

## Tabitha Boschetti

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**From:** Carol Rulla <crullaor@gmail.com>  
**Sent:** Friday, May 17, 2024 4:39 PM  
**To:** Tabitha Boschetti  
**Cc:** PlannerOnDuty; Alex Logue  
**Subject:** Re: Proposed amendment to Development Code appeal procedures | CPA-24-00168

**Follow Up Flag:** Follow up  
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**CAUTION:** External Email

Hi, Tabitha -

Thanks for the information. Would you please tell me who in the NAs is getting this email notification? Presidents and Land Use Officers who get land use notifications?

Concerning ideas to share, I had been planning to wait until after the levy vote to contact Council about my objection to the City Attorney's and Jim Wheeler's interpretation of 11.0502.H.1 and 11.1106.A to mean that you have to have standing to testify in appeal hearings instead of you have to have standing to file an appeal. My experience with prior in-person appeals is that anyone was allowed to sign up to testify at an appeal hearing. The COA's interpretation also doesn't match with the city's notifications for appeal hearings which give instructions about testimony & evidence being directed toward the criteria but no limitations on who may testify. It also makes no sense that 11.1106.B would require posting the property if no member of the public but those with standing (who also got notices) could participate.

The language for Type II appeals in 11.0402.G.1 and 11.1105.A & B is nearly identical ("have standing to appeal" and "may be appealed"), and yet Type II appeals are more expansive *de novo* hearings that shouldn't limit participation to only members of the public who have standing. And I have an old example of a Type II appeal before the Hearings Officer where those without prior standing did testify in the appeal hearing.

Also, city land use trainings for NAs always emphasized that you had to provide comments in the initial public comment opportunity in order to have standing to file an appeal and that an issue had to be raised in comments to appeal on that issue, but there was never any mention that you have standing in order to testify in an appeal hearing.

I believe an error has been made in interpreting what it means to "appeal" in the code. Historically and the written evidence on notices and in other code requirements says that "appeal" means "file an appeal" not "participate in an appeal another party with standing has filed," and I would ask that the proposed code change clarify who has standing to "appeal" by changing the wording to "file an appeal." I would suggest that this language also apply to the proposed new Council Review option, especially when the Council is taking over the appeal from another Appeal Authority.

I plan to give testimony at the June 10 Planning Commission hearing but wanted to give you a heads-up for staff's consideration in making this clarification in the proposed code revisions that are presented at the June 10 hearing.

One minor comment and one more substantive comment about the proposed code change:

- p.2 - Two typos: 11.502.G.3 should be 11.0502.G.3, and the existing code language says "twelve (12)" but the ordinance leaves off the parentheses around 12.
- p.3 - new 11.1106.F.1: The last sentence says the Council may not initiate a Council Review if it is the Decision Authority or "there is no local appeal" which I believe is intended to mean "there is no option for a local appeal." Saying "there is no local appeal" could be misinterpreted to mean that, if no one else files a local appeal when Council is not the Decision Authority, Council cannot initiate a Council Review, and that's not what's meant per your email. I would suggest being very clear on what that wording means so that no one can challenge it in the future and it's not misinterpret by future staff.

Thank you,  
Carol

On Fri, May 17, 2024 at 1:37 PM Tabitha Boschetti <[tabitha.boschetti@greshamoregon.gov](mailto:tabitha.boschetti@greshamoregon.gov)> wrote:

I'm writing to your Neighborhood Association to let you know about a proposed amendment to the *Gresham Community Development Code*. These proposed changes are focused on the City's land use appeal procedures.

Proposal:

This is a City-initiated Plan Text Amendment to the land use appeal procedures in [GCDC Article 11](#).

- Proposed changes will clarify procedures when appeal deadlines would fall on a weekend or holiday.
- Proposed changes will also create a path for City Council to initiate review of a discretionary (Type III) land use decision without the need for an outside party to initiate appeal procedures. The proposed Council Review would function similarly to an appeal hearing as otherwise described in the Development Code now.

### **Planning Commission Hearing:**

A Planning Commission hearing is scheduled for **June 10, 2024 at 6:30pm**

- The agenda, materials, and link to the Zoom meeting will be posted online here: [Planning Commission | City of Gresham \(greshamoregon.gov\)](#) at least a week in advance (**June 3<sup>rd</sup>**)

- The formal notice for this hearing (case number CPA-24-00168) is attached.
- Current draft materials are online here: [greshamor-energovweb.tylerhost.net/apps/SelfService#/home](http://greshamor-energovweb.tylerhost.net/apps/SelfService#/home). Note that the details of the proposed code language are still being revised and may be a bit different when the staff report and revised materials will be posted by June 3<sup>rd</sup>.
- If Planning Commission votes to move the proposal forward, we tentatively anticipate a City Council hearing July 16<sup>th</sup>.

### **Questions, and Testimony**

If you or your members have questions about the proposal or ideas to share, please let me know. You can send written testimony ahead of the June 10<sup>th</sup> hearing to me at this email ([tabitha.boschetti@greshamoregon.gov](mailto:tabitha.boschetti@greshamoregon.gov)) and/or share verbal testimony at the Planning Commission on June 10<sup>th</sup>.

Sincerely,

**Tabitha Boschetti, AICP**

she/her

Planner 2 | [City of Gresham](http://CityofGresham)

[tabitha.boschetti@greshamoregon.gov](mailto:tabitha.boschetti@greshamoregon.gov) | [503-618-2243](tel:503-618-2243)

## Tabitha Boschetti

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**From:** Carol Rulla <crullaor@gmail.com>  
**Sent:** Monday, May 20, 2024 5:00 PM  
**To:** Tabitha Boschetti  
**Cc:** PlannerOnDuty; Alex Logue; Jim Wheeler  
**Subject:** Re: Proposed amendment to Development Code appeal procedures | CPA-24-00168

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Thanks for the info, Tabitha.

I understand about the difference between the Type III appeals being on the record vs. Type I & II appeals being *de novo*. I appreciate the additional info about state law requiring full evidentiary hearings when there's not been a hearing before. Are you saying that *de novo* hearings allow anyone to testify? I believe they should be open to anyone to testify, right?

I understand the 120-day rule, but allowing anyone to testify in appeal hearings (Type II or III) wouldn't have any effect on that timeline.

Carol

On Mon, May 20, 2024 at 4:28 PM Tabitha Boschetti <[tabitha.boschetti@greshamoregon.gov](mailto:tabitha.boschetti@greshamoregon.gov)> wrote:

Carol,

Thank you for your comments.

I sent the initial email here to current active Neighborhood Association contacts, generally including the President and Land Use Chair/Director as applicable; in the cases Neighborhood Associations use a more general contact (e.g. [Neighborhood@email.com](mailto:Neighborhood@email.com)) that serve for one or more of those positions, I used that address. I also included our neighborhood coalition contacts.

I appreciate you raising the point on the relative merits of a *de novo* hearing versus an “on the record” hearing.

As a bit of background, Type I and Type II appeal hearings are different than Type III processes in a few ways that could be helpful to consider. The initial decisions for Type I and Type II hearings are made at the staff level with no hearing. If there's an appeal hearing, that is the very first time there is a hearing on those cases. State law