

## **CHAPTER 3 - PUBLIC HEARINGS, NOTICE & APPEAL**

### **ARTICLE 30 - BASIC PROVISIONS**

#### **30.010 - PURPOSE**

The purpose of this Chapter is to prescribe procedures for the conduct of public hearings, public notice requirements, and the appeal of decisions reached as a result of the Review Procedures described in Chapter 2.

#### **30.020 - APPLICATIONS**

- A. All documentation relied upon by the applicant in support of a permit or any application processed using an Administrative Review Procedure under Article 22, where no public hearing is required by this Code, shall be submitted to the Planning Department.
- B. All documents or evidence relied upon by the applicant in support of an application which requires a public hearing as established by this Code, shall be submitted to the Planning Department by 5 p.m. 10 days prior to the date notice is mailed.
- C. If additional documents or evidence is submitted in support of an application before or at the public hearing, any party shall be entitled to a continuance of the hearing. The hearing continuance shall not be subject to the 150 day time limitation for final local action per ORS 215.427.
- D. Unless there is a continuance, if a participant so requests before the conclusion of the initial evidentiary hearing, the record shall remain open for at least seven days after the hearing. Such an extension shall not be subject to the limitations of the 150 day rule found in ORS 215.427.
- E. Review of an application or a public hearing on an application shall not be scheduled or noticed until the application is deemed complete by the Planning Director.

#### **30.030 - STAFF REPORTS**

Staff reports shall be available for public inspection at least seven days prior to the date of the public hearing.

**30.040 - GENERAL PROCEDURES**

- A. The Planning Director shall develop forms to be used for all applications and the appeal of all applications set out in this Chapter.
- B. The burden of proof is on the applicant and/or the appellant to complete the forms and to substantiate the information presented on the application and/or appeal forms.
- C. The Planning Director may reject applications or appeals which are not complete.
- D. In the context of this Chapter, the term "applicant" shall have the following meaning:
  - 1. When the original Review or Hearing Body hears and decides on the application, the applicant is the person(s) submitting the application;
  - 2. When a decision is appealed, the applicant is the person(s) filing the appeal;
  - 3. The proponent and opponent shall be considered in the same context as Section 30.040(D)(1) & (2) above.

## **ARTICLE 31 - PUBLIC HEARINGS**

### **31.010 - PURPOSE**

This Article shall govern the conduct of all quasi-judicial and legislative land use hearings within Grant County, including all urban growth boundary areas which are held or made by the County Court or its designates. Such hearings include all proceedings before the Hearings Officer, Planning Commission, or the County Court, and may involve comprehensive plan changes, zone changes, subdivision or partition platting, conditional use permit, changes in non-conforming uses, appeals, and the interpretation and administration of ordinances, codes, laws, and items referred by the Planning Director, as well as all other official actions upon application or request.

### **31.020 - SPECIAL HEARINGS**

- A. The Planning Director may process any question or decision regarding the administration of this Code by a special hearing before the Planning Commission or the Hearings Officer if the issue: is complex; will have a substantial impact on the area; raises questions of a substantive nature. The Presiding Officer of the Hearing Body assigned to hear the matter shall be consulted before the matter is scheduled.
- B. The Planning Director may appoint a special fact-finder(s) to investigate any circumstance or question concerning this Code. The Planning Director shall consult with County Legal Counsel prior to appointing a special fact-finder(s):
  - 1. The Planning Director shall establish the scope of the investigation and the procedures which will be followed during the inquiry;
  - 2. The special fact-finder(s) shall report to the Planning Director and shall submit their results and/or findings as a recommendation to the Director.
- C. Notice of a special hearing shall be given in accordance with Article 32.
- D. The special hearing shall be conducted according to the rules set out in Article 31.

### **31.030 - REQUESTS FOR HEARING**

- A. A hearing as provided in these rules shall be initiated in one of the following ways:
  - 1. By motion of the Court or the Planning Commission;

2. By an application filed with the Planning Director in conformance with Code requirements and this Article; or
  3. By written directive of the Planning Director.
- B. In cases where the hearing is initiated by a motion of the Court or Planning Commission:
1. The motion shall set forth the specific issue or issues to be considered in the hearing and shall identify, if appropriate, those who will be recognized as parties to the proceedings for the purpose of notice as required by Article 32 of this Code. The motion may relate to new matters, matters for rehearing, or previous decision requiring clarification or explanation;
  2. The decision to issue or not issue a motion shall lie entirely within the discretion of the Court or Planning Commission, and the reason or reasons for the action need not be specified in the motion;
  3. In all cases, the Court or Planning Commission shall cause notice of the hearing to be given in accordance with Article 32 of this Code.
- C. In cases where the hearing is initiated by application, the application shall meet all the requirements for the type of application submitted as set out in Chapters 4 and 5.
- D. In cases initiated at the direction of the Planning Director, the Director shall prepare a written statement of the matter to be considered. The statement shall include the following:
1. The name of the Hearing Body that will hear the request, as determined at the Director's discretion; and
  2. A statement of the factual background or circumstances giving rise to the request, the applicable criteria, and the issue or issues requiring resolution.
- E. In the event the request involves specific property or properties, notice of the hearing shall be given in accordance with Article 32 of this Code.

### **31.040 - NATURE OF HEARING**

- A. Land use hearings conducted pursuant to this Article which are quasi-judicial administrative determinations shall be conducted according to the rules and procedures

governing those actions. All applicants are entitled to a notice of the hearing, to an opportunity to be heard, to present and rebut evidence before an impartial Hearing Body, to have the proceedings recorded, and to have a decision rendered in accordance with the facts on record and the law.

- B. Land use hearings conducted pursuant to this Article which are legislative determinations shall be conducted according to the rules and procedures governing those actions. Notice of the hearing shall be published and the public shall be invited to testify, to present and rebut evidence before an impartial Hearing Body, to have the proceedings recorded, and to have a decision rendered.
- C. Hearings held pursuant to this Article are proceedings and the applicant(s) shall appear in person or through an attorney or authorized representative.

**31.050 - PRESIDING OFFICER**

- A. The Hearing Body shall designate one of its members to preside over the proceedings. The Presiding Officer shall have the authority to:
  - 1. Regulate the course and decorum of the meetings;
  - 2. Dispose of procedural requests or similar matters;
  - 3. Rule on offers of proof and relevancy of evidence;
  - 4. Impose reasonable limitations on the number of witnesses heard and set reasonable time limits for oral presentations, cross-examination, and rebuttal testimony;
  - 5. Question any person appearing, and allow other members to question the person;
  - 6. Waive, at the Presiding Officer's discretion, the application of any Section of this Article where the circumstances of the hearing indicate it would be expedient and proper to do so, provided the waiver does not act to prejudice or deny any party their substantial rights as provided in this Code or otherwise by law;
  - 7. Take any other actions as authorized by the Court or Commission to appropriately conduct the hearing.

- B. All procedural decisions of the Presiding Officer shall be those of the Hearing Body unless the Presiding Officer is overruled by a majority vote of the members of the Hearing Body.

### **31.060 - CONDUCT OF PARTICIPANTS**

Proceedings shall, at all times, be orderly and respectful. No person shall be heard until they state their name and address for the record. The Presiding Officer may terminate the hearing when necessary or refuse to recognize anyone who:

- A. Is disorderly, abusive, and/or disruptive;
- B. Takes part in or encourages audience demonstrations, including applause, cheering, display of signs, or other conduct disruptive of the hearing;
- C. Testifies without first receiving recognition from the Presiding Officer and stating their full name and residential address;
- D. Presents irrelevant, immaterial, or repetitious evidence.

### **31.070 - BURDEN AND NATURE OF PROOF**

- A. The burden of proof shall be on the applicant. The more a proposed use or structure changes existing land use patterns, or causes impacts on surrounding lands or the community, the greater the burden of proof shall be on the applicant to show the request complies with all applicable criteria. The applicant shall address all the criteria listed in the staff report as it applies to the request. For purposes of an appeal, the burden of proof shall be upon the appellant. The applicant may present rebuttal evidence to the information in the staff report, as appropriate, to meet the requirements of this subsection.
- B. The decision of the Hearing Body shall be based upon substantial evidence and be supported by the record. The applicant shall address the required criteria and present evidence as appropriate to the specific proposal. In addition to the standards and criteria for the specific type of application, the Hearing Body shall deem the following criteria applicable to its decisions:
  - 1. Conformance with the Grant County Comprehensive Plan to include its Goals, Policies and Implementing Measures;

2. Conformance with applicable State Laws, Rules, and Regulations pertaining to land use and the specific proposal, including the applicable Oregon Administrative Rules in Chapter 660 and guidelines contained in the State Wide Planning Goals;
3. Conformance with the Land Development Code, the Building Code, Health Code, and similar requirements as they relate to the specific proposal;
4. Conformance with general development considerations, such as the preservation of the character of the area involved, the properties peculiar suitability for particular uses, the conservation of property values, and the current direction of building development;
5. Whether or not a mistake has been made in the original Comprehensive Plan designation;
6. Whether or not a change of circumstances has occurred so that the existing condition within the vicinity of the proposal no longer conforms to the intent of the Comprehensive Plan, or applicable codes.

### **31.080 - DISCLOSURE RULE**

#### **A. Pre-Hearing/Ex parte Contact:**

1. Members of the Hearing Body shall avoid significant ex parte and pre-hearing contacts with interested parties to the proposal so that their deliberations and recommendations can be based on the evidence presented at the time of the public hearing. Any contacts shall be revealed at the commencement of the hearing or when identified, and:
  - a. If the contacts have not significantly impaired the member's impartiality or ability to vote on the matter, the member shall so state and may participate; or
  - b. If the contacts have significantly impaired the member's impartiality and ability to vote on the matter, the member shall so state and shall abstain from voting on the matter. The member may be counted for purposes of forming a quorum.

2. Parties to the request may challenge the impartiality of a member of the Hearing Body based on ex parte contact. The disqualification of a challenged member is discretionary and shall be determined by a majority vote of the unchallenged members. A quorum is not required for a vote of disqualification. In no case shall any member participate in a vote concerning his or her own disqualification;
  3. Contact with County staff does not constitute ex parte contact.
- B. Conflict of Interest. In addition to the ex parte and pre-hearing contacts, no member of the governing body shall participate in any vote on a proposal when:
1. The member (or spouse, brother, sister, child, parent, father-in-law, mother-in-law, or any business in which the member has a financial interest, or any business which the member is negotiating for) has a direct or substantial financial interest in the proposal;
  2. The member has an interest in property within the area entitled to receive notice of the public hearing under Article 32;
  3. The member has a relationship with the applicant or other participants so that the member is unable to be reasonably impartial in reaching a decision;
  4. For any other reason specified by State Law;
  5. No other official or employee of the County who has a financial interest or other private interest in the proposal shall participate in discussion with or give an official opinion on the proposal without first declaring for the record the nature and extent of the conflict of interest.

**31.090 - CHALLENGE FOR BIAS, PREJUDICE, OR CONFLICT OF INTEREST**

- A. Any applicant or opponent of a proposal may challenge the qualification of any member to participate in such hearing and decision because of bias, prejudice or conflict of interest.
- B. The challenge may be oral or in writing, and shall state the facts relied upon for the challenge.
- C. The challenge must be submitted, to the Planning Commission at the time set for the public hearing.

- D. The challenged member(s) shall have an opportunity at the hearing:
  - 1. To agree with the challenge and withdraw from participation in the Hearing and decision; or
  - 2. To disagree with the challenge and respond orally and in writing.
- E. The challenge and any response shall be incorporated into the record of the hearing.

**31.100 - PARTIES**

- A. Person(s) speaking at the hearing shall identify themselves as:
  - 1. A witness only; or
  - 2. A party as defined in Section 11.030; or
  - 3. A County Official.
- B. Person(s) appearing at a hearing either orally or in writing (including those representing an organization) shall state at the beginning of their testimony the facts which support their status as a party or a witness:
  - 1. Persons who were not entitled to notice, but who claim party status because they will be adversely affected by the decision, shall identify and document the facts showing how they will be adversely affected. Persons who fail to do so shall be witnesses;
  - 2. At the close of their statement of facts on how they will be adversely affected, the Presiding Officer will promptly rule on whether that person will be treated as a party or not;
  - 3. The ruling of the Presiding Officer on this point shall be the ruling of the Hearing Body unless the Hearing Body votes to overrule the Presiding Officer
- C. After party status has been determined, anyone challenging the ruling shall be heard immediately and the Presiding Officer (or the Hearing Body) may change its decision on party status.

**31.110 - RULES OF EVIDENCE**

- A. All evidence offered and not properly objected to may be received unless otherwise excluded by the Hearing Body.
- B. All documents or evidence relied upon by the applicant shall be submitted to the Planning Director as specified in Section 30.020(B) and shall be made available to the public for inspection.
- C. All evidence received by the Hearing Body shall be made a part of the record of the case, except for matters stipulated to and matters judicially noticeable. No other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference (if the document so incorporated is a public record not exempt from inspection).
- D. Cross-examination shall be at the discretion of the Hearing Body. Any cross-examination question shall be directed to the Presiding Officer who will determine if the cross-examination will benefit the Hearing Body. If the Presiding Officer determines the question will help in the decision, the Presiding Officer will ask the question to the party or witness appropriate to answer. In all cases, cross-examination shall be conducted in a non-inflammatory manner. The Presiding Officer may terminate cross-examination if it becomes disruptive to the hearing.
- E. Judicial notice may be taken of any ORS, OAR, Federal, State, or local rule or regulation, general fact, and/or scientific fact within the experience, technical competence, or specialized knowledge of a member of the Hearing Body, staff, or technical witness called by either side. Opportunity will be given for rebuttal of these facts.
- F. No decision shall be rendered except upon consideration of the whole record, or portions as may be cited by the Hearing Body, and as supported by, and in accordance with, reliable, probative, and substantial evidence.
- G. The Hearing Body at its discretion may be represented by the County Legal Counsel.

**31.120 - ORDER OF PROCEDURE**

The Presiding Officer shall conduct the hearing in an orderly fashion, within the guidelines in this Section. However, the technical rules of parliamentary procedure shall be avoided so the hearing may be conducted in a clear, simple and fair manner.

- A. Quorum. The Presiding Officer shall establish a quorum:
1. If a member of the Hearing Body must leave prior to the close of the particular proposal at hand, losing the quorum, the Presiding Officer shall so state, and shall proceed with the hearing for purposes of taking evidence and testimony;
  2. The members shall not vote on the proposal until the absent member has reviewed the evidence and testimony taken;
  3. At the close of the hearing, the Hearing Body shall continue the request to a date and time certain for deliberation and decision when the absent member can participate;
  4. If the request cannot be continued to a date and time certain during the public hearing, the Planning Director shall reschedule the request as soon as possible and give new notice as set out in Article 32;
  5. If a quorum is not present, a Hearing Body shall continue (reschedule) the agenda to a date and time certain.
- B. Commencement. The Presiding Officer shall announce the nature and purpose of the hearing, summarize the rules for the conduct of the hearing, identify the name of each applicant, and describe the general nature of each proposal. In addition, the Presiding Officer shall announce the following:
1. All testimony and evidence must be directed toward the criteria required by Section 31.120(E);
  2. All speakers that fail to raise an issue in a hearing, in person or by letter, with sufficient specificity to afford the Hearing Body an opportunity to respond to the issue precludes a local or LUBA appeal based on that issue; (RAISE IT OR WAIVE IT)
- C. Abstentions. The Presiding Officer shall inquire of the Hearing Body whether any member wishes to abstain from participation in the hearing on a specific proposal:
1. Any member so abstaining shall identify the reasons for the record and shall not participate in the discussion of, or vote on the proposal;

2. Any member whose participation has been challenged by an allegation of bias, prejudice, conflict of interest, or pre-judgment, or who has been subject to significant ex parte or pre-hearing contacts with proponents or opponents, may make a statement explaining the nature of the conflict or bias for the record, and shall announce whether the member will participate in the hearing as set forth in Section 31.080.
- D. **Objection to Jurisdiction.** The Presiding Officer shall inquire of the audience if there are any objections to the jurisdiction of the Hearing Body to hear the matter. Objections, if any, shall be noted in the record, and the matter shall proceed or terminate at the discretion of the Hearing Body.
- E. **Criteria.** The Presiding Officer shall request the Planning Director or staff member to present the criteria from the Land Development Code, the Comprehensive Plan, the Goals and Policies, or other document as required under ORS 197.763(5), under which the request shall be reviewed.
- F. **Staff Report.** The Presiding Officer shall request the Planning Director or a member of staff be present at the meeting to report and indicate the action required.
- G. **Proponent's Case.** The Presiding Officer shall allow the applicant or appellant to comment and present evidence in support of the application or appeal as follows:
1. 10 minutes for the proponent to make introductory comments and present evidence;
  2. 5 minutes for each witness called by the proponent;
  3. 5 minutes for each audience member speaking in favor of the proposal;
  4. 5 minutes for cross-examination of planning staff regarding the Staff Report subject to the general rules of cross-examination set out in Section 31.110(D); and
  5. The time allocations for the proponent's case may be adjusted at the discretion of the Hearing Body to expedite the hearing or promote fairness.
- H. **Opponent's Case.** The Presiding Officer shall allow opponents to comment and present evidence in opposition to the proposal as follows:

1. 10 minutes for a representative of the opponents to make introductory comments and present evidence;
  2. 5 minutes for each witness or party to speak in opposition to the proposal;
  3. 5 minutes for each audience member speaking in opposition to the proposal;
  4. 5 minutes for cross-examination of planning staff regarding the Staff Report subject to the general rules of cross-examination set out in Section 31.110(D); and
  5. The time allocations for the opponent's case may be adjusted at the discretion of the Hearing Body to expedite the hearing or promote fairness.
- I. Neutral. Any audience member wishing to ask the Presiding Officer for clarification on procedural or substantive issues may be heard at the discretion of the Presiding Officer prior to the call for Rebuttal as follows:
1. The audience member shall give their name and address for the record and address their request for clarification to the Presiding Officer;
  2. If acknowledged as a neutral participant, the audience member need not speak in favor or against the proposal;
  3. After receiving a response by or through the Presiding Officer, the participant may request to establish party or witness status in order to go on record as a proponent or opponent; and
  4. If status is approved by the Presiding Officer, the initial neutral status of the participant will be altered and recorded as testimony by a proponent or opponent or witness thereto within the time frames given in (G) or (H) above.
- J. Rebuttal. The Presiding Officer shall allow the applicant to cross-examine the opponent by addressing questions to the Presiding Officer, and otherwise rebut any new matters presented by the opponents or their witnesses. The Hearing Body may allow the opponent to offer rebuttal to the applicant's rebuttal if:
1. The applicant has provided new arguments in the rebuttal; and
  2. The opponent has specific responses to the new arguments.

- K. Continuances. The Hearing Body may grant a continuance of the hearing whenever it concludes additional time is reasonably required to either evaluate evidence in the record or to obtain additional evidence. In addition, continuances shall be granted in the following circumstances:
1. If the applicant places additional documents or evidence in the record, any party to the hearing may request the hearing be continued in order to review the additional documents or evidence. The period of continuance shall not count against the 150 day limit for final action specified in ORS 215.427;
  2. If a continuance has not otherwise been granted, any participant may request the record remain open for at least seven days after the hearing. The request must be made before the close of the evidentiary hearing and the period of continuance shall not count against the 150 day limit for final action specified in ORS 215.427.
- L. Summation. The Presiding Officer shall allow the proponent and opponent five minutes, or other reasonable time limit determined by the Hearing Body, to summarize their arguments.
- M. Discussion. At the close of the proponents and the opponents summation, the Planning Staff shall review the applicable criteria, the evidence submitted, and the staff recommendation. The members of the Hearing Body shall be allowed to openly discuss the proposal and further question staff members or any party appearing for or against the proposal.
- N. Close of Hearing. The Presiding Officer shall close the public hearing when certain that all of the testimony has been heard, and all questions have been answered:
1. If there should be a need to discuss the proposal with any person who is not a member of the Hearing Body, the Presiding Officer shall re-open the public hearing for that purpose;
  2. Upon satisfaction of the situation, and an opportunity for comment and/or rebuttal by the proponent, the opponent and staff, the Presiding Officer shall again close the public hearing.

### **31.130 - FINAL ACTION**

- A. At the close of the public hearing, the Hearing Body may:

1. On a quasi-judicial application:
    - a. Approve the application as submitted;
    - b. Deny the application;
    - c. Approve the application with certain conditions as it deems appropriate; or
    - d. Continue the application for further study, a site visit, deliberations, or a decision to a date and time certain.
  
  2. On a legislative matter:
    - a. Approve the matter as submitted;
    - b. Deny the matter;
    - c. Approve the matter with conditions as it deems appropriate; or
    - d. Continue the matter for further study, a site visit, deliberations, or a decision to a date and time certain.
- B. The decision of the Hearing Body shall be made after the hearing is closed and deliberations are completed, and shall be in the form of a motion, duly seconded, and approved by a majority of the members. The Presiding Officer may poll each member regarding their vote and the reasons for it. All members shall state their vote for the record.
- C. A quasi-judicial decision of the Hearing Body shall not become final until written findings of fact are prepared and approved by a majority vote of the participating members, signed by the Presiding Officer or a designate, and mailed as required by Article 32. The findings shall include the criteria, standards for approval, the facts relied on in making the decision, and a statement showing how the facts, when applied to the criteria, justify the final action.
- D. A legislative matter shall become final upon the second reading of the Ordinance, in a public meeting. Notice of the adoption shall be sent to DLCD. Local notice of the adoption shall be deemed given by a notice of the date for the second reading by publication.

**31.140 - RECORD OF PROCEEDINGS AND DECISIONS**

- A. The Presiding Officer of the Hearing Body shall designate a person to record the proceedings electronically or stenographically. The proceedings shall not be transcribed unless required for appeal, review, or unless otherwise ordered by the Court, Commission or Hearings Officer.
  
- B. All exhibits received in evidence shall be marked or otherwise made readily available and identifiable for purposes of review. Evidence or exhibits of unusual size or bulk, which cannot be conveniently held, shall not be received. All exhibits received into the record shall be retained by the Planning Director on behalf of the Hearing Body, and shall be made accessible per ORS Chapter 192 for inspection or copying by interested persons, subject to a reasonable copying fee. When all appeal periods have expired, the Planning Director is authorized to dispose of the exhibits.
  
- C. The Planning Director shall hold all sound recordings made of hearings items for the following time periods after the date of the last meeting on that item. The tapes shall be made available for inspection or copying by interested persons, subject to a reasonable charge for copying:
  - 1. If a meeting is fully transcribed, hold the tapes for 90 days;
  - 2. If the meeting is summarized in minutes, hold the tapes for one year;
  - 3. If the meeting is summarized in formal findings, hold the tapes for five years;
  - 4. If minutes or findings are not done, the tape cannot be erased and must be kept forever.
  
- D. Findings of fact are to be compiled for each decision taken at a hearing. Responsibility for preparation of this document shall be determined by the Presiding Officer of the Hearing Body at the close of each hearing on any matter.
  
- E. Notice of the decision shall be mailed to Parties as defined in Section 11.030, who perfect status under Section 31.100(B) who request a copy of the notice in writing at the Hearing.

## **ARTICLE 32 - PUBLIC NOTICE**

### **32.010 - PURPOSE**

The purpose of public notice is to provide an opportunity for affected or interested persons to participate in the local land use review and decision process.

### **32.020 - NOTICE SCHEDULE**

- A. The Planning Director shall determine the type of notice required for each decision, and may provide additional notice, in such a way that all persons reasonably determined to be potentially affected by a local land use decision receive actual notice.
- B. The notice requirements for the various types of land use, development, and land division decisions are set forth in Sections 32.030 through 32.070.

### **32.030 - TYPES OF NOTICE**

- A. Notices shall be sent by first class mail at least 10 days prior to the date of review for all applications processed as a Type II Review Procedure under Article 22, a Planning Commission Review under Article 24, a Hearings Officer Review under Article 23, or a County Court Review under Article 25 and at least 20 days prior to a hearing, to the following persons:
  - 1. The applicant and subject property owner;
  - 2. To all property owners, or contract purchasers of record, as shown on the most recent property tax assessment roll where such property is located:
    - a. Within 100 feet of the property which is the subject of the notice where the property is wholly or in part within an urban growth boundary;
    - b. Within 250 feet of the property which is the subject of the notice where the property is outside an urban growth boundary and not within a farm or forest zone;
    - c. Within 750 feet of the property which is the subject of the notice where the property is within a farm or forest zone;

- d. To each mailing address for tenants of a mobile home park for an application involving property encompassing all or part of a mobile home park. The applicant shall provide a mailing list of all tenants of the park;
  - e. To a public airport owner for a zone change if:
    - 1. The zone could permit development of a structure greater than 35 feet in height, and the property is inside the runway "approach surface" as defined by the Oregon Department of Transportation; and
    - 2. The subject property is within 5,000 feet of the side or end of a runway.
  - f. To all property owners within 500 feet of a parcel when a change of comprehensive plan designation and zone change, or a zone change is proposed;
  - g. To all property owners within 500 feet of a proposed quarry, mining, or processing operation;
  - h. To the Citizen Advisory Committee, if any are certified in the area the application is located;
  - i. The Planning Director may increase the notice list for applications which may have an impact beyond the limitations in Section 32.030(A)(2)(a)-(h).
3. Notice of the final action on a land use application or application for division of land shall be sent to all participants who have been officially recognized as parties.
- B. When required by Section 32.060, notice shall be given by publication in a newspaper of general circulation in the area affected, published at least 10 days prior to the date of the hearing.
- C. The hearing may be continued when necessary to gather additional information, to visit the site, or to respond to new information presented after the 10 day deadline has passed. No additional notice is required provided the hearing is continued to a date and time certain. If an application is continued without setting a date and time certain, additional notice as originally required shall be sent.

- D. Cost of the first notice shall be included in the application fee.
- E. Additional or subsequent notices may require a fee.

**32.040 - CONTENT OF MAILED NOTICE**

- A. Notice of the review date for the application or an evidentiary hearing before the Review or Hearing Body shall contain the following information, as appropriate:
  - 1. The date, time, and location of the hearing;
  - 2. Nature of the application and the proposed use or uses which could be authorized;
  - 3. A list of the applicable criteria from the Comprehensive Plan, Land Development Code, and State Goals by reference only. A statement shall be included indicating where the criteria can be viewed or copies purchased;
  - 4. A description of the subject property, reasonably calculated to give notice of its actual location;
  - 5. A statement that failure to raise an issue in a hearing, in person or by letter, with sufficient specificity to afford the Review or Hearing Body an opportunity to respond to the issue precludes a local or LUBA appeal based on that issue;  
(RAISE IT OR WAIVE IT)
  - 6. Name of a local government representative to contact and the telephone number where additional information may be obtained;
  - 7. Statement that a copy of the application, all documents and evidence relied upon by the applicant and applicable criteria are available for inspection at no cost and copies will be provided at a reasonable cost;
  - 8. Statement that a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing and copies will be provided at a reasonable cost;
  - 9. A general explanation of the requirements for submission of testimony and the procedure for the conduct of hearings.

- B. Where the application is made for a change of zone classification, the Planning Director shall have the discretion to include within the notice of hearing, that the Hearing Body may consider a more restrictive zone classification than requested in the application.

**32.050 - RECEIPT OF NOTICE**

Failure of any party to receive notice shall not nullify a land use decision.

**32.060 - NOTICE SCHEDULE**

TYPE OF APPLICATION	REQUIREMENT
Administrative Permit	Mailed
Temporary Use Permit	Mailed
Variance	Mailed Published
Conditional Use Permit	Mailed
Subdivision	Mailed Published
Land Partition	Mailed
Replat	Mailed Published
Planned Unit Development	Mailed Published
Change of Zone Designation: Quasi-Judicial	Mailed Published
Change of Plan Designation: Quasi-Judicial	Mailed Published
Legislative Amendment: Comprehensive Plan, Data Base, Goals & Policies, & Land Development Code Text	Mailed Published
Appeal to County Court	Mailed Published

**32.070 - NOTICE TO PUBLIC AGENCIES**

Information that should be conveyed to reviewers includes:

- A. Project location.
- B. Proposed land use action.
- C. Location of project access points.
- D. Additional information that could be supplied to the reviewer upon request (provided the information is available) includes a site plan showing the following:
  - 1. Distances to neighboring constructed access points, median openings, traffic signals, intersections and other transportation features on both sides of the property.
  - 2. Number and direction of lanes to be constructed on the driveway plus striping plans.
  - 3. All planned transportation features (lanes, signals, bikeways, walkways, crosswalks etc.).
  - 4. Trip generation data or appropriate traffic studies.
  - 5. Parking and internal circulation plans for vehicles and pedestrians.
  - 6. Plot map showing property lines, right-of-way and ownership abutting properties.
  - 7. A detailed description of any requested variance.

## **ARTICLE 33 - APPEAL OF DECISIONS**

### **33.010 - PURPOSE**

The purpose of this Article is to establish uniform procedures for the appeal of decisions rendered pursuant to this Code.

### **33.020 - APPEAL AUTHORITY**

- A. Final actions made under the following review procedures may be appealed to the County Planning Commission:
  - 1. Type II Administrative Review - Article 22
  
- B. Final actions made under the following review procedures may be appealed to the County Court:
  - 1. Hearings Officer - Article 23
  - 2. Planning Commission - Article 24
  
- C. Recommendations to another Review or Hearing Body do not constitute a final action and cannot be appealed.

### **33.030 - APPEALS**

- A. An action by the Planning Director may be appealed to the Planning Commission and an action by the Hearings Officer, or the Planning Commission may be appealed to the County Court by a party filing a statement of appeal with the Planning Director within:
  - 1. 21 days after written notice of the decision is given or mailed to the individual on the matter for the following types of issues:
    - a. Zone changes;
    - b. Comprehensive Plan amendments;
    - c. All legislative matters.

2. 12 days after written notice of the decision is given or mailed to the individual on all other types of land use or land division applications.
- B. Notice is deemed given when:
1. It is mailed (as established by the date of the official postmark) to the last known address of the party;
  2. It is personally given to the party.
- C. A party shall mean a person or organization perfecting status as a party as defined in Section 11.030. Party status may be challenged on appeal by any party to the appeal, the Planning Director, or the Court. Any challenge of party status shall be settled by the Court as its first order of business in the appeal hearing.
- D. Notice for appeal hearings shall be given to all parties perfecting status.

### **33.040 - STATEMENT OF APPEAL**

- A. A statement of appeal shall be on a form supplied by the Planning Director and shall contain the following information:
1. How the Comprehensive Plan, Grant County Land Development Code, applicable State law, or other evidence, was incorrectly interpreted or applied in the decision;
  2. What information in the record of decision was pertinent to the decision, but was not considered by the Review Body. This may include the Comprehensive Plan, Grant County Land Development Code, applicable State law, or other evidence;
  3. Each ground or reason for appeal must be separately numbered and explained, and the appeal hearing will be strictly limited to the items specified in the statement of appeal;
- B. The grounds for the local or LUBA appeal must have been raised at the Review or Hearing Body level with sufficient specificity to allow the Review or Hearing Body an opportunity to respond to the issue.
- C. The statement of appeal shall be accompanied by the following:
1. The required filing fee;

2. In cases involving an appeal on the record, the statement shall also be accompanied by a deposit, in an amount established by the Planning Director, to cover the estimated cost of producing a typewritten summary of the testimony in the hearing;
3. In the event the deposit is insufficient to cover the cost of the preparation of the typewritten summary, the Planning Director shall mail written notice to the appellant of the balance due;
  - a. Within 10 days from the mailing of the notice of completion of the summary, appellant shall tender to the Director the balance due for the cost of the summary;
  - b. Failure to tender the balance is a jurisdictional defect and the appeal shall be dismissed;
  - c. Any part of the deposit in excess of the actual cost of the summary shall be returned to the appellant.
- D. In the event more than one party files an appeal, the Planning Director shall require equal deposits from each appellant. The final cost of the typewritten summary, shall be shared equally by all appellants.
- E. Failure to submit a statement of appeal in conformance with the requirements of this Section shall be considered a jurisdictional defect, and the appeal shall be dismissed.

### **33.050 - EFFECT OF APPEAL**

- A. Failure to file an appeal within the specified time or in the manner prescribed in Sections 33.030 and 33.040 shall nullify the appeal and the decision shall be final.
- B. The effect of an appeal shall be to stay or suspend the appealed action.

### **33.060 - STANDING TO APPEAL**

To have standing to appeal a decision rendered under the procedures of this Code, persons or parties must have participated, either orally or in writing, in the local review process, and must have been granted standing under Section 31.100(B) of this Code by the Presiding Officer at the Public Hearing.

**33.070 - ACTION OF THE PLANNING DIRECTOR**

Appeal from actions by Planning Director shall be to the Planning Commission and shall be heard de novo by the Commission:

- A. Within 14 days from the filing of the statement of appeal, the Planning Director shall prepare a report of the action under appeal, and mail notice to the parties indicating the report is available for inspection and/or copying;
- B. The report shall consist of all materials, documents, and exhibits considered by the Planning Director in taking the action, including the final action under appeal, if one exists;
- C. The Planning Director is authorized to charge a reasonable fee for the preparation and copying of the report.

**33.080 - ACTION OF THE HEARINGS OFFICER OR PLANNING COMMISSION**

- A. An appeal from an action by the Hearings Officer or Planning Commission shall be to the County Court, and shall be confined to the record of the hearing. The record shall include:
  - 1. All materials, pleadings, memoranda, stipulations, motions, exhibits, and documents submitted by any party to the action as evidence in the hearing;
  - 2. All materials submitted by the Planning staff in the hearing;
  - 3. The tape recording, if one exists, of the hearing;
  - 4. A typewritten summary of the testimony given at the hearing. The typewritten summary shall be prepared by the Planning Director or a designate;
  - 5. The findings of fact entered by the Hearing Body.
- B. Within 21 days of filing of the statement of appeal, the Planning Director shall cause the record to be compiled, including the written summary of testimony, and mail notice to the parties indicating the record is available for inspection and/or copying. The Planning Director is authorized to charge a reasonable fee for paper or tape copying.

- C. Any party wishing to challenge the composition or completeness of the record, or the accuracy of the typewritten summary of the testimony, shall file written objections within 14 days from the date of the mailing of the notice of completion of record. In addition;
1. Objections to the accuracy of the summary of testimony shall be accompanied by a verbatim transcript for the portion(s) of the hearing which supports each challenged point;
  2. Controversy concerning any of these matters shall be settled by the Court as its second order of business at the appeal hearing, after questions about party status, if any exist, are settled.
- D. The parties to an appeal from any action by the Hearings Officer or Planning Commission shall be allowed to present oral or written arguments concerning any ground or reason for appeal specified in the statement of appeal, but no new matters or evidence shall be submitted unless permitted pursuant to Section 33.080(E).
- E. A party to an appeal from any action by the Hearings Officer or Planning Commission may request permission to submit evidence not contained in the record for an appeal when all of the following criteria are met:
1. The evidence was not reasonably available to the party at the time of the original hearing, and the facts supporting this conclusion are documented by affidavit(s);
  2. The evidence is substantially relevant to issues raised in the appeal. Evidence is substantially relevant when, in the opinion of the County Court, it has special value to prove relevant criteria, so that consideration of the new evidence is likely to alter deliberations;
  3. The evidence to be introduced was made available to all parties to the appeal at least 20 days prior to the hearing, and there is no significant prejudice or unfairness to another party. In addition:
    - a. If it becomes available within 10 days of the hearing, a continuance may be requested by the proponent in order to meet the 20 day rule;
    - b. The County Court may grant a continuance so the new evidence will meet the 20 day rule provided the continuance serves the public interest; and

- c. If the applicant is the party requesting the privilege of introducing evidence, a written waiver of the 150 day time limit specified in ORS 215.428 must be submitted to the County Court.

### **33.090 - ACTION OF THE COUNTY COURT**

- A. In addition to appeals created by other provisions in this Chapter, the County Court may order its own review of a final action by a Review or Hearing Body. Review under these circumstances shall be governed by the provisions of this Article including the creation of the record as provided in this Article. A summary of testimony as required by Section 33.040(C) shall be prepared at the County's expense.
- B. The County Court may affirm, reverse, or amend the decision under appeal, and may impose additional or different conditions as may be necessary to carry out its decision. The Court may also return the proceeding to the initial Review or Hearing Body for additional consideration or action. The return shall contain specific instructions to the initial Review or Hearing Body regarding the nature and scope of its further consideration or action.
- C. The County Court shall make written findings and conclusions as part of its written decision. This document will constitute the final action of the County Court for appeal and other purposes.
- D. The County Court may cause supplemental or replacement findings and conclusions, based on the record for the decision, to be prepared and signed after the original findings and conclusions have been executed. When supplemental or replacement findings and conclusions are prepared and signed, this document shall constitute the final action of the County Court for appeal and other purposes in lieu of the original findings and conclusions.
- E. The County Court may open the record for clarification on a part of the record.
- F. The County Court by its own motion only, may choose to hear any appeal de novo. The decision to do so must be made within 10 days of receiving a statement of appeal.
- G. An appeal of a decision of the County Court to the Land Use Board of Appeals (LUBA), shall follow the procedures outlined in ORS 197.805 to 197.860.

**33.100 - CONSOLIDATION OF APPEALS**

In the event the final action for a single land use or land division is subject to concurrent appeals, the County Court is authorized to consolidate the appeals into a single proceeding. In this event, the Presiding Officer may modify the rules of procedure contained in this Chapter, or implement new rules, which facilitate the merger of the appeal applications and the taking of evidence, testimony and argument. The decision of the County Court or Appeal Board shall be documented in a single set of findings of fact which shall act as the formal decision and final action on all of the appeals for the purpose of further appeals.

**33.110 - REMANDS - LAND USE BOARD OF APPEAL**

In all cases, a copy of the opinion on remand shall be filed with the Planning Director to be included in the permanent file.

**33.120 - PARTICIPATION IN LAND USE BOARD OF APPEAL (LUBA)**

The County shall not generally participate in appeals filed with the LUBA. The response to an appeal shall be left to the party whose interests are, or may be, affected by a modification, reversal, or remand upon appeal. Only in those cases that represent a significant issue to the entire County, or establish a precedent that may be detrimental to County interests, will the County Court and the County Legal Counsel consider participating in a response.

**33.130 - REHEARING**

Remanded land use applications shall be subject to the following rules regarding rehearing:

- A. Only a party of record in the appeal to the LUBA appeal may initiate an application for rehearing before the County Court. The County Court reserves the right to initiate a rehearing by its own motion.
- B. Participation in the rehearing shall be strictly limited to those persons or organizations who were parties to the LUBA appeal. Therefore:
  - 1. Notice of the rehearing required by Article 32 shall be given only to persons who were parties to the LUBA appeal; and
  - 2. Only parties to the LUBA appeal may present evidence, witnesses, testimony or arguments in the rehearing. Grant County shall be considered a participant in the rehearing even if it did not directly appear in the LUBA appeal.

- C. The rehearing shall be initiated by an appeal application, subject to the normal appeal fee, and on a form prescribed by the Planning Director. The appeal must be filed with the Planning Director within 14 days from the date the decision is mailed to the participants by LUBA.
- D. The rehearing shall be strictly limited to the ground or grounds specified in the LUBA decision for remand, and no evidence, testimony, or arguments shall be received on other issues, even if such issues were matters within the scope of the Court's original action.
- E. The rules otherwise governing applications, hearings, and appeals contained in Articles 30, 31, 32 and 33 shall control rehearings unless modified by the provisions of this Section.
- F. The party prevailing at the rehearing shall prepare the findings of fact necessary to support the decision upon rehearing.