

November 12, 2015

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VIA EMAIL ONLY

Mayor Russ Axelrod
West Linn City Council
City Hall
22500 Salamo Road
West Linn, OR 97068

**Re: Appeal of Planning Commission Denial of Applications for Mixed-Use
Development
City File Nos. DR-15-11 and LLA-15-01 (AP-15-01)
Appellant's Response to November 10, 2015 Letter from Jeffrey Kleinman**

Dear Mayor Axelrod and Members of the West Linn City Council:

This office represents Con Am Properties, LLC ("Appellant"), the appellant and applicant in this matter. This letter explains why, for two reasons, the City Council should deny Jeffrey Kleinman's request to strike Appellant's letter dated November 9, 2015.

First, contrary to Mr. Kleinman's contention, Appellant submitted, and the City staff accepted, Appellant's November 9, 2015 letter in accordance with the procedures set forth in the final public notice for this hearing, a copy of which is set forth in [Exhibit A](#). That notice does not contain any deadline for the submittal of written testimony. Rather, the only express restriction on written testimony is that it will not be accepted at the hearing itself.

Further, the notice states that the proceedings will be conducted in accordance with "Council rules for on the record hearings." Public Notice, p. 1 (last paragraph). In turn, those rules provide that the deadline to submit "written arguments" to the City Council for an on the record appeal hearing is "by 5:00 p.m. seven calendar days prior to the date at which the review request is scheduled to be heard." City Council Rules, p. 20, a copy of which is set forth in [Exhibit B](#). Appellant submitted its letter to the City at 4:54 pm on November 9, 2015, which is seven days before the November 16, 2015 hearing in this matter. Therefore, Appellant submitted the testimony in a timely manner, and the

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City did not err in accepting it. Mr. Kleinman's reliance upon the deadline in the original hearing notice is misplaced because the City issued a later notice that superseded the first notice. Further, the deadline in the original notice was seven days before the scheduled hearing date in this matter, which is consistent with the deadline applied by City staff in this case.

Second, even if the City committed a procedural error in accepting Appellant's letter, it has not prejudiced the substantial rights of Mr. Kleinman's client to prepare and present its case or to a full and fair hearing. Appellant's letter does not include any new evidence. Further, Appellant provided the letter to Mr. Kleinman six days in advance of the hearing, which allowed both he and his client sufficient time to review it. Finally, both Mr. Kleinman and his client will have the opportunity to respond to the letter orally at the City Council hearing.

In fact, not only is it not error to accept the letter, it would be error to strike it because Appellant would be penalized for following the instructions in the hearing notice. Under these circumstances, striking the letter would be grounds for remand of the City's decision.

For these reasons, Appellant requests that the City Council deny Mr. Kleinman's request and not strike Appellant's letter. Thank you for your consideration of the points in this letter.

Very truly yours,



Michael C. Robinson

Encls.

cc: Mr. Chris Kerr (via email) (w/encls.)
Mr. John Boyd (via email) (w/encls.)
Ms. Megan Thornton (via email) (w/encls.)
Mr. Seth King (via email) (w/encls.)
Mr. Jeff Kleinman (via email) (w/encls.)
Client (via email) (w/encls.)

**WEST LINN CITY COUNCIL
PUBLIC HEARING NOTICE
FILE NO. AP-15-01**

The West Linn City Council is scheduled to hold a public hearing on **Monday, November 16, 2015**, starting at 6:00 p.m. in the Council Chambers of City Hall at 22500 Salamo Road, West Linn, to consider an appeal by Con Am Properties LLC of the Planning Commission's denial of design review consisting of approximately 180 multi-family residential apartment units and approximately 2,000 square feet of commercial space (DR-15-11) and a lot line adjustment affecting the boundaries of three existing lots (LLA 15-01) for the properties located at 2410, 2422 and 2444 Tannler Drive (Tax Lots 100, 102 and 200 of Assessor's Map 21E35C).

The criteria applicable to an appeal of a denial of a design review and lot line adjustment are found in Chapter 55, 34, 38, 42, 44, 46, 48, 52, 54, 85 and 99 of the West Linn Community Development Code. The City Council will make a decision to approve the application and overturn the Planning Commission's decision or deny the application and uphold the Planning Commission's decision based upon the applicable criteria and the evidence in the record. At the hearing, all written or oral argument must relate specifically to the applicable criteria and refer only to evidence and facts already in the record.

You have been notified of this proposal because City records indicate that you had standing on case DR 15-11/LLA 15-01 or because notice is required by Chapter 99 of the West Linn Community Development Code.

The hearing is limited to the issues clearly and distinctly set forth in the notice of appeal. Con Am Properties LLC (Con Am) asserts that the applicable approval criteria in Community Development Code (CDC) 21.010, 21.020, and 21.050 were misapplied. Therefore, Con Am disagrees with the findings adopted by the Planning Commission for the design review application and asserts that all of the criteria are met requiring the City to approve the Class II Design Review application. Con Am also asserts that the applicable approval criteria for the Lot Line Adjustment in CDC 85.210 are met by the application, requiring the City to approve the Lot Line Adjustment application.

The notice of appeal and the complete application for AP 15-01 is available for inspection, at no cost, at City Hall or via the City of West Linn's website at <http://westlinnoregon.gov/planning/2444-2422-and-2410-tannler-drive-class-ii-design-review-and-lot-line-adjustment>. Printed copies of these documents may be obtained for a minimal charge per page. At least 10 days prior to the hearings, a copy of the staff report will be available for inspection at no cost or copies can be obtained for a minimal charge per page. For further information, please contact John Boyd, Planning Manager, at City Hall, 22500 Salamo Road, West Linn, OR, (503) 656-4211, or jboyd@westlinnoregon.gov.

The appeal hearing is on the record, and it will be conducted in accordance with Community Development Code (CDC) 99.280(B), Council rules for on the record hearings and those rules in CDC Section 99.170 that are applicable to on the record hearings. **No new facts or evidence may be submitted in an on the record hearing.** If you wish to read material at the meeting, you may do so, but the Council will not be accepting those as written materials. Members of the public may speak for a maximum of three (3) minutes each at the public hearing, but no new evidence or facts are allowed and those speaking should refer to the record for all facts relied upon. At the appeal hearing the Applicant, who is also the Appellant, will be allowed to present the basis for its appeal. The Applicant and members

of the public opposing the application may speak, but no new evidence or facts are allowed and those speaking should refer to the record for all facts relied upon.

The Council may continue the appeal hearing to another meeting if it chooses to open the record on a limited basis pursuant to CDC 99.080(C) to obtain additional evidence or testimony, or close the appeal hearing and take action on the appeal as provided by CDC 99.290.

Failure to raise an issue in person or by letter at some point prior to the close of the hearing, or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue, precludes an appeal to the Land Use Board of Appeals (LUBA) based on that issue.

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- C. All written arguments or other documents to present to Council for consideration must be submitted to the City Manager's office by 5:00 p.m. seven calendar days prior to the date at which the application is scheduled to be heard. All other written materials must be presented in person at the hearing.

Public Hearings – Appeal Hearings.

- A. Conducting Appeal Hearing: Conduct of on the record appeal hearings shall conform to the requirements of the West Linn Community Development Code, and applicable state law, including, but not limited to the following:
 - 1. The Mayor or City Attorney shall announce prior to opening the hearing the nature of the matter to be heard as it is set forth on the agenda and the procedure to be followed for the hearing.
 - 2. The Mayor or City Attorney shall give notice that failure to address a criterion or raise any other issue with sufficient specificity precludes an appeal to the Land Use Board of Appeals on that criterion or issue.
 - 3. Discussion of jurisdiction and impartiality of the West Linn City Council and Councilors.
 - 4. Staff introduction of appeal.
 - 5. Argument on appeal and rebuttal.
 - a. If the Appellant is the applicant, the Appellant/Applicant will receive twenty (20) minutes to present argument based on facts and evidence in the record.
 - b. If the Appellant is not the applicant:
 - 1) The Appellant will receive twenty (20) minutes to present argument based on facts and evidence in the record.
 - 2) The Applicant will receive twenty (20) minutes to present argument based on facts and evidence in the record.
 - 6. Statements from the Public. Statements shall be limited to three (3) minutes per person, and all statements must refer to facts and evidence in the record. No new facts or evidence are allowed.
 - 7. Questions from the Council to staff.
 - 8. Closure of appeal hearing, no further information from the audience.
 - 9. Motion for the purpose of deliberation.
 - 10. Discussion by Council and decision.
 - 11. The Council has the discretion to adopt findings or direct the staff or prevailing party to submit proposed findings for Council consideration and adoption at a future meeting.
- B. If there are objections to the jurisdiction of the City Council to hear a matter, the Mayor shall terminate the hearing if the inquiry results in substantial evidence that the Council lacks jurisdiction or the procedural requirements of any code or ordinance provision were not met.

- C. All written arguments or other documents to present to Council for consideration must be submitted to the City Manager's office by 5:00 p.m. seven calendar days prior to the date at which the review request is scheduled to be heard.

Public Hearings – Comprehensive Plan Map Amendments.

- A. Conducting Hearing for Comprehensive Plan Map Amendments: Conduct of on the record hearing for Comprehensive Plan Map Amendments shall conform to the requirements of the West Linn Community Development Code, and applicable state law, including, but not limited to the following:
1. The Mayor or City Attorney shall announce prior to opening the hearing the nature of the matter to be heard as it is set forth on the agenda and the procedure to be followed for the hearing.
 2. The Mayor or City Attorney shall give notice that failure to address a criterion or raise any other issue with sufficient specificity precludes an appeal to the Land Use Board of Appeals on that criterion or issue.
 3. Discussion of jurisdiction and impartiality of the West Linn City Council and Councilors.
 4. Staff presentation and discussion of any correspondence received.
 5. Applicant's argument. Applicant will receive twenty (20) minutes to present argument based on facts and evidence in the record.
 6. Statements from the Public. Statements shall be limited to three (3) minutes per person, and all statements must refer to facts and evidence in the record. No new facts or evidence are allowed.
 7. Staff response, if necessary.
 8. Applicant's rebuttal. Applicant will receive ten (10) minutes for rebuttal.
 9. Questions from the Council to staff, the Applicant, or both.
 10. Closure of public hearing, no further information from the audience.
 11. Motion for the purpose of deliberation.
 12. Discussion by Council and decision.
 13. The Council has the discretion to adopt findings or direct the staff or prevailing party to submit proposed findings for Council consideration and adoption at a future meeting.
- B. If there are objections to the jurisdiction of the City Council to hear a matter, the Mayor shall terminate the hearing if the inquiry results in substantial evidence that the Council lacks jurisdiction or the procedural requirements of any code or ordinance provision were not met.
- C. All written arguments or other documents to present to Council for consideration must be submitted to the City Manager's office by 5:00 p.m. seven calendar days prior to the date at which the review request is scheduled to be heard.