# February 15th, 2022

# Testimony from Kelly Doherty, LU 21-005/ ZP21-031

# The scheduled meeting of the City Council has been authorized under ORS 197.830(13)(b) & OAR 661-010-0021. Which suspends any Appeals to LUBA, but allows any other person to file a notice of intent to appeal the decision on reconsideration as provided in [OAR 661-010-0015](https://oregon.public.law/rules/oar_661-010-0015). The entire record is essential for a citizen to file an appeal after reconsideration therefore, the" record" in its entirety must be provided to comply with Goal 1 citizen involvement.

I was concerned when the "record" was not provided to City Councilors at the first hearing. Two Councilors said "they were not provided enough information to make an informed decision." While it is not required by rule that the record follow the procedural succession, it is a good policy as it supports the "decision" with evidence and fact by which the councilors will use to deliberate to a decision. Without the facts and evidence behind the decision it appears baseless. This is a Quasi Judicial hearing that is to be based on criteria and fact.

I would like to add the entire record of ZP21-031 to the City Council meeting scheduled for February 2, 2022. Please include the Application, Public Notices, Notices of Decisions, certified mailings, all written and video testimony including exhibits, staff reports and any meeting minutes adopted or preliminary. This request is made in support of the" Notice", the purpose of the meeting is to correct the legal description of the property that is the subject of the permit. In order to do that with sufficiency I have asked for the record in its entirety to be provide to City Councilors.

Why are we here today, the notice indicates we are providing the correct legal description to tax lot properties that have now been discussed for months and been through 3 hearing bodies. However, two different notices were mailed neither indicating which one was correct or possibly both were going to be considered. . It blows my mind that in the seventh hour we are providing our citizens, and our decision makers with this basic information. That said, which properties did you make your initial decision on?? How did you make those decisions if you didn't have the correct property description. We were talking about a liner transmission line and you approved it to go over a tax lot a section away. Without asking one single question when it was brought to your attention. What properties did planning Dept rely on?? What property did the citizens rely on???. If I got notice of a land use hearing that was a section away I would round file it.

I have repeatedly said the tax lots were incorrect , and in fact ask for my money back because you failed to contractually fulfill my appeal. Now here we are,

**At the basic level it is important to understand that challenging a land use decision is an appeal of that decision to a higher authority. Staff to - Planning Commission to- City Councilors to- LUBA to- Court System all the way up. The decision itself never changes. The tax lots certainly don't change. It is either upheld or denied by the criteria and evidence that supports it .**

**Remember these numbers - ZP 21-031 TAX LOTS 402, 403 ,405 ,3201**

**ZP21-031 Tax Lots 402,403,405,3201**

**Staff:**

On July 1, 2021 the City sent out a public notice that an application was made for the following tax lots 402,405,403,3206,3201,3211,3302,3100,3000 of 4n 25E 10. (Exhibit 1)

July 26, 2021 a Type II Notice of Decision on ZP21-031 was made " this project affects **Tax lots #402, #403,#405 of Tax lot map 4N 25E 11, and tax lot 3201**.

No privilege was given as to why the other tax lots were removed, however some were already approved by zoning and some do not even exist and Tallman lots withdrawn .

**Planning:**

On Aug ,2021 Kellington Law Group filed an appeal on the Type II Decision ZP 21-031(above) to the Planning Commission on "tax lots 402,403,405 of Morrow county tax map 4N 25E 11 and tax lot 3201 of map 4N25E 10" (Exhibit 3).

August 13,2021 Public Notice went out for the appeal of the Staff decision ZP21-031 to the Planning Commission indicating lots 402, 403,405, 3206,3201,3211,3100,and 3000 of 4N 25E 10. (Exhibit 4) These are not the lots in ZP 21-031. Notice was in error.

Sept 15, 2021 Planning Commission voted to hold record open.

On October 6, 2021 the Planning Commission denied the appeal and up held the (Staff) decision ZP 21-031.

Oct 11, 2021 Notice of Decision put in its findings subject property was" 3000, 3200, 3201, 402, 403" and on page 6 "the appeal of the Staff decision in ZP21-031 is denied **and** the zoning permits for tax lots were 402, 403, 3201, 3206 and 3000 in the SC zone are approved." There is no **and. Findings are not a place to add tax lots to a decision. Decision was not what the notice idicated.**

**The only tax lots in ZP21-031/ are 402, 403, 405, 3201.**

**City Council:**

On October 14 ,2021 Kelly Doherty filed an appeal to the City Council on the type III decision of ZP21-031 lots 402 403 405 3201 from the Planning Commission.

On October 21,2021 Public Notice went out for the Appeal of Staff Decision ZP21-031 to the City Council tax lots 3000, 3200, 3201 ,402, 403 (no legal) were noticed. Again notice was in error not the correct tax lots . Notice did not reflect the action taken.

On Dec 3, 2021 Notice of Decision ZP21-031/ LU 21-005 Denied the appeal , findings state subject property as 3201 of map 4N25E 10 and 402 and 403 of map 4N 25E 11 on the first page and on page 5 402,403 of map 4N 25E 11 and 3201 3206 and 3000 of map 4N25E 10 Again in error. not the correct tas lots

**The only tax lots in ZP21-031/ are 402, 403, 405, 3201.**

On Jan 10, 2022 City attorney Christopher Crean filed a notice of Withdrawal of Decision for Reconsideration to LUBA. Was this done without the knowledge of the City Councilors? No vote, no motion, no minutes, no meeting. Did he take it upon himself to act as our local government? Additionally, he took it upon himself to limit testimony which is not his decision to make either. City Council was elected to make these decisions, I find it perfectly normal for Mr. Crean to give legal advice, but these decisions are not his to make without the consent of the local government and hidden from the public's eye or worse in illegal serial meetings. We the people cannot un-elect Mr. Crean for bad decisions that were hidden from the public. But Citizens can un-elect councilors who find it a good idea to allow this to go on.

Jan 21, 2022 two Notices were published which I received both, one indicating tax lots 402, 403 ,3201,3206,and 3300 of map **4N 25E10**. The other listed subject property as 402,403 of map **4N25 E 11** and 3201, 3206, 3300 map **4N25E 10**. ( Exhibit 5)

I do not know which Notice I should address my comments to, I would like some extra time to research and comment if and when the correct notice is determined, posted and mailed . We have 90 days to reconsider this, I would like to be able to address the correct tax lots when determined. My substantial rights under ORS 197.835(9)(a)(B) include

the rights to an adequate opportunity to prepare [evidence] and submit

[the] case and **a full and fair** hearing. *Muller v. Polk County,* LUBA

No. 88-018, 16

The city has limited testimony to modification and that is not a full and fair hearing. This may be the first time that the city has identified all the legal tax lots. All the testimony before this hearing has been addressed to the wrong tax lots and now you have restricted testimony . This is prejudice to my substantial rights as a result of a procedural error. Comments and testimony have been directed to the wrong tax lots because of the notices that have been sent, staff reports, findings of fact and prior decisions that have been made. All addressed above.

Again tax lots 3206 and 3300 were not part of ZP21-031 decision, If they are included tonight and approved. The required noticed property owners within the 250 ft Notice area were left out of the process and the certificate of mailing that is in the record will support this claim. The owners of Tax lot 400 the Woods will be adversely affected and left with no notice served. Again had the correct legal descriptions been made earlier in the process errors like these would not have taken place.

If you approve this tonight, do we know if correct and legal property owners have authorized the permit application? Nothing in the record suggests that these amended property owners have authorized the application due to the fact that they could not have been identified until the correct legal tax lots were identified..

BCD 4.1.700 D (1) a and BDC 4.1.700 D(3) a, into the development code to prevent this very issue.

The City’s Development Code:

(“BDC”) 4.1.700(D)

(1)(a) provides that land use applications, applications for a Zoning Permit may only be initiated by

(1) Order of the City Council;

(2) Resolution of the Planning Commission;

(3) the City Manager; or

(4) “A record owner of property (person(s) whose name is on the most recently recorded deed), or contract purchaser with written permission from therecord owner.”

BDC 4.1.700(D)(3)(a)

“When an application is received by the City, the City Manager shall immediately determine whether the following essential items are present. If the following items are not present, the application shall not be accepted and shall be immediately returned to the applicant:

“(1) The required form;

“(2) The required fee;

“(3) The signature of the applicant on the required form and signed written authorization of the property owner of record if the applicant is not the owner.

If you deny the appeal of the application tonight you will be putting tax lot 405 in jeopardy of a 230 Kv Transmission line across it and it was never part of the application.

You have a opportunity tonight to affirm, modify or reverse this decision, you have 90 days to do it is entirely up to the Council.. This decision was made entirely upon tax lots that were not part of the original decision and never identified correctly. With certainly the citizens never had an opportunity to voice their concerns when a the basic level the City could not identify the correct tax lots. Even tonight I cannot testify because I don't know which notice is correct.

Thanks again, Sorry it's so late. But the cows come first, then civic duty.

Kelly Doherty