

**EXHIBIT XX**

**MEMORANDUM**

TO: Mayor Pulliam  
Sandy City Council Members

FROM: David Doughman, City Attorney's Office

SUBJECT: Scope of Review for Deer Meadows Appeal

DATE: December 21, 2021



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On January 18, 2022, the Sandy City Council will hear an appeal of the Deer Meadows subdivision, which the Sandy Planning Commission denied in November. At its January 3, 2022 meeting, the council must determine the scope of its review for the appeal.

Section 17.28.30 of the Sandy Municipal Code says:

Except where a de novo hearing is required for review of Type II (Limited Land Use) decisions, an appeal is limited to a review of the record and a hearing for receipt of oral arguments regarding the record. At its discretion and if good cause has been demonstrated by the appellant or City staff, the hearing body may allow an appeal to include new evidence based upon circumscribed issues relevant to the appeal, or it may allow a de novo hearing.

Roll Tide Properties is the applicant/appellant. The appellant has requested the council limit its review to the record of the planning commission.

Historically, the council has heard appeals “de novo.” Under the city’s code, a de novo hearing is one where the council is able to consider new evidence and written testimony, in addition to the evidence and testimony presented to the planning commission. When an appeal is heard “on the record,” the city’s code says parties may only present oral argument regarding evidence and testimony in the record. In addition, if an appeal is limited to the record, the council may not accept new evidence and may not consider any new issue that someone may raise.

In my experience, local governments are not well equipped to handle appeals on the record. It makes sense for appellate bodies such as LUBA and appellate courts to limit appeals to the record. However, in those instances, rules govern the contents of the record; parties have an opportunity to object to the contents; and, prior to the hearing, each party files written briefs that must cite to relevant portions of the record in order to demonstrate they have preserved an issue for appeal.

Local governments are not appellate courts. Without similar procedures in place, appeals on the record can lead to arguments between parties about what issues may or may not be asserted on appeal, who may assert them and what evidence in the record supports those assertions. Significant amounts of time can be spent sorting through and making decisions concerning these issues, which then results in potential procedural errors. These potential problems are exacerbated by hybrid/remote hearings, which Oregon law will effectively require as of January 1, 2022.

**RECOMMENDATION:** For these reasons, I recommend the council choose to hold a de novo hearing for the Deer Meadows appeal on January 18, 2022.