



Memorandum

Date: May 15, 2017

To: Russ Axelrod, Mayor
Members, West Linn City Council

From: John Boyd, Planning Manager

Subject: AP-17-01 Review of Oral Testimony for Admissibility

This memorandum addresses whether the Council should consider the admissibility of certain oral testimony from the May 8, 2017, hearing.

As described in the attached table below, the following oral testimony cannot be considered because they contain evidence not presented to the Planning Commission:

- Jason Harra
- Jessica Harra
- Rick Nys
- Chris Harris
- Robert Palmer
- Scot Chandler

Staff recommends that the following oral testimony also be excluded from consideration as beyond the permissible scope of the proceeding per CDC 99.280(B), however, final determination on these documents is dependent on the Council's conclusion regarding the proper breadth of the appeal:

- Jason Harra
- Jessica Harra
- Rick Nys
- Chris Harris
- Scot Chandler

With respect to the proper scope of the appeal, the memorandum takes the narrow view that Ground of Appeal 3 (safety of bike lanes) controls the scope of the hearing, but staff acknowledges that this is a matter of judgment for the City Council and that it is possible to find that Grounds of Appeal 1 (impact of construction) and 2 (lack of geologic information) are within the scope of reviewing the adequacy of the transportation infrastructure to support the project. Ground of Appeal 4 (abandonment of the project) appears to staff to be outside the scope of the reconsideration.

The table below evaluates the testimony based on those standards. If testimony receives a “NO”, then the referenced portion of the testimony is deemed inadmissible. If testimony receives all “YES”, then it is admissible. The City Council is the final judge of admissibility.

Table indicating admissibility of oral testimony for AP-17-01

| Sender | Within Council’s scope of reconsideration: <i>“adequate public facilities including traffic impact and influences and pedestrian improvements and safety”</i> | Addresses admissible grounds for review (#3 re: <i>Inadequate consideration of the impact of the proposed interim design on Willamette Drive on existing bike lanes)</i> per 99.020(B) | Meets standard for not including new evidence |
|----------------------------|--|--|---|
| Jason Harra | YES | NO | NO (1) (2) |
| Rick Nys | YES | NO | NO (1) (2) |
| Jessica Harra | NO | NO | NO (3) |
| Doug Palmer | YES | YES | YES |
| Friedrich Baumann | YES | YES | YES |
| Robert Stowell | YES | YES | YES |
| Alice Richmond | YES | YES | YES |
| Chris Harris | YES | NO | NO (1)(2)(5) |
| Ryan Zygar | YES | YES | YES |
| Scot Chandler | NO | NO | NO(7) |
| Robert Palmer | NO | YES | NO (6) (7) |
| James O’Toole | YES | YES | YES |
| Sue Yawkey/Adrienne Palmer | YES | YES | YES |

Footnote identifying new evidence: (1) Introduced previously unused sources and citations. (2) Citations from Greenlight Engineering report. (3) Count of number of children in neighborhood. (4) Parks impacted. (5) ADA compatibility. (6) Trees cut/logging. (7) Need for Downzoning.

ATTACHMENT:

To be admissible, the following three standards were applied:

1. Does the oral testimony address the City Council’s motion to “focus the scope of the reconsideration to adequate public facilities including traffic impact and influences and pedestrian improvements and safety.”?
2. Does the oral testimony address “the issues set forth in the request to appeal” per 99.280(B) (1) TYPE OF APPEAL HEARING AND SCOPE OF REVIEW”?
 - “B. Except as provided for in subsection C of this section, an appeal of a decision made by the Planning Commission shall be confined to:
 1. Those issues set forth in the request to appeal; and
 2. The record of the proceedings as well as the oral and written arguments presented which are limited to those issues clearly and distinctly set forth in the notice of appeal;”
3. Does the oral testimony introduce new evidence that was not part of the Planning Commission record?

The appellant’s issues set forth in the request to appeal may be summarized as follows:

- 1) Need to provide a timeline for completion of the subdivision including the construction of all houses within the subdivision;
- 2) Need for geological studies;
- 3) Inadequate consideration of the impact of the proposed interim design on Willamette Drive on existing bike lanes; and
- 4) Who has long term responsibility to address congestion, drainage, lighting, and related issues that may arise after the development is complete.

(Staff found that only Ground for Appeal 3 correctly addressed the City Council’s scope of reconsideration. Grounds for Appeal 1, 2 and 4 did not.)