

Mollusky, Kathy

From: Tim Ramis <Tim.Ramis@jordanramis.com>
Sent: Thursday, May 18, 2017 11:04 AM
To: Jennifer Bragar
Cc: Spir, Peter; Stein, Eileen; Mollusky, Kathy; mrobinson@perkinscoie.com; King, Seth J. (Perkins Coie); Maggie Daly; Spir, Peter; Tim Ramis
Subject: RE: File No Ap-17-01 Harra Testimony

Jennifer,

Up to this point in the appeal the City Council has not opened the record to new evidence. Because the appeal is confined to the factual record made at the Planning Commission, the Council has permitted argument based on that record, but not introduction of new evidence.

The references to the record being open mean that the record before the City Council is open for argument only. The Council has the authority to open the factual record in some limited circumstances, and could do so in this case, but it has not yet authorized introduction of any factual evidence that was not presented to the Planning Commission. The record transcribed below confirms the proceeding was continued until May 18, but it does not establish that the City Council has ruled under the code to accept new factual information. Tonight the Council may consider whether to open the factual record, but it is not bound to do so.

Tim

From: Jennifer Bragar [mailto:jbragar@tomasilegal.com]
Sent: Thursday, May 18, 2017 9:29 AM
To: Tim Ramis
Cc: pspir@westlinnoregon.gov; estein@westlinnoregon.gov; KMOLLUSKY@westlinnoregon.gov; mrobinson@perkinscoie.com; King, Seth J. (Perkins Coie); Maggie Daly; Spir, Peter
Subject: RE: File No Ap-17-01 Harra Testimony

Dear Tim,

Please forward this message in response to the staff memorandum of May 18, 2017 (attached here for convenience) to the City Council and include it in the record for the above-referenced file on behalf of Jason and Jessica Harra. The staff memorandum states,

“With the advice of the City Attorney, to the extent the letter and attachments contain evidence, that evidence should not be considered since (a) the record was closed; and, (b) it includes new evidence that the Planning Commission had no access to. Those parts of the letter where counsel simply makes arguments objecting to our view of the scope and record, can be considered.”

The Harras are unclear by the meaning of “(a) the record was closed.” Based on the Harras review of the City Council hearing tape, the record before the City Council remains open. Below is a transcription of the end of the hearing where the City Council left the record open.

4:04:08 "Robinson: Is the written record open after tonight? We are not waiving out right to final written argument."

4:07:48 "Mayor: Now, we are going to keep the hearing open because I would like for example, I have a couple questions have come up about staff that I would like to ask about potential options and considerations because

the 43 plan has been referenced here a lot on the record as has the 3-lane issue without potentially other measures we might consider and remember the 43 plan is conceptual. So I would like to have some discussion about our options there which could maybe help mitigate....So is that correct, the procedure would be.

4:08:49 "Mayor: So maybe we close the hearing then [18th] and we do it in deliberation. Would that be better?"

4:09:50 "Mr. Ramis: We could have the applicant prepare a final written submission on the 11th, on the 18th your questions of staff, and then follow that with an opportunity for the applicant as well as the appellant to comment on the staff's responses **and then close the record.**"

4:09:15 "Mr. Robinson: Don't we get oral rebuttal?"

4:09:16 "Mayor: That's what he meant. Mr. Ramis: Exactly. Once the staff had commented you would have the opportunity as well as the appellant."

4:09:25 "Mayor: So, **we will continue the hearing until the 18th.** We'll answer final questions. You'll have the opportunity to have submitted comments. We'll have a clear record, of what's in and not in terms of the criteria and clarification of the appeal and we'll wrap it up hopefully"

4:09:47 "Mr. Robinson: Can I restate to make sure I have not screwed this up? On May 10th staff will have a recommendation to this body on what's on the record and scope of appeal. We have the right to give you what is effectively final written argument until May 11th at 5pm. You are going to do a public hearing on the 18th and I am sorry Mr. Mayor I didn't hear a time.

--staff discuss time of day--

4:10:43 " Mr. Robinson: 5pm. You are going to open with questions of staff, then each party and by party you mean the applicant and the appellant only have a right to respond to I guess what they heard without new evidence. Applicant takes it 10 minutes for oral rebuttal, there may be questions of applicant, and then you are going to **close the hearing and the record** and potentially deliberate?"

4:12:00 "Mr. Harra asks for this information to be broken down into layman's terms."

4:12:23 "Mr. Ramis: How about if offline I take the opportunity to explain?"

For the reasons stated in the Harras' May 16, 2017 letter, the City Council can exercise its discretion under CDC 99.280(C) to allow in all of the new evidence submitted at the May 8, 2017 hearing, and consider the entirety of the Harras' May 16, 2017 letter. Thank you.



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by *Chambers USA* 2016 in Real Estate: Zoning/Land Use

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