

SUPPLEMENTAL MATERIAL *JOINT BCC/PLANNING*
T.b. *COMMISSION*

July 20, 2009

TO: Commissioners
FROM: Deanna Harris, Planner
Land Management Division



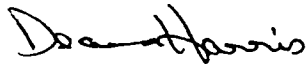
LAND MANAGEMENT DIVISION
http://www.LaneCounty.org/PW_LMD/

RE: Supplemental Memo on Proposed Lane Code Ch. 14 Code Amendments

Hello,

I have attached written comments to the proposed Ch. 14 Lane Code Amendment Staff Report. The comments are entered into the record and can be discussed at the public hearing this Tuesday.

Thank you,



Deanna Harris, Planner
Land Management Division
Phone: (541) 682-4082
Fax: (541) 682-3947
Deanna.Harris@co.lane.or.us



Goal One is Citizen Involvement

Lane County Planning Commission
Lane County Board of Commissioners
c/o Deanna Harris, Planner
125 East 8th Avenue
Eugene, OR 97401

July 13, 2009

**RE: ORDINANCE NO. 3-09. IN THE MATTER OF AMENDING CHAPTER 14 OF
LANE CODE TO REVISE LAND USE PERMIT AND ZONE CHANGE
APPLICATION REVIEW AND APPEAL PROCEDURES (Planning File No. PA
09-5351)**

Dear Members of the Planning Commission and County Commissioners:

Goal One Coalition (Goal One) is a nonprofit organization whose mission is to protect and enhance the ability of Oregon citizens to participate effectively in Oregon's land use planning program and to make that program responsive to the twin challenges of energy and climate change.

The purpose of this letter is to respond to issues raised in the Staff Report dated June 30, 2009.

Goal One Coalition and LandWatch Lane County concur with staff's recommendation that the Board adopt Option 2: Adopt original proposed amendments to LC Ch. 14 draft G dated 4-17-2009, along with Staff's proposed revisions in Attachments "B" and "C" and the additional revisions proposed in this letter.

Goal One Coalition and LandWatch Lane County greatly appreciate the efforts of staff in reviewing the proposed amendments and identifying drafting errors and oversight.

Staff has also identified several "policy issues" that might benefit from discussion and explanation.

Policy Issue 1 at Staff Report page 7: Goal One Coalition and LandWatch Lane County concur with staff's recommendation to retain LC 14.410 as amended by staff.

Policy Issue 2 at Staff Report page 8: Staff notes that currently any party may request that the Hearings Official ask the Board for interpretive guidance. The proposed change would require that the Hearings Official grant such request if made by the applicant and if accompanied by a waiver of the 150-day decision deadline.

ORS 215.427(9) provides that a county may not "compel" an applicant to waive the timeline. LC 14.300(6)(a) in its current form may run afoul of this statutory prohibition. The proposed change would remove any element of compulsion and ensure compliance with ORS 215.427(9).

following substitute language was drafted, modeled on a similar code provision from the city of Ashland:

LC 14.600 Elective Board Review Procedure.

(1) The Board of Commissioners may upon motion and majority vote call up any planning action decision by the hearings officer for a public hearing and decision, provided such vote takes place within the 14-day review period set forth in LC 14.500(2).

(2) The Board review of the Planning Action is limited to the record and shall be conducted pursuant to LC 14.400.

Goal One Coalition and LandWatch Lane County believe this substitute language for LC 14.600 clarifies the Board review process and addresses the concerns of staff.

The numbering of LC 14.400 needs to be fixed.

We recommend that the scope of Board review of a decision by the Hearings Official be specified in LC 14.400 subsection (2) as follows:

(2) Scope of Review. The Board may reverse or modify the decision of the hearings officer if it finds that the hearings officer

(i) exceeded his or her jurisdiction;

(ii) failed to follow the procedure applicable to the matter;

(iii) rendered a decision that is unconstitutional;

(iv) misinterpreted the Lane Code or Manual, State Law (statutory or case law) or other applicable criteria; or

(v) rendered a decision that violates a Statewide Planning Goal (until acknowledgment of the Lane County Comprehensive Plan, or any applicable portion thereof has been acknowledged to be in compliance with the Statewide Planning Goals by the Land Conservation and Development Commission).

The above changes also necessitate revising the proposed LC 14.400 subsections (4) and (9)(b) as follows:

LC 14.400 On The Record Hearings Procedure:

(43) Hearing Deadlines. An appeal ~~A review~~ of a Hearings Official decision which ~~has been reviewed by the Board pursuant to LC 14.600 below and for which an on the record hearing has been approved,~~ shall be heard by the Board within ~~14~~ **21** days of the date of the ~~decision written order of~~ **decision by** the Board **electing** to conduct the ~~on the record~~ **review** hearing.

(97) Order of Procedure. In the conduct of a hearing on the record, and unless otherwise specified by the Approval Authority **Board**, the Approval Authority **Board** shall:

(a) Announce the nature and purpose of the hearing and summarize the rules for conducting the hearing.

persons who qualified as parties at the hearing with the Hearings Official. The notice shall disclose the tentative date on which the Board ~~will elect whether or not to consider the appeal~~ **will conduct the review hearing.**

LC 14.600 Elective Board Review Procedure.

(1) The Board of Commissioners may upon motion and majority vote call up any planning action decision by the hearings officer for a public hearing and decision, provided such vote takes place within the 14-day review period set forth in LC 14.500(2).

(2) The Board review of the Planning Action is limited to the record and shall be conducted pursuant to LC 14.400.

Goal One Coalition and LandWatch Lane County again thank staff for her thorough review of the proposed amendments and urge the Board to adopt the amendments with the revisions proposed by staff and in this letter.

Sincerely,

Jim Just
Executive Director

July 13, 2009

Lane County Planning Commission
Lane County Board of Commissioners
c/o Deanna Harris, Planner
125 East 8th Avenue
Eugene, OR 97401

Re: Proposed Amendments to Lane Code Chapter 14

Dear Members of the Lane County Planning Commission and Board of Commissioners:

Jim Just of Goal One Coalition requested that I review the proposed revisions to LC 14.600 and suggest additional revisions thereto, as needed for clarification and simplification of the code. In particular, Mr. Just was interested in coming up with a clearer way of providing the Board with the authority to review decisions of the hearings officer. The elective review procedure has not always been a model of clarity, and Jim felt that the proposed changes could potentially create issues with the deadlines for filing LUBA appeals of hearings officer decisions.

In reviewing the proposed revisions and the likely desire of the Board to retain the ability to review certain land use actions, I recalled that some Oregon jurisdictions provided a mechanism for the local governing body to "call up" a lower decision to review. I researched the codes of several local jurisdictions and discovered that the City of Ashland has such a provision. The Ashland City Council is authorized to "call up" and review any planning action of the planning commission. Ashland Land Use Ordinance (ALUO) 18.208.070(B)(5).¹ In June, 2007, the Ashland City Council "called up" a matter under this provision. A LUBA appeal followed in which LUBA reviewed ALUO 18.208.070(B)(5) and determined that the provision did, in fact, authorize the city council to "call up" a planning action for city council review. *Bullock v. City of Ashland*, LUBA No. 2007-113, June 3, 2008. The Ashland provision has since been revised to clarify the procedure and timelines.²

¹ At that time ALUO 18.208.070(B)(5) provided: "The City Council may call up any planning action for a public hearing and decision upon motion and majority vote, provided such vote takes place in the required time period, as outlined below."

² The current version of that provision provides: "The City Council may call up any planning action for a public hearing and decision upon motion and majority vote, provided such vote takes place in the required appeal period. Unless the planning action is appealed and a public hearing is required, the City Council review of the Planning Action is limited to the record and public testimony is not allowed. The City Council may affirm, modify or reverse the decision of the Planning Commission, or may remand the decision to the Planning Commission for additional consideration if sufficient time is permitted for making a final decision of the city. The City Council shall make findings and conclusions and cause copies of a final order to be sent to all parties of the planning action."

Statewide Planning Goals by the Land Conservation and Development Commission)."

We also propose the following changes to subsections (3) and (7) of LC 14.400.

"(3) Hearing Deadlines. A review of a Hearings Official decision pursuant to LC 14.600 below and for which an on the record hearing has been approved, shall be heard by the Board within 21 days of the date of the decision by the Board electing to conduct the review hearing.

"(7) Order of Procedure. In the conduct of a hearing on the record, and unless otherwise specified by the Board, the Board shall:

* * *

"(b) Announce to all persons present that the hearing is on the record from the hearing of the Hearings Official, and that only the persons entitled to notice of the hearing as specified in LC 14.525(2) will be allowed to participate in the on-the-record hearing."

This proposed new process does not specify how the Board would obtain notice of a particular hearings official decision that requires review. However, the Board can either rely on staff and/or citizens to alert it to such cases, or it can arrange with the hearings officer to provide it with all hearings officer decisions. The new process clarifies that a hearings officer decision does not become final until the time for elective board review has expired. It spells out the process for elective board review, and provides for a final written decision that would then be appealable to LUBA. The Board does not have to adopt an order electing to review a decision; it need only pass a motion electing to review a hearings officer decision, and then conduct a hearing within 21 days of passing the motion. As proposed, the scope of review by the Board is very limited, and the process is very streamlined.

I believe these proposed changes go a long way toward simplifying and clarifying the Board's elective review procedures. If the planning commission, board or staff have any questions or concerns about this proposal, I would gladly make myself available to discuss them. I will be out of town from July 22nd through August 1st, but am otherwise available. Thank you for all of your work on these very important code changes.

Sincerely,

Anne C. Davies