

DESIGN COMMISSION QUASI-JUDICIAL HEARINGS:

A Guide for Presenting Testimony

INTRODUCTION

“It is not the function of our government to keep the citizen from falling into error; it is the function of the citizen to keep the government from falling into error.”

– Supreme Court Justice
– Robert Jackson

Testifying at a public hearing is a principal way to be engaged in civic life and strengthen your community. Elected leaders rely on citizens to broaden their knowledge about neighborhood and community-wide issues. Still, testifying before at a public hearing can be challenging, especially if you’ve never attended one. This outline is designed to help you prepare and become familiar with the procedures of a **quasi-judicial** public hearing with the Design Commission. If you know what to expect and are prepared, your message is more likely to be effective.

About the Design Commission

The Design Commission provides leadership and expertise on urban design and architecture and on maintaining and enhancing Portland’s historical and architectural character. Their review is focused on new construction and remodeling projects on sites within the Design Overlay Zone.

CONTENTS



This guide is organized into the following sections:

1. **Types of land use actions** – the Design Commission hears two different types of **quasi-judicial** land use cases.
2. **Preparing for the hearing** – things to do in advance of the hearing.
3. **Day of the hearing** – hearing process, signing in, order and time limits of testifiers.
4. **Important considerations** – reminders and tips for effective testimony.
5. **After the record closes** – what happens after the public participation part of the hearing is closed.
6. **Glossary of terms** – **terms highlighted in blue text** are explained here.
7. **Resources** – where to get additional information.

1. TYPES OF LAND USE ACTIONS

The Design Commission hears the following types of land use actions:

1. **Major design review** (following a Type III process) applies to major new developments. For these types of reviews, the Design Commission holds a public hearing on the proposal and considers the staff recommendation, a written report addressing the applicable **approval criteria**.
2. **Appeals of design review administrative decisions** (following a Type II process) applies to proposals that are smaller in scale than Type III proposals. The initial decision of a Type II design review request is called an administrative decision. A Bureau of Development Services staff planner issues the administrative decision and the Design Commission hears appeals of these decisions. Appeals may be filed by the applicant, the owner, those entitled to notice, and any person adversely affected or aggrieved by the decision.
2. **Legislative actions** are another type of land use action heard by the Design Commission. Hearings for **legislative actions** do not follow the appeal procedures in this guide. Contact the Bureau of Planning and Sustainability for more information.

2. PREPARING FOR THE HEARING



- 1) **Read the decision and/or the staff recommendation.**
If the review is a Type III process, a staff recommendation will be published prior to the hearing. For Type II reviews, there will be an administrative decision and an appeal statement.

Administrative decisions and staff recommendations contain contact information and facts about the subject site, the proposal and the relevant **approval criteria**. Most importantly, the reasons behind the decision or staff recommendation are explained. In addition to the administrative decision for Type II reviews, read the appeal statement and understand what parts of the decision are at issue.

Design Review administrative decisions (Type II process) and staff recommendations (Type III process) are available on the BDS website. See the Resource Section of this document.

- 2) **Explore other sources of information.**
The case planner and other city staff, neighbors, the applicant, property owner, appellant, and neighborhood and business associations can provide you with the information needed to shape

If you think you're too small to have an impact, try going to sleep in a room with a mosquito.

-- Anita Roddick

Introducing your Testimony. State your full name and address for the record. Speak directly into the microphone.

Time Limits. Generally, your testimony should be limited to 2 to 5 minutes. For hearings that involve a large number of testifiers, the Commission may request that testifiers adhere to a two (2) minute time limit in order for all testimony to be heard.

Order of Presenters and Testifiers for a Public Hearing:

Presenter/Testifier	Notes
1. City Planner, Bureau of Development Services	Presents summary of staff report, with slides of site and surrounds. If appeal, staff presents summary of administrative decision, and issues of appeal.
2. Applicant	Presents their proposed development project.
3. Public Testimony in Favor	
4. Public Testimony in Opposition	Presents arguments.
5. Applicant Rebuttal	
6. Public Testimony closed	
7. Design Commission discussion and decision	

4. IMPORTANT CONSIDERATIONS

EXAMPLE of a relevant Approval Criterion:

Create a sense of enclosure and visual interest to buildings along sidewalks and pedestrian by incorporating small scale building design features, creating effective gathering places, and differentiating street level facades.

- **Your testimony can only address the applicable design guideline approval criteria.** State how you think the proposal meets or falls short of meeting the approval criteria. Design review approval criteria are stated in the administrative decision or staff recommendation and are referenced in Zoning Code Chapter 33.825.
- **Be clear about your position.** Your testimony should clarify your role and interest in the design review. For a Type III Design Review, do you agree with the staff recommendation? If not, what parts do you oppose? Or, in the case of a Type II appeal hearing, do you support the appeal and disagree with the administrative decision?
- **The burden of proof is on the land use review applicant** to show that each and every element of the approval criteria can be satisfied. Testifiers may argue the criteria are being incorrectly interpreted, the incorrect approval criteria are being applied, or additional approval criteria should be applied.

- **Testifying as a Group.** Instead of each group member restating the same issue, it is much more effective to have each group member address a different issue and to state that they support the previous testimony on an issue.
- **Requests to the Design Commission.** Any party may request that the hearing be continued or that the record be kept open.

5. AFTER THE RECORD CLOSES

When will the Design Commission make a final decision? After discussion, the Design Commission will vote to either approve or deny a Type III proposal. In the case of a Type II Appeal, the Design Commission will vote to either uphold or deny the appeal. The decision may occur at the initial hearing or at a later public meeting. The decision is final and effective on the day the notice of decision is mailed.

Who is notified of the final decision? The Bureau of Development Services will mail the final decision to the applicant, owner, recognized organizations and persons who responded to the appeal notice, testified at the hearing, or requested notice of the decision.

Appeal rights. In the case of a Type II Appeal, the Design Commission's decision is a final land use decision and may not be appealed to another review body within the City. If you appeared before the Design Commission orally or in writing, you may appeal the decision to the State Land Use Board of Appeals (LUBA) within 21 days of the date of the Design Commission's final decision.

In the case of a Type III Design Review, the Design Commission's decision may be appealed to the City Council.

6. GLOSSARY OF TERMS

A community is like a ship: everyone ought to be prepared to take the helm.

– Henrik Ibsen

Approval criteria. The set of statements that must be answered, supported by facts, and be satisfied in their entirety in order for a proposal to be approved. Design Guidelines are the approval criteria used in design review. They ensure that the proposal complies with the design guidelines specific to the area. The relevant approval criteria are identified throughout the process in the following documents: the public notice, the staff report and recommendation, and the review body's decision. Approval criteria are also stated during the public hearing.

Burden of proof. The burden to present facts and evidence demonstrating that the approval criteria have been satisfied.

Continued hearing. The review body may decide to continue the hearing to a future date. The review body will state the date and time of the continued hearing.

Legislative actions. Generally, legislative actions involve the adoption of law or policy citywide or to a broad geographical area of the city.

Quasi-judicial actions. Generally, quasi-judicial actions involve the application of existing law or policy to a small geographical area or a specific factual situation. Three factors distinguish quasi-judicial decision making: (1) the process results in a decision; (2) pre-existing criteria are applied to facts to make a decision; and (3) the decision is directed at a closely circumscribed factual situation (site and proposal). A quasi-judicial process must include notice, an opportunity to be heard and present evidence; an impartial decision maker; and a written decision that explains the basis for the decision.

Record closed. After all testimony, evidence and rebuttal are submitted, the review body will end the public participation portion of the hearing. This means review body will accept no more oral or written testimony.

Record held open. A participant may request and the review body may decide to leave the record open until a specified date, to allow submission of additional information and rebuttal of that information. The record will close after that date.

7. RESOURCES

HOW TO GIVE TESTIMONY AT PUBLIC HEARINGS

Tips:

- *Arrive early to sign up to testify. This will also allow you to listen to testimony from others.*
- *Be polite and project a positive image.*
- *Try to anticipate questions you may receive and consider how you would answer them.*

Case Planner, Bureau of Development Services (503) 823-7300 (direct line listed on front page of the decision).

Bureau of Development Services Website

www.portlandonline.com/bds

Zoning Code, land use review procedures. Land use decisions listed by neighborhood area. Design Commission agendas also posted.

Bureau of Planning and Sustainability Website

www.portlandonline.com/bps

Design Guidelines, Legislative Projects, District Liaison program, ongoing planning projects and studies

Oregon Dept. of Land Conservation and Development (503) 373-0050

www.oregon.gov/lcd -- publications/citizen involvement.

Tips about How to Testify at Land Use Hearings.

State Land Use Board of Appeals (503) 373-1265

www.oregon.gov/luba – file an appeal, hearings schedules.