

W.3.b.

**LANE COUNTY BOARD OF COMMISSIONER  
STAFF REPORT**

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**DATES:** October 12, 2009 (Date of this report)  
July 7, 2009 (Date of 1<sup>st</sup> Reading)  
July 21, 2009 (Date of 2<sup>nd</sup> Reading /Joint LCPC/BCC Public  
Hearing)  
October 6, 2009 (Date of Deliberations for LCPC)  
October 21, 2009 (Date of BCC 3<sup>rd</sup> Reading/Public Hearing)

**TO: LANE COUNTY BOARD OF COMMISSIONERS**

**DEPARTMENT:** Public Works Department/Land Management Division

**PRESENTED BY:** Deanna Wright, Planner

**AGENDA ITEM TITLE:** 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).

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**I. REQUESTED MOTION**

**A. MOTIONS FOR THE BOARD OF COMMISSIONERS:**

1. MOTION TO APPROVE THE THIRD READING OF ORDINANCE  
NO. 3-09 WITH THE CHANGES RECOMMENDED BY THE PLANNING  
COMMISSION AND SETTING A FOURTH READING AND  
DELIBERATION FOR AT LEAST TWO WEEKS OUT ON NOVEMBER 4,  
2009.

**OR**

2. MOTION TO MAKE REVISIONS TO PROPOSAL BEFORE  
SCHEDULING AN ADDITIONAL READING.

**OR**

3. MOTION TO TAKE NO ACTION AT THIS TIME.

**II. AGENDA ITEM SUMMARY**

The Lane County Board of Commissioners is being asked to review amendments to the Lane Code (LC) that would: (1) eliminate Planning Director Evidentiary Hearings; and (2) change the way the Board reviews appeals.

What is being presented here is stakeholder and staff changes to the original code amendment proposal as a result of the implications in the earlier proposal. Staff has reviewed the proposed amendments and has identified some of the potential departmental implications within the sections below.

### **III. BACKGROUND**

#### **A. History and Analysis**

At the July 21, 2009 Public Hearing, the Commissioners made a motion to direct staff, stakeholders, and interested parties to revise the proposed amendments and report back to the BCC. Staff arranged two stakeholder meetings which took place, on August 12<sup>th</sup> and the other meeting on September 9<sup>th</sup> in Harris Hall. Staff contacted the interested persons via e-mail to announce the stakeholder meetings. During the August 12<sup>th</sup> meeting the discussion centered on dislike of original proposal process on how the Board would review appeals, fees, Hearing's Official reconsiderations, and how it all might work. A new idea by Thom Lanfear (Land Use Consultant) was introduced and the group agreed to redirect some of the amendment provisions. Thom Lanfear then crafted some new amendment proposals and staff circulated his draft via e-mail to all interested individuals on August 25, 2009. This draft was reviewed during the second stakeholder meeting on September 9, 2009 in which some changes were discussed and agreed upon during this meeting. Attachment "A" is the result of stakeholder's and staff's development of the proposed text amendments to Lane Code Ch. 14.

Staff has prepared flowcharts showing the existing appeals process versus the proposed amendment process to clarify the changes and both the existing and proposed process flowcharts are included as Attachment "B". There was interest during the stakeholder meeting and the LCPC deliberation to include the end result flowchart within the adopted amendment text. Attachment "C" is a list of the individuals who attended the stakeholder meetings. Attachment "D" is the approved minutes from the Joint BCC/LCPC hearing which occurred on July 21, 2009.

On October 6<sup>th</sup> the Lane County Planning Commissioners deliberated on this matter. Their recommendation and motion is:

*"Approve Ordinance 3-09 with revisions to Lane Code developed by stakeholders and staff groups and leave silent issue of the fee structure for the Board determination with request from LCPC to evaluate the physical impact on the Department's ability to carry out the 2010 recommended work plan."* The motion passed 5-1.

The proposed text amendments include the reduced amount of \$250 appeal fee for an appeal of a Hearing's Official decision under LC 14.415(3)(f)(ii). Staff is proposing a fee of \$600. The Planning Commissioners wish the Board to decide

the fee issue under their motion and that the priorities of the work plan they recommended be considered by the Board.

Another noteworthy Commissioner feedback was that the end result flow chart be available to the public for their use for the appeals process. Staff agrees with this.

## **B. Policy Issues**

The proposed amendment if adopted includes two main policy changes as related to the current LC Ch. 14 text and procedures which are:

- 1) Eliminate the option of the Planning Director Elective Hearing held by the Planning Director, while maintaining the Director to Hearings Official elective hearing process.

Currently the Director has discretion to conduct an elective hearing process in order to expand citizen involvement before reaching a decision. Staff agrees with eliminating a Director Elective Hearing because citizen involvement is considered in the referral notice process to adjacent property owners, interested groups, and agencies whereby the public is permitted to submit comments to the application prior to a decision. Furthermore, maintaining the Director to Hearings Official elective hearing process as proposed still allows the Director to elect a hearing with the Hearings Official if it meets specific criteria.

- 2) Change the way the Board reviews appeals.

Currently in an appeal of a Hearing's Official decision the Board either elects to hear or declines to hear the appeal. The new proposal allows the appellant to direct the course of their appeal under two routes: option (1) Appellant request HO Reconsideration or BCC review (which is current practice); or option (2) Appellant requests final decision without BCC review or HO reconsideration (which is a newly proposed amendment). The appellant would request their option in the Department's appeal form. Under option 2 the Board could affirm the HO decision on the consent calendar via an order prepared by Planning staff. The Board could still elect to review the appeal under option 2.

Under option 2, staff suggested as a starting point a fee of \$600 to prepare the order since staff time will be required to prepare the order and attend the public meeting even if the action is on the Board's consent calendar. Goal One stakeholder was against this recommendation and requested the fee not go above \$250. Staff believes the actual cost of the Board order preparation and review will cost the Department around \$5,000. This cost was derived from the consulting firm that analyzed our fee structure in 2007 for what would be similar to "Board considers whether to hear the appeal" (which is a scenario in option 1 above). The Board will have to consider the physical impacts and budget impacts to LMD with this issue.

### **C. Board Goals**

Action on this ordinance may support the following Lane County Strategic Goals adopted by the Board:

- *Provides opportunities for citizen participation in decision-making, voting, volunteerism and civic and community involvement, - through this hearings process.*
- *Contributes to appropriate community development in the areas of transportation and telecommunications infrastructure, housing, growth management, and land development.*
- *Provides efficient and effective financial and administrative support and systems to direct-service departments, - as a customer within the "service departments" of the County.*

### **D. Financial and/or Resource Considerations**

It is conceivable more appeals where the appellant chooses "no review" option 2 could occur. If this occurs then there could be negative impacts to the Planning Department's personnel physical resources and budget. Staff believes some stakeholders have this concern which is documented in the record during the Joint Hearing on July 21, 2009. If more appeals occur, more staff time would be taken to produce orders for the Board consent calendar in which only a portion of staff time would be supplemented with the stakeholder requested amount of a \$250 appeal fee. Staff chose a starting point of \$600 as cost for preparation of the order, attending the hearing, and required appeal mailings. Goal One stakeholder is opposed to the proposed fee of \$600. Under either case the cost of preparing the item for Board action will not be recovered.

These impacts should be discussed at the deliberation and public hearing by the Board of Commissioners since this scenario could impact the Department's physical and budget resources, also see Policy issue above for further discussion. It is challenging to measure the exact cost of potential financial loss and physical impact under the \$250 appeal fee proposal. Staff requests Board direction to be determined in a way so as not to substantially affect our current permit review and long range planning work efforts/plans and to assist in a potential financial solution in this appeal fee issue.

Additionally, it is conceivable that policy or interpretation issues not dealt with under the "no review" option may result in an increase of remands from Land Use Board of Appeals (LUBA). The possibility exists that issues raised in the appeal may not have been reviewed previously or addressed by evidence in the record. In those cases, LUBA could remand the decision back to the County to resolve unaddressed local policy or interpretation issues.

## **Lane Code Amendment Criteria**

This is an amendment proposal of LC Ch. 14 which is a component of LC Ch. 16 with the nexus found in LC Ch. 16.100 Development Approval Procedures. Therefore the Lane Code Amendment criteria for this proposal are pursuant to LC 16.252 and LC 12.050. This amendment shall meet those provisions and will ultimately be up to the Board to decide. The revision to LC Ch. 14 amendments recommended by the stakeholders and LCPC does not affect the findings previously described in the original staff report memo for the Joint Hearing on July 21, 2009.

### **V. TIMING/IMPLEMENTATION**

Staff will take steps as directed by the Board in the progress of this proposed code amendment. The coordination and land use process will follow applicable laws and allow opportunities for citizen involvement throughout the process. Notice will be give to DLCD as required for code amendments upon adoption.

### **VI. ACTION**

#### **A. Options**

**Option 1:** MOTION TO APPROVE THE THIRD READING OF ORDINANCE NO. 3-09 WITH THE CHANGES RECOMMENDED BY THE PLANNING COMMISSION AND SETTING A FOURTH READING AND DELIBERATION FOR AT LEAST TWO WEEKS OUT ON NOVEMBER 4, 2009.

**Option 2:** MAKE REVISIONS TO PROPOSAL BEFORE SCHEDULING AN ADDITIONAL READING.

**Option 3:** TAKE NO ACTION AT THIS TIME.

#### **B. Recommendation**

Staff recommends Option 1.

### **VII. ATTACHMENTS**

- A.** Ordinance No. 3-09 with attached proposed code language
- B.** Flow charts for existing and proposed appeal process
- C.** Attendance lists for stakeholder meetings
- D.** Adopted Meeting Minutes for Joint Board/LCPC Hearing on July 21, 2009

BEFORE THE BOARD OF COUNTY COMMISSIONERS, LANE COUNTY, OREGON

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 (LC 14.015, 14.050, 14.100,  
14.110, 14.300, 14.500, 14.510, 14.515, 14.520,  
14.525, 14.530, 14.535 and 14.600)

The Board of County Commissioners of Lane County ordains as follows:

Chapter 14 of Lane Code is hereby amended by removing, substituting and adding new sections as follows:

**REMOVE THESE SECTIONS**

14.015 through 14.050  
located on pages 14-1 through 14-4  
(a total of 4 pages)

14.100 through 14.110  
located on pages 14-6 through 14-7  
(a total of 2 pages)

14.300  
located on pages 14-11 through 14-15  
(a total of 5 pages)

14.500 through 14.600  
located on page 14-17 through 14-21  
(a total of 5 pages)

**INSERT THESE SECTIONS**

14.015 through 14.050  
located on pages 14-1 through 14-4  
(a total of 4 pages)

14.100 through 14.110  
located on pages 14-6 through 14-7  
(a total of 2 pages)

14.300  
located on pages 14-11 through 14-15  
(a total of 5 pages)

14.500 through 14.600  
located on pages 14-17 through 14-21  
(a total of 5 pages)

Said sections are attached hereto and incorporated herein by reference. The purpose of this substitution and addition is to revise land use permit and zone change application review and appeal procedures (LC 14.015, 14.050, 14.100, 14.110, 14.300, 14.500, 14.510, 14.515, 14.520, 14.525, 14.530, 14.535 and 14.600).

ENACTED this \_\_\_\_\_ day of \_\_\_\_\_ 2009.

\_\_\_\_\_  
Chair, Lane County Board of Commissioners

\_\_\_\_\_  
Recording Secretary for this Meeting of the Board

APPROVED AS TO FORM

Date 10-14-2009 Lane County

Stephen J. Vanhook  
OFFICE OF LEGAL COUNSEL

## APPLICATION REVIEW AND APPEAL PROCEDURES

### 14.010 Purpose.

This chapter is intended to establish procedures for the submittal, acceptance, investigation and review of applications and appeals, and to establish limitations upon approved or denied applications. *(Revised by Ordinance No. 16-83; Effective 9.14.83)*

### 14.015 Definitions.

For the purpose of this Code, certain abbreviations, terms, phrases, words and their derivatives shall be construed as specified in this chapter. Words used in the singular include the plural and the plural the singular. Words used in the masculine gender include the feminine, and the feminine the masculine.

Where terms are not defined, they shall have their ordinary accepted meanings within the context in which they are used. Webster's Third New International Dictionary of the English Language, Unabridged, copyright 1981, principal copyright 1961, shall be considered as providing accepted meanings.

**Acceptance.** Received by and considered by the Director as sufficiently complete to begin processing according to the application or appeal review procedures of this chapter.

**Appearance.** Submission of testimony or evidence in the proceeding, either oral or written. Appearance does not include a name or address on a petition.

**Approval Authority.** A person, or a group of persons, given authority by Lane Code to review and/or make decisions upon certain applications according to the review procedures of this chapter.

**Argument.** The assertions and analysis regarding the satisfaction or violation of legal standards or policy believed relevant by the proponent to a decision. Argument does not include facts.

**Board.** The Lane County Board of Commissioners.

**County Official.** The Director of a Lane County Department or Division, or any Lane County advisory committee or commission acting in its official capacity.

**Day.** A calendar day, computed consistent with ORS 174.120.

**Department.** The Lane County Department of Public Works.

**Director.** The Director of the Land Management Division of the Lane County Public Works Department, or the Director's delegated representative within the Department. The Director shall approve or deny land use applications as authorized by this chapter.

**Evidence.** The facts, documents, data or other information offered to demonstrate compliance or non-compliance with the standards believed by the proponent to be relevant to the decision.

**Hearings Official.** A person who has been appointed by the Board to serve at their pleasure and at a salary fixed by them. The Hearings Official shall conduct hearings on applications as authorized by this Code.

**Land Use Decision.**

- (1) A final decision or determination made by Lane County that concerns the adoption, amendment or application of
  - (a) The Goals;
  - (b) A comprehensive plan provision;
  - (c) A land use regulation; or
  - (d) A new land use regulation.
- (2) A land use decision does not include a decision made by Lane County:

- (a) Which is made under land use standards which do not require interpretation or the exercise of policy or legal judgement;
- (b) Which approves or denies a building permit issued under clear and objective land use standards;
- (c) Which is a limited land use decision;
- (d) Which determines final engineering design, construction, operation, maintenance, repair or preservation of a transportation facility which is otherwise authorized by and consistent with the comprehensive plan and land use regulations;
- (e) Which is an expedited land division as described in ORS 197.360; or
- (f) A land use approval in response to a writ of mandamus.

**Land Use Regulation.** Any zoning ordinance, land division ordinance adopted under ORS 92.044 to 92.046 or similar general ordinance establishing standards for implementing a comprehensive plan.

**Legal Interest.** An interest in property not confined solely to ownership or possessory interest, but including all interests in property which, in the discretion of the Director, are not inconsistent with the intent and purposes of this chapter. Such interests may include, but are not limited to, the following: owner, contract purchaser, lessee, renter, easement, resolution or ordinance of necessity to acquire or condemn adopted by a public or private condemnor.

**Limited Land Use Decision.** A final decision or determination made by a Lane County Approval Authority, as defined in LC 14.015, pertaining to a site within an urban growth boundary and which concerns:

- (1) The approval or denial of a subdivision or partition.
- (2) The approval or denial of an application based on discretionary standards designed to regulate the physical characteristics of a use permitted outright, including but not limited to site review pursuant to the Site Review Procedures of LC 10.335.

**New Land Use Regulation.** A land use regulation other than an amendment to an acknowledged land use regulation adopted by Lane County.

**Party.** With respect to actions pursuant to LC 14.100 and 14.200 below, the following persons or entities are defined as parties:

- (1) The applicant and all owners or contract purchasers of record, as shown in the files of the Lane County Department of Assessment and Taxation, of the property which is the subject of the application.
- (2) Any person who makes an appearance before the Approval Authority.

**Permit.**

(1) A discretionary approval of a proposed development of land under ORS 215.010 to 215.293, 215.317 to 215.438 and 215.700 to 215.780 or county legislation or regulation adopted pursuant thereto.

- (2) "Permit" does not include:
  - (a) A limited land use decision;
  - (b) A decision which determines the appropriate zoning classification for a particular use by applying criteria or performance standards defining the uses permitted within the zone, and the determination applies only to land within an urban growth boundary;
  - (c) A decision which determines final engineering, design, construction, operation, maintenance, repair or preservation of a transportation facility which is otherwise authorized by and consistent with the comprehensive plan and land use regulations; or
  - (d) An action under ORS 197.360(1).

**Person.** Any individual, his or her heirs, executors, administrators or assigns, or a firm, partnership or corporation, its heirs or successors or assigns, or the agent of any of



the aforesaid, any political subdivision, agency, board or bureau of the State or public or private organization of any kind.

Planning Commission. The Planning Commission of Lane County, Oregon.

Planning Director. See Director.

Received. Acquired by or taken into possession by the Director. *(Revised by Ordinance No. 16-83; Effective 9.14.83; 10-89, 10.4.89; 4-96; 11.29.96; 12-97, 11.20.97)*

#### **14.050 Application Requirements, Acceptance and Investigation.**

(1) Contents. Applications subject to any of the review procedures of this chapter shall:

- (a) Be submitted by any person with a legal interest in the property.
- (b) Be completed on the form prescribed by the Department and submitted to the Department.
- (c) Address the appropriate criteria for review and approval of the application and shall contain the necessary supporting information.
- (d) Be accompanied by the filing fee to help defray the costs of the application.

(2) Combinable Applications. Applications for the same property may be combined and concurrently reviewed as a master application, subject to the following permissible combination schemes and required review procedures:

(a) Applications subject to the review procedures of LC 14.100 below may be combined with other applications subject to the review procedures of LC 14.100 below, and the required review shall be by the Director according to LC 14.100 below.

(b) Applications subject to Hearings Official approval, according to the review procedures of LC 14.300 below, may be combined with other applications subject to Hearings Official approval according to LC 14.300 below and the required review procedure shall be by the Hearings Official according to LC 14.300 below.

(c) Applications subject to the review procedures of LC 14.100 below may be combined with applications subject to Hearings Official approval according LC 14.300 below, and the required review procedure shall be by the Hearings Official according to LC 14.300 below.

(d) A zone change application may be combined with an application for an amendment to the Comprehensive Plan, and the combined application shall be concurrently reviewed by the Planning Commissions and Board according to the review procedures of LC Chapters 12 and 14 for a plan amendment.

(3) Acceptance. Applications subject to any of the review criteria of this chapter:

(a) May be received by the Director at any time and shall not be considered as accepted solely because of having been received;

(b) Shall be, within 30 days of receipt, reviewed by the Director to determine if they meet the requirements of LC 14.050(1) and (2) above and are complete. Applications shall be determined to be complete and shall be accepted by the Director when they include the required information, forms and fees. When the Director determines that an application is not complete, the Director shall mail written notice to the applicant and disclose exactly what information, forms or fees are lacking.

(c) On the 181<sup>st</sup> day after first being submitted, the application is void if the applicant has been notified of the missing information and has not submitted:

- (i) All of the missing information;
- (ii) Some of the missing information and written notice that no other information will be provided; or

(iii) Written notice that none of the missing information will be provided.

The Director shall mail written notice to the applicant when the application is deemed complete or accepted.

(d) Within 10 days of acceptance of an application, the Director shall mail information explaining the proposed development to the persons identified in LC 14.100(4) and, if applicable, notice required by LC 14.160. Persons receiving notice pursuant to LC 14.160 shall have 15 days following the date of postmark of the notice to file written objections as required by LC 14.160(1)(c). All other persons shall have 10 days from the date information is mailed to provide the Director with any comments or concerns regarding the proposed development. After the end of the applicable comment period, the Director shall complete the investigation report and mail notice of a decision or elect to schedule the application for a Hearings Official evidentiary hearing.

(4) Investigation and Reports. The Director shall make, or cause to be made, an investigation to provide necessary information to ensure that the action on each application subject to any review procedure of this chapter is consistent with the criteria established by this chapter and other chapters of Lane Code requiring the review. The report of such investigation shall be included within the application file and, in the event of a hearing, presented to the Approval Authority before or during the hearing.

(5) Timelines for Final Action. For development sites located within an urban growth boundary, except as provided in LC 14.050(5)(a) through (d) below, the Approval Authority shall take final action on an application for a permit, limited land use decision or zone change within 120 days after the application is deemed complete. For development sites located outside an urban growth boundary, except as provided in LC 14.050(5)(a) through (d) below, the Approval Authority shall take final action on an application for a permit, limited land use decision or zone change within 150 days after the application is deemed complete. Except when an applicant requests an extension under LC 14.050(5)(a) below, if Lane County does not take final action on such an application within the required 120 or 150 days after the application is deemed completed, Lane County shall refund to the applicant either the unexpended portion of any application fees or deposits previously paid or 50 percent of the total amount of such fees or deposits, whichever is greater. The applicant is not liable for additional Lane County land use fees or deposits for the same application incurred subsequent to the payment of such fees or deposits. However, the applicant is responsible for the costs of providing sufficient additional information to address relevant issues identified in the consideration of the application. Exceptions to the requirement to take final action on an application within 120 or 150 days are:

(a) When an applicant waives or requests an extension of the required 120-day or 150-day period for final action. The total of all extensions may not exceed 215 days.

(b) When an application is for an amendment to an acknowledged comprehensive plan or land use regulation or adoption of a new land use regulation that was forwarded to the Director of the Department of Land Conservation and Development under ORS 197.610(1).

(c) When a decision is not wholly within the authority and control of Lane County.

(d) When parties have agreed to mediation as described in ORS 197.318(2)(b). (*Revised by Ordinance No. 16-83; Effective 9.14.83; 10-84, 9.8.84; 10-89, 10.4.89; 4-96; 11.29.96; 3-98, 7.8.98*)

(3) Notice of a hearing pursuant to the procedures of LC 14.400 below shall contain:

- (a) The information required by LC 14.070(2) above.
- (b) A statement regarding the purpose of the hearing and whether or not testimony will be limited to the record.
- (c) The names of parties who may participate in the Board hearing.
- (d) Where to receive more information.

(4) The records of the Lane County Department of Assessment and Taxation shall be used for notice as required by this chapter to nearby property owners. Persons whose names and addresses are not on file at the time of the filing of the application need not be notified of the action. The failure of a property owner to receive notice shall not invalidate the action if the Director can demonstrate by affidavit of compliance that such notice was given. The Director shall cause to be filed certification of compliance with the notice provisions of this section.

(5) Notice of a hearing to be posted on the property shall meet the following requirements:

- (a) The design and size of the signs shall be determined by the Director, but shall be at least 22 inches x 28 inches in size and have a brightly colored background.
- (b) The sign shall identify the time, date and place of the public hearing.
- (c) The sign shall identify the Department file number.
- (d) The sign shall identify the general nature of the proposal.
- (e) The sign shall identify where more information may be received.

*(Revised by Ordinance No. 16-83; Effective 9.14.83; 10-89, 10.4.89; 4-96; 11.29.96)*

#### **14.100 Director Review Procedure.**

All applications subject to this subsection shall be reviewed as follows:

(1) **Decision Deadline.** Unless the Director elects to schedule the application for a hearing with the Hearings Official pursuant to LC 14.110 below, an application which has been accepted by the Director shall be acted upon within 21 days of the date the application was accepted. An application which has not been so acted upon may be appealed by the Applicant to the Hearings Official in the same manner as provided for in this chapter for appeals of Director decisions, except that there will be no fee charged for the appeal. The application processing timeline may be extended for a reasonable period of time at the request of the applicant.

(2) **Director Review.** The Director shall review the application and prepare a written investigation report. The Director may elect to schedule the application for a hearing with the Hearings Official pursuant to LC 14.110 below.

(3) **Director Decision.** The Director shall determine if the evidence supports a finding that the required criteria have been met and shall approve, approve with conditions or deny the application. The Director's approval or denial shall be in writing, shall be based on factual information, and shall include express written findings on each of the applicable and substantive criteria.

(4) **Notice.** Within two days of the decision, the Director shall mail notice meeting the requirements of LC 14.070(1) above to the applicant, to all parties, to all neighborhood or community organizations recognized by the Board and whose boundaries include the site and to the owners of record of property on the most recent property tax assessment roll where such property is located:

- (a) Within 100 feet of the exterior boundaries of the contiguous property ownership which is the subject of the notice if the subject property is wholly or in part within an urban growth boundary;

(b) Within 250 feet of the exterior boundaries of the contiguous property ownership which is the subject of the notice if the subject property is outside an urban growth boundary and not within a farm or forest zone;

(c) Within 750 feet of the exterior boundaries of the contiguous property ownership which is the subject of the notice if the subject property is within a farm or forest zone. *(Revised by Ordinance No. 16-83; Effective 9.14.83; 10-89, 10.4.89; 4-96; 11.29.96; 3-98, 7.8.98)*

#### **14.110 Director Elective Hearing Procedure.**

(1) Purpose. This section establishes the procedure and criteria which the Director shall follow in electing to have an evidentiary hearing for the application with the Hearings Official for a land use application otherwise subject to review pursuant to LC 14.100 above without a hearing. The purpose of the evidentiary hearing by the Hearings Official is to provide interested persons with a hearing and an opportunity to contribute statements or evidence to the land use decision.

(2) Procedure.

(a) Where an application is subject to review by the Director without a hearing under LC 14.100 above, the Director may instead elect to have an evidentiary hearing for the application with the Hearings Official, to review the application pursuant to LC 14.300 below.

(b) The evidentiary hearing by the Hearings Official shall be scheduled for a date no later than 35 days from the date of application acceptance.

(c) At least 20 days in advance of the evidentiary hearing and before the end of the 21-day action period provided in LC 14.100(1) above, the Director shall provide the applicant with a copy of his or her written report that addresses compliance with LC 14.110(3) or (4) below and that identifies the hearing date.

(3) Hearing Criteria. An election by the Director to have an evidentiary hearing for the application with the Hearings Official must comply with one or more of the following criteria:

(a) An application raises an issue which is of countywide significance.

(b) An application raises an issue which will reoccur with frequency and is in need of policy guidance.

(c) An application involves a unique environmental resource based upon evidence provided by a state or federal agency, or by a private professional with expertise in the field of the resource of concern.

(d) An application involves an existing use with a compliance action pending against it and with neighborhood opposition against it.

(e) An application involves persons with opposing legal arguments regarding unresolved interpretations of applicable state laws or regulations.

(f) An application involves a contemplated use which would be a different kind of use than the uses of nearby properties and the owners of three or more nearby properties object to the use or request a hearing.

(g) An application involves a contemplated use which would result in any of the following offsite impacts based upon information provided to the Director: the introduction of new commercial or industrial traffic, or ongoing truck traffic, on local roads in a residential neighborhood; or the introduction of noise, odors or dust into a residential neighborhood.

(h) An applicant requests a hearing. *(Revised by Ordinance No. 4-96; Effective 11.29.96; 3-98, 7.8.98)*

(d) Impose reasonable limitations on the number of witnesses heard and set reasonable time limits for oral presentation, cross-examination of witnesses and rebuttal testimony.

(e) Take such other action appropriate for conduct commensurate with the nature of the hearing.

(f) Grant, deny or, in appropriate cases, attach such conditions to the matter being heard or that may be necessary to comply with the applicable approval criteria or, in appropriate cases, formulate a recommendation for the Board.

(g) Continue the hearing to a date certain and for a period of time not to exceed 31 days from the date of the hearing being continued. No further notice need be given for continuance of a hearing to a date certain. In the event that the continuance is requested by the applicant, the applicant shall first agree to a waiver of any statutory timelines in which Lane County must expedite processing of the application, and such waiver shall be in addition to any other waivers of the statutory application processing timelines requested by the applicant.

(h) Allow the applicant to withdraw the application. Subsequent to the application withdrawal, any new application for the same property must be submitted and reprocessed in compliance with the provisions of this chapter.

(10) Record of Proceeding.

(a) A verbatim record of the hearing shall be made by mechanical means. In all cases, the tape, transcript of testimony or other evidence of the hearing shall be part of the record.

(b) All exhibits received shall be marked so as to provide identification upon review.

(c) All actions taken by the Approval Authority pursuant to adopting findings and conclusions shall be made a part of the record. *(Revised by Ordinance No. 16-83; Effective 9.14.83; 10-89, 10.4.89; 4-96; 11.29.96)*

**14.300 De Novo Hearing Procedure.**

All applications or appeals, unless otherwise specified, subject to this section shall be reviewed as follows:

(1) Hearing Deadlines.

(a) An appeal of a decision made without a hearing and pursuant to LC 14.100 above, and which has been accepted by the Director pursuant to LC 14.520 below, shall be scheduled for the next regularly scheduled hearing before the Hearings Official for appeals no sooner than 21 days from the date of acceptance of the appeal and no later than 35 days from the date that the appeal was accepted.

(b) An application for review by the Hearings Official, and which has been accepted by the Director, shall be scheduled for the next regularly scheduled hearing for such review no sooner than 20 days from the date of application acceptance and no later than 35 days from the date of application acceptance.

(c) An application for review by the Planning Commission and a subsequent action by the Board, if accepted by the Director, shall be scheduled as follows:

(i) The Planning Commission hearing shall be no sooner than 45 days from the date of application acceptance and no later than 60 days from the date of application acceptance.

(ii) The Board hearing shall be no sooner than 60 days from the date of application acceptance and no later than 75 days from the date of application acceptance.

(2) Publication of Notice. For a zone change application and/or plan amendment application, the Department shall cause to be published in a newspaper of general circulation, at least 21 days in advance of the hearing, a notice of the hearing which contains the information required by LC 14.070(2) above.

(3) Mailing of Notice. At least 20 days in advance of the hearing, the Director shall mail notice of the hearing which meets the requirements of LC 14.070(2) above to the persons identified in 14.300(3)(a) through (f) below.

(a) The applicant;

(b) The property owner, if different than the applicant;

(c) The appellant, if there is one, and if the appellant is different than the applicant or property owner; and

(d) The owners of record of all property on the most recent property tax assessment roll where such property is located:

(i) Within 100 feet of the exterior boundaries of the contiguous property ownership which is the subject of the notice if the subject property is wholly or in part within an urban growth boundary;

(ii) Within 250 feet of the exterior boundaries of the contiguous property ownership which is the subject of the application, is outside an urban growth boundary and not within a farm or forest zone; or

(iii) Within 750 feet of the exterior boundaries of the contiguous property ownership which is the subject of the application if the subject property is within a farm or forest zone.

(e) All neighborhood or community organizations recognized by the Board and whose boundaries include the site.

(f) Any person who has made an appearance.

(4) Posting Notice. At least 14 days in advance of the hearing, for initial application reviews and not appeals of Director decisions, the Director shall cause notice to be conspicuously posted on one or more locations on the subject property, and such notice shall comply with LC 14.070(5) above.

(5) Challenges for Bias. Challenges for bias must meet the standards of LC 14.200(7) above and must be delivered to and received by the Director at least five days in advance of the hearing. The Director shall then, prior to the hearing, forward a copy of the challenge to the Approval Authority or member of the Approval Authority who is being challenged.

(6) Request for Interpretation of County Policy. When, prior to or in the course of a hearing, the Hearings Official finds that the case raises substantial question involving either the application or interpretation of a policy that has not been clarified in sufficient detail, the Hearings Official may submit that question of application or interpretation in written form to the Board for its determination. In the event the application or interpretation of policy is requested by the applicant, the applicant shall first agree to a waiver of any statutory timelines in which Lane County must expedite processing of the application, and such waiver shall be in addition to any other waiver of the statutory application processing timelines requested by the applicant.

The Board, at its discretion, may elect to accept or reject the Hearings Official's request. When such a question is accepted by the Board, those persons receiving notice of the Hearings Official hearing, the applicant and parties of record shall be notified that they may submit in writing their view as to what the policy application or interpretation should be. Such written views must be submitted to the Board and Department at least five days in advance of the Board's review of the request. Such persons shall restrict their statements to the issue of interpretation or application as stated by the Hearings Official and shall not present the Board with arguments or evidence

immaterial to the determination sought, even though such evidence or argument may be relevant to the Hearings Official's final decision.

The Board shall render its written determination within 14 days after receipt of the question from the Hearings Official. Said decision shall be transmitted to the Hearings Official, who will then apply the interpretation to the application.

(7) Order of Procedure. In the conduct of a public hearing, and unless otherwise specified by the Approval Authority, the Approval Authority shall:

(a) Announce the nature and purpose of the hearing and summarize the rules for conducting the hearing, including a statement made to those in attendance that:

(i) Lists the applicable substantive criteria;

(ii) States that evidence and testimony must be directed toward the criteria described in LC 14.300(7)(a)(i) above or other criteria in the comprehensive plan or land use regulations which the person believes apply to the decision; and

(iii) States that failure to raise an issue accompanied by statements or evidence sufficient to afford the Approval Authority and the parties an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals based upon that issue.

(b) Announce to all persons present whether or not the hearing about to commence is their only opportunity to enter information into the record and whether or not only those persons who qualify as a party may appeal the Approval Authority's decision.

(c) Disclose any ex parte contacts. A communication between County staff and the Planning Commission or Board shall not be considered an ex parte contact.

(d) Call for abstentions based upon any conflicts of interest or biases due to ex parte contacts, and any member of the Approval Authority may respond to any challenges for bias meeting the standards of this chapter. No decision or action of the Planning Commission or Board shall be invalid due to ex parte contact or bias resulting from ex parte contact with a member of the Planning Commission or Board, if the Planning Commission or Board member receiving the contact:

(i) Places on the record the substance of any written or oral ex parte communications concerning the decisions or action; and

(ii) Has a public announcement of the content of the communication and of the parties' right to rebut the substance of the communication made at the first hearing following the communication where action will be considered or taken on the subject to which the communication is related.

(e) Request the Director to present his or her introductory report, explain any graphic or pictorial displays which are a part of the report, read findings and recommendations, if any, and provide such other information as may be requested by the Approval Authority.

(f) Allow the applicant to be heard first, on his or her own behalf, or by representative.

(g) Allow persons in favor of the applicant's proposal to be heard next.

(h) Allow other persons to be heard next in the same manner as in the case of the applicant.

(i) Upon failure of any person to appear, the Approval Authority may take into consideration written material submitted by such person.

(j) Allow the Director to present any further comments or information in response to testimony and evidence offered by any interested persons.

(k) Allow the applicant to rebut, on his or her own behalf or by representative, any of the testimony or evidence previously submitted.

(l) Conclude the hearing.

(m) Questions may be asked at any time by the Approval Authority. Questions by interested persons, or the Director, may be allowed by the Approval Authority upon request. Upon recognition by the Approval Authority, questions may be submitted directly to the persons being questioned. The persons questioned shall be given a reasonable amount of time to respond solely to the questions.

(n) An issue which may be the basis for an appeal to the Land Use Board of Appeals shall be raised not later than the close of the record at or following the final evidentiary hearing on the proposal before the Approval Authority. Such issues shall be raised and accompanied by statements or evidence sufficient to afford the Approval Authority and the parties an adequate opportunity to respond to each issue.

(o) If the hearing is an initial evidentiary hearing, any participant may request an opportunity to present additional evidence or testimony regarding the application. The Approval Authority shall grant such request by continuing the public hearing pursuant to LC 14.300(7)(o)(i) below or leaving the record open for additional written evidence or testimony pursuant to LC 14.300(7)(o)(ii) below.

(i) If the Approval Authority grants a continuance, the hearing shall be continued to a date, time and place certain at least seven days from the date of the initial evidentiary hearing. An opportunity shall be provided at the continued hearing for persons to present and rebut new evidence and testimony. If new written evidence is submitted at the continued hearing, any person may request, prior to the conclusion of the continued hearing, that the record be left open for at least seven days to submit additional written evidence or testimony for the purpose of responding to the new written evidence.

(ii) If the Approval Authority leaves the record open for additional written evidence or testimony, the record shall be left open for at least seven days. Within 5 days from the close of the record, any participant may file a written request with the Approval Authority for an opportunity to respond to new evidence submitted during the period the record was left open. If such a request is timely filed, the Approval Authority shall reopen the record pursuant to LC 14.700(7)(o)(v) below.

(iii) A continuance or extension granted pursuant to LC 14.300(7)(o) shall be subject to the limitations of ORS 215.428 unless the continuance or extension is requested or agreed to by the applicant.

(iv) Unless waived by the applicant, the Approval Authority shall allow the applicant at least seven days after the record is closed to all other parties to submit final written arguments in support of the application. The applicant's final submittal shall be considered part of the record, but shall not include any new evidence.

(v) When the Approval Authority reopens the record to admit new evidence or testimony, including a response to new evidence allowed pursuant to LC 14.300(7)(o)(ii) above, any person may raise new issues which relate to the new evidence, testimony or criteria for decision-making which apply to the matter at issue.

(p) At the conclusion of the hearing, the Approval Authority shall either make a tentative decision and state findings which may incorporate findings proposed by any person or the Director, or take the matter under advisement for a decision to be made at a later date. If additional documents or evidence are provided by any party, the Approval Authority may allow a continuance or leave the record open to allow a reasonable opportunity to respond. Any continuance or extension of the record requested by an applicant shall result in a corresponding extension of the time limitations of ORS 215.428. The Approval Authority may request proposed findings and conclusions from any person at the hearing. The Approval Authority, before finally adopting findings and conclusions, may circulate the same in proposed form to parties for written comment. The written decision and findings shall be based on factual information, shall identify who has party status and shall be completed in writing and signed by the Approval



Authority within 10 days of the closing of the record for the last hearing. A longer period of time may be taken to complete the findings and decision if the applicant submits a written request to the Approval Authority consenting and agreeing to a waiver of the 120-day or 150-day statutory time period for final action on the application equal to the amount of additional time it takes to prepare the findings.

(8) Decision and Findings Mailing. Within two days of the date that the written decision adopting findings is signed by the Approval Authority, the Director shall mail to the applicant, and all parties of record, a copy of the decision and findings; or if the decision and findings exceed five pages, the Director shall mail notice of the decision. *(Revised by Ordinance No. 16-83; Effective 9.14.83; 10-89, 10.4.89; 4-96; 11.29.96; 3-98, 7.8.98)*

#### **14.400 On The Record Hearings Procedure.**

All appeals subject to this section shall be reviewed as follows:

(1) Review on the Record. The review of the decision by the Approval Authority shall be confined to the record of the proceeding before the previous Approval Authority except as provided in LC 14.400(2) and 14.400(3) below.

(2) Limited Additional Testimony. The Approval Authority may admit additional testimony and other evidence without holding a de novo hearing, if it is satisfied that the testimony or other evidence could not have been presented at the initial hearing. In deciding such admission, the Approval Authority shall consider:

- (a) Prejudice to parties.
- (b) Convenience or availability of evidence at the time of the initial hearing.
- (c) Surprise to opposing parties.
- (d) When notice was given to other parties of the intended attempt to admit the new evidence.
- (e) The competency, relevancy and materiality of the proposed testimony or other evidence.
- (f) Whether the matter should be remanded for a de novo hearing under LC 14.400(3) below.

(3) De Novo Hearing/Remand. The Approval Authority may elect to hold a de novo hearing or remand the appeal for a supplemental de novo hearing before the previous Approval Authority if it decides that the volume of new information offered by a party proceeding under LC 14.400(2) above would:

- (a) Interfere with the Approval Authority's agenda; or
- (b) Prejudice parties; or
- (c) If the Approval Authority determines that the wrong legal criteria were applied by the previous Approval Authority. On remand, the previous Approval Authority shall apply the procedures of LC 14.300 above. If an appeal is desired from the previous Approval Authority's decision on remand, the appropriate procedures of LC 14.500 below, for an appeal of a decision shall be followed.

(d) In the event that the remand is requested by the applicant, the applicant shall first agree to a waiver of any statutory timelines in which Lane County must expedite processing of the application, and such waiver shall be in addition to any other waivers of the statutory application processing timelines requested by the applicant.

(4) Hearing Deadlines. An appeal 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 days of the date of the decision by the Board to conduct the on the record hearing.

(5) Publication of Notice. For a zone change application, the Department shall cause to be published, at least 10 days in advance of the hearing and in a newspaper of

(e) Request the Director to present his or her introductory report, explain any graphic or pictorial displays which are a part of the report, read findings and recommendations, if any, and provide such other information as may be requested by the Board.

(f) Allow the appellant to be heard first, on his or her own behalf or by representative.

(g) Allow the applicant, if different from the appellant to be heard next in the same manner as in the case of the appellant.

(h) Upon failure of any party to appear, the Approval Authority may take into consideration written material submitted by such party.

(i) Allow the appellant to rebut, on his or her own behalf or by representative, any of the arguments previously presented to the Approval Authority.

(j) Conclude the hearing.

(k) Questions may be asked at any time by the Approval Authority. Questions by the parties or Director may be allowed by the Approval Authority upon request. Upon recognition by the Approval Authority, questions may be submitted directly to the persons being questioned. The persons questioned shall be given a reasonable amount of time to respond solely to the questions.

(l) At the conclusion of the hearing, the Approval Authority shall either make a tentative decision and state findings which may incorporate findings proposed by any person or the Director, or may continue the hearing to a date certain. The Approval Authority may request proposed findings and conclusions from any party to the hearing. The Approval Authority, before finally adopting findings and conclusions, may circulate the same in proposed form to parties for written comment.

(10) Written Decision or Final Order. Upon the adoption of findings, the Approval Authority shall enter a written decision or final order affirming, reversing or modifying the decision of the previous Approval Authority. The decision or final order shall be based on factual information. The Director shall, within two working days of the date of the written decision or final order, mail a copy of the written decision or final order to all parties of record. *(Revised by Ordinance No. 16-83; Effective 9.14.83; 10-89, 10.4.89; 4-96; 11.29.96; 3-98, 7.8.98)*

#### **14.500 Appealable Decisions and Manner of Review.**

(1) Decisions made by the Director without an evidentiary hearing pursuant to LC 14.100 above may be appealed, and upon Director acceptance of an appeal, shall be reviewed by the Hearings Official with an evidentiary hearing pursuant to LC 14.300 above.

(2) Decisions by the Hearings Official pursuant to LC 14.300 or 14.400 above may be appealed to the Board. Upon Director acceptance of such an appeal, the Board may elect to hear or not hear the appeal, and shall follow LC 14.600 below in deciding whether or not to hear the appeal. Appeals heard by the Board shall be reviewed according to LC 14.400 above. A decision on any application appealed to the Board shall become final upon signing of an order by the Board to not hear the appeal or specifying the final decision in an appeal the Board elected to hear. A decision not to hear an appeal shall affirm the appealed decision pursuant to LC 14.600(2)(d) below.

(3) Unless appealed, a decision on any application shall be final upon expiration of the period provided by this chapter for filing an appeal. *(Revised by Ordinance No. 16-83; Effective 9.14.83; 4-96; 11.29.96; 3-98, 7.8.98)*

**14.510 Appeal Period.**

A decision by the Director or Hearings Official, once reduced to writing and signed, shall be appealed as provided in LC 14.500 above, within 12 days of the date of signing of the decision provided notice of the decision occurs as required by law. When the last day of the appeal period so computed is a Saturday, Sunday, a Federal or County holiday, or a day during which the Department is closed because of a temporary work furlough, the appeal period shall run until 5:00 o'clock p.m. on the next business day. *(Revised by Ordinance No. 16-83; Effective 9.14.83; 4-96; 11.29.96)*

**14.515 Appeal Content Requirements.**

All appeals shall:

- (1) Be submitted in writing to, and received, by the Department within the 12 day appeal period;
- (2) Be accompanied by the necessary fee to help defray the costs of processing the appeal; and
- (3) Be completed on the form provided by the Department, or one substantially similar thereto, and shall contain the following information:
  - (a) The name, address and telephone number of the person filing the appeal;
  - (b) How the person filing the appeal qualifies as a party;
  - (c) A reference to the Department file number for the application being considered with the appeal;
  - (d) An explanation with detailed support specifying one or more of the following as assignments of error or reasons for reconsideration:
    - (i) The Approval Authority exceeded his or her jurisdiction;
    - (ii) The Approval Authority failed to follow the procedure applicable to the matter;
    - (iii) The Approval Authority rendered a decision that is unconstitutional;
    - (iv) The Approval Authority misinterpreted the Lane Code or Manual, State Law (statutory or case law) or other applicable criteria;
    - (v) The Approval Authority 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); or
    - (vi) Reconsideration of the decision by the Approval Authority in order to submit additional evidence not available at the hearing and addressing compliance with relevant standards and criteria.
  - (e) The position of the appellant indicating the issue raised in an appeal to the Board was raised before the close of the record at or following the final evidentiary hearing and whether the appellant wishes the application to be approved, denied or conditionally approved;
  - (f) An election between the following two options:
    - (i) Request that the Board conduct a hearing on the appeal, or
    - (ii) Request that the Board not conduct a hearing on the appeal and deem the Hearings Official decision the final decision of the County. An appellant's election under this section shall constitute exhaustion of administrative remedies for purposes of further appeal of the County's final decision. The fee under this option shall not exceed the amount specified in ORS 215.416(11)(b); and

(g) The signature of the appellant. *(Revised by Ordinance No. 16-83; Effective 9.14.83; 4-96; 11.29.96; 3-98, 7.8.98)*

#### **14.520 Director Review.**

Within two working days of the date that the appeal is received by the Department, the Director shall review the written appeal to determine if it was received within the 12 day appeal period and if it contains the contents required by LC 14.515 above. If it was not received within the appeal period or does not contain the required contents, within this same two day period, the Director shall reject the appeal and mail to the appellant the appellant's appeal submittal contents and a disclosure in writing identifying the deficiencies of content. The appellant may correct the deficiencies and resubmit the appeal if still within the 12 day appeal period. Appeals which are not so rejected by the Director shall be assumed to have been accepted. *(Revised by Ordinance No. 16-83; Effective 9.14.83)*

#### **14.525 Notice of Appeals and Review.**

Within two days of the date of acceptance of an appeal pursuant to LC 14.520 above, the Director shall mail notice of the appeal acceptance in compliance with the following:

(1) For an appeal of a decision by the Director, notice of the appeal acceptance shall be mailed to the applicant, the applicant's representative, and to the appellant, if the appellant is different than the applicant. The notice shall disclose the tentative hearing date for the appeal and the requirements of this chapter for the submission of written materials prior to the hearing; and

(2) For an appeal of a decision by the Hearings Official, notice of the appeal acceptance shall be mailed to all 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. *(Revised by Ordinance No. 10-89, Effective 10.4.89; 4-96; 11.29.96; 3-98, 7.8.98)*

#### **14.530 Director Reconsideration.**

Within two working days of receipt of an appeal of a decision by the Director, the Director may affirm, modify or reverse the decision in compliance with the following:

(1) Affirmation. To affirm the decision, no action by the Director is necessary.

(2) Modification or Reversal. To modify or reverse the decision, the Director must conclude that the final county decision can be made within the time constraints established by ORS 215.427(1) and shall prepare a written modification or reversal of the decision, together with supporting findings and give notice pursuant to LC 14.100(3) and (4) above.

(3) If the Director elects to reconsider a decision without being requested to do so by the appellant, that appellant shall not be required to pay a fee for a subsequent appeal of the Director's decision on reconsideration. *(Revised by Ordinance No. 16-83; Effective 9.14.83)*

#### **14.535 Hearings Official Reconsideration.**

Within two working days of acceptance of an appeal of a Hearings Official's decision, the Director shall forward a copy of the appeal to the Hearings Official. The Hearings Official shall have full discretion to affirm, modify or reverse his or her initial decision and to supplement findings as necessary. When affirming, modifying or reversing the initial decision, the Hearings Official shall comply with either LC 14.535(1) or (2).

(1) Affirmation. Within seven days of receipt and acceptance of the appeal by the Director, if the Hearings Official wishes to affirm the decision without further

consideration, the Hearings Official shall mail to the appellant and give to the Director written notice of his or her decision to affirm the original decision.

(2) Reconsideration. If the Hearings Official wishes to reconsider his or her decision, the Hearings Official must conclude that a final County decision can be made within the time constraints established by ORS 215.427(1). A reconsideration shall comply with either LC 14.535(a), (b) or (c) below:

(a) On the Record. If the reconsideration is limited to the existing record, then within seven days of acceptance of the appeal, the Hearings Official shall develop a reconsideration decision and supplemental findings.

(b) Brief of Additional Issues. If the reconsideration is not limited to the existing record, and if the Hearings Official wishes to allow written materials to be submitted briefing additional issues, then the Hearings Official shall:

(i) Within seven days of acceptance of the appeal by the Director, mail notice to all persons who qualified as parties at the hearing or hearings for the decision which is being reconsidered. The notice shall disclose the limited issues to be addressed for the reconsideration and timelines for submittal of new materials and rebuttal by the applicant.

(ii) Within 14 days of the close of the hearing record, issue a decision and supplemental findings. The decision and findings shall be, within two working days of issuance, mailed to all persons mentioned in LC 14.535(2)(b)(i) above.

(c) Limited Hearings. If the reconsideration is not limited to the existing record and if the Hearings Official wishes to reopen the record and to conduct a hearing to address limited issues, then the Hearings Official shall:

(i) Within seven days of acceptance of the appeal by the Director, mail notice to all persons who qualified as parties at the hearing or hearings for the decision which is being reconsidered. The notice shall disclose the same information required by LC 14.070(3) above. LC 14.200 and LC 14.300 above shall be followed in the conduct of the hearing.

(ii) Within 10 days of the close of the hearing record, issue a reconsideration decision and supplemental findings, and within this same time period, mail copies of the decision and findings to persons who have qualified as parties.

(3) If the Hearings Official elects to reconsider a decision without being requested to do so by an appellant, that appellant shall not be required to pay a fee for a subsequent appeal of the Hearings Official decision on reconsideration.

(4) Timeline Waiver. In the event a decision of the Hearings Official is being appealed by the applicant for the same application to be reconsidered by the Hearings Official, then to receive reconsideration by the Hearings Official, the applicant must first agree to a waiver of any statutory application timelines, and such a waiver shall be in addition to any other waivers already given.

(5) Appeal of Reconsideration Decisions. Reconsidered decisions may be appealed to the Board within 12 days of the date of the decision and in the same manner as provided for appeals of Hearings Official decisions in LC 14.500 above. *(Revised by Ordinance No. 16-83; Effective 9.14.83; 4-96; 11.29.96)*

#### **14.600 Elective Board Review Procedure.**

(1) Purpose. This section establishes the procedure and criteria which the Board shall follow in deciding whether or not to conduct an on the record hearing for an appeal of a decision by the Hearings Official.

(2) Procedure.

(a) The Board shall determine whether or not they wish to conduct an on the record hearing for the appeal after an indication from the Hearings Official not to

reconsider the decision and within 14 days of the expiration of the appeal period from the Hearings Official's decision.

(b) Within seven days of the determination mentioned in LC 14.600(2)(a) above, the Board shall adopt a written decision and order electing to have a hearing on the record for the appeal or declining to further review the appeal.

(c) The Board order shall specify whether or not the decision of the Board is to have a hearing on the record for the appeal and shall include findings addressing the decision criteria in LC 14.600(3) below. If the Board's decision is to have a hearing on the record for the appeal, the Board order shall also specify the tentative date for the hearing on the record for the appeal and shall specify the parties who qualify to participate in the hearing on the record for the appeal.

(d) If the decision of the Board is to not have a hearing, the Board order shall specify whether or not the Board expressly agrees with or is silent regarding any interpretations of the comprehensive plan policies or implementing ordinances made by the Hearings Official in the decision being appealed. The Board order shall affirm the Hearings Official decision.

(3) Decision Criteria. A decision by the Board to hear the appeal on the record must conclude that a final decision by the Board can be made within the time constraints established by ORS 215.427(1) and that the issue raised in the appeal to the Board could have been and was raised before the close of the record at or following the final evidentiary hearing. The Board's decision to hear the appeal must comply with one or more of the following criteria:

- (a) The issue is of Countywide significance.
- (b) The issue will reoccur with frequency and there is a need for policy guidance.
- (c) The issue involves a unique environmental resource.
- (d) The Planning Director or Hearings Official recommends review.

(4) Participation Criteria. Persons who may participate in a Board on-the-record hearing for an appeal are:

- (a) The applicant and the applicant's representative.
- (b) The Director.
- (c) The appellant and the appellant's representative.

(5) On the Record Appeal. If the Board's decision is to hear the appeal on the record, then such a hearing shall be:

(a) Scheduled for a hearing date with the Board and within 14 days of the date of the Board's decision.

(b) Conducted pursuant to LC 14.200 and LC 14.400 above. *(Revised by Ordinance No. 16-83; Effective 9.14.83; 10-89, 10.4.89; 4-96; 11.29.96)*

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**Bold** indicates material being added  
~~Strikethrough~~ indicates material being deleted  
14.010 Lane Code

**LEGISLATIVE  
FORMAT**

14.015

**APPLICATION REVIEW AND APPEAL PROCEDURES**

**14.010 Purpose.**

This chapter is intended to establish procedures for the submittal, acceptance, investigation and review of applications and appeals, and to establish limitations upon approved or denied applications. *(Revised by Ordinance No. 16-83; Effective 9.14.83)*

**14.015 Definitions.**

For the purpose of this Code, certain abbreviations, terms, phrases, words and their derivatives shall be construed as specified in this chapter. Words used in the singular include the plural and the plural the singular. Words used in the masculine gender include the feminine, and the feminine the masculine.

Where terms are not defined, they shall have their ordinary accepted meanings within the context in which they are used. Webster's Third New International Dictionary of the English Language, Unabridged, copyright 1981, principal copyright 1961, shall be considered as providing accepted meanings.

Acceptance. Received by and considered by the Director as sufficiently complete to begin processing according to the application or appeal review procedures of this chapter.

Appearance. Submission of testimony or evidence in the proceeding, either oral or written. Appearance does not include a name or address on a petition.

Approval Authority. A person, or a group of persons, given authority by Lane Code to review and/or make decisions upon certain applications according to the review procedures of this chapter.

Argument. The assertions and analysis regarding the satisfaction or violation of legal standards or policy believed relevant by the proponent to a decision. Argument does not include facts.

Board. The Lane County Board of Commissioners.

County Official. The Director of a Lane County Department or Division, or any Lane County advisory committee or commission acting in its official capacity.

Day. A calendar day, computed consistent with ORS 174.120.

Department. The Lane County Department of Public Works.

Director. The Director of the Land Management Division of the Lane County Public Works Department, or the Director's delegated representative within the Department. The Director shall approve or deny land use applications ~~with or without~~ ~~hearings~~ as authorized by this chapter.

Evidence. The facts, documents, data or other information offered to demonstrate compliance or non-compliance with the standards believed by the proponent to be relevant to the decision.

Hearings Official. A person who has been appointed by the Board to serve at their pleasure and at a salary fixed by them. The Hearings Official shall conduct hearings on applications as authorized by this Code.

Land Use Decision.

(1) A final decision or determination made by Lane County that concerns the adoption, amendment or application of

- (a) The Goals;
- (b) A comprehensive plan provision;
- (c) A land use regulation; or
- (d) A new land use regulation.

- (2) A land use decision does not include a decision made by Lane County:
- (a) Which is made under land use standards which do not require interpretation or the exercise of policy or legal judgement;
  - (b) Which approves or denies a building permit issued under clear and objective land use standards;
  - (c) Which is a limited land use decision;
  - (d) Which determines final engineering design, construction, operation, maintenance, repair or preservation of a transportation facility which is otherwise authorized by and consistent with the comprehensive plan and land use regulations;
  - (e) Which is an expedited land division as described in ORS 197.360; or
  - (f) A land use approval in response to a writ of mandamus.

Land Use Regulation. Any zoning ordinance, land division ordinance adopted under ORS 92.044 to 92.046 or similar general ordinance establishing standards for implementing a comprehensive plan.

Legal Interest. An interest in property not confined solely to ownership or possessory interest, but including all interests in property which, in the discretion of the Director, are not inconsistent with the intent and purposes of this chapter. Such interests may include, but are not limited to, the following: owner, contract purchaser, lessee, renter, easement, resolution or ordinance of necessity to acquire or condemn adopted by a public or private condemnor.

Limited Land Use Decision. A final decision or determination made by a Lane County Approval Authority, as defined in LC 14.015, pertaining to a site within an urban growth boundary and which concerns:

- (1) The approval or denial of a subdivision or partition.
- (2) The approval or denial of an application based on discretionary standards designed to regulate the physical characteristics of a use permitted outright, including but not limited to site review pursuant to the Site Review Procedures of LC 10.335.

New Land Use Regulation. A land use regulation other than an amendment to an acknowledged land use regulation adopted by Lane County.

Party. With respect to actions pursuant to LC 14.100 and 14.200 below, the following persons or entities are defined as parties:

- (1) The applicant and all owners or contract purchasers of record, as shown in the files of the Lane County Department of Assessment and Taxation, of the property which is the subject of the application.
- (2) Any person who makes an appearance before the Approval Authority.

Permit.

(1) A discretionary approval of a proposed development of land under ORS 215.010 to 215.293, 215.317 to 215.438 and 215.700 to 215.780 or county legislation or regulation adopted pursuant thereto.

- (2) "Permit" does not include:
  - (a) A limited land use decision;
  - (b) A decision which determines the appropriate zoning classification for a particular use by applying criteria or performance standards defining the uses permitted within the zone, and the determination applies only to land within an urban growth boundary;
  - (c) A decision which determines final engineering, design, construction, operation, maintenance, repair or preservation of a transportation facility which is otherwise authorized by and consistent with the comprehensive plan and land use regulations;or



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(d) An action under ORS 197.360(1).

Person. Any individual, his or her heirs, executors, administrators or assigns, or a firm, partnership or corporation, its heirs or successors or assigns, or the agent of any of the aforesaid, any political subdivision, agency, board or bureau of the State or public or private organization of any kind.

Planning Commission. The Planning Commission of Lane County, Oregon.

Planning Director. See Director.

Received. Acquired by or taken into possession by the Director. *(Revised by Ordinance No. 16-83; Effective 9.14.83; 10-89, 10.4.89; 4-96; 11.29.96; 12-97, 11.20.97)*

**14.050 Application Requirements, Acceptance and Investigation.**

(1) Contents. Applications subject to any of the review procedures of this chapter shall:

(a) Be submitted by any person with a legal interest in the property.

(b) Be completed on the form prescribed by the Department and submitted to the Department.

(c) Address the appropriate criteria for review and approval of the application and shall contain the necessary supporting information.

(d) Be accompanied by the filing fee to help defray the costs of the application.

(2) Combinable Applications. Applications for the same property may be combined and concurrently reviewed as a master application, subject to the following permissible combination schemes and required review procedures:

(a) Applications subject to the review procedures of LC 14.100 below may be combined with other applications subject to the review procedures of LC 14.100 below, and the required review shall be by the Director according to LC 14.100 below.

(b) Applications subject to Hearings Official approval, according to the review procedures of LC 14.300 below, may be combined with other applications subject to Hearings Official approval according to LC 14.300 below and the required review procedure shall be by the Hearings Official according to LC 14.300 below.

(c) Applications subject to the review procedures of LC 14.100 below may be combined with applications subject to Hearings Official approval according LC 14.300 below, and the required review procedure shall be by the Hearings Official according to LC 14.300 below.

(d) A zone change application may be combined with an application for an amendment to the Comprehensive Plan, and the combined application shall be concurrently reviewed by the Planning Commissions and Board according to the review procedures of LC Chapters 12 and 14 for a plan amendment.

(3) Acceptance. Applications subject to any of the review criteria of this chapter:

(a) May be received by the Director at any time and shall not be considered as accepted solely because of having been received;

(b) Shall be, within 30 days of receipt, reviewed by the Director to determine if they meet the requirements of LC 14.050(1) and (2) above and are complete. Applications shall be determined to be complete and shall be accepted by the Director when they include the required information, forms and fees. When the Director determines that an application is not complete, the Director shall mail written notice to the applicant and disclose exactly what information, forms or fees are lacking.

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~~The application shall be deemed complete by the Director upon receipt of the missing information, forms or fees. If the applicant has submitted the required processing fee into the possession of the Director, but refuses to submit the missing information or forms, the application shall be deemed complete for review and action on the 31st day after the Director first received the application.~~

**(c) On the 181<sup>st</sup> day after first being submitted, the application is void if the applicant has been notified of the missing information and has not submitted:**

**(i) All of the missing information;**  
**(ii) Some of the missing information and written notice that no other information will be provided; or**  
**(iii) Written notice that none of the missing information will be provided.**

The Director shall mail written notice to the applicant when the application is deemed complete or accepted.

**(de)** Within 10 days of acceptance of an application, the Director shall mail information explaining the proposed development to the persons identified in LC 14.100(4) and, if applicable, notice required by LC 14.160. Persons receiving notice pursuant to LC 14.160 shall have 15 days following the date of postmark of the notice to file written objections as required by LC 14.160(1)(c). All other persons shall have 10 days from the date information is mailed to provide the Director with any comments or concerns regarding the proposed development. After the end of the applicable comment period, the Director shall complete the investigation report and mail notice of a decision or **elect to schedule the application for a Hearings Official evidentiary a-hearing.**

**(4) Investigation and Reports.** The Director shall make, or cause to be made, an investigation to provide necessary information to ensure that the action on each application subject to any review procedure of this chapter is consistent with the criteria established by this chapter and other chapters of Lane Code requiring the review. The report of such investigation shall be included within the application file and, in the event of a hearing, presented to the Approval Authority before or during the hearing.

**(5) Timelines for Final Action.** For development sites located within an urban growth boundary, except as provided in LC 14.050(5)(a) through (d) below, the Approval Authority shall take final action on an application for a permit, limited land use decision or zone change within 120 days after the application is deemed complete. For development sites located outside an urban growth boundary, except as provided in LC 14.050(5)(a) through (d) below, the Approval Authority shall take final action on an application for a permit, limited land use decision or zone change within 150 days after the application is deemed complete. Except when an applicant requests an extension under LC 14.050(5)(a) below, if Lane County does not take final action on such an application within the required 120 or 150 days after the application is deemed completed, Lane County shall refund to the applicant either the unexpended portion of any application fees or deposits previously paid or 50 percent of the total amount of such fees or deposits, whichever is greater. The applicant is not liable for additional Lane County land use fees or deposits for the same application incurred subsequent to the payment of such fees or deposits. However, the applicant is responsible for the costs of providing sufficient additional information to address relevant issues identified in the consideration of the application. Exceptions to the requirement to take final action on an application within 120 or 150 days are:

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(a) When an applicant waives or requests an extension of the required 120-day or 150-day period for final action. **The total of all extensions may not exceed 215 days.**

(b) When an application is for an amendment to an acknowledged comprehensive plan or land use regulation or adoption of a new land use regulation that was forwarded to the Director of the Department of Land Conservation and Development under ORS 197.610(1).

(c) When a decision is not wholly within the authority and control of Lane County.

(d) When parties have agreed to mediation as described in ORS 197.318(2)(b). *(Revised by Ordinance No. 16-83; Effective 9.14.83; 10-84, 9.8.84; 10-89, 10.4.89; 4-96; 11.29.96; 3-98, 7.8.98)*

**14.070 Notice Contents.**

(1) Notice of a decision by the Director pursuant to LC 14.100 below shall contain:

(a) Identification of the application by Department file number.

(b) Identification of the contiguous property ownership involved by reference to the property address, if there is one, and to the Lane County Assessment map and tax lot numbers.

(c) Identification of the property owner and applicant.

(d) An explanation of the nature of the application and the proposed use or uses that could be authorized by the decision.

(e) A list of the criteria from Lane Code and the comprehensive plan that apply to the application and decision.

(f) The name of the Department representative to contact and the telephone number where additional information may be obtained.

(g) A statement that the application, all documents and evidence relied upon by the applicant, and the applicable criteria are available for inspection at the Department at no cost and copies will be provided at reasonable cost.

(h) A statement that a copy of the staff report is available for inspection at no cost and copies will be provided at reasonable cost.

(i) Identification of whether the decision is to approve or deny the application, a disclosure of any conditions of approval and the time and date on which the decision shall become final unless appealed.

(j) The deadline for and manner in which an appeal of the decision may be made.

(k) A statement that failure of an issue to be raised in a hearing, in person or by writing, or failure to provide statements or evidence sufficient to afford the Approval Authority an opportunity to respond to the issue precludes raising the issue in an appeal to the Land Use Board of Appeals.

(l) The following statement, "NOTICE TO MORTGAGEE, LIENHOLDER, VENDOR OR SELLER: ORS CHAPTER 215 REQUIRES THAT IF YOU RECEIVE THIS NOTICE, IT MUST BE FORWARDED TO THE PURCHASER."

(2) Notice of a hearing pursuant to the procedure of LC 14.300 below shall contain:

(a) The information required by LC 14.070(1)(a) through (g) and (l) above.

(b) The time, date and location of the public hearing.  
(c) Identification of which Approval Authority will conduct the hearing.  
(d) Disclosure of the requirements of this chapter for the submittal of written materials prior to the hearing and a general statement of the requirements of this chapter for submission of testimony and the procedure for conduct of hearings.

(e) If the hearing is an appeal, identification of the appellant's name, if different than the property owner's name or applicant's name.

(f) A statement that failure of an issue to be raised in a hearing, in person or by writing, or failure to provide statements or evidence sufficient to afford the Approval Authority an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals on that issue.

(g) A statement that at least seven days prior to the hearing a copy of the staff report for the hearing will be available for a free inspection at the Department and copies will be provided at a reasonable cost.

(3) Notice of a hearing pursuant to the procedures of LC 14.400 below shall contain:

(a) The information required by LC 14.070(2) above.  
(b) A statement regarding the purpose of the hearing and whether or not testimony will be limited to the record.

(c) The names of parties who may participate in the Board hearing.

(d) Where to receive more information.

(4) The records of the Lane County Department of Assessment and Taxation shall be used for notice as required by this chapter to nearby property owners. Persons whose names and addresses are not on file at the time of the filing of the application need not be notified of the action. The failure of a property owner to receive notice shall not invalidate the action if the Director can demonstrate by affidavit of compliance that such notice was given. The Director shall cause to be filed certification of compliance with the notice provisions of this section.

(5) Notice of a hearing to be posted on the property shall meet the following requirements:

(a) The design and size of the signs shall be determined by the Director, but shall be at least 22 inches x 28 inches in size and have a brightly colored background.

(b) The sign shall identify the time, date and place of the public hearing.

(c) The sign shall identify the Department file number.

(d) The sign shall identify the general nature of the proposal.

(e) The sign shall identify where more information may be received.

*(Revised by Ordinance No. 16-83; Effective 9.14.83; 10-89, 10.4.89; 4-96; 11.29.96)*

#### **14.100 Director Review Procedure.**

All applications subject to this subsection shall be reviewed as follows:

(1) Decision Deadline. ~~Unless the Director elects to conduct a hearing to review the application pursuant to LC 14.110 below, or unless the Director elects to schedule the application for a hearing with the Hearings Official pursuant to LC 14.110 below, an application which has been accepted by the Director shall be acted upon within 21 days of the date the application was accepted. An application which has not been so acted upon may be appealed by the Applicant to the Hearings Official in the same manner as provided for in this chapter for appeals of Director decisions, except that there will be no fee charged for the appeal. The application processing timeline may be extended for a reasonable period of time at the request of the applicant.~~

(2) Director Review. The Director shall review the application and prepare a written investigation report. The Director may elect to schedule the application for a hearing with the Hearings Official ~~or to conduct an evidentiary hearing and to review the application~~ pursuant to LC 14.110 below.

(3) Director Decision. The Director shall determine if the evidence supports a finding that the required criteria have been met and shall approve, approve with conditions or deny the application. The Director's approval or denial shall be in writing, shall be based on factual information, and shall include express written findings on each of the applicable and substantive criteria.

(4) Notice. Within two days of the decision, the Director shall mail notice meeting the requirements of LC 14.070(1) above to the applicant, to all parties, to all neighborhood or community organizations recognized by the Board and whose boundaries include the site and to the owners of record of property on the most recent property tax assessment roll where such property is located:

(a) Within 100 feet of the exterior boundaries of the contiguous property ownership which is the subject of the notice if the subject property is wholly or in part within an urban growth boundary;

(b) Within 250 feet of the exterior boundaries of the contiguous property ownership which is the subject of the notice if the subject property is outside an urban growth boundary and not within a farm or forest zone;

(c) Within ~~750-500~~ feet of the exterior boundaries of the contiguous property ownership which is the subject of the notice if the subject property is within a farm or forest zone. *(Revised by Ordinance No. 16-83; Effective 9.14.83; 10-89, 10.4.89; 4-96; 11.29.96; 3-98, 7.8.98)*

#### **14.110 Director Elective Hearing Procedure.**

(1) Purpose. This section establishes the procedure and criteria which the Director shall follow in electing to have an evidentiary hearing for the application with the Hearings Official ~~or in electing for the Director to conduct an evidentiary hearing~~ for a land use application otherwise subject to review pursuant to LC 14.100 above without a hearing. The purpose of the evidentiary hearing by the ~~Director or Hearings Official~~ is to ~~help the Director or Hearings Official resolve unique land use issues by providing~~ **provide** interested persons with a hearing and an opportunity to contribute statements or evidence to the land use decision.

(2) Procedure.

(a) Where an application is subject to review by the Director without a hearing under LC 14.100 above, the Director may instead elect to ~~conduct an evidentiary hearing, or to have an evidentiary hearing~~ for the application with the Hearings Official, to review the application pursuant to LC 14.300 below.

(b) The evidentiary hearing by the ~~Director or Hearings Official~~ shall be scheduled for a date no later than 35 days from the date of application acceptance.

(c) At least 20 days in advance of the evidentiary hearing and before the end of the 21-day action period provided in LC 14.100(1) above, the Director shall provide the applicant with a copy of his or her written report that addresses compliance with LC 14.110(3) or (4) below and that identifies the hearing date.

(3) ~~Director Hearing~~ Criteria. An election by the Director to ~~conduct a Director~~ **have an evidentiary hearing for the application with the Hearings Official** must comply with one or more of the following criteria:

(a) An application raises an issue which is of countywide significance.

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(b) An application raises an issue which will reoccur with frequency and is in need of policy guidance.

(c) An application involves a unique environmental resource based upon evidence provided by a state or federal agency, or by a private professional with expertise in the field of the resource of concern.

(d) An application involves an existing use with a compliance action pending against it and with neighborhood opposition against it.

(e) An application involves persons with opposing legal arguments regarding unresolved interpretations of applicable state laws or regulations.

(f) An application involves a contemplated use which would be a different kind of use than the uses of nearby properties and the owners of three or more nearby properties object to the use or request a hearing.

(g) An application involves a contemplated use which would result in any of the following offsite impacts based upon information provided to the Director: the introduction of new commercial or industrial traffic, or ongoing truck traffic, on local roads in a residential neighborhood; or the introduction of noise, odors or dust into a residential neighborhood.

(h) An applicant requests a hearing.

~~(4) Hearings Official Hearing Criteria. An election by the Director to have an evidentiary hearing for the application with the Hearings Official shall demonstrate that the application involves persons with opposing legal arguments regarding unresolved interpretations of applicable state laws or regulations. (Revised by Ordinance No. 4-96; Effective 11.29.96; 3-98, 7.8.98)~~

**14.150 Limited Land Use Decision Procedure.**

Notwithstanding LC 14.100 above, all applications for Limited Land Use Decisions shall be reviewed as follows:

(1) Decision Deadline. An application which has been accepted by the Director shall be acted upon within 21 days of the date the application was accepted. An application which has not been so acted upon may be appealed by the applicant to the Hearings Official in the same manner as provided for in this chapter for appeals of Director decisions, except that there will be no fee charged for the appeal.

(2) Director Review. The Director shall review the application and related materials.

(3) Director Decision. The Director shall determine if the evidence supports a finding that the required criteria have been met and shall approve, approve with conditions or deny the application. The Director's approval or denial shall be in writing and shall include express written findings on each of the applicable and substantive criteria. A staff report shall not be required prior to the decision.

(4) Notice. Written notice shall be provided to owners of property within 100 feet of the entire contiguous site for which the application is made and to all neighborhood or community organizations recognized by the Board and whose boundaries include the site. The property owner's list shall be compiled from the most recent property tax assessment roll. At the time that notice is provided, the Director shall place in the record an affidavit or other certification that such notice was given. The notice and related procedures shall:

(a) Provide a 14-day period for submission of written comments prior to the decision.

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(a) A verbatim record of the hearing shall be made by mechanical means. In all cases, the tape, transcript of testimony or other evidence of the hearing shall be part of the record.

(b) All exhibits received shall be marked so as to provide identification upon review.

(c) All actions taken by the Approval Authority pursuant to adopting findings and conclusions shall be made a part of the record. *(Revised by Ordinance No. 16-83; Effective 9.14.83; 10-89, 10.4.89; 4-96; 11.29.96)*

**14.300 De Novo Hearing Procedure.**

All applications or appeals, unless otherwise specified, subject to this section shall be reviewed as follows:

(1) Hearing Deadlines.

(a) An appeal of a decision made without a hearing and pursuant to LC 14.100 above, and which has been accepted by the Director pursuant to LC 14.520 below, shall be scheduled for the next regularly scheduled hearing before the Hearings Official for appeals no sooner than 21 days from the date of acceptance of the appeal and no later than 35 days from the date that the appeal was accepted.

~~(b) An appeal of a decision made by the Director with a hearing pursuant to LC 14.300, and which has been accepted by the Director pursuant to LC 14.520 below, shall be scheduled for the next regularly scheduled hearing before the Hearings Official for appeals no sooner than 10 days from the date of acceptance of the appeal and no later than 28 days from the date that the appeal was accepted.~~

(be) An application for review by the Hearings Official, and which has been accepted by the Director, shall be scheduled for the next regularly scheduled hearing for such review no sooner than 20 days from the date of application acceptance and no later than 35 days from the date of application acceptance.

(cd) An application for review by the Planning Commission and a subsequent action by the Board, if accepted by the Director, shall be scheduled as follows:

(i) The Planning Commission hearing shall be no sooner than 45 days from the date of application acceptance and no later than 60 days from the date of application acceptance.

(ii) The Board hearing shall be no sooner than 60 days from the date of application acceptance and no later than 75 days from the date of application acceptance.

(2) Publication of Notice. For a zone change application and/or plan amendment application, the Department shall cause to be published in a newspaper of general circulation, at least 21~~0~~ days in advance of the hearing-, a notice of the hearing which contains the information required by LC 14.070(2) above.

(3) Mailing of Notice. ~~If the Approval Authority is the Director, then at least 20 days in advance of the hearing, the Director shall mail notice of the hearing which meets the requirements of LC 14.070(2) to the persons identified in LC 14.300(3)(a) through (f) below. If the Approval Authority for the hearing is the Hearings Official, and the hearing is to consider an appeal from a decision by the Director for which the Director held a hearing, then at least ten days in advance of the hearing the Director shall mail notice of the hearing which meets the requirements of LC 14.070(3) to the persons identified in LC 14.400(6) below. For any other hearing, Aat least 20 days in advance of~~

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the hearing, the Director shall mail notice of the hearing which meets the requirements of LC 14.070(2) above to the persons identified in 14.300(3)(a) through (f) below.

- (a) The applicant;
- (b) The property owner, if different than the applicant;
- (c) The appellant, if there is one, and if the appellant is different than the applicant or property owner; and
- (d) The owners of record of all property on the most recent property tax assessment roll where such property is located:
  - (i) Within 100 feet of the exterior boundaries of the contiguous property ownership which is the subject of the notice if the subject property is wholly or in part within an urban growth boundary;
  - (ii) Within 250 feet of the exterior boundaries of the contiguous property ownership which is the subject of the application, is outside an urban growth boundary and not within a farm or forest zone; or
  - (iii) Within ~~750~~500 feet of the exterior boundaries of the contiguous property ownership which is the subject of the application if the subject property is within a farm or forest zone.
- (e) All neighborhood or community organizations recognized by the Board and whose boundaries include the site.
- (f) Any person who has made an appearance.

(4) Posting Notice. At least 14 days in advance of the hearing, for initial application reviews and not appeals of Director decisions, the Director shall cause notice to be conspicuously posted on one or more locations on the subject property, and such notice shall comply with LC 14.070(5) above.

(5) Challenges for Bias. Challenges for bias must meet the standards of LC 14.200(7) above and must be delivered to and received by the Director at least five days in advance of the hearing. The Director shall then, prior to the hearing, forward a copy of the challenge to the Approval Authority or member of the Approval Authority who is being challenged.

(6) Request for Interpretation of County Policy. When, prior to or in the course of a hearing, the Hearings Official finds that the case raises substantial question involving either the application or interpretation of a policy that has not been clarified in sufficient detail, the Hearings Official may submit that question of application or interpretation in written form to the Board for its determination. In the event the application or interpretation of policy is requested by the applicant, the applicant shall first agree to a waiver of any statutory timelines in which Lane County must expedite processing of the application, and such waiver shall be in addition to any other waiver of the statutory application processing timelines requested by the applicant.

The Board, at its discretion, may elect to accept or reject the Hearings Official's request. When such a question is accepted by the Board, those persons receiving notice of the Hearings Official hearing, the applicant and parties of record shall be notified that they may submit in writing their view as to what the policy application or interpretation should be. Such written views must be submitted to the Board and Department at least five days in advance of the Board's review of the request. Such persons shall restrict their statements to the issue of interpretation or application as stated by the Hearings Official and shall not present the Board with arguments or evidence immaterial to the determination sought, even though such evidence or argument may be relevant to the Hearings Official's final decision.



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The Board shall render its written determination within 14 days after receipt of the question from the Hearings Official. Said decision shall be transmitted to the Hearings Official, who will then apply the interpretation to the application.

(7) Order of Procedure. In the conduct of a public hearing, and unless otherwise specified by the Approval Authority, the Approval Authority shall:

(a) Announce the nature and purpose of the hearing and summarize the rules for conducting the hearing, including a statement made to those in attendance that:

(i) Lists the applicable substantive criteria;  
(ii) States that evidence and testimony must be directed toward the criteria described in LC 14.300(7)(a)(i) above or other criteria in the comprehensive plan or land use regulations which the person believes apply to the decision; and

(iii) States that failure to raise an issue accompanied by statements or evidence sufficient to afford the Approval Authority and the parties an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals based upon that issue.

(b) Announce to all persons present whether or not the hearing about to commence is their only opportunity to enter information into the record and whether or not only those persons who qualify as a party may appeal the Approval Authority's decision.

(c) Disclose any ex parte contacts. A communication between County staff and the Planning Commission or Board shall not be considered an ex parte contact.

(d) Call for abstentions based upon any conflicts of interest or biases due to ex parte contacts, and any member of the Approval Authority may respond to any challenges for bias meeting the standards of this chapter. No decision or action of the Planning Commission or Board shall be invalid due to ex parte contact or bias resulting from ex parte contact with a member of the Planning Commission or Board, if the Planning Commission or Board member receiving the contact:

(i) Places on the record the substance of any written or oral ex parte communications concerning the decisions or action; and

(ii) Has a public announcement of the content of the communication and of the parties' right to rebut the substance of the communication made at the first hearing following the communication where action will be considered or taken on the subject to which the communication is related.

(e) Request the Director to present his or her introductory report, explain any graphic or pictorial displays which are a part of the report, read findings and recommendations, if any, and provide such other information as may be requested by the Approval Authority.

(f) Allow the applicant to be heard first, on his or her own behalf, or by representative.

(g) Allow persons in favor of the applicant's proposal to be heard next.

(h) Allow other persons to be heard next in the same manner as in the case of the applicant.

(i) Upon failure of any person to appear, the Approval Authority may take into consideration written material submitted by such person.

(j) Allow the Director to present any further comments or information in response to testimony and evidence offered by any interested persons.

(k) Allow the applicant to rebut, on his or her own behalf or by representative, any of the testimony or evidence previously submitted.

(l) Conclude the hearing.

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(m) Questions may be asked at any time by the Approval Authority. Questions by interested persons, or the Director, may be allowed by the Approval Authority upon request. Upon recognition by the Approval Authority, questions may be submitted directly to the persons being questioned. The persons questioned shall be given a reasonable amount of time to respond solely to the questions.

(n) An issue which may be the basis for an appeal to the Land Use Board of Appeals shall be raised not later than the close of the record at or following the final evidentiary hearing on the proposal before the Approval Authority. Such issues shall be raised and accompanied by statements or evidence sufficient to afford the Approval Authority and the parties an adequate opportunity to respond to each issue.

(o) If the hearing is an initial evidentiary hearing, any participant may request an opportunity to present additional evidence or testimony regarding the application. The Approval Authority shall grant such request by continuing the public hearing pursuant to LC 14.300(7)(o)(i) below or leaving the record open for additional written evidence or testimony pursuant to LC 14.300(7)(o)(ii) below.

(i) If the Approval Authority grants a continuance, the hearing shall be continued to a date, time and place certain at least seven days from the date of the initial evidentiary hearing. An opportunity shall be provided at the continued hearing for persons to present and rebut new evidence and testimony. If new written evidence is submitted at the continued hearing, any person may request, prior to the conclusion of the continued hearing, that the record be left open for at least seven days to submit additional written evidence or testimony for the purpose of responding to the new written evidence.

(ii) If the Approval Authority leaves the record open for additional written evidence or testimony, the record shall be left open for at least seven days. Within 5 days from the close of the record, any participant may file a written request with the Approval Authority for an opportunity to respond to new evidence submitted during the period the record was left open. If such a request is timely filed, the Approval Authority shall reopen the record pursuant to LC 14.700(7)(o)(v) below.

(iii) A continuance or extension granted pursuant to LC 14.300(7)(o) shall be subject to the limitations of ORS 215.428 unless the continuance or extension is requested or agreed to by the applicant.

(iv) Unless waived by the applicant, the Approval Authority shall allow the applicant at least seven days after the record is closed to all other parties to submit final written arguments in support of the application. The applicant's final submittal shall be considered part of the record, but shall not include any new evidence.

(v) When the Approval Authority reopens the record to admit new evidence or testimony, including a response to new evidence allowed pursuant to LC 14.300(7)(o)(ii) above, any person may raise new issues which relate to the new evidence, testimony or criteria for decision-making which apply to the matter at issue.

(p) At the conclusion of the hearing, the Approval Authority shall either make a tentative decision and state findings which may incorporate findings proposed by any person or the Director, or take the matter under advisement for a decision to be made at a later date. If additional documents or evidence are provided by any party, the Approval Authority may allow a continuance or leave the record open to allow a reasonable opportunity to respond. Any continuance or extension of the record requested by an applicant shall result in a corresponding extension of the time limitations of ORS 215.428. The Approval Authority may request proposed findings and conclusions from any person at the hearing. The Approval Authority, before finally adopting findings and conclusions, may circulate the same in proposed form to parties for written comment.

The written decision and findings shall be based on factual information, shall identify who has party status and shall be completed in writing and signed by the Approval Authority within 10 days of the closing of the record for the last hearing. A longer period of time may be taken to complete the findings and decision if the applicant submits a written request to the Approval Authority consenting and agreeing to a waiver of the 120-day or 150-day statutory time period for final action on the application equal to the amount of additional time it takes to prepare the findings.

(8) Decision and Findings Mailing. Within two days of the date that the written decision adopting findings is signed by the Approval Authority, the Director shall mail to the applicant, and all parties of record, a copy of the decision and findings; or if the decision and findings exceed five pages, the Director shall mail notice of the decision. *(Revised by Ordinance No. 16-83; Effective 9.14.83; 10-89, 10.4.89; 4-96; 11.29.96; 3-98, 7.8.98)*

#### **14.400 On The Record Hearings Procedure.**

All appeals subject to this section shall be reviewed as follows:

(1) Review on the Record. The review of the decision by the Approval Authority shall be confined to the record of the proceeding before the previous Approval Authority except as provided in LC 14.400(2) and 14.400(3) below.

(2) Limited Additional Testimony. The Approval Authority may admit additional testimony and other evidence without holding a de novo hearing, if it is satisfied that the testimony or other evidence could not have been presented at the initial hearing. In deciding such admission, the Approval Authority shall consider:

- (a) Prejudice to parties.
- (b) Convenience or availability of evidence at the time of the initial hearing.
- (c) Surprise to opposing parties.
- (d) When notice was given to other parties of the intended attempt to admit the new evidence.
- (e) The competency, relevancy and materiality of the proposed testimony or other evidence.
- (f) Whether the matter should be remanded for a de novo hearing under LC 14.400(3) below.

(3) De Novo Hearing/Remand. The Approval Authority may elect to hold a de novo hearing or remand the appeal for a supplemental de novo hearing before the previous Approval Authority if it decides that the volume of new information offered by a party proceeding under LC 14.400(2) above would:

- (a) Interfere with the Approval Authority's agenda; or
- (b) Prejudice parties; or
- (c) If the Approval Authority determines that the wrong legal criteria were applied by the previous Approval Authority. On remand, the previous Approval Authority shall apply the procedures of LC 14.300 above. If an appeal is desired from the previous Approval Authority's decision on remand, the appropriate procedures of LC 14.500 below, for an appeal of a decision shall be followed.

(d) In the event that the remand is requested by the applicant, the applicant shall first agree to a waiver of any statutory timelines in which Lane County must expedite processing of the application, and such waiver shall be in addition to any other waivers of the statutory application processing timelines requested by the applicant.

(4) Hearing Deadlines. An appeal 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

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(i) Places on the record the substance of any written or oral ex parte communications concerning the decisions or action; and

(ii) Has a public announcement of the content of the communication and of the parties' right to rebut the substance of the communication made at the first hearing following the communication where action will be considered or taken on the subject to which the communication is related.

(e) Request the Director to present his or her introductory report, explain any graphic or pictorial displays which are a part of the report, read findings and recommendations, if any, and provide such other information as may be requested by the Board.

(f) Allow the appellant to be heard first, on his or her own behalf or by representative.

(g) Allow the applicant, if different from the appellant to be heard next in the same manner as in the case of the appellant.

(h) Upon failure of any party to appear, the Approval Authority may take into consideration written material submitted by such party.

(i) Allow the appellant to rebut, on his or her own behalf or by representative, any of the arguments previously presented to the Approval Authority.

(j) Conclude the hearing.

(k) Questions may be asked at any time by the Approval Authority. Questions by the parties or Director may be allowed by the Approval Authority upon request. Upon recognition by the Approval Authority, questions may be submitted directly to the persons being questioned. The persons questioned shall be given a reasonable amount of time to respond solely to the questions.

(l) At the conclusion of the hearing, the Approval Authority shall either make a tentative decision and state findings which may incorporate findings proposed by any person or the Director, or may continue the hearing to a date certain. The Approval Authority may request proposed findings and conclusions from any party to the hearing. The Approval Authority, before finally adopting findings and conclusions, may circulate the same in proposed form to parties for written comment.

(10) Written Decision or Final Order. Upon the adoption of findings, the Approval Authority shall enter a written decision or final order affirming, reversing or modifying the decision of the previous Approval Authority. The decision or final order shall be based on factual information. The Director shall, within two working days of the date of the written decision or final order, mail a copy of the written decision or final order to all parties of record. *(Revised by Ordinance No. 16-83; Effective 9.14.83; 10-89, 10.4.89; 4-96; 11.29.96; 3-98, 7.8.98)*

**14.500 Appealable Decisions and Manner of Review.**

(1) Decisions made by the Director without an evidentiary hearing pursuant to LC 14.100 above may be appealed, and upon Director acceptance of an appeal, shall be reviewed by the Hearings Official with an evidentiary hearing pursuant to LC 14.300 above. ~~Decisions made by the Director with an evidentiary hearing pursuant to LC 14.100 above may be appealed, and upon Director acceptance of an appeal, shall be reviewed on the record by the Hearings Official pursuant to LC 14.400 above.~~

(2) Decisions by the Hearings Official pursuant to LC 14.300 or 14.400 above may be appealed to the Board. Upon Director acceptance of such an appeal, the Board may elect to hear or not hear the appeal, and shall follow LC 14.600 below in deciding whether or not to hear the appeal. Appeals heard by the Board shall be reviewed

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according to LC 14.400 above. A decision on any application appealed to the Board shall become final upon signing of an order by the Board to not hear the appeal or specifying the final decision in an appeal the Board elected to hear. A decision not to hear an appeal shall affirm the appealed decision pursuant to LC 14.600(2)(d) below.

(3) Unless appealed, a decision on any application shall be final upon expiration of the period provided by this chapter for filing an appeal. *(Revised by Ordinance No. 16-83; Effective 9.14.83; 4-96; 11.29.96; 3-98, 7.8.98)*

**14.510 Appeal Period.**

A decision by the Director or Hearings Official, once reduced to writing and signed, shall be appealed as provided in LC 14.500 above, within 120 days of the date of signing of the decision provided notice of the decision occurs as required by law. When the last day of the appeal period so computed is a Saturday, Sunday, a Federal or County holiday, or a day during which the Department is closed because of a temporary work furlough, the appeal period shall run until 5:00 o'clock p.m. on the next business day. *(Revised by Ordinance No. 16-83; Effective 9.14.83; 4-96; 11.29.96)*

**14.515 Appeal Content Requirements.**

All appeals shall:

(1) Be submitted in writing to, and received, by the Department within the 120 day appeal period;

(2) Be accompanied by the necessary fee to help defray the costs of processing the appeal; and

(3) Be completed on the form provided by the Department, or one substantially similar thereto, and shall contain the following information:

(a) The name, address and telephone number of the person filing the appeal;

(b) How the person filing the appeal qualifies as a party;

(c) A reference to the Department file number for the application being considered with the appeal;

(d) An explanation with detailed support specifying one or more of the following as assignments of error or reasons for reconsideration;

(i) The Approval Authority exceeded his or her jurisdiction;

(ii) The Approval Authority failed to follow the procedure applicable to the matter;

(iii) The Approval Authority rendered a decision that is unconstitutional;

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

(v) The Approval Authority 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);  
or

(vi) Reconsideration of the decision by the Approval Authority in order to submit additional evidence not available at the hearing and addressing compliance with relevant standards and criteria.

(e) The position of the appellant indicating the issue raised in an ~~on-the-record appeal to the Hearings Official or~~ appeal to the Board was raised before the close

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of the record at or following the final evidentiary hearing and whether the appellant wishes the application to be approved, denied or conditionally approved; and

(f) **An election between the following two options:**

(i) **Request that the Board conduct a hearing on the appeal, or**

(ii) **Request that the Board not conduct a hearing on the appeal and deem the Hearings Official decision the final decision of the County. An appellant's election under this section shall constitute exhaustion of administrative remedies for purposes of further appeal of the County's final decision. The fee under this option shall not exceed the amount specified in ORS 215.416(11)(b); and**

(gf) The signature of the appellant. *(Revised by Ordinance No. 16-83; Effective 9.14.83; 4-96; 11.29.96; 3-98, 7.8.98)*

**14.520 Director Review.**

Within two working days of the date that the appeal is received by the Department, the Director shall review the written appeal to determine if it was received within the 120 day appeal period and if it contains the contents required by LC 14.515 above. If it was not received within the appeal period or does not contain the required contents, within this same two day period, the Director shall reject the appeal and mail to the appellant the appellant's appeal submittal contents and a disclosure in writing identifying the deficiencies of content. The appellant may correct the deficiencies and resubmit the appeal if still within the 120 day appeal period. Appeals which are not so rejected by the Director shall be assumed to have been accepted. *(Revised by Ordinance No. 16-83; Effective 9.14.83)*

**14.525 Notice of Appeals and Review.**

Within two days of the date of acceptance of an appeal pursuant to LC 14.520 above, the Director shall mail notice of the appeal acceptance in compliance with the following:

(1) For an appeal of a decision by the Director ~~made without an evidentiary hearing pursuant to LC 14.300 above~~, notice of the appeal acceptance shall be mailed to the applicant, the applicant's representative, and to the appellant, if the appellant is different than the applicant. The notice shall disclose the tentative hearing date for the appeal and the requirements of this chapter for the submission of written materials prior to the hearing; and

~~(2) For an appeal of a decision by the Director that was made with an evidentiary hearing pursuant to LC 14.300 above, notice of the appeal acceptance shall be mailed to all persons who qualified as parties at the hearing with the Director. The notice shall disclose the tentative date on which the Hearings Official will hear the appeal and the requirements of this chapter for the submission of written materials prior to the hearing; and~~

(23) For an appeal of a decision by the Hearings Official, notice of the appeal acceptance shall be mailed to all 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. *(Revised by Ordinance No. 10-89, Effective 10.4.89; 4-96; 11.29.96; 3-98, 7.8.98)*

**14.530 Director Reconsideration.**

Within two working days of receipt of an appeal of a decision by the Director, the Director may affirm, modify or reverse the decision in compliance with the following:

(1) Affirmation. To affirm the decision, no action by the Director is necessary.

(2) Modification or Reversal. To modify or reverse the decision, the Director **must conclude that the final county decision can be made within the time constraints established by ORS 215.427(1)** and shall prepare a written modification or reversal of the decision, together with supporting findings and give notice pursuant to LC 14.100(3) and (4) above.

(3) **If the Director elects to reconsider a decision without being requested to do so by the appellant, that appellant shall not be required to pay a fee for a subsequent appeal of the Director's decision on reconsideration.** *(Revised by Ordinance No. 16-83; Effective 9.14.83)*

#### **14.535 Hearings Official Reconsideration.**

Within two working days of acceptance of an appeal of a Hearings Official's decision, the Director shall forward a copy of the appeal to the Hearings Official. The Hearings Official shall have full discretion to affirm, modify or reverse his or her initial decision and to supplement findings as necessary. When affirming, modifying or reversing the initial decision, the Hearings Official shall comply with either LC 14.535(1) or (2).

(1) Affirmation. Within seven days of receipt and acceptance of the appeal by the Director, if the Hearings Official wishes to affirm the decision without further consideration, the Hearings Official shall mail to the appellant and give to the Director written notice of his or her decision to affirm the original decision.

(2) Reconsideration. If the Hearings Official wishes to reconsider his or her decision, **the Hearings Official must conclude that a final County decision can be made within the time constraints established by ORS 215.427(1).** A ~~then~~ the reconsideration shall comply with either LC 14.535(a), (b) or (c) below:

(a) On the Record. If the reconsideration is limited to the existing record, then within seven days of acceptance of the appeal, the Hearings Official shall develop a reconsideration decision and supplemental findings.

(b) Brief of Additional Issues. If the reconsideration is not limited to the existing record, and if the Hearings Official wishes to allow written materials to be submitted briefing additional issues, then the Hearings Official shall:

(i) Within seven days of acceptance of the appeal by the Director, mail notice to all persons who qualified as parties at the hearing or hearings for the decision which is being reconsidered. The notice shall disclose the limited issues to be addressed for the reconsideration and timelines for submittal of new materials and rebuttal by the applicant.

(ii) Within 14 days of the close of the hearing record, issue a decision and supplemental findings. The decision and findings shall be, within two working days of issuance, mailed to all persons mentioned in LC 14.535(2)(b)(i) above.

(c) Limited Hearings. If the reconsideration is not limited to the existing record and if the Hearings Official wishes to reopen the record and to conduct a hearing to address limited issues, then the Hearings Official shall:

(i) Within seven days of acceptance of the appeal by the Director, mail notice to all persons who qualified as parties at the hearing or hearings for the decision which is being reconsidered. The notice shall disclose the same information required by LC 14.070(3) above. LC 14.200 and LC 14.300 above shall be followed in the conduct of the hearing.

(ii) Within 10 days of the close of the hearing record, issue a reconsideration decision and supplemental findings, and within this same time period, mail copies of the decision and findings to persons who have qualified as parties.

(3) **If the Hearings Official elects to reconsider a decision without being requested to do so by an appellant, that appellant shall not be required to pay a fee for a subsequent appeal of the Hearings Official decision on reconsideration.**

(43) Timeline Waiver. In the event a decision of the Hearings Official is being appealed by the applicant for the same application to be reconsidered by the Hearings Official, then to receive reconsideration by the Hearings Official, the applicant must first agree to a waiver of any statutory application timelines, and such a waiver shall be in addition to any other waivers already given.

(54) Appeal of Reconsideration Decisions. Reconsidered decisions may be appealed to the Board within 120 days of the date of the decision and in the same manner as provided for appeals of Hearings Official decisions in LC 14.500 above. *(Revised by Ordinance No. 16-83; Effective 9.14.83; 4-96; 11.29.96)*

#### 14.600 Elective Board Review Procedure.

(1) Purpose. This section establishes the procedure and criteria which the Board shall follow in deciding whether or not to conduct an on the record hearing for an appeal of a decision by the Hearings Official.

(2) Procedure.

(a) The Board shall determine whether or not they wish to conduct an on the record hearing for the appeal after an indication from the Hearings Official not to reconsider the decision and within 14 days of the expiration of the appeal period from the Hearings Official's decision.

(b) Within seven days of the determination mentioned in LC 14.600(2)(a) above, the Board shall adopt a written decision and order electing to have a hearing on the record for the appeal or declining to further review the appeal.

(c) The Board order shall specify whether or not the decision of the Board is to have a hearing on the record for the appeal and shall include findings addressing the decision criteria in LC 14.600(3) below. If the Board's decision is to have a hearing on the record for the appeal, the Board order shall also specify the tentative date for the hearing on the record for the appeal and shall specify the parties who qualify to participate in the hearing on the record for the appeal.

(d) If the decision of the Board is to not have a hearing, the Board order shall specify whether or not the Board expressly agrees with or is silent regarding any interpretations of the comprehensive plan policies or implementing ordinances made by the Hearings Official in the decision being appealed. The Board order shall affirm the Hearings Official decision.

(3) Decision Criteria. A decision by the Board to hear the appeal on the record must conclude **that a final decision by the Board can be made within the time constraints established by ORS 215.427(1) and that the issue raised in the appeal to the Board could have been and was raised before the close of the record at or following the final evidentiary hearing. The Board's decision to hear the appeal ~~and~~ must comply with one or more of the following criteria:**

(a) The issue is of Countywide significance.

(b) The issue will reoccur with frequency and there is a need for policy guidance.

(c) The issue involves a unique environmental resource.

(d) The Planning Director or Hearings Official recommends review.

(4) Participation Criteria. Persons who may participate in a Board on-the-record hearing for an appeal are:



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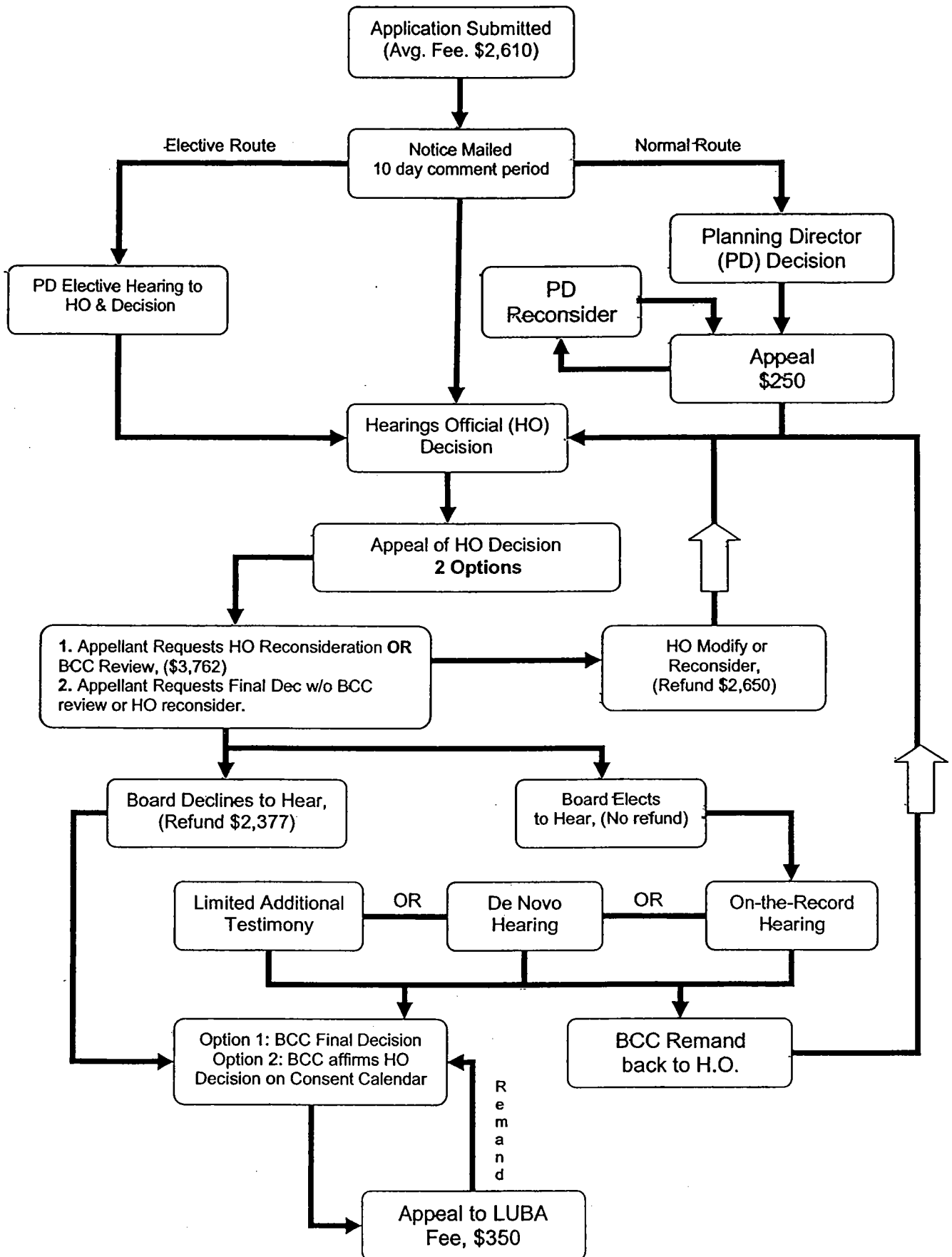
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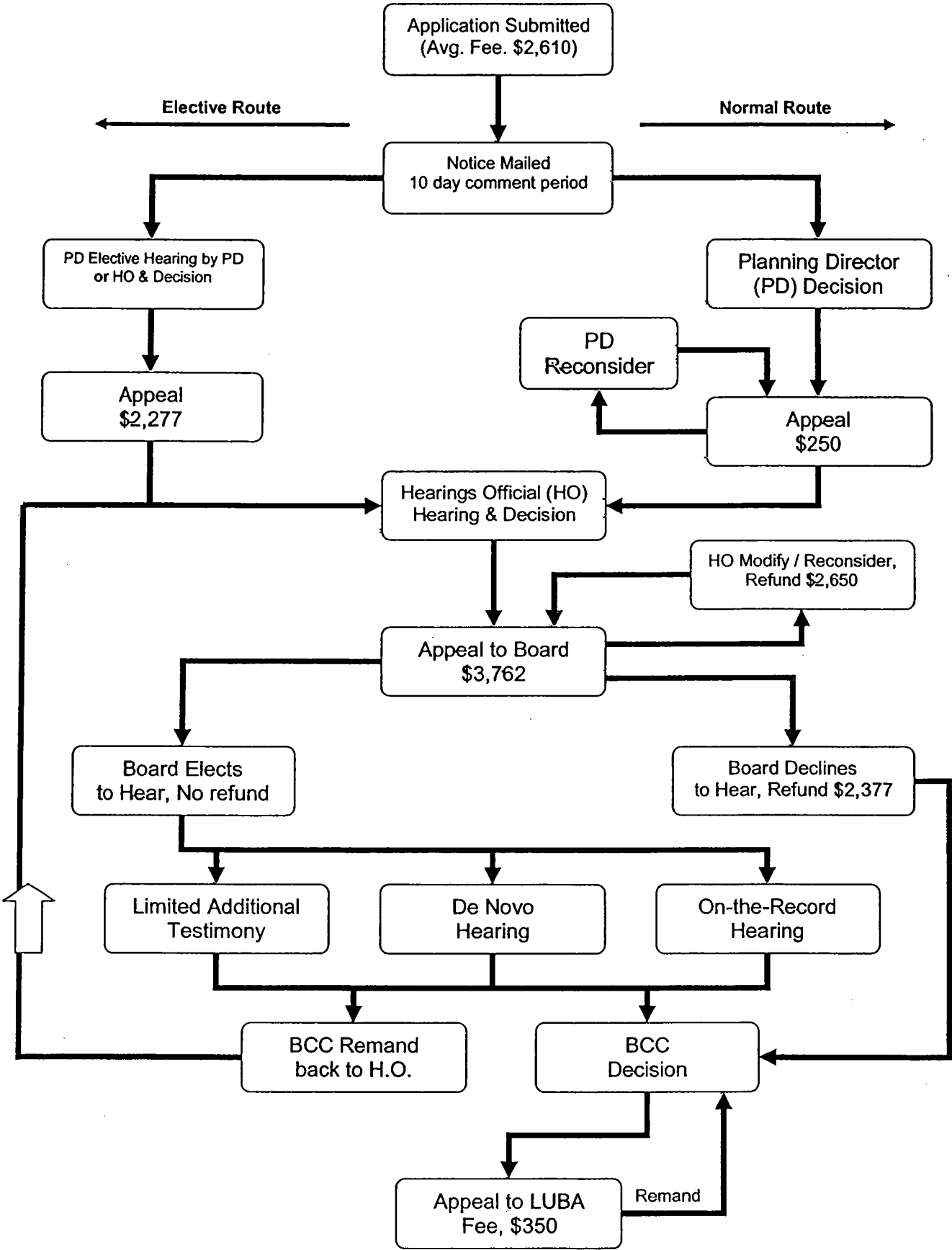
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- (a) The applicant and the applicant's representative.
- (b) The Director.
- (c) The appellant and the appellant's representative.
- (5) On the Record Appeal. If the Board's decision is to hear the appeal on the record, then such a hearing shall be:
  - (a) Scheduled for a hearing date with the Board and within 14 days of the date of the Board's decision.
  - (b) Conducted pursuant to LC 14.200 and LC 14.400 above. *(Revised by Ordinance No. 16-83; Effective 9.14.83; 10-89, 10.4.89; 4-96; 11.29.96)*

# Stakeholder's Proposed Permit Appeal Process



# Existing Planning Director Permit Appeal Process



## Lane Code Chapter 14 Code Amendments

Interested Parties	Attended Work Session	
	12-Aug-09	09-Sep-09
Thom Lanfear, Consultant	X	X
Jim Just, Goal 1 Coalition	X	X
Anne Davies, Atty Goal 1 Coalition	X	X
Robert Emmons, Land Watch Lane County	X	X
Jim Welsh, Relator	X	
Dan Terrell		X
Don Nickell, Coconsultant/Surveyor		X
Mike Evans, Consultant	X	
Ron Funke, Consultant	X	X
Jim Belknap, Realtor/Consultant		X
Kent Howe (Staff)	X	X
Lindsey Eichner (Staff)	X	X
Deanna Harris (Staff)	X	X
Steve Vorhes (Staff)		X

ATTACHMENT D

**JOINT BOARD OF COMMISSIONERS/  
PLANNING COMMISSION MEETING  
PUBLIC HEARING**

July 21, 2009

7:00 p.m.

Harris Hall Main Floor

**APPROVED 8/18/2009**

Lisa Arkin presided with Lane County Planning Commission Members: Bob Noble, Jozef Siekel-Zdzienicki, John Sullivan, Nancy Nichols, Todd Johnson, Steve Dignam. Tony McCown and Howard Shapiro were excused.

Commissioner Pete Sorenson presided with Commissioners Bill Dwyer, Rob Handy and Faye Stewart. Bill Fleenor was excused. County Administrator Jeff Spartz, Assistant County Counsel Stephen Vorhes and Recording Secretary Melissa Zimmer were also present.

a. **SECOND READING AND PUBLIC HEARING/Ordinance No. 2-09**/In the Matter of Amending Chapter 13 of Lane Code to Revise and Add Definitions and Provisions Pertaining to Lawfully Established Units of Land, Partitioning Land, Property Line Adjustments and Validation of Units of Land (LC 13.010, 13.030, and 13.450) (PA 09-5350). (NBA & PM 07/7/09).

b. **SECOND READING AND PUBLIC HEARING/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 (LC 14.100, 14.110, 14.300, 14.400, 14.500, 14.510, 14.515, 14.520, 14.525, 14.535 and 14.600) (Planning File No. PA 09-5351). (NBA & PM 07/7/09).

Lindsey Eichner, Land Management, stated that this is a proposal for text amendments to Lane Code Chapter 13. She indicated that the proposed amendments would add text specifically to property line adjustments and validation of units of land ensuring that Lane County is consistent with state law. She added that the proposal includes definitions to be modified and added to coincide with the proposed amendments. She noted that the ordinance is the same version the Board of Commissioners gave to staff in April with minor changes to ensure it is consistent with state law. She recalled at the same meeting the Board also directed staff to schedule this joint hearing. She noted in attachment 2, the staff proposed changes, section 1, 3.450 (b) saying it is referred to LC 16.450 (3)(c) for exceptions. She indicated that it is supposed to be Chapter 13 and not Chapter 16.

Eichner explained how they process property line adjustments. She said Lane Code states if someone applies for a legal lot verification and the property has not ever had a property line adjustment made to it, it is either noticed as a final land use decision or stays as an administrative decision. She said if a property owner applies for a legal lot verification and a property line adjustment has been made to that property some time in the past, it is required by Lane Code that it is noticed as a final land use decision. She said staff has concerns how Lane County will process property line adjustments with this proposal. She noted in the memo staff has laid out three main options: Option 1, every property line adjustment that is processed is an administrative decision and that no notice is sent to the neighbors and there is no opportunity to appeal; Option 2, some property line adjustments are administrative decisions and the rest are processed as planning director approval that are noticed to the neighbors and there is an opportunity to appeal; Option 3, for all property line adjustments that are completed are processed as planning director approval and noticed with the opportunity for appeal.

Eichner stated that staff has suggested Option 2, giving both the property owner and the planning director options in how to process; assuming that the planning director approval decision takes more

time along with the costs of sending notice so the fee would be more expensive than an administrative decision. She added in the memo, staff has laid out four options for the Planning Commission and the Board for tonight: Option 1, to recommend and adopt the proposed ordinance as is; Option 2 to recommend and adopt the proposed amendment with revisions determined by the Board as necessary; Option 3, to recommend and direct staff to work with stakeholders and interested parties on further revisions or Option 4, do not adopt any of the proposed changes at this time. She indicated that staff originally recommended Option 2, but since then has received comments and is changing their recommendation to Option 3 that states that the Planning Commission and the Board direct staff to work with stakeholders and interested parties on further revisions.

Deanna Harris, Land Management, explained that this proposal is related to Chapter 14 application review and appeal procedures. She recalled in April the Board directed staff to proceed with the process of the author's proposed code amendments. She indicated that the primary author is Jim Just, Goal One Coalition. She added the other interested parties are Lane County Planning Department and Lane County Home Builders Association. She said the Board of Commissioners and the Planning Commission are being asked to review amendments to the code that would affect four processes: 1) to change the way the planning director decisions are made, reviewed and processed; 2) eliminate hearings official appeals, reconsiderations and modifications; 3) eliminate appeals to the Board and 4) change the way the Board might review hearings official decisions. She stated that staff along with counsel has identified some of the implications of the proposal if it is adopted in its current form. She indicated that there are 16 issues that were reviewed. She said that staff originally identified Option 2 as their recommendation for action but since then they have received comments that reflect participants' wishes to extend to the review and action of the amendment. She stated that staff believes that in order to work out some of the disconnects and come to a more workable product, they changed their recommendation to Option 3, to direct staff, stakeholders and interested parties to get to a more refined product.

Sorenson stated that this hearing is being held to take public testimony. In the event a decision is reached, it is subject to plan amendment and rezoning criteria set aside in the agenda cover memorandum. Evidence and testimony must be directed to the approval criteria and failure to raise an issue to enable a response may preclude an appeal to LUBA. He indicated that this is an opportunity for those present to enter information into the record. Only persons who qualify as parties may appeal the decision to the LUBA.

Commissioner Sorenson opened the Public Hearing.

Jim Just, Goal One Coalition, Eugene, stated that adopting Ordinance 2-09 would bring an end to years of contention and litigation and would bring Lane Code into compliance with current state law. He said it would eliminate the risk property owners currently take when adjusting property lines and property line adjustments should be simple, cheap and sure. He supported adoption of the ordinance in its current form. He said staff proposed revision of the language and they would not object to the staff proposals that would move sections around and make conforming amendments to Chapter 16. He added that they object to the new sections that would make property line adjustments ministerial decisions. He didn't believe those provisions were either good policy or that they comply with state law and they don't agree that property line adjustments either require or should be accompanied by concurrent legal lot verifications. He thought it would make the process more complicated and more expensive. With regard to Chapter 14, the fees for an appeal of a decision made without an initial public hearing, Just said they are capped by state law at \$250, but fees for an appeal of a decision resulting from the initial public hearing to the higher body are not so restricted. He recalled over the past decade many jurisdictions under fiscal constraints have increased their appeal fees. He noted during the 2003 legislative session, they proposed a fix to the problem that priced citizens out of the process. He added that Goal One introduced legislation that would cap those fees at \$250. He said that legislation didn't go

anywhere. He recommended streamlining and expediting the entire decision making the process cheaper and faster for everyone. He noted that ORS 215,221 authorizes counties to do what is being proposed to make a hearings official decision the final decision of the County. He added that it authorizes the Board of Commissioners to call the decision at its discretion. He said they find the current system unacceptable and they urged the Board to fix it. He said they have no objection with adopting the proposals with the revisions proposed by staff in their letters. He stated they had no objection to keeping the public process open and letting more people participate in the process. He added that they don't want to make it an open ended process. He wanted staff to prepare a working draft incorporating the changes proposed by staff and proposed by Goal One and be willing to accept comments addressed to the draft.

Dan Terrell, Bill Kloos Office, Eugene, said he is not representing any clients. He said they have had an interest in working with DLCD and a wide range of interested parties in helping governments craft effective, clear land use regulations that don't have unintended consequences. He commented that he supports both ordinances but thinks they both need more work. He encouraged the Planning Commission and the Board of Commissioners to direct staff to continue working with various interested parties.

Robert Emmons, Fall Creek, stated for the past two years Goal One Coalition and Landwatch Lane County have been working with County Counsel, Land Management Division staff and developer consultants to amend Chapter 13 regarding property line adjustments and Chapter 14 regarding the appeals process. He said they were satisfied that their proposal to amend Chapter 13 will bring Lane County's property line adjustment procedure into compliance with state law and that their proposed Chapter 14 amendment streamlines the appeals procedure. He commented that the proposal is faster, fairer and more equitable to all Lane County citizens. He said on behalf of Goal One and Lane County citizens at large and Landwatch Lane County, he urged the Board to direct staff to prepare a final version of both of these amendments that reflect the concerns of staff and County Counsel.

Mike Evans, Planning Consultant, Springfield, said with regard to Chapter 13, the property line adjustment procedure has gone on for years. He agreed with Jim Just that the original Ordinance 2-09 was the language agreed upon between Landwatch, Goal One, Dan Terrell, and Bill Kloos, He noted that the committee and staff participation was adequate to fix the property line adjustment issue. He said with legal lot verifications and property line adjustments; there needs to be new legal lot verifications to wrap things up. He commented that it is a time consuming awkward process for staff and it is expensive for applicants and that wasn't addressed in the first draft. He thought it didn't need to be part of the ordinance, that it could be addressed separately. He noted that property line adjustments could cost in excess of \$10,000. He said if the Board and Planning Commission decide to extend this, it could be cleaned up and made better. He cautioned everyone not to make it too complicated. He thought they should stick to the original version. With regard to Chapter 14 changes, he thought the process could be streamlined. He agreed with what has been said by Goal One and Landwatch that the costs are extreme. He was concerned about the loss of an opportunity for access to the Board of Commissioners. He said the process needs to be open where they can go to the Board and make a request to consider whether the Board wants to hear the appeal. He thought they should retain the hearings official procedure, as it was important for the applicants and opponents. He thought changes could occur and if everyone is on board, they could have the opportunity to work out a process that is more streamlined, understandable and less expensive for both the appellant and the applicant.

Jim Belknap, Broker, Territorial Land Company, Cottage Grove, said they are a rural land brokerage firm. He thought Chapter 13 needed more time to be reviewed. He said the Board will be requiring staff to do an extensive review of the documents and actions that will come before the Board. He didn't think it was fair for review to be done for a \$250 fee for the Chapter 14 amendment. He thought they

will open a Pandora's Box of problems for multiple appeals. He said staff will be buried in processing appeals so the average applicant for a land use partition will wait the 150 period and they won't get an answer and their choice will be to go to circuit court to get a writ of mandamus or to wait it out. He thought they were creating a problem that they could avoid. He commented that the process is expensive but he didn't think it was fair to expect the landowner and County to incur \$12,000 in fees to prepare a competent application to bring to staff to fund their review for a \$250 appeal fee. He noted the people opposed to the action get a chance to object for free. He thought this needed to be sent back to staff and review what the fee structure will be to evaluate the appeals. With regard to Chapter 13, he said he supported the initial proposal that came out. He thought they could do better, but what has evolved is cumbersome and confusing. He also thought they needed an administrative review process. He indicated that Benton County has a four page code that addresses property line adjustment and a two page application. He added they are sorted out at a lower level with a simpler process and he thought that was what they needed to go to. He thought neighbors should be given the opportunity to comment.

Thom Lanfaer, Planning Consultant, Eugene, commented that maintaining an up-to-date set of code provisions is an important function for the planning process and that too often it falls to the bottom of the priority list. He said this is a big step and needs to be done carefully because they want to end up with a good product. He said in speaking with other land use professionals, he didn't hear objections about developing a good process for reviewing property line adjustments. He thought the draft was a good start and close to a finished product. He requested the Board and Planning Commission go with Option 3, allowing additional time for a more detailed review on some of the proposals that were in the staff report. He stated that the housekeeping provisions seem necessary to make sure the code is internally consistent between Chapter 13 and Chapter 16. He said the other variety of options staff has presented needs a closer review or they could end up with unintended consequences. For Chapter 14, he supported staff's recommendation for Option 3 to allow more time for review.. He commented that Chapter 14 is critical for the functioning of the land use process since it governs all the land use decisions in Lane County. He said the ordinance proposed tonight falls short of being a fair and efficient process for everyone. He supported the removal of the director hearing procedure from the code. He recalled in participating on a staff level in the 10 of the 14 director hearings every held in Lane County, he has a good perspective and he didn't believe they were efficient. He thought they were time consuming and costly. He thought a better process would be to allow the planning director to bounce the application to the hearings official and have the hearings official conduct the hearing. He thought the reconsideration process for the planning director and hearings official should be left intact. He said that it is a useful tool to make a more efficient decision and to correct some errors that are made in the process. He commented that the elimination of the procedure for bringing appeals of the hearings official decision to the Board doesn't seem appropriate. He added that it appears to rely on ex- parte contacts to get the Board to review a decision. He didn't think that was the transparency they wanted to build into the code. He thought they could change the ordinance to reduce the product time and cost to applicants, appellants and staff.

Jim Mann, Eugene, stated that he had analyzed the proposed amendments to Lane Code Chapters 13 and 14 and he provided recommendations. He commented that his recommendations are based on 30 years of experience working for the public as a land use planner and writing land use codes. He added that it is based on his experience as a land use consultant advising clients in land use matters. He said with Chapter 13, the first recommendation is to carry over the boundary line adjustment and the lot validation requirements from ORS 92 to put into Lane Code. He recommended the Board adopts that part of the proposal. He added in addition to the changes required by ORS, staff proposes adopting additional requirements that are intended to help process boundary line adjustments and lot validations. He believed that some of the requirements might unintentionally over regulate the process and assistance from other stakeholders could be provided to help staff solve the problems and complete an acceptable draft of the code changes. He asked not to adopt the staff recommendations and direct staff to work with



stakeholders to develop the improvements. With regard to the changes in Chapter 14, he said the proposed amendment would eliminate the process for citizens to appeal a hearings official decision to the Board, but the Board on its own initiative would have the ability to call up and review a hearings official decision. He stated the problem with that proposal is that there are no criteria for guiding the Board for when it should call up and review such decision. He said this potentially creates two problems: special interest groups and others would be encouraged to enter through a back door and make ex parte contacts with the Board in order to get them to review a hearings official decision and some hearings official decisions could be appealed directly to the state without Board review and prior agreement with the findings. He said the state is not required to give deference to interpretations of local codes if the interpretations are not adopted by elected officials. He added that eliminating appeals to the Board as proposed opens the door for the state and not Lane County to interpret Lane County land use requirements. He recommended they do not adopt this part of the proposal. He said these hearings are infrequent, have not encountered unusual problems and have resulted in good decision making. He didn't see the need to delete this option if there are delays in the process. He added the delays are often the result of the application sitting in the planning office for 90 days before it is picked up to be reviewed and that is where the emphasis needs to be placed in speeding up the process. He thought changes are inevitable. He indicated that it has been a while since the codes have been updated. He thought there is work that could be adopted and things that could be done to be improved to come up with an acceptable code by working with the stakeholders.

There being no one else signed up to speak, Commissioner Sorenson closed the Public Hearing for the Board of Commissioners.

There being no one else signed up to speak, Chair Arkin closed the Public Hearing for the Planning Commission.

Siekel-Zdzienicki noted that based on the testimony, most people want Option 3. He suggested they adopt Option 3 for both Chapter 13 and Chapter 14. He wanted to see the stakeholders well defined.

Stewart agreed with Siekel-Zdzienicki to go back and do more work so it is well defined and more streamlined. He wanted to take three or four processes to define a property line as it has been used for years to see if it is a more simplified process. With regard to Chapter 14, he thought there were areas that could be agreed upon. He didn't want to streamline Chapter 14 so far that it takes out flexibility. He thought it was good to have a re-review by a hearings official to work with the concerns that were addressed. He also wanted to work on reducing costs.

Arkin agreed that there should be streamlining of the chapters. She supported going forward with current stakeholders correcting the language for Chapter 13 and Chapter 14.

With regard to Chapter 14, Noble recalled that Sullivan stated it wasn't their place to get into the fee structure issue. He commented that the County's fees are some of the highest in the state and it sets an obstruction for participation. He encouraged the Board to look at something that is fair and reasonable with a more modest approach.

Dignam asked if staff recommended they leave the record open if they approved Option 3.

Vorhes explained that the simple way to allow the stakeholders and not have to restart with a notice and hearing on changes would be to leave the record open. He said to keep this process moving, they should keep the record open. He added a report could go to both bodies as they move toward deliberations.

MOTION: to move that the Planning Commission keeps the record open and that staff should be

directed to work with stakeholders and interested parties on further revisions to the proposal. This applies to both proposed ordinances.

Dignam MOVED, Sullivan SECONDED.

Dignam noted the principles staff should consider as they are moving forward are: the lot line verifications and property line adjustments and the appeals process. He added that they should allow some flexibility depending on the specific circumstances. He said they do not want a rigid system. He said Goal 1 says there needs to be opportunity for citizen involvement. He stated that staff has made it clear that the system they already have has opportunity for citizen involvement and they are already meeting that requirement. He added that not all citizen involvement by definition is going to be better. He noted that according to Lane County Legal Counsel, their code is consistent with state law. He said they have time to allow further processing of these ordinances. He concurred with comments that they need to try to simplify the process. He didn't believe that simple land use actions like a property line adjustment should require a tremendous amount of process. He noted that a property owner is a citizen as well and he commented that sometimes they lose track of that when they are trying to protect the rights of others.

Sullivan stated the simplicity issue for Chapter 13 is critical. He added that flexibility is important and he has mixed feelings about taking away the planning director hearing. He thought it was important that the Board of Commissioners look through the process. He added that taking the Board of Commissioners out of the appeal process was not a good idea. He said they are not in the business of reducing fees but there is something that could be done with fees. He thought time would give stakeholders options to give to the Planning Department for this and for fees in general.

Nichols hoped the stakeholders would keep in mind reducing the time and cost when they are working on the overall goals and getting the wording right. She wanted efficiency and what it would cost in staff time. She thought cost was important.

Siekel-Zdzienicki asked if there was a sliding scale for the process. He stated that if an issue is complex or simple, the fee is the same. He didn't think it was fair.

Eichner explained that currently for legal lot verification, they have three different fees. He indicated that they review them by deed and the deed history of the property is how they determine if a parcel was lawfully created or not. She said the more deeds staff have to review, the more expensive it gets. She said if this is adopted, they will come back to the Board with proposed fees.

Harris indicated they don't have a sliding scale for the appeals process but they have an option where they refund a significant amount of money if the Board declines to hear the hearing. She noted for a total appeal fee for a land use decision to go from planning director to hearings official to the Board, an applicant would have paid \$3,740. She added that if the Board declined to hear, the Planning Department would refund the applicant \$2,248.

Siekel-Zdzienicki supported Option 3 for both Chapter 13 and Chapter 14.

Johnson also supported the motion. He thought the interested parties were well represented. He encouraged the Board to consider some timelines. He noted it was the second time they reviewed this issue and it is not something people are comfortable with.

Sorenson thought the Planning Commission could set a date when there was something ready for them

to review. He thought the Planning Commission should work on this independent of the Board's schedule.

Vorhes thought they should enlist stakeholders, starting that process in mid-August.. He asked people to sign up if they were interested to get notice for the work session or a meeting with staff on both of the code changes. He said if they leave the record open, people could speak to what is currently proposed and what people think about the changes that come from the stakeholder discussion.

Sullivan encouraged the Planning Commission to turn this office to the Board of Commissioners now and then the Board would come back to the Planning Commission at their next regular meeting to let them know what the timeline looks like. He said they could then set a date and close the record.

Eichner indicated if the Board wanted a joint meeting with the Planning Commission that the first available date would be November 3.

Dignam modified his motion to close the record on September 29 and he would keep the rest of the motion as is.

Sullivan SECONDED.

VOTE: 7-0.

MOTION: to approve a Second Reading and Setting a Third Reading and Public Hearing for October 21, 2009 and to close the record on September 29 for Ordinance No. 2-09.

Dwyer MOVED, Stewart SECONDED.

Handy wanted this to be a focused group. He wanted them to work with the author to continue this process forward so they can have a conclusion that will hold up.

Stewart commented that what they are doing will improve the process but it is not the ultimate end to fixing problems in Lane County. He explained that their codes are complex and need to be updated and improved. He thought if they could work on improving their codes, it will improve what they are trying to do. He said they need to gain efficiencies.

Dwyer indicated that he would not support anything that would take the Board out of the process.

VOTE: 4-0.

MOTION: to approve a Second Reading and Setting a Third Reading and Public Hearing for October 21, 2009 and to close the record on September 29 for Ordinance No. 3-09.

Dwyer MOVED, Stewart SECONDED.

VOTE 4-0.

Chair Arkin adjourned the Planning Commission at 8:25 p.m.

There being no further business, Commissioner Sorenson adjourned the meeting at 8:25 p.m.

Melissa Zimmer

Recording Secretary