



**CSA Planning, Ltd**

4497 Brownridge, Suite 101  
Medford, OR 97504

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Fax 541.779.0114

Jay@CSAplanning.net

May 30, 2024

CITY OF PHOENIX PLANNING COMMISSION  
c/o Zac Moody, Community Development Manager  
112 W. 2<sup>nd</sup> Street  
Phoenix, Or 97535

*via hand delivery*

**NOTICE OF APPEAL**

*City of Phoenix Planning Department Similar Use Determination Letter dated May 24, 2024 for Maplots 38-1W-16AD-3100 and 38-1W-16AD-3200<sup>1</sup>.*

Dear Mr. Mayor and City Council:

**DECISION SOUGHT TO BE REVIEWED AND APPEAL:**

Applicant files this letter as its Appeal of the Community Development Manager's letter dated May 24, 2024 to the Applicant denying a Similar Use Determination to allow the General Industrial zoned property to be used as base of operations for a business that provides contract forest management services.

**STANDING:**

Our client, Dinah Walker is in contract to purchase the property and the Seller/Property Owner is aware of and supports this appeal request, see attached limited Powers of Attorney from the Applicant and the Seller/Property Owner. Purchase of the property is contingent on Ms. Walker's ability to use the property to expand her existing business Silhouette Farm & Forestry LLC, henceforth "Silhouette". The Similar Use Determination was filed with the Planning Department on May 24, 2024 and this Appeal has been timely filed. Appellant has standing to appeal this matter.

**MATERIAL FACTS:**

On May 24, 2024, Alycia Cash with CSA Planning Ltd. filed a similar use determination request to allow the subject properties zoned General Industrial Property to be used by Silhouette as a base of operations for this business that provides contract forest management services; the work is predominantly conducted in forests off-site. The Similar Use Determination request has been previously submitted but is attached to this appeal to ensure its inclusion in the record.

On May 24, 2024 the Community Development Manager issued a letter denying the requested Similar Use Determination; this letter is attached to this appeal for inclusion in the record.

The City of Phoenix Development Code provides that Similar Use Determinations are issued pursuant to Chapter 4.8 - Code Interpretations. The Applicant has followed the process prescribed in the code for Similar Use Determination.

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<sup>1</sup> At the time of filing of this appeal, Applicant is unaware of any Planning File Number being assigned to the Similar Use Determination Request that can be referenced in this appeal.



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**BASIS FOR THE APPEAL:**

The decision of the Planning Director was not made as a land use decision. This decision is not precedential to the appeal timely filed herein. The Planning Commission's hearing on this appeal is *de novo* and the Planning Commission is free to interpret the code as the Commission deems appropriate, provided it is an interpretation that can be made by a *reasonable person*; the *reasonable person test* is the colloquial label that is commonly used to describe the formal deferential standard of review that local planning commissions enjoy when it interprets its own land use regulations. A simple way to conceptualize the deferential standard of review is that a code interpretation can be allowed unless it clearly contradicts the express language of the code.

In the subject case, Applicant's position is that allowing the requested use in the General Industrial zone is certainly reasonable and well within the wide berth for allowable code interpretations under the deferential standard of review, *see Siporen vs. the City of Medford*.

**EVIDENCE AND ARGUMENTS IN THE RECORD:**

Because this appeal is *de novo* and the Staff's Similar Use Determination is not precedential, the record for the subject appeal will remain open at least until the conclusion of the initial hearing. The Applicant intends to provide additional evidence and arguments to the record between this appeal filing and the initial hearing in support of this Similar Use Determination appeal.

Very Truly Yours,

CSA Planning, Ltd.

A handwritten signature in blue ink, appearing to read 'Jay Harland', is written over the typed name.

Jay Harland  
Principal

cc. File

**LIMITED SPECIAL POWER OF ATTORNEY**

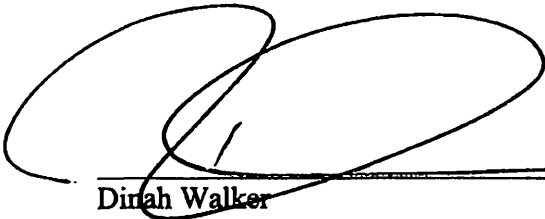
**AUTHORIZATION TO ACT on behalf of the undersigned owner of real property described as Tax Lots 3100 & 3200 of Jackson County Assessor map 38-1W-16AD.**

**LET IT BE KNOWN that CSA Planning, Ltd. (CSA) is the duly authorized representative of Dinah Walker the applicant of the above described real property, and, by this instrument, owners and applicant does hereby authorize CSA to perform all acts procedurally required to obtain land use and development applications and permits as may be required by and through City of Phoenix as legal prerequisites to actual development of the described real property.**

**THIS LIMITED AND SPECIAL POWER OF ATTORNEY shall be used for only the limited and special purposes above described and shall not be used to buy, sell or convey any part or any interest whatsoever in this or any other land owned by the above property owner.**

**THIS LIMITED AND SPECIAL POWER OF ATTORNEY has been expressly authorized by the undersigned applicant and shall expire on December 31, 2025, but may be extended by the mutual consent of the parties.**

Done and dated this 30 day of May, 2024.

  
\_\_\_\_\_  
Dinah Walker

### LIMITED SPECIAL POWER OF ATTORNEY

AUTHORIZATION TO ACT on behalf of the undersigned owner of real property described as Tax Lots 3100 & 3200 of Jackson County Assessor map 38-1W-16AD.

LET IT BE KNOWN that CSA Planning, Ltd. (CSA) is the duly authorized representative of Lesley Properties, LLC the owner of the above described real property, and, by this instrument, owners and applicant does hereby authorize CSA to perform all acts procedurally required to obtain land use and development applications and permits as may be required by and through City of Phoenix as legal prerequisites to actual development of the described real property.

THIS LIMITED AND SPECIAL POWER OF ATTORNEY shall be used for only the limited and special purposes above described and shall not be used to buy, sell or convey any part or any interest whatsoever in this or any other land owned by the above property owner.

THIS LIMITED AND SPECIAL POWER OF ATTORNEY has been expressly authorized by the undersigned owner and shall expire on December 31, 2025, but may be extended by the mutual consent of the parties.

Done and dated this 31 day of May, 2024.

DocuSigned by:  
*Jim Lesley*  
A8888904672B464  
\_\_\_\_\_  
Authorized Representative

5/31/2024

Member,  
Lesley  
\_\_\_\_\_  
Properties,  
LLC.



May 24, 2024

CSA Planning, LTD.  
Alycia Cash  
4497 Brownridge, Suite 101  
Medford, OR 97504

RE: Similar Use Determination – 381W16AD TL 3100 & 3200

Dear Ms. Cash,

Thanks for your request for a similar use determination for the properties located at 306 S. C Street (381W16AD TL 3100 and 3200). Below is the requested determination and some additional information on previous uses.

As noted in your memo, the subject properties are within the Phoenix city limits. These properties are subject to the regulations outlined in the Phoenix Land Development Code, Chapter 2.5 – General Industrial and uses listed in Table 2.2.5(A).

On April 17, 2024 staff received an inquiry regarding use of the properties for chainsaw repair and heavy equipment maintenance and storage for a forestry land management business on the subject properties. The proposed use now also includes additional accessory uses such as office space. The General Industrial zone, unlike other zones including the Light Industrial zone, *accommodates a range of light and heavy industrial land uses. It is intended to segregate incompatible developments from other districts, while providing a high-quality environment for businesses and employees.*

Unlike other zoning designations, the General Industrial zone does not specifically identify truck or equipment repair or machining as an allowed use and specifically disallows storage as shown below:

***Warehousing and distribution (this does not include Mini-Warehouse Storage facilities)***

Warehousing and distribution are typically defined as the process of storing physical inventory for sale or distribution. Warehouses are used by all types of businesses that need to temporarily store products in bulk before either shipping them to other locations or individually to end consumers.

In addition to staff's interpretation of warehousing and distribution above, staff further believes that the emphasis on not allowing mini-warehouse storage facilities was intended to ensure that the few parcels that allow heavy industrial uses are preserved for that purpose. Considering the interpretation above, storage of vehicles is not a warehousing or distribution use and therefore cannot be allowed on the subject properties.

The Phoenix Land Development Code acknowledges that not all uses are listed in the code and that uses similar to the ones listed can be approved. The code is silent on uses that are listed in one zone and not the other. However, it can be interpreted that if a use is not listed in one



Community & Economic Development Department  
112 W. 2<sup>nd</sup> Street/ PO Box 330  
Phoenix, OR 97535  
www.phoenixoregon.gov  
541-535-2050

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zone, in this case General Industrial, but listed as allowed in other zones such as Light Industrial, that the zone without the use listed does not support the unlisted use.

In the case of this request, the Light Industrial zone specifically allows for the following use:

***Light fabrication and repair shops such as blacksmith, cabinet, electric motor, heating, machine, sheet metal, stone monuments, upholstery, welding, auto body, and auto and truck repair.***

As noted above, the General Industrial zone doesn't allow storage that is not related to warehousing or distribution nor does it allow for the repair of equipment onsite.

This determination may be appealed to the Planning Commission within 14 days after the interpretation was mailed or delivered to the applicant. The Planning Commission shall hear all appeals of a Planning Director interpretation as a Type III action pursuant to Chapter 4.1.5 – Type III Procedure (Quasi-Judicial), except that written notice of the hearing shall be provided to the applicant, any other party who has filed a notice of appeal, and any other person who requested notice.

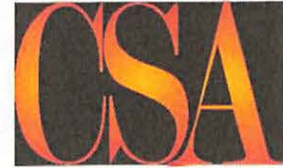
If you have any questions about this interpretation or the appeal process, please contact me directly by email at [zac.moody@phoenixoregon.gov](mailto:zac.moody@phoenixoregon.gov) or at 541-535-2050.

Respectfully,

A handwritten signature in black ink, appearing to read "Zac Moody", is written in a cursive style.

Zac Moody  
Community Development Manager

CC: Agent, Property Files



**CSA Planning, Ltd**

4497 Brownridge, Suite 101  
Medford, OR 97504

Telephone 541.779.0569  
Fax 541.779.0114

Alycia@CSAplanning.com

## Memorandum

To: Zac Moody  
City of Phoenix Planning Director

Date: May 24, 2024

Subject: Similar Use Determination

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On behalf of our client, Dinah Walker, we are requesting a similar use determination on the property located on C Street within the City of Phoenix. Described in the records of the Jackson County Assessor as Map 38-1W-16AD, Tax Lots 3100 & 3200, hereinafter known as the subject property.

## BACKGROUND

Silhouette Farm & Forestry, LLC provides forestry land management, vegetation control, and environmental services to U.S. federal government agencies and privately held forestlands and farms. Such as the Forest Service, Bureau of Land Management, Fish & Wildlife Services, and the Department of Defense. Business operations include hazardous fuels reduction, invasive species removal, habitat restoration, herbicide application, tree planting, roadside vegetation clearing and other natural resource management activities.

## LAND USE DESIGNATION

The subject property is within the Phoenix City limits and within the Urban Growth Boundary. The property is zoned General Industrial (G-I) and the Comprehensive Plan map (attached) shows the property with an Industrial designation. The General Industrial (G-I) District accommodates a range of light and heavy industrial land uses. Including light manufacturing, Urban agriculture, warehousing and distribution, and other uses similar to those listed on Table 2.5.2.A - Land Uses Types Permitted in the General Industrial District. The property abuts the Central Oregon & Pacific Railroad along the west property line. The properties directly south of the subject property are zoned Low Density Residential (R-1). East of the subject property, across C Street are several Medium Density Residential (R-2) properties. Immediately north of the property does not have a Tax Lot number but appears to be owned by the railroad and leased out to the current tenants for industrial uses. Further north are several additional General Industrial (G-I) zone properties.

## PRIOR USE

The subject property's prior use was a company called Noel Lesley. A professional and public event management service and event rental supply. The subject property was the storage yard for the professional large event equipment including staging & scaffolding, lighting, fencing, etc. They supplied smaller public event rental items such as smaller event tents, table and chairs, party décor, etc. The yard housed semi trucks, Hyster trackers, trailers, customer and employee parking lots, and an administration/office building. The business operation had customer base pick up and drop off along with delivery service creating a traffic flow of truck and trailers to the site as well as employee traffic.



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## PROPOSED USE & REQUEST

The applicants use would include office/administration building, warehouse storage for company equipment, tools, and supplies, parking for company service vehicles & employee parking. The permitted land use table and comprehensive plan use designation does not specifically list a use category that clearly allows the proposed use. The agricultural and warehouse/distribution uses that are set out in the permissible uses table are similar in many ways to the operation of Silhouette Farm & Forestry. The industrial area would serve as an efficient use of land and public services. The location is close to transportation options for employees. The majority of business operations are off site and will not increase daily traffic flow when compared to the prior use. If future redevelopment is proposed, it will be evaluated during the Site Plan Review process with the City of Phoenix to ensure all standards are met. The applicant has the property under contract but needs to confirm a similar use determination would be accepted within the current zoning designation.

The other way to think about this request is that - if this type of employment use is not allowed in the General Industrial zone - then where would it be allowed? This is the type of employment use for which the City of Phoenix is well positioned because it is proximate to large areas of agricultural land in the Bear Creek Valley and has good access to forestlands in the southern third of Jackson County. Moreover, the existing built environment on the site is one that if this use (or some similar use) cannot be sited there under the General Industrial zoning district - what uses will occupy the space? Noel Lesley was a very specialized use and the built facilities to serve it have a limited number and types of uses that would make sense to re-occupy the site. It is not really laid out for manufacturing uses. In CSA's professional opinion, the Silhouette is an ideal user to reoccupy a site that might otherwise sit vacant and become a blight for many years and is appropriate for a General Industrial zoned area.

CSA Planning Ltd.,

A handwritten signature in blue ink, reading 'Alycia Cash', is written over a horizontal line.

Alycia Cash  
Assistant Planner

Attachment A: Comprehensive Plan Map

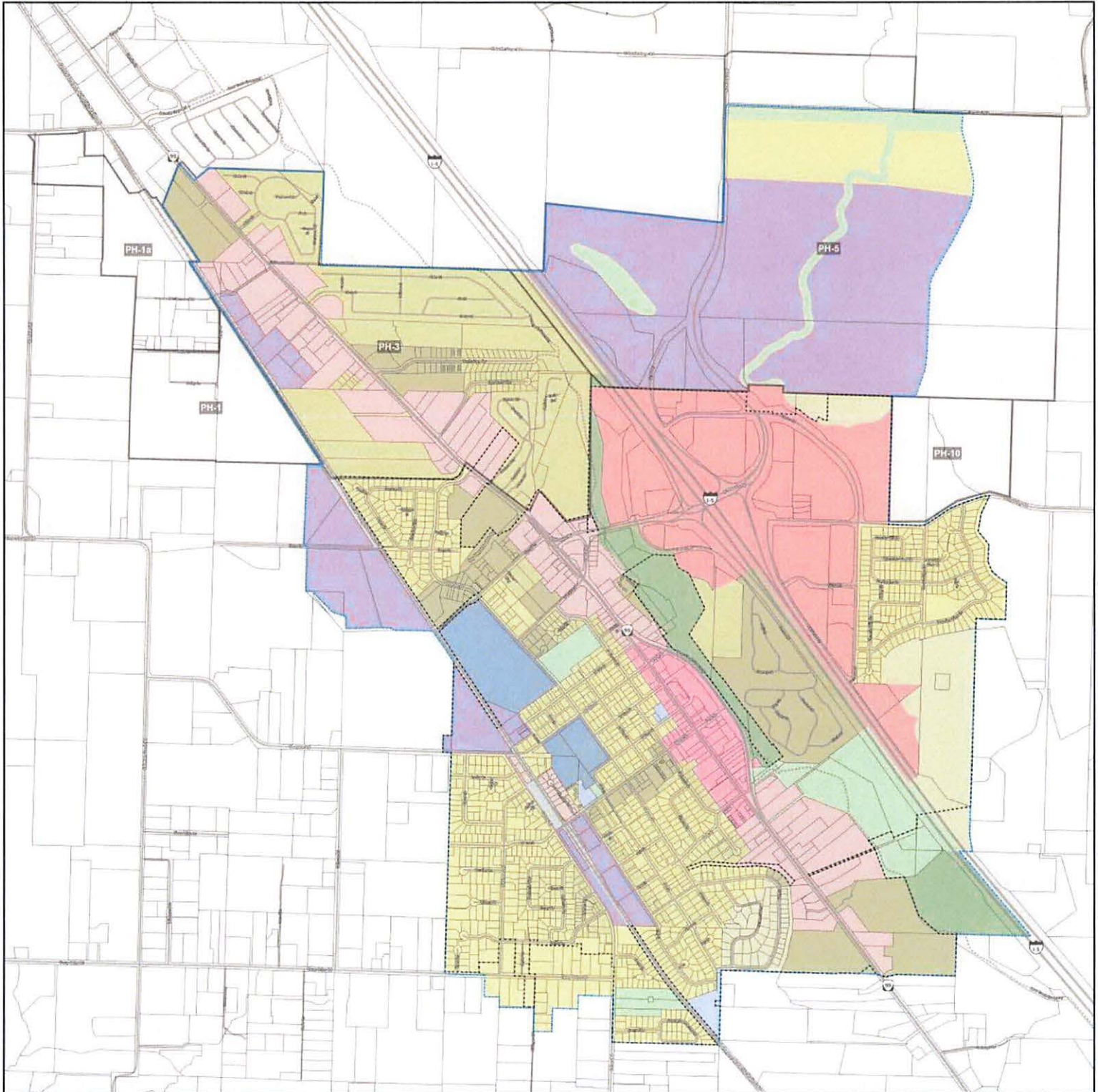
Attachment B: Zoning Map

Attachment C: Subject Property GIS Map

Attachment D: Jackson County Assessors Data for the subject property



# Community & Economic Development Comprehensive Plan Designations



### Boundary

-  City Limit  
(See Section 10-10-010)
-  Urban Growth Boundary  
(See Section 10-10-010)
-  Urban Reserve Area  
(See Section 10-10-010)

### Comprehensive Plan Designations

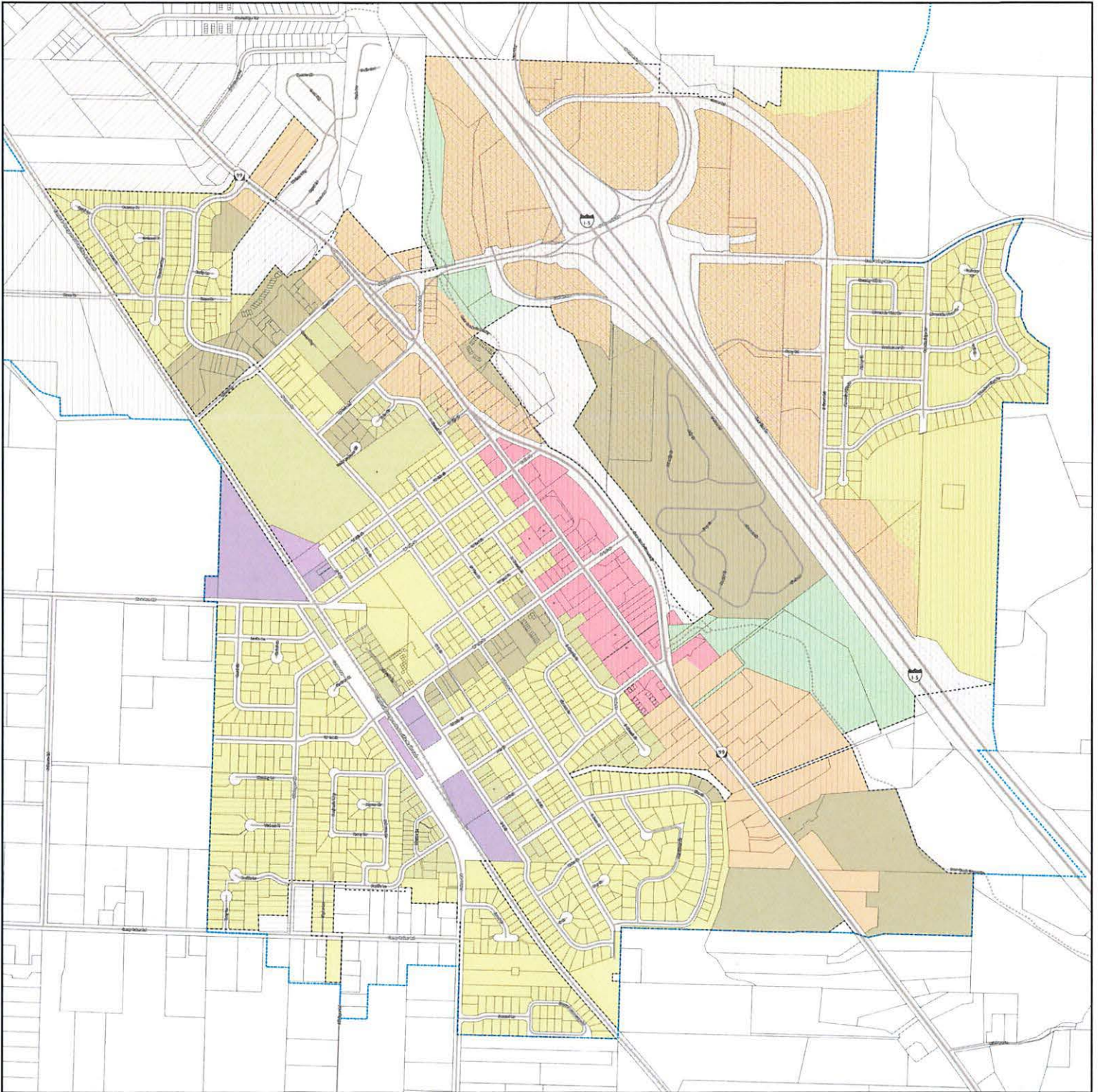
- |  |   |  |
|--|---|--|
|  Residential Hillside       |  Park & Open Space   |  Commercial             |
|  Low Density Residential    |  Bear Creek Greenway |  Residential Employment |
|  Medium Density Residential |  Public              |  City Center District   |
|  High Density Residential   |  Schools             |  Interchange Business   |
|  |  Railroad            |  Industrial             |

0 0.07 0.15  
Miles  
1 inch equals 0.075 Miles



The details shown on this map are for planning purposes only. The City of Phoenix is not responsible for errors or omissions. Every effort has been made to ensure the accuracy of this map. However, there may be inaccuracies due to human or mechanical error or changes in land use, laws and regulations or legislative changes. To verify the zoning designation of a parcel or to report errors, please contact the Planning Department at (602) 506-2000. This product is provided as is, without warranty. In no event shall the City of Phoenix be liable for damages from the use of this product. This product is subject to update and change. Distribution and further distribution or copies prohibited.









# Community & Economic Development Land Use Districts









### Boundary

-  City Limit  
(See 1984 Ord. 1022)
-  Urban Growth Boundary  
(See 1984 Ord. 1022)

### Land Use District

-  Low Density Residential (R-1)
-  Medium Density Residential (R-2)
-  High Density Residential (R-3)
-  City Center (C-C)
-  Commercial Highway (C-H)
-  General Industrial (G-I)
-  Light Industrial (L-I)
-  Bear Creek Greenway (BCG)

### Overlays

-  Hilsinger Overlay
-  Historic Preservation Overlay
  -  State of Oregon Inventory
  -  Southern Oregon Historical Society Marker
  -  Other Significant Site
-  I-5 Overlay
-  Interchange Development Charge Overlay
-  Motor Vehicle Trip Reduction Designs and Programs Overlay
-  Oregon 99 Setback Overlay
-  Trip Budget Overlay

0 0.05 0.1  
1 inch equals 0.05 Mi



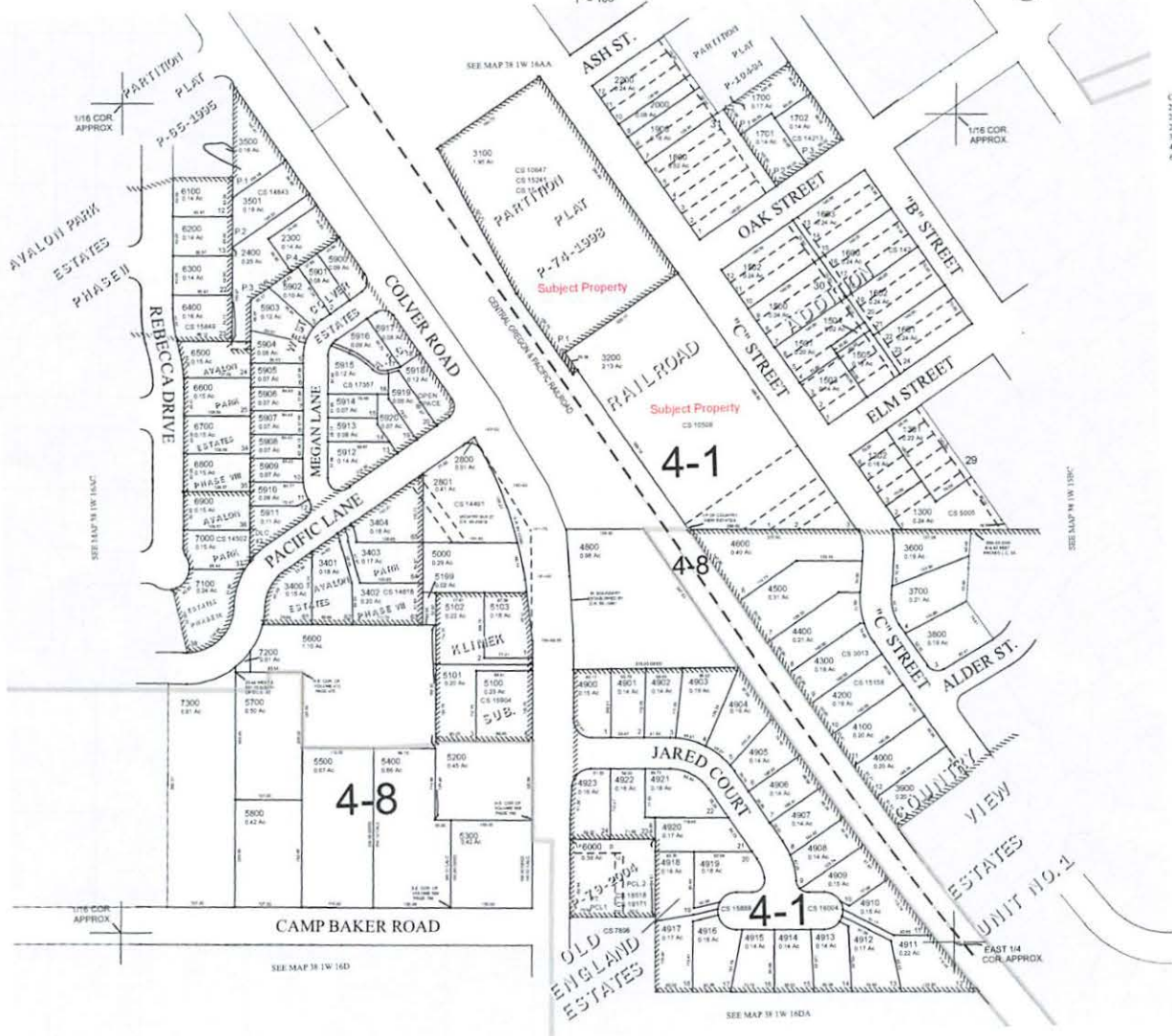
The statistics shown on this map are for planning purposes only. The City of Phoenix is not responsible for errors or omissions. Every effort has been made to ensure the accuracy of this map; however, there may be discrepancies due to human or mechanical error or changes created by recent land use action or legislative changes. To verify the zoning designation of a parcel or to report errors, please contact the Planning Department at (602) 525-2550. This product is provided as is, without warranty, in no event is the City of Phoenix liable for damages from the use of this product. This product is subject to change and copyright limitations and further distribution of resale is prohibited.

FOR ASSESSMENT AND TAXATION ONLY

S.E.1/4 N.E.1/4 SEC.16 T.38S. R.1W. W.M.  
JACKSON COUNTY

1" = 100'

381W16AD  
PHOENIX



CANCELLED TAX LOT NUMBERS  
2200  
3000  
2700  
3000  
4700 KILLED TO STREET  
4001 ADDED TO 4000

GIS DATA  
DATE: 02/25/2015 8:41:30 AM 100000

381W16AD  
PHOENIX  
NEW MAP August 10, 2005  
REV April 7, 2015

<a href="#">Account Sequence</a>	<a href="#">Map TL Sequence</a>	Assessment Year 2023 <span style="font-size: small;">v</span>	<a href="#">Print Window</a>	<a href="#">Close Window</a>
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**Assessment Info for Account 1-091907-2 Map 381W16AD Taxlot 3100**  
Report For Assessment Purposes Only Created May 23, 2024

Account Info		Tax Year 2023 Info	Land Info
Account	1-091907-2	<a href="#">Pay Taxes Online</a>	Tax Code 4-01
Map	381W16AD 3100		Acreage 1.95
Taxlot			<a href="#">Zoning</a>
Owner	LESLEY PROPERTIES LLC		<a href="#">Land Class</a>
Situs Address		Tax Report <span style="float: right;"><a href="#">Details</a></span>	
<a href="#">C STREET PHOENIX</a>		Tax Statement <span style="float: right;"><a href="#">Details</a></span>	UNK 1.95 Ac
	LESLEY PROPERTIES LLC NOEL A LESLEY AND MARY C LESLEY	Tax History <span style="float: right;"><a href="#">Details</a></span>	<a href="#">Property Class</a> 231
Mailing Address	7551 S FLAT LN	Tax Details <span style="float: right;"><a href="#">Details</a></span>	<a href="#">Stat Class</a> 612
	KUNA ID, 836343201	Tax Rates <span style="float: right;"><a href="#">Details</a></span>	Unit ID 185225-1
<a href="#">Associated Taxlots</a>	2 Acct		Maintenance Area 4
4-01 MS	<a href="#">3-007530-5</a> <a href="#">381W16AD 3100 A2</a> <span style="color: red;">PURGED</span>		Neighborhood 000
4-01 MS	<a href="#">3-012197-0</a> <a href="#">381W16AD 3100 A2</a> <span style="color: red;">PURGED</span>		Study Area 77
Appraiser	37		Account Status ACTIVE
			Tax Status Assessable
			Sub Type NORMAL

Sales Data (AS 400)				
Last Sale		Sale Date	Instrument Number	Sales History
\$125,000.00		12/7/1998	<a href="#">1998-56724</a>	<a href="#">Details</a>

**Value Summary Detail ( For Assessment Year 2023 )**

**Market Value Summary ( For Assessment Year 2023 )**

Code Area	Type	Acreage	RMV	M5	MAV	AV
4-01	LAND	1.95	\$ 433,710	\$ 433,710	\$ 106,320	\$ 106,320
4-01	IMPR	0.00	\$ 1,351,900	\$ 1,351,900	\$ 652,180	\$ 652,180
Value History <a href="#">Details</a>			Total:	\$ 1,785,610	\$ 1,785,610	\$ 758,500

Improvements									
Building #	Code Area	Year Built	Eff Year Built	Stat Class	Description	Type	SqFt	% Complete	
1	4-01	0		612	Warehouse - Distribution	Comm Imp	80	100 %	<a href="#">Details</a>

Photos and Scanned Documents			
Type	Item Number	Image Files	
APEX DRAWINGS	1	1	<a href="#">PDF</a>
ACCOUNT PHOTO	2	1	<a href="#">PDF</a>
ACCOUNT PHOTO	3	1	<a href="#">PDF</a>
ACCOUNT PHOTO	4	1	<a href="#">PDF</a>
ACCOUNT PHOTO	5	1	<a href="#">PDF</a>
ACCOUNT PHOTO	6	1	<a href="#">PDF</a>
ACCOUNT PHOTO	7	1	<a href="#">PDF</a>
ACCOUNT PHOTO	8	1	<a href="#">PDF</a>
ACCOUNT PHOTO	9	1	<a href="#">PDF</a>
ACCOUNT PHOTO	10	1	<a href="#">PDF</a>
ACCOUNT PHOTO	11	1	<a href="#">PDF</a>
ACCOUNT PHOTO	12	1	<a href="#">PDF</a>
ACCOUNT PHOTO	13	1	<a href="#">PDF</a>
SCANNED ASSESSOR DOCUMENTS	(See new portal)	(See new portal)	<a href="#">Portal</a>

**Improvement Comments**

**Commercial**

**Appraisal Maintenance**

2008 - VALID COMMERCIAL R.T.

**Account Comments**

review; n/c dba37 02/13/08 >>> >>9/5/08: Reappraised as part of county wide revaluation of warehouse properties done for base year 2008-09. Established MA 8 (county wide), SA 70 (Commercial), NH 610 (Warehouses) for this purpose. >>

**Exemptions / Special Assessments / Notations / Potential Liability**

Notations			
Description	Tax Amount	Year Added	Value Amount
BOPTA ORDER-REDUCTION 309.120		1999	

**Location Map**

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Close WindowPrint Window

<a href="#">Account Sequence</a>	<a href="#">Map TL Sequence</a>	Assessment Year 2023 <span style="font-size: small;">▼</span>	<a href="#">Print Window</a>	<a href="#">Close Window</a>
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**Assessment Info for Account 1-073109-5 Map 381W16AD Taxlot 3200**  
 Report For Assessment Purposes Only Created May 23, 2024

Account Info		Tax Year 2023 Info	Land Info
Account	1-073109-5	<a href="#">Pay Taxes Online</a>	Tax Code 4-01
Map Taxlot	381W16AD 3200		Acreage 2.13
Owner	LESLEY PROPERTIES LLC		<a href="#">Zoning</a>
Situs Address	C STREET PHOENIX R	Tax Report <span style="float: right;"><a href="#">Details</a></span>	<a href="#">Land Class</a>
	LESLEY PROPERTIES LLC NOEL A LESLEY AND MARY C LESLEY	Tax Statement <span style="float: right;"><a href="#">Details</a></span>	UNK 2.13 Ac
Mailing Address	7551 S FLAT LN	Tax History <span style="float: right;"><a href="#">Details</a></span>	<a href="#">Property Class</a> 231
	KUNA ID, 836343201	Tax Details <span style="float: right;"><a href="#">Details</a></span>	<a href="#">Stat Class</a> 720
Appraiser		Tax Rates <span style="float: right;"><a href="#">Details</a></span>	Unit ID 185226-1
			Maintenance Area 4
			Neighborhood 000
			Study Area 77
			Account Status ACTIVE
			Tax Status Assessable
			Sub Type NORMAL

Sales Data (AS 400)			
Last Sale	Sale Date	Instrument Number	Sales History
\$293,750.00	11/6/1996	<a href="#">1996-37249</a> <span style="float: right;"><a href="#">Details</a></span>	<a href="#">Details</a>

[+ Value Summary Detail \( For Assessment Year 2023 \)](#)

[- Market Value Summary \( For Assessment Year 2023 \)](#)

Code Area	Type	Acreage	RMV	M5	MAV	AV
4-01	LAND	2.13	\$ 473,750	\$ 473,750	\$ 239,290	\$ 239,290
4-01	IMPR	0.00	\$ 233,380	\$ 233,380	\$ 448,730	\$ 448,730
Value History <span style="float: right;"><a href="#">Details</a></span>			Total:	\$ 707,130	\$ 707,130	\$ 688,020

Improvements									
Building #	Code Area	Year Built	Eff Year Built	Stat Class	Description	Type	SqFt	% Complete	
1	4-01	0		720	Lumber & Wood Products	Comm Imp	0	100 %	<a href="#">Details</a>

[+ Photos and Scanned Documents](#)

Type	Item Number	Image Files	
ACCOUNT PHOTO	1	1	<a href="#">PDF</a>
SCANNED ASSESSOR DOCUMENTS	(See new portal)	(See new portal)	<a href="#">Portal</a>

[+ Improvement Comments](#)

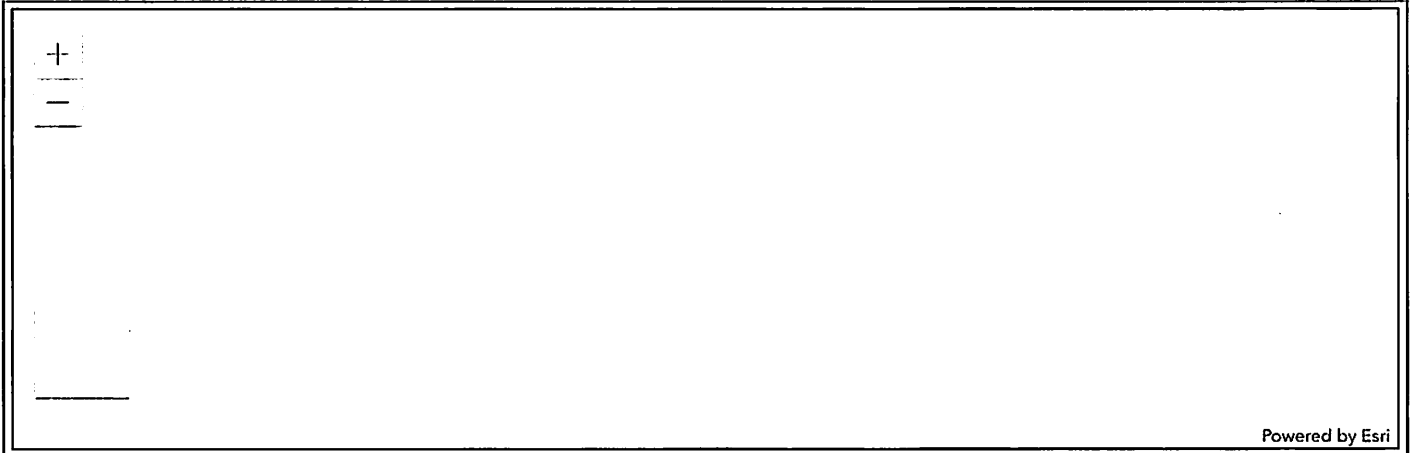
Commercial					
Space: A	Square Feet: 0	Year Built: 0	Use: 720 - Lumber & Wood Products	Name: SPECIAL PRODUCTS	
Floor: None	Wall: None	Partition: None	Roof: None	Foundation:	
Cover: None	Cover: None	Cover: None	Cover: None	Ceiling: None	
Site			Size		
COMMERCIAL SITE			1		
Commercial Land					
Commercial Comments					
Comment					
Improvement value arrived at through					
Industrial RPR					

[+ Account Comments](#)

[- Exemptions / Special Assessments / Notations / Potential Liability](#)

Notations	Description	Tax Amount	Year Added	Value Amount
	TRC DOWNLOADED FROM CAAP			
	TAX RATE CORRECTION 2012		2013	
	READ BEFORE DATA ENTRING EXCEPTION		2006	
	BOPTA ORDER-REDUCTION 309.120		1996	
	BOPTA ORDER-REDUCTION 309.120		1992	

[- Location Map](#)



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## Chapter 4.8 – Code Interpretations

### Sections

4.8.1 – Purpose.....	291
4.8.2 – Code Interpretation Procedure .....	291

#### 4.8.1 – Purpose

Some terms or phrases within the Code may have two or more reasonable meanings. This section provides a process for resolving differences in the interpretation of the Code text.

#### 4.8.2 – Code Interpretation Procedure

- A. Requests.** A request for a code interpretation shall be made in writing to the Planning Director.
- B. Decision to Issue Interpretation.** The Planning Director shall have the authority to review a request for an interpretation. The Planning Director shall advise the requester in writing within 14 days after the request is made, on whether or not the City will issue the requested interpretation.
- C. Written Interpretation.** If the Planning Director decides to issue an interpretation, it shall be issued in writing and shall be mailed or delivered to the person requesting the interpretation and any other person who specifically requested a copy of the interpretation. The written interpretation shall be issued within 14 days after the City advises the requester that an interpretation shall be issued. The decision shall become effective 14 days later, unless an appeal is filed in accordance with E-G below.
- D. Appeals.** The applicant and any party who received such notice or who participated in the proceedings through the submission of written or verbal evidence of an interpretation may appeal the interpretation to the Planning Commission within 14 days after the interpretation was mailed or delivered to the applicant. The appeal may be initiated by filing a notice of appeal with the Planning Director pursuant to Chapter 4.1.4 – Type II Procedure (Administrative), Section G.
- E. Appeal Procedure.** The Planning Commission shall hear all appeals of a Planning Director interpretation as a Type III action pursuant to Chapter 4.1.5 – Type III Procedure (Quasi-Judicial), except that written notice of the hearing shall be provided to the applicant, any other party who has filed a notice of appeal, and any other person who requested notice.
- F. Final Decision/Effective Date.** The decision of the Planning Commission on an appeal of an interpretation shall be final and effective when it is mailed to the applicant. If an appeal of the Planning Commission’s decision is filed with the City Council, the decision of the City Council remains effective unless or until it is further appealed and modified by the Land Use Board of Appeals or a court of competent jurisdiction.
- G. Interpretations on File.** The Planning Department shall keep on file a record of all code interpretations.



## Chapter 4.1 – Types of Applications and Review Procedures

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### Amendments

4.1.6 - Ord. No. 954, 2014

4.1.5 – Ord. No. 997, 2018

#### **4.1.1 – Purpose**

The purpose of this Chapter is to establish standard decision-making procedures that will enable the City, the applicant, and the public to reasonable review of applications and participation in the local decision-making process in a timely and effective way.

#### **4.1.2 – Description of Permit/Decision-making Procedures**

All land use and development permit applications, except building permits, shall be decided by using the procedures contained in this Chapter. General procedures for all permits are contained in Chapter 4.1.7 – General Provisions. Specific procedures for certain types of permits are contained in Chapters 4.1.2 through 4.1.6. The procedure type assigned to each permit governs the decision-making process for that permit. There are four types of permit/decision-making procedures: Type I, II, III, and IV. These procedures are described in subsections A-D below. In addition, Table 4.1.2 lists all of the City’s land use and development applications and their required permit procedures. Projects that require separate development applications shall require separate application fees.

- A. Type I Procedure (Ministerial).** Type I decisions are made by the Planning Director, without public notice and without a public hearing. The Type 1 procedure is used when there are clear and objective approval criteria, and applying city standards and criteria requires no use of discretion. Such decisions include, but are not limited to, Sign Permits, Lot Line Adjustments, and Zone Clearances on submitted Site Plans for development not subject to Site Development Plan Review.
- B. Type II Procedure (Administrative).** Type II decisions are made by the Planning Director with public notice and an opportunity for a public hearing. The appeal of a Type II decision is heard by the Planning Commission.
- C. Type III Procedure (Quasi-Judicial).** Type III decisions are made by the Planning Commission after a public hearing, with appeals reviewed by the City Council. Type III decisions generally use discretionary approval criteria.
- D. Type IV Procedure (Legislative).** Type IV procedures apply to legislative matters. Legislative matters involve the creation, revision, or large-scale implementation of public policy (e.g., adoption of land use regulations, zone changes, and comprehensive plan amendments which apply to entire districts). Type IV matters are considered initially by the Planning Commission with final decisions made by the City Council.

**Table 12: 4.1.2 – Summary of Development Decisions/Permit by Type of Decision-making Procedure\***

Access to a Street	Type I	Chapter 3.2 and the standards of the applicable roadway or transit authority
Annexation	Type III/IV	Comprehensive Plan and city/county intergovernmental agreements, and ORS Chapter 222, as applicable
Building Permit	N/A	Building Code
Code Interpretation	Type II	Chapter 4.8 – Code Interpretations
Code Amendment	Type IV	Chapter 4.7 – Land Use District Map and Text Amendments
Comprehensive Plan Amendment, including urban growth boundary and urban reserve amendments	Type IV	Comprehensive Plan (ORD940)
Conditional Use Permit	Type III	Chapter 4.4 – Conditional Use Permits
Flood Plain Development Permit	Type I	City Engineer
Home Occupation Permit	Type I	Chapter 4.9 – Miscellaneous Permits
Planned Unit Development	Type III	Chapter 4.5 – Planned Unit Developments
Modification to Approval	Type II/III	Chapter 4.6 – Modifications to Approved Plans and Conditions of Approval
Land Use District Map Change		
Quasi-Judicial (no plan amendment required)	Type III	Chapter 4.7 – Land Use District Map and Text Amendments
Legislative (plan amendment required)	Type IV	Chapter 4.7 – Land Use District Map and Text Amendments
Lot Line Adjustment	Type I	Chapter 4.3 – Land Divisions and Lot Line Adjustments
Non-Conforming Use or Development Confirmation	Type I	Chapter 5.3 – Non-Conforming Uses and Developments
Partition	Type II	Chapter 4.3 – Land Divisions and Lot Line Adjustments
Sign Permit	Type I	Chapter 3.6
Development Review	Type I	Chapter 4.2, Building Code
Site Design Review	Type II/III	Chapter 4.2
Subdivision	Type II/III	Chapter 4.3 – Land Divisions and Lot Line Adjustments
Temporary Use Permit	Type II/III	Chapter 4.9 – Miscellaneous Permits
Tree Removal	Type I/II	Chapter 3.3 – Landscaping, Street Trees, Fences, and Walls
Variance	Type II/III	Chapter 5.2 – Variances

\*Note: The chapters referenced above in the right-hand column describe the types of land uses and development activity that require permits under each type of decision-making procedure.

### 4.1.3 – Type I Procedure (Ministerial)

#### A. Application Requirements

1. Application Forms. Type I applications shall be made on forms provided by the Planning Department.

2. **Application Requirements.** Type I applications shall:
  - a. Include the information requested on the application form;
  - b. Address the criteria in sufficient detail for review and action; and
  - c. Be filed with the required fee.
- B. Zoning Clearance and Planning Inquiry.** Some planning requests are simply requests for information regarding a specific property that require staff time in excess of that necessary to answer land use questions on the phone or over the counter. These activities are not land use decisions requiring notice or an opportunity to appeal. However, land use applications that involve creating or modifying access to the street network require notice to public agencies, including Jackson County, Rogue Valley Metropolitan Planning Organization (RVMPO), RVTD and ODOT, if applicable.
  1. A Zoning Clearance is a written statement of facts regarding the application of this or other land use ordinances to a specific parcel or tract of land. Answering Zoning Clearance questions is a basic service of the Planning Department. The City shall charge a fee reasonably related to the amount of time needed for staff to write findings for the applicant and the property address file. For example, an applicant who wishes to build an addition or convert a garage into an accessory dwelling unit would need a zoning clearance.
  2. A Planning Inquiry is a request for a written statement of information about a specific parcel or tract of land. Such information may be in response to a specific question, or may be in response to a general question about the history or characteristics of the site. The City shall charge a fee reasonably related to the cost of staff time to research the question at hand and to make a written statement of findings that will be maintained in the property address file.
- C. Ministerial Decision Requirements.** The Planning Director's decision shall address all of the approval criteria. When appropriate, future land use decisions that affect transportation facilities require review coordination with the applicable public agency with roadway and/or transit jurisdiction to ensure that the access standards of that agency are met. Based on the criteria and the facts contained within the record, the Planning Director shall approve, approve with conditions, or deny the requested permit or action. A written record of the decision shall be provided to the applicant and kept on file at City Hall.
- D. Final Decision.** The decision shall be final on the date it is mailed or otherwise provided to the applicant, whichever occurs first. The decision is the final decision of the City. It cannot be appealed to City officials. The applicant shall apply for a variance if it is permissible.
- E. Effective Date.** The decision is effective the day after it is final.

#### 4.1.4 – Type II Procedure (Administrative)

Pre-Application. A pre-application conference is recommended for Type II applications. Pre-application conference requirements and procedures are in Chapter 4.1.7 – General Provisions.

##### A. Application requirements

1. **Application Forms.** Type II applications shall be made on forms provided by the Planning Department;
2. **Submittal Information.** The application shall:
  - a. Include the information requested on the application form;
  - b. Be filed with two copies of a narrative statement that explains how the application satisfies all of the relevant criteria and standards in sufficient detail for review and decision-making;
  - c. Be accompanied by the required fee;

- d. Include two sets of mailing labels for all real property owners of record who will receive a notice of the application as required in Chapter 4.1.4 – Type II Procedure (Administrative), section C. The records of the Jackson County Department of Assessment and Taxation are the official records for determining ownership. The applicant shall demonstrate that the most current assessment records have been used to produce the notice list;
- e. Include an impact study for all land division applications. The impact study shall quantify/assess the effect of the development on public facilities and services. The study shall address, at a minimum, the transportation system, including pedestrian ways and bikeways; the drainage system; the parks system; the water system; the sewer system; and the noise impacts of the development. For each public facility system and type of impact, the study shall propose improvements necessary to meet City standards and to minimize the impact of the development on the public at large, public facilities systems, and affected private property users. In situations where this Code requires the dedication of real property to the City, the applicant shall either specifically agree to the dedication requirement or provide evidence that shows that the real property dedication requirement is not roughly proportional to the projected impacts of the development.

**B. Notice of Application for Type II administrative decision**

1. Before making a Type II administrative decision, the Planning Department shall provide notice in the following forms:
  - a. By mail to all owners of record of real property within 100 feet of the subject site;
  - b. In writing to any person who submits a written request to receive a notice; and
  - c. As requested to any governmental agency that is entitled to notice under an intergovernmental agreement entered into with the City. The City may notify other affected agencies, as appropriate, for review of the application.
2. The purpose of the notice is to give nearby property owners and other interested parties the opportunity to submit written comments about the application before the Type II decision is made. The goal of this notice is to invite people to participate early in the decision-making process;
3. Notice of a pending Type II administrative decision shall:
  - a. Provide a 14-day period for submitting written comments before a decision is made on the permit;
  - b. List the relevant approval criteria by name and number of code sections;
  - c. State the place, date and time the comments are due, and the person to whom the comments should be addressed;
  - d. Include the name and telephone number of a contact person regarding the administrative decision;
  - e. Identify the specific permits or approvals requested;
  - f. Describe the street address or other easily understandable reference to the location of the site;
  - g. State that if any person fails to address the relevant approval criteria with enough detail, they may not be able to appeal to the Land Use Board of Appeals or Circuit Court on that issue. Only comments on the relevant approval criteria are considered relevant evidence;
  - h. State that all evidence relied upon by the Planning Director to make this decision is in the public record, available for public review. Copies of this evidence can be obtained at a reasonable cost from the City;

- i. State that after the comment period closes, the Planning Director shall issue a Type II administrative decision. The decision shall be mailed to the applicant and to anyone else who submitted written comments or who is otherwise legally entitled to notice;
  - j. Contain the following notice: “Notice to mortgagee, lien holder, vendor, or seller: The City of Phoenix Development Code requires that, if you receive this notice, it shall be promptly forwarded to the purchaser.”
- C. Administrative Decision Requirements.** The Planning Director shall make Type II written decisions addressing all of the relevant approval criteria and standards. Based upon the criteria, standards and the facts contained within the record, the Planning Director shall approve, approve with conditions, or deny the requested permit or action.
- D. Public Hearing Option.** Applicant may request a public hearing with the Planning Commission in lieu of administrative review. The City will charge a fee for a Type III Procedure if the applicant requests a public hearing.
- E. Notice of Decision**
1. Within five days after the Planning Director signs the decision, a Notice of Decision shall sent by mail to:
    - a. All property owners of record within 100 feet of the site;
    - b. The applicant and all owners or contract purchasers of record of the site that is the subject of the application;
    - c. Any person who has submitted a written request to receive notice, or provided comments during the application review period;
    - d. Any governmental agency that is entitled to notice under an intergovernmental agreement entered into with the City and other agencies that were notified or provided comments during the application review period.
    - e. Any neighborhood or community organization recognized by the City whose boundaries include the site.
  2. The Planning Department shall cause an affidavit of mailing and posting of the notice to be prepared and made a part of the file. The affidavit shall show the date the notice was mailed and posted and shall demonstrate that the notice was mailed to the people within the timeframe required by law.
  3. The Type II Notice of Decision shall contain:
    - a. A description of the applicant’s proposal and the use or uses authorized by the City’s decision on the proposal;
    - b. The address or other geographic description of the property proposed for development;
    - c. The name of the planning official to be contacted and the telephone number where additional information on the decision may be obtained;
    - d. A statement that a copy of the application and decision, all documents and evidence submitted by or for the applicant, and the applicable criteria and standards may be reviewed at Phoenix City Hall at no cost and that copies shall be provided at a reasonable cost;
    - e. A statement that the decision will not become final until the period for filing a local appeal has expired and a statement that the person who is mailed written notice of the decision cannot appeal the decision directly to the Land Use Board of Appeals under ORS 197.830;
    - f. A statement that all persons entitled to notice or who are otherwise adversely affected or aggrieved by the decision may appeal the decision;
    - g. A statement briefly explaining how an appeal can be filed, the deadline for filing an appeal, and where further information can be obtained concerning the appeal process.

- F. Final decision and effective date.** A Type II administrative decision is final for purposes of appeal when it is mailed by the City. A Type II administrative decision is effective the day after the appeal period expires. If an appeal is filed, the decision is effective when the appeal is decided.
- G. Appeal.** A Type II administrative decision may be appealed to the Planning Commission as follows:
1. The following people have legal standing to appeal a Type II administrative decision:
    - a. The applicant;
    - b. Any person who was mailed written notice of the Type II administrative decision;
    - c. Any other person who participated in the proceeding by submitting written comments.
  2. Appeal procedure.
    - a. Notice of appeal. Any person with standing to appeal, as provided in subsection H.1 above may appeal a Type II administrative decision by filing a Notice of Appeal according to the following procedures;
      - i. A Notice of Appeal shall be filed with the Planning Department within 14 days of the date the Notice of Decision was mailed;
      - ii. The Notice of Appeal shall contain:
        - a) An identification of the decision being appealed, including the date of the decision;
        - b) A statement demonstrating the person filing the Notice of Appeal has standing to appeal;
        - c) A statement explaining the specific issues raised on appeal;
        - d) A filing fee.
      - iii. The amount of the filing fee shall be established by the City. The maximum fee for an initial hearing shall be the City's cost for preparing and for conducting the hearing or the statutory maximum, whichever is less.
    - b. Appeal procedures. Type III notice and hearing procedures shall be used for all Type II administrative decision appeals, as provided in sections 4.1.5 – Type III Procedure (Quasi-Judicial), sections C through G.
  3. Scope of appeal. The appeal shall be a de novo hearing and shall be the initial evidentiary hearing required under ORS 197.763 as the basis for an appeal to the Land Use Board of Appeals.
- H. Appeal to City Council.** The decision of the Planning Commission regarding an appeal of a Type II administrative decision is the final decision of the City unless appealed to City Council. An appeal to City Council shall follow the same notification and hearing procedures as the Planning Commission appeal.

#### **4.1.5 – Type III Procedure (Quasi-Judicial)**

- A. Pre-application conference.** A pre-application conference is required for all Type III applications. The requirements and procedures for a pre-application conference are described in Chapter 4.1.7 – General Provisions, Section C.
- B. Application requirements**
1. Application forms. Type III applications shall be made on forms provided by the Planning Department.
  2. Content. Type III applications shall:
    - a. Include the information requested on the application form;
    - b. Be filed with copies of a narrative statement that explains how the application satisfies each and all of the relevant criteria in sufficient detail for review and action;
    - c. Be accompanied by the required fee;

- d. Include two sets of mailing labels for all property owners of record as specified in Chapter 4.1.5 – Type III Procedure (Quasi-Judicial), Section C (Notice of Hearing). The records of the Jackson County Department of Assessment and Taxation are the official records for determining ownership. The applicant shall demonstrate that the most current assessment records have been used to produce the notice list;
- e. Include an impact study for all Type III applications. The impact study shall quantify/assess the effect of the development on public facilities and services. The study shall address, at a minimum, the transportation system, including pedestrian ways and bikeways, the drainage system, the parks system, the water system, and the sewer system. For each public facility system and type of impact, the study shall propose improvements necessary to meet City standards and to minimize the impact of the development on the public at large, public facilities systems, and affected private property users. In situations where this Code requires the dedication of real property to the City, the applicant shall either specifically agree to the dedication requirement, or provide evidence that shows that the real property dedication requirement is not roughly proportional to the projected impacts of the development.

### **C. Notice of Hearing**

1. Notice of a Type III application hearing or an appeal of a Type II decision hearing shall be given by the Planning Department in the following manner:
  - a. At least 20 days before the hearing date, notice shall be mailed to:
    - i. The applicant and all owners or contract purchasers of record of the property which is the subject of the application;
    - ii. All property owners of record within 200 feet of the site;
    - iii. Any governmental agency that has entered into an intergovernmental agreement with the City that includes provision for such notice or who is otherwise entitled to such notice including Jackson County, Rogue Valley Metropolitan Planning Organization (RVMPO), and ODOT, if applicable;
    - iv. Any person who submits a written request to receive notice;
    - v. For appeals, the appellant and all persons who provided testimony in addition to those listed above; and
    - vi. For a land-use district change affecting a manufactured home or mobile home park, all mailing addresses within the park, in accordance with ORS 227.175.
  - b. The Planning Department shall have an affidavit of notice prepared and made a part of the file. The affidavit shall state the date that the notice was mailed to the persons who must receive notice.
2. Content of Notice. Notice of appeal of a Type II Administrative decision or a Type III hearing to be mailed per Subsection 1 above shall contain the following information:
  - a. The nature of the application and the proposed land use or uses that could be authorized for the property;
  - b. The applicable criteria and standards from the development code that apply to the application;
  - c. The street address or other easily understood geographical reference to the subject property;
  - d. The date, time, and location of the public hearing;
  - e. A statement that the failure to raise an issue in person, or by letter at the hearing, or failure to provide statements or evidence sufficient to afford the decision-maker an opportunity to respond to the issue, means that an appeal based on that issue cannot be filed with the State Land Use Board of Appeals;

- f. The name of the planning official to be contacted and the telephone number where additional information on the application may be obtained;
- g. A statement that a copy of the application, all documents and evidence submitted by or for the applicant, and the applicable criteria and standards can be reviewed at Phoenix City Hall at no cost and that copies shall be provided at a reasonable cost;
- h. A statement that a copy of the planning official's staff report and recommendation to the Planning Commission shall be available for review at no cost at least seven days before the hearing, and that a copy shall be provided on request at a reasonable cost;
- i. A general explanation of the requirements to submit testimony, and the procedure for conducting public hearings.
- j. The following notice: "Notice to mortgagee, lien holder, vendor, or seller: The City of Phoenix Development Code requires that if you receive this notice it shall be promptly forwarded to the purchaser."

#### **D. Conduct of the Public Hearing**

1. At the commencement of the hearing, the hearings body shall state to those in attendance:
  - a. The applicable approval criteria and standards that apply to the application or appeal;
  - b. A statement that testimony and evidence shall concern the approval criteria described in the staff report, or other criteria in the comprehensive plan or land use regulations which the person testifying believes to apply to the decision;
  - c. A statement that failure to raise an issue with sufficient detail to give the hearings body and the parties an opportunity to respond to the issue, means that no appeal may be made to the State Land Use Board of Appeals on that issue;
  - d. Before the conclusion of the initial evidentiary hearing, any participant may ask the hearings body for an opportunity to present additional relevant evidence or testimony that is within the scope of the hearing. The hearings body shall grant the request by scheduling a date to finish the hearing (a "continuance") per paragraph 2 of this subsection, or by leaving the record open for additional written evidence or testimony per paragraph 3 of this subsection.
2. If the hearings body grants a continuance, the completion of the hearing shall be continued to a date, time, and place at least seven days after the date of the first evidentiary hearing. An opportunity shall be provided at the second hearing for persons to present and respond to new written evidence and oral testimony. If new written evidence is submitted at the second hearing, any person may request, before the conclusion of the second hearing, that the record be left open for at least seven days, so that they can submit additional written evidence or testimony in response to the new written evidence;
3. If the hearings body leaves the record open for additional written evidence or testimony, the record shall be left open for at least seven days after the hearing. Any participant may ask the City in writing for an opportunity to respond to new evidence submitted during the period the record was left open. If such a request is filed, the hearings body shall reopen the record per this section;
  - a. When the Planning Commission re-opens the record to admit new evidence or testimony, any person may raise new issues that relates to that new evidence or testimony;
  - b. An extension of the hearing or record granted pursuant to Section D is subject to the limitations of ORS 227.178 (120-day rule), unless the continuance or extension is requested or agreed to by the applicant;



- c. If requested by the applicant, the City shall allow the applicant at least seven days after the record is closed to all other persons to submit final written arguments in support of the application, unless the applicant expressly waives this right. The applicant's final submittal shall be part of the record but shall not include any new evidence.
4. The record
  - a. The record shall contain all testimony and evidence that is submitted to the City and the hearings body and not rejected;
  - b. The hearings body may take official notice of judicially cognizable facts under the applicable law. If the review authority takes official notice, it must announce its intention and allow persons participating in the hearing to present evidence concerning the noticed facts;
5. Participants in the appeal of a Type II Administrative decision or a Type III hearing are entitled to an impartial review authority as free from potential conflicts of interest and pre-hearing ex parte contacts (see Section 6 below) as reasonably possible. However, the public has a countervailing right of free access to public officials. Therefore:
  - a. At the beginning of the public hearing, hearings body members shall disclose the substance of any pre-hearing ex parte contacts (as defined in Section 6 below) concerning the application or appeal. He or she shall state whether the contact has impaired their impartiality or their ability to vote on the matter and shall participate or abstain accordingly;
  - b. A member of the hearings body shall not participate in any proceeding in which they, or any of the following, has a direct or substantial financial interest: Their spouse, brother, sister, child, parent, father-in-law, mother-in-law, partner, any business in which they are then serving or have served within the previous two years, or any business with which they are negotiating for or have an arrangement or understanding concerning prospective partnership or employment. Any actual or potential interest shall be disclosed at the hearing where the action is being taken;
  - c. Disqualification of a member of the hearings body due to contacts or conflict may be ordered by a majority of the members present and voting. The person who is the subject of the motion may not vote on the motion to disqualify;
  - d. If all members abstain or are disqualified, those members present who declare their reasons for abstention or disqualification shall be re-qualified to make a decision;
  - e. If a member of the hearings body abstains or is disqualified, the City shall provide a substitute in a timely manner subject to the impartiality rules in Section 6;
  - f. Any member of the public may raise conflict of interest issues prior to or during the hearing, to which the member of the hearings body shall reply in accordance with this Section.
6. Ex parte communications
  - a. Members of the hearings body shall not:
    - i. Communicate, directly or indirectly, with any applicant, appellant, other party to the proceedings, or representative of a party about any issue involved in a hearing, except upon giving notice, per Section 5 above;
    - ii. Take official notice of any communication, report, or other materials outside the record prepared by the proponents or opponents in connection with the particular case, unless all participants are given the opportunity to respond to the noticed materials.
  - b. No decision or action of the hearings body shall be invalid due to ex parte contacts or bias resulting from ex parte contacts, if the person receiving contact:

- i. Places in the record the substance of any written or oral ex parte communications concerning the decision or action; and
    - ii. Makes a public announcement of the content of the communication and of all participants' right to dispute the substance of the communication made. This announcement shall be made at the first hearing following the communication during which action shall be considered or taken on the subject of the communication.
  - c. A communication between City staff and the hearings body is not considered an ex parte contact.
7. Presenting and receiving evidence
- a. The hearings body may set reasonable time limits for oral presentations and may limit or exclude cumulative, repetitious, irrelevant or personally derogatory testimony or evidence;
  - b. No oral testimony shall be accepted after the close of the public hearing. Written testimony may be received after the close of the public hearing, only as provided in Section D;
  - c. Members of the hearings body may visit the property and the surrounding area, and may use information obtained during the site visit to support their decision, if the information relied upon is disclosed at the hearing and an opportunity is provided to dispute the evidence. In the alternative, a member of the hearings body may visit the property to familiarize him or herself with the site and surrounding area, but not to independently gather evidence. In the second situation, at the beginning of the hearing, he or she shall disclose the circumstances of the site visit and shall allow all participants to ask about the site visit.

#### **E. The Decision Process**

1. Basis for decision. Approval or denial of an appeal of a Type II Administrative decision or a Type III application shall be based on standards and criteria in the development code. The standards and criteria shall relate approval or denial of a discretionary development permit application to the development regulations and, when appropriate, to the comprehensive plan for the area in which the development would occur, to the development regulations and comprehensive plan for the City as a whole, and to the standards of the applicable roadway or transit authority for future land use decisions that affect transportation facilities;
2. Findings and conclusions. Approval or denial shall be based upon the criteria and standards considered relevant to the decision. The written decision shall explain the relevant criteria and standards, state the facts relied upon in rendering the decision, and justify the decision according to the criteria, standards, and facts;
3. Form of decision. The hearings body shall issue a final written order containing the findings and conclusions stated in subsection 2, which either approves, denies, or approves with specific conditions. The hearings body may also issue appropriate intermediate rulings when more than one permit or decision is required;
4. Decision-making time limits. A final order for any Type II Administrative Appeal or Type III action shall be filed with the City Recorder within ten business days after the close of the deliberation.

- F. Notice of Decision.** Written notice of a Type II Administrative Appeal decision or a Type III decision shall be mailed to the applicant and to all participants of record within 30 business days after the hearings body decision. Failure of any person to receive mailed notice shall not invalidate the decision, provided that a good faith attempt was made to mail the notice.

- G. Final Decision and Effective Date.** The decision of the hearings body on any Type II appeal or any Type III application is final for purposes of appeal on the date it is mailed by the City. The decision is effective on the day after the appeal period expires. If an appeal is filed, the decision becomes effective on the day after the appeal is decided by the City Council. The notification and hearings procedures for Type III applications on appeal to the City Council shall be the same as for the initial hearing.
- H. Appeals.** Type III decisions may be appealed to the City Council as follows:
1. Notice of appeal. Any person with standing to appeal may appeal a Type III Decision by filing a Notice of Appeal according to the following procedures;
    - a. A Notice of Appeal shall be filed with the Planning Department within 14 days of the date the Notice of Decision was mailed;
    - b. The Notice of Appeal shall contain:
      - i. An identification of the decision being appealed, including the date of the decision;
      - ii. A statement demonstrating the person filing the Notice of Appeal has standing to appeal;
      - iii. A statement explaining the specific issues raised on appeal;
      - iv. If the appellant is not the applicant, a statement demonstrating that the appeal issues were raised during the comment period;
      - v. Filing fee.
  2. Scope of appeal. The appeal of a Type III Decision by a person with standing shall be limited to the specific issues raised during the written comment period, unless the City Council allows additional evidence or testimony concerning any other relevant issue. The City Council may allow such additional evidence if it determines that such evidence is necessary to resolve the case.
  3. City Council Call-Up of Planning Commission Decision. The City Council may call up any Planning Commission decision upon motion and majority vote, provided such vote takes place in the required appeal period.
    - a. The Council may affirm, modify, or reverse the decision of the Planning Commission, or may remand the decision to the Commission for additional consideration if sufficient time is permitted for making a final decision of the city.
    - b. The Council shall make findings and conclusions and cause copies of a final order to be sent to all parties of the planning action.
    - c. City Council review of a Planning Commission decision shall be completed within the statutorily mandated 120-day limit unless a waiver of the time limit is received from the applicant.

#### **4.1.6 – Type IV Procedure (Legislative)**

- A. Pre-Application conference.** A pre-application conference is required for all Type IV applications. The requirements and procedures for a pre-application conference are described in Chapter 4.1.7 – General Provisions.
- B. Timing of requests.** The City Planner shall not review non-City sponsored or State required proposed Type IV actions more than five times annually, based on a City Council Resolution-approved schedule for such actions. Legislative requests are not subject to the 120-day review under ORS 227.178.
- C. Application requirements**
1. Application forms. Type IV applications shall be made on forms provided by the Planning Department;
  2. Submittal Information. The application shall contain:
    - a. The information requested on the application form;