excavation) have more short-term implementation risks than Alt. 4.
- Alt. 2 and Alt. 3 require construction of a new rail spur and transportation off site.
- Alt. 2 would require shoring for deep excavation.

5) Reasonableness of Cost

- Alt. 2 ~ \$7,240,000
- Alt. 3 ~ \$5,800,000
- Alt. 4 ~ \$1,960,000

6) Sustainability/green remediation

- Alt. 4 would have the least amount of greenhouse gas emissions - reduced truck/locomotive exhaust and fuel burned
- No waste generated with Alt. 4.



Cleanup considerations

Single-family residential development is not an option

- Current zoning is mixed commercial-residential.
- Surrounding development is all mixed commercial and high-density residential.
- City has indicated a preference for a mixed-use community.

Soil removal from eastern 3-acre area is not practical

- Large quantities of soil would need to be removed by truck or rail.
- High degree of uncertainty in soil volume and cost.
- Benefits of soil removal don't outweigh cost and implementation downsides.
- Protectiveness can be achieved by consolidation, capping and deed restrictions.

Most practical and focused cleanup scenario:

- Two separate exposure areas: **8.7 acres (west) and 3 acres (east)**.
- Most likely future exposure scenario: **Urban residential**.
- Both areas cannot be subdivided or change use without DEQ approval.

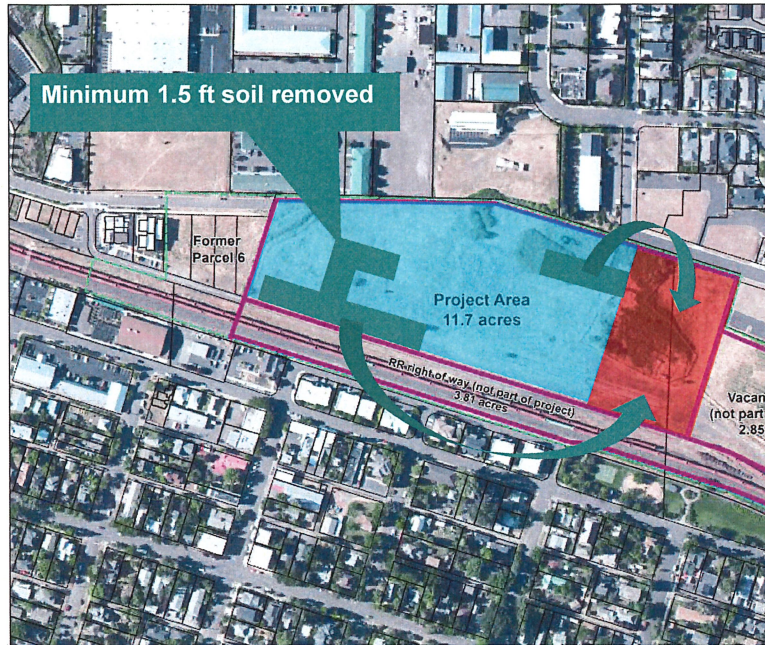


DEQ review recommended alternative

- DEQ accepted the recommended Alternative 4 (excavation, consolidation and capping) and proposed cleanup plan in 2021.
- In 2022, DEQ prepared a recommendation for the current proposed cleanup plan in the Revised Recommended Remedial Action.
- Revised Recommended Remedial Action went out for public comment in October 2022.



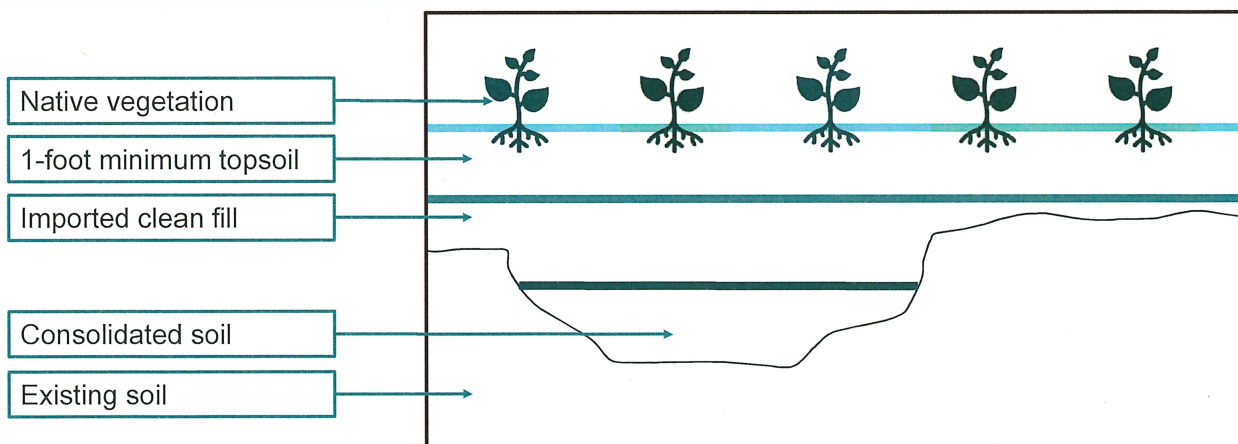
Cleanup plan



- About 2,700 cubic yards of soil excavated from western area and consolidated in eastern area.
- Clean backfill/topsoil for excavations delivered by side-dump railcars for entire site.
- One-foot clean soil cap on eastern area.
- Entire site hydroseeded with native plants.
- Eastern area will be fenced and have a deed restriction.



Conceptual vegetated soil cap



Institutional controls

For the entire 11.7 acres

- DEQ review and approve any request to subdivide or develop either the western 8.7-acres or the eastern 3-acres.
- Allow urban-residential/commercial site use.

For the capped 3 acres

- Site management plan for cap maintenance and guide future development.
- DEQ review and approve of proposed activities that would affect the cap.



Potential site use after cleanup

11.7 acres ready for urban-residential mixed use

- Living spaces may be on ground floor or higher.
- Commercial spaces may be on the ground floor.

More cleanup allowed if change in site use

- DEQ oversight if subdivided.
- More cleanup can happen if site use changes to single-family residential.



Examples of capped sites

Capped sites in Oregon

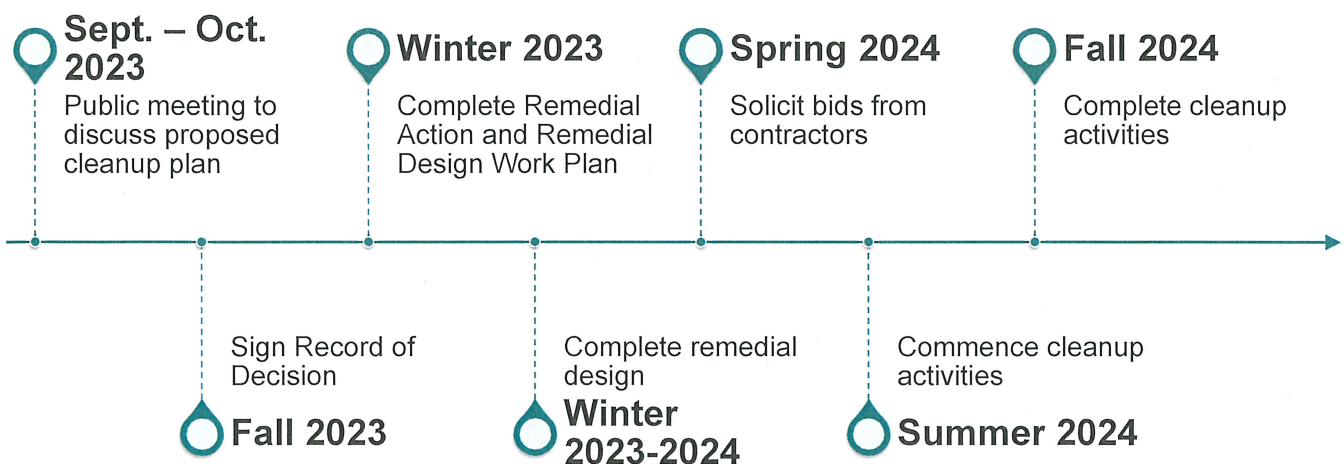
- Mill Casino in North Bend along Coos Bay;
- Portions of Riverfront City Park in Salem;
- Suburban park in Tigard;
- Bridgeport Village shopping center in Tigard; and
- A former lumber yard ready for re-development in Sweet Home.

Former UPRR sites with soil caps

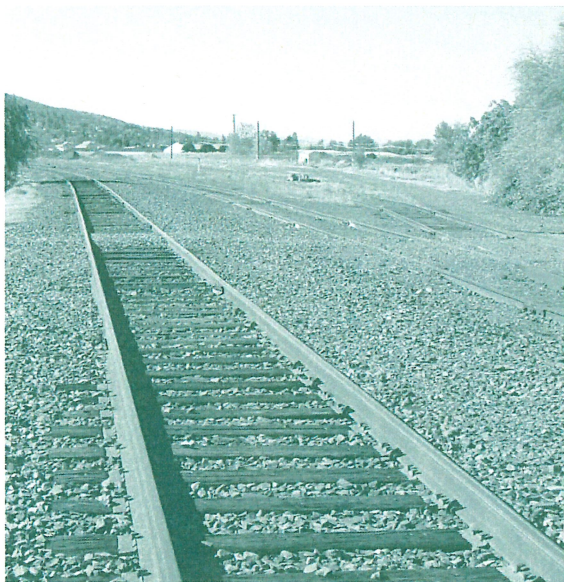
- An abandoned right of way into a 74-mile-long bike trail for recreational use in northern Idaho;
- One property redeveloped with a manufacturing site, community visitor center and sheriff's office; and
- A soccer field complex.



Estimated timeline



Questions



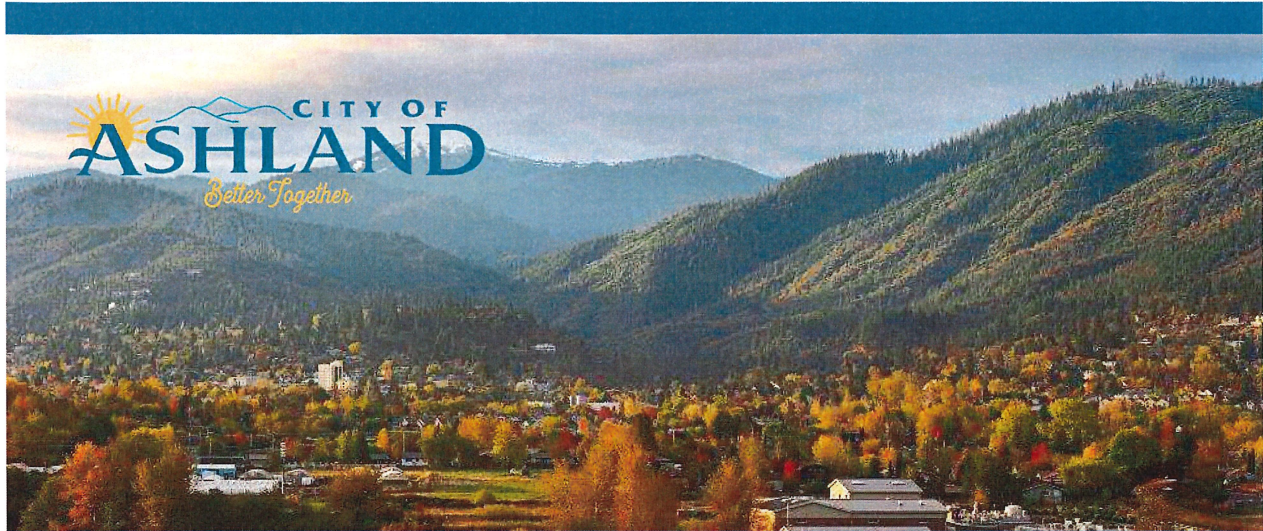
Visit the Ashland Railyard page for more information:

ordeq.org/AshlandRailYardInfo

Send questions or comments by 5 p.m. Oct. 31, 2023 to:

margaret.oscilia@deq.oregon.gov





Grand Terrace Remand

City Council
Limited Public Hearing
October 10, 2023

City Council

Grand Terrace Annexation (1511 Hwy 99N)

Annexation, Outline Plan Subdivision, Site Design Review & Exceptions to Street Standards

Remanded on Two Issues

On-Street Parking Exception & Affordable Unit Size Requirements

PA-T3-2019-00001
Annexation

Approved 12/20

LUBA Appeal 2021-009

Reversed 5/21

PA-T3-2002-00004

Approved 12/22

LUBA Appeal 2023-007

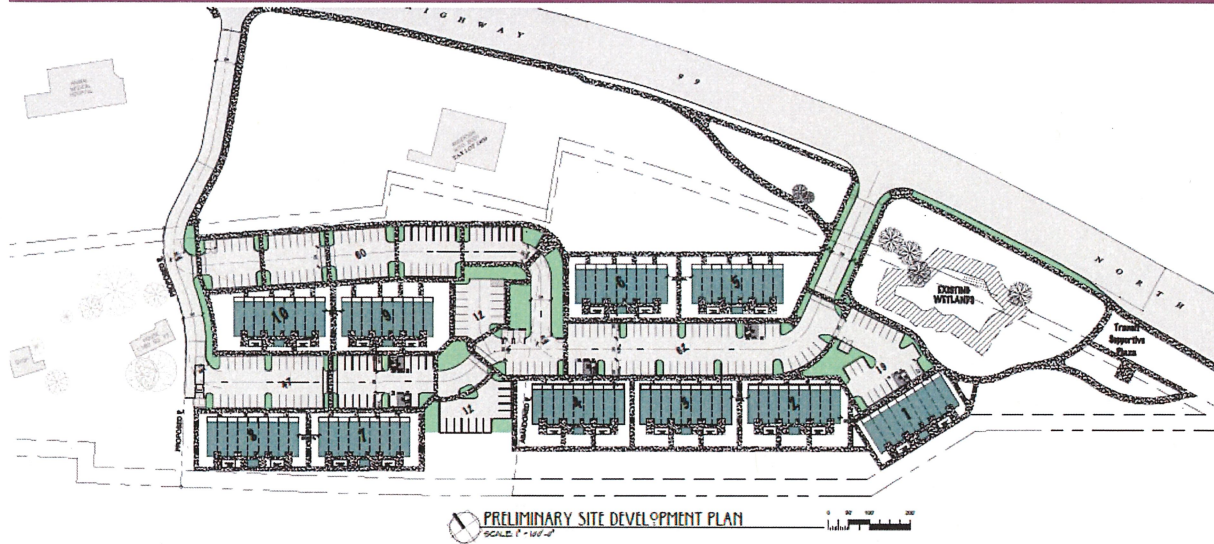
Remanded 5/23



1511 Highway 99N

Site Design Review

CITY OF
ASHLAND



1511 Highway 99N

Site Design Review – Front/Rear Elevations

CITY OF
ASHLAND



1511 Highway 99N

Site Design Review – Front/Rear Elevations

CITY OF
ASHLAND



SOUTHWEST EXTERIOR ELEVATION
SCALE: 1/8" = 1'-0"
0 2 4 8
1/8" = 1'-0"

NOTE: SEE ADD FOR EXTERIOR FINISHES AND FINISH KEY



NORTHEAST EXTERIOR ELEVATION
SCALE: 1/8" = 1'-0"
0 2 4 8
1/8" = 1'-0"

HVAC COMPRESSOR BANKS CONCEALED BEHIND LANDSCAPING

NOTE: SEE ADD FOR EXTERIOR FINISHES AND FINISH KEY

1511 Highway 99N

Site Design Review – Side Elevations

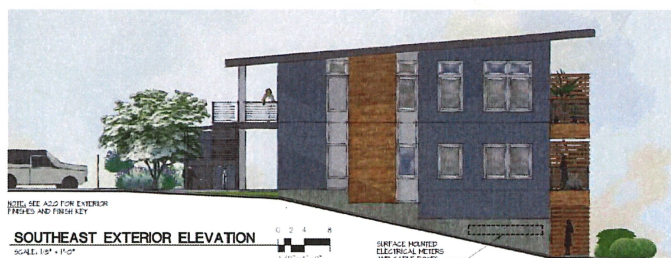
CITY OF
ASHLAND



NORTHWEST EXTERIOR ELEVATION
SCALE: 1/8" = 1'-0"
0 2 4 8
1/8" = 1'-0"

NOTE: SEE ADD FOR EXTERIOR FINISHES AND FINISH KEY

SURFACE MOUNTED ELECTRICAL METERS AND CABLE BOXES



SOUTHEAST EXTERIOR ELEVATION
SCALE: 1/8" = 1'-0"
0 2 4 8
1/8" = 1'-0"

NOTE: SEE ADD FOR EXTERIOR FINISHES AND FINISH KEY

SURFACE MOUNTED ELECTRICAL METERS AND CABLE BOXES

1511 Highway 99N

Site Review – Transit Supportive Plaza

CITY OF
ASHLAND



Bus pull-out lane, Bus Stop & Transit Supportive Plaza

1511 Highway 99N

Site Design Review – Southern Driveway

CITY OF
ASHLAND





LUBA REMAND ISSUES

The city erred in approving an Exception to the on-street parking requirements in AMC 18.3.9.060

- Performance Standards require one on-street space/unit.
- Approval granted an Exception to this standard, where a Variance should have been required.

That the affordable unit sizes as approved do not comply with AMC 18.5.8.050.G.3

- Affordable studio-units are to be at least 350 square feet (Studios proposed were 250 square feet.)
- Affordable one-bedroom units are to be at least 500 square feet. (One-bedrooms proposed were 499.5 square feet..)

REMAND ISSUE #1

On-Street Parking Exception

AMC 18.3.9.060 All development under this chapter shall conform to the following parking standards, which are in addition to the requirements of chapter 18.4.3, Parking, Access, and Circulation.

A. On-Street Parking Required. At least one on-street parking space per dwelling unit shall be provided, in addition to the off-street parking requirements for all developments in an R-1 zone, with the exception of cottage housing developments, and for all developments in R-2 and R-3 zones that create or improve public streets.

B. On-Street Parking Standards. On-street parking spaces shall be immediately adjacent to the public right-of-way on publicly or association-owned land and be directly accessible from public right-of-way streets. On-street parking spaces shall be located within 200 feet of the dwelling that it is intended to serve. In addition, on-street public parking may be provided pursuant to minimum criteria established under subsection 18.4.3.060.A.



REMAND ISSUE #1

On-Street Parking Exception

- No Variance or Exception to the on-street requirement was requested as part of the application.
- Planning Commission determined that AMC 18.3.9.060 was applicable, that an Exception to the Street Design Standards was the appropriate procedure if on-street parking could not be provided, and that such an Exception was merited.
- New Climate-Friendly and Equitable Communities (CFEC) rules were adopted in July of 2022 by the Land Conservation and Development Commission (LCDC) in response to Executive Order #20-04 by Governor Kate Brown.
- These CFEC rules delineate how cities may regulate a variety of land use and transportation issues, including a number of changes to the ways cities may regulate parking, going forward.

Among the new CFEC rules:



REMAND ISSUE #1

On-Street Parking Exception

- After January 1, 2023, the Climate-Friendly & Equitable Communities rules prevent cities from enforcing existing *off-street* parking mandates within ½-mile of frequent transit.
- Cities may not require more than one parking space (on- or off-street) for multi-family residential units.
- **Cities may not require parking for units less than 750 square feet or for affordable units.**
- Cities are to implement the new CFEC parking rules for development applications submitted after December 31, 2022.
- Cities may modify ordinances or implement directly from the new rules. Pending ordinance modifications, Ashland is implementing directly from the new rules.



REMAND ISSUE #1

On-Street Parking Exception

- Grand Terrace application submitted July 8, 2022 but remains in process now, 15 months after submittal and ten months after new rules are in place.
- LUBA remand for further review now, before City decision is final, is occurring after the new regulations were implemented.
- Final Plan approval, the second step in the two-step development application process, is still required before site development occurs. At Final Plan, the applicant could apply to modify the approval by removing all parking, and under the CFEC rules there would be no basis by which the city could require parking.



REMAND ISSUE #1

On-Street Parking Exception

- ORS 197.307(4) requires local governments to adopt & apply only clear and objective standards, conditions *and procedures* in regulating housing, particularly **needed housing**.
- Planning Commission found that the parking rules having changed so that the applicant was subject to parking requirements for one part of a two-part application and no parking requirements for the second-part of the application process for the same needed housing project was not a clear and objective procedure.
- Similarly, the Planning Commission found that a city-imposed on-street parking requirement to install parking on a state facility (*which is outside the city's control*) where the state does not allow on-street parking creates a direct conflict that the applicant could not resolve without unreasonable cost or delay, and as such the on-street parking requirement should not be applied here.



REMAND ISSUE #2

Affordable Unit Size Requirements

- Original application identified each of the 10 identical buildings proposed as containing 20 one-bedroom units of 499.5 square feet each, and three studio units of 250 square feet each.
- Two of these ten buildings were to be relied on in meeting the affordability requirement that a total of 38 deed restricted affordable units be provided (assuming that the applicant either builds the units themselves or does so in cooperation with a non-profit affordable housing provider partner).
- **AMC 18.5.8.050.G.3** requires that the minimum square footage for affordable one-bedroom units be 500 square feet, and that the minimum square footage for affordable studios be 350 square feet.



REMAND ISSUE #2

Affordable Unit Size Requirements

- The adopted conditions relating to affordability are:
 - **Condition #7e.** *[That prior to final approval and annexation of the property, the applicant shall provide:]* A deed restriction agreement that development of the property **shall comply with the affordability requirements for annexations in AMC 18.5.8.050.G** including that where the required number of affordable units is fractional it shall be rounded up, and that should the applicant opt to dedicate land area to an affordable housing provider, it will require that the dedication comply with the requirements of AMC 18.5.8.050.G.2 and dedicate sufficient land area to accommodate 47 ownership units affordable at 100 percent AMI.
 - **Condition #10g.** If the applicant opts to dedicate land area to a non-profit affordable housing developer, dedication shall occur in a manner consistent with AMC 18.5.8.050.G.2 and recording of deed restrictions guaranteed affordability described herein shall occur in conjunction with plat signature and recording.



REMAND ISSUE #2

Affordable Unit Size Requirements

The City's approval was remanded by LUBA on the basis "That the affordable unit sizes as approved do not comply with AMC 18.5.8.050.G.3 which requires that affordable studios be a minimum of 350 square feet and that affordable one-bedroom units be a minimum of 500 square feet." In response to this issue, the applicant has provided a revised floor plan demonstrating how the one-bedroom units could be modified by reducing their recessed entry depth by 3-inches in order to achieve the required 500 square feet per affordable one-bedroom unit.

- **AS PROPOSED:** $12.5 \times 42 = 525$ square feet less 25.98 square feet for recessed entry = 499.02 square feet.
- **AS MODIFIED:** $12.5 \times 42 = 525$ square feet less 24.8975 feet for recessed entry = 500.1025 square feet.

In addition, the applicant notes that affordable basement level studios could be modified to be 499.5 square feet to significantly exceed the required 350 square feet per affordable studio unit requirement.



REMAND ISSUE #2

Affordable Unit Size Requirements

- Staff note that the affordability requirement for this project calls for 38 affordable units to be provided. Each building proposed has 20 one-bedroom units and 3 studios (i.e. 23 units).
- Assuming that two buildings will be developed by an affordable housing provider partner or the applicant themselves, the 38 required affordable units could be accommodated entirely with one-bedroom units, leaving one one-bedroom unit and three studios in each of the two buildings to be rented at market rate or provided as voluntarily affordable (i.e. not deed-restricted and not subject to the square footage requirements of AMC 18.5.8.050.G.3.).
- Staff believe that the second remand issue can be fully addressed by increasing the size of the one-bedroom units by a *de minimis* amount to comply with AMC 18.5.8.050.G.3 and making clear that as configured in the original proposal the studio units need not be considered among the required affordable units. If this approach is satisfactory to the Council, the Planning Commission has recommended that Condition #7e be slightly modified as follows:



Affordable Unit Size Requirements

Modified Condition #7e. *[That prior to final approval and annexation of the property, the applicant shall provide:]* A deed restriction agreement that development of the property shall comply with the affordability requirements for annexations in AMC 18.5.8.050.G including that: **1)** where the required number of affordable units is fractional it shall be rounded up, **2) and** that should the applicant opt to dedicate land area to an affordable housing provider, it will require that the dedication comply with the requirements of AMC 18.5.8.050.G.2 and dedicate sufficient land area to accommodate 47 ownership units affordable at 100 percent AMI, **and 3) that each of the required affordable units comply with the minimum affordable units size requirements of AMC 18.5.8.050.G.3, with one bedroom affordable units being a minimum of 500 square feet, and affordable studio units being a minimum of 350 square feet.**

If the Council accepts the approaches outlined above for both of the remand issues, the Planning Commission's findings could be adopted as draft findings and bring them back to the September meeting for adoption.

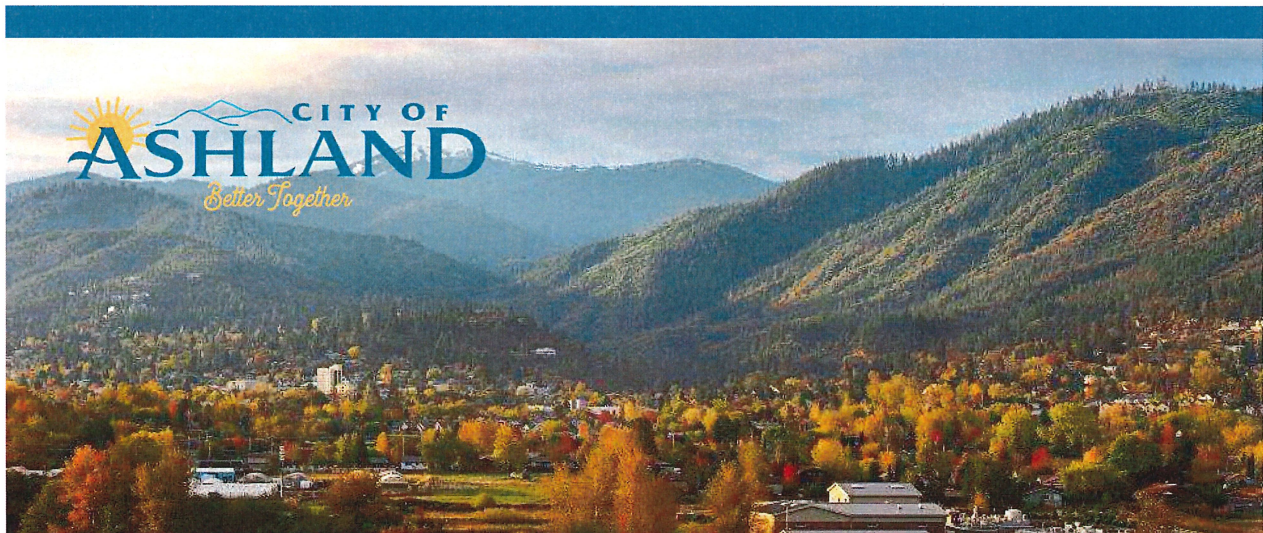


One last note:

The applicant has asked that Council not consider any potential fee waiver at this time, and as such Councilors can disregard that request.



ANY QUESTIONS?



Grand Terrace Remand

City Council
Limited Public Hearing
October 10, 2023



Advocating for a livable and sustainable
Rogue Valley through responsible land use

October 3, 2023

Ashland City Council

Filed via email: council@ashland.or.us, derek.severson@ashland.or.us

RE: Land Use Board of Appeals (LUBA) Remand of PA-T3-2022-00004, 1511 Highway 99
North “Grand Terrace” Annexation Approval

Dear Ashland City Council,

Rogue Advocates is a land use advocacy organization with members in Ashland. We are supportive of Ashland’s goal of increasing the availability of affordable housing as well as Ashland’s longstanding efforts to accomplish their housing goals while emphasizing reduced dependency on the automobile and while improving conditions for walking, cycling and transit.

Rogue Advocates, as the petitioner in the appeal of Ashland’s approval of Grand Terrace, submits the below comments for your consideration during these remand proceedings. The below comments are intended to supplement earlier comments made before the Planning Commission.

I. First Assignment of Error, Second Subassignment - AMC 18.3.9.060.A

Under petitioner’s assignment of error here, LUBA found that:

The city does not dispute that the city council erred in approving an exception to the requirement for on-street parking in AMC 18.3.9.060(A). Instead, in the respondent's

BOARD MEMBERS

Jamie Talarico Jimmy MacLeod Steve Rouse Hugo Hamblin-Agosto Pepper Trail Robin Elliott
RogueAdvocates.org * 541-846-1083 * PO Box 624 Ashland, OR 97520

brief the city argues that "under Oregon's Equitable Communities and Climate Friendly Act of 2023, as of January 1, 2023, cities within Oregon's [eight] Metropolitan Planning Organizations (MPOs), including the City of Ashland, can no longer require more than one parking space per multi-family unit."

LUBA goes on to conclude that:

Because the challenged decision was made in December 2022, we agree with petitioner the legislation does not apply to Casita's application. The city may or may not be correct that the legislation prevents it from requiring more than one parking space per multi-family unit and that, on remand, it will be unable to apply the requirement for on-street parking in AMC 18.3.9.060(A). However, the city does not develop that argument sufficiently for our review in the respondent's brief. We will therefore not conclude that the issue of whether the city council improperly construed AMC 18.3.9.060(A) is moot.

On remand, the city must show how the Climate-Friendly and Equitable Communities (CFEC) legislation prevents it from requiring more than one parking space per multi-family unit as per AMC 18.3.9.060.A.

The city states that OAR 660-012-0012(5)(e) requires cities and counties to “*implement the requirements of OAR 660-012-0430 and 660-012-0440 when reviewing development applications submitted after December 31, 2022.*” The city then describes the Final Plan review process under the city’s Performance Standards Option, asserting that (the December, 2022 Grand Terrace approval) “*remains in process... after these new CFEC rules have taken effect.*” The city further asserts that “*prior to the physical development of the site, another development application for Final Plan approval will be required at which time the applicant will not be subject to (AMC 18.3.9.060.A) parking requirements*” and that “*the Planning Commission and Council have the discretion to assess the current request based on the new CFEC rules.*”

We believe that the city's above claims are without merit. Firstly, the Grand Terrace annexation is not "in process." Final approval of the application occurred on December 20, 2022. The CFEC rules are applicable to applications submitted after December 31, 2022, not applications that have been approved before that date. Oregon law requires that "*approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted.*" [ORS 227.178(3)(a)] The plain language of the CFEC legislation [OAR 660-012-0012(5)(e)] renders the CFEC rules inapplicable to the city's December, 2022 approval.

Secondly, AMC 18.3.9.060.A is not rendered "moot" through the Final Plan approval process, which serves only to verify "substantial conformance with the outline plan." [AMC 18.3.9.040.B.5] There is nothing within the final plan approval criteria that requires a reevaluation of Outline Plan criteria under AMC 18.3.9.060.

The city has failed to show how AMC 18.3.9.060.A is rendered "moot" by legislation that went into effect after the city's approval (as instructed through LUBA's remand) and the city's approval of an exception to the parking standards under AMC 18.3.9.060.A was therefore unlawful.

II. Fourth Assignment of Error, Second Subassignment - AMC 18.5.8.050.G.3

In response to Rogue Advocates argument under this assignment of error, the city argued the following in their response brief:

Petitioner argues Applicant failed to meet the minimum square footage required for affordable housing units, as established by the table provided in Respondent's AMC 18.5.8.050.G.3 (500 square feet for one bedroom units; and 350 square feet for studio units).

At the time Applicant submits its Final Plan application for review and approval by Respondent, Applicant will be required to comply with the 500 sq. ft. minimum floor area for one-bedroom units, and the 350 sq. ft. minimum floor area for studio units. In adopting its findings for Planning Action PA-T-3-2022-00004, the Council approved Applicant's initial Outline Plan. Applicant's Final Plan application submitted to Respondent will be required to meet the conditions of approval included in the final decision of Respondent's Council with respect to the minimum square footage required by Respondent's code.

Applicant's Final Plan submittal will be required to demonstrate that the affordable housing units meet the units sizes required by 18.5.6.050.G (sic). The 499 square foot units proposed in the Application can readily be enlarged to 500 square feet within the proposed building floor areas, and Respondent anticipates Applicant can easily make the required adjustments which, like other relevant conditions will be required to comply with City's code at the time of Final Plan approval.

The city's above argument was reiterated at oral argument before LUBA; i.e.:

"The Final Plan application must comply with the minimum square footage requirements established by the Respondent's AMC 18.5.8.050.G."

The city's above position with respect to Final Plan approval served as the basis for remand under this assignment of error. LUBA's remand gave the city an opportunity to identify a provision (or a condition of approval) that requires Applicant to demonstrate compliance with AMC 18.5.8.050.G.3 at the Final Plan approval stage. The identification of such a provision is necessary under remand because, as stated by LUBA: "We are aware of none."

The city has identified no such provision or condition of approval. Rather, the city now seeks to impermissibly alter their final approval by approving a different application.

OAR 661-010-0071 requires reversal of a decision that violates a provision of applicable law. The city's December, 2022 final decision - the subject of these remand proceedings - violated AMC 18.5.8.050.G.3 because the Applicant's Outline Plan did not comply with the minimum square footage requirements therein. And, contrary to the city's arguments before LUBA, there are no provisions - within Final Plan approval criteria or otherwise - that force such compliance.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Craig Anderson', with a long horizontal line extending to the right.

Craig Anderson
Member, Rogue Advocates

575 Elizabeth Ave.
Ashland, OR 97520
craig.ashland@gmail.com

Speaker Request Form
THIS FORM IS A PUBLIC RECORD
ALL INFORMATION PROVIDED WILL BE MADE AVAILABLE TO THE PUBLIC

- 1) Complete this form and return it to the City Recorder prior to the discussion of the item you wish to speak about.
- 2) Speak to the City Council from the table podium microphone.
- 3) State your name and address for the record.
- 4) Limit your comments to the amount of time given to you by the Mayor, usually 3 or 5 minutes.
- 5) If you present written materials, please give a copy to the City Recorder for the record.
- 6) You may give written comments to the City Recorder for the record if you do not wish to speak.
(Comments can be added to the back of this sheet if necessary)
- 7) Speakers are solely responsible for the content of their public statement.

Tonight's Meeting Date 10/3/23
Name Kelly Marozzelli

Agenda topic/item number _____ OR
Topic for public forum (non agenda item) Telecomm Ordinance

Land Use Public Hearing

Please indicate the following:
For: _____ Against: _____

Challenge for Conflict of Interest or Bias

If you are challenging a member (a city councilor or a planning commissioner) with a conflict of interest or bias, please write your allegation complete with supporting facts on this form and deliver it to the clerk immediately. The Presiding Officer will address the written challenge with the member. Please be respectful of the proceeding and do not interrupt. You may also provide testimony about the challenge when you testify during the normal order of proceedings.

Written Comments/Challenge: _____

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Comments and statements by speakers do not represent the opinion of the City Council, City Officers or employees of the City of Ashland.

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Tonight's Meeting Date 10/13/23
Name PAUL MOZINA

Regular Meeting

Agenda topic/item number _____ OR
Topic for public forum (non agenda item) ROW Ordinance

Land Use Public Hearing

Please indicate the following:
For: _____ Against: _____

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Tonight's Meeting Date Oct 3
Name Jebbie Nersiswauder
Phone _____ Email _____

Regular Meeting

Agenda topic/item number _____ OR
Topic for public forum (non agenda item) Dusk to Dawn Site

Land Use Public Hearing

Please indicate the following:
For: _____ Against: _____

Challenge for Conflict of Interest or Bias
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Tonight's Meeting Date OCT 3
Name BARRY THALDEN
Phone _____ Email _____

Regular Meeting

Agenda topic/item number VI OR DEP RAIL YARD
Topic for public forum (non agenda item) _____

Land Use Public Hearing

Please indicate the following:
For: _____ Against: _____

Challenge for Conflict of Interest or Bias
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