

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

ORDINANCE NO. 1065

Amending MCC Chapter 37, Administration and Procedures, to Allow Planning Director to Appeal Certain Hearings Officer Decisions to the Board and Make Technical Corrections, and Declaring an Emergency

(Language ~~stricken~~ is deleted; double underlined language is new.)

Multnomah County Ordains as follows:

Section 1. § 37.0530 is amended as follows:

37.0530 Summary Of Decision Making Processes.

The following decision making processes chart shall control the County's review of the indicated permits:

APPROVAL PROCESS					
Permit Type	I	II	III	IV	PC
Initial Approval Body	(Not a "land use decision")	(Planning Director)	(Hearings Officer)	(Planning Commission)	(Legislative)
Allowed Uses	X				
Review Uses		X			
Conditional Uses			X		
Community Service			X		
Design Review		X			
Plan/Zone Change (single tract) quasi-judicial				X	
<u>Demolition of historic building or structure before 120 day permit delay</u>				<u>X</u>	
Plan/Zone Changes-legislative					X
Zone Code Text Changes (Initiated by County <u>county</u> only)					X
<u>Creation of a parcel/lot not abutting a street</u>			<u>X</u>		
Variance		X			
Non-conforming Uses/Determination of Non- conforming Use		X			
<u>Extensions of Decisions in EFU & CFU Zones (MCC 37.0690)</u>	<u>X</u>				
<u>All other Extensions of Decisions</u>		X			

APPROVAL PROCESS					
Permit Type	I	II	III	IV	PC
Initial Approval Body	(Not a "land use decision")	(Planning Director)	(Hearings Officer)	(Planning Commission)	(Legislative)
Revocation of Decision		X			
Property Line Adjustments		X			
Planned Unit Developments			X		
Land Divisions:					
• Subdivision Category 1 & 2			X		
• Major Partition Category 3 & 4		X			
• Minor Partition		X			
Significant Environmental Concern		X			
Hillside Development Permit		X			
Willamette River Greenway		X			
Zoning Code Interpretations		X			
Temporary Permits		X			
Temporary Health Hardship		X	X If CU		
Bus Shelter		X			
Lot of Record Determination		X			
Lot of Exception		X			
Exceptions		X			
Post Emergency response to emergency/disaster event		X			
All other discretionary decisions		X			
First response to emergency/disaster event	X				
Grading and Erosion Control	X				
Floodplain Development	X				
Street & Property Addressing	X				
Type A Home Occupation	X				

Permit Types

(A) Type I decisions do not require interpretation or the exercise of policy or legal judgment in evaluating approval standards. Type I decisions include, but are not limited to, site plan approval of building or other specialty permits and final subdivision and planned unit development plans where there are no material deviations from the approved preliminary plans. Because no discretion is involved, Type I decisions do not qualify as land use or limited land use decisions. The process requires no notice to any party other than the applicant. The Planning Director's decision is final and not appealable by any party through the normal land use process. Type I decisions may only be appealed through a writ of review proceeding to circuit court.

(B) Type II decisions involve the exercise of some interpretation and discretion in evaluating approval criteria. Applications evaluated through this process are assumed to be allowable in the underlying zone. County Review typically focuses on what form the use will take, where it will be located in relation to other uses and natural features and resources, and how it will look. However, an application shall not be approved unless it is consistent with the applicable siting standards and in compliance with approval requirements. Upon receipt of a complete application, notice of application and an invitation to comment is mailed to the applicant, recognized neighborhood associations and property owners within 750 feet of the subject tract. The Planning Director accepts comments for 14 days after the notice of application is mailed and renders a decision. The Planning Director's decision is appealable to the Hearings Officer. If no appeal is filed the Planning Director's decision shall become final at the close of business on the 14th day after the date on the decision. ~~If an appeal is received, the Hearings Officer decision is the County's final decision and is appealable to the Land Use Board of Appeals (LUBA) within 21 days of when the signed Hearings Officer decision is mailed pursuant to 37.0660(D).~~

(1) If there is an appeal of the Planning Director's decision, the Hearings Officer shall conduct a public hearing on the application pursuant to MCC 37.0610. After the Hearings Officer issues a signed decision, the Planning Director may appeal the decision to the Board within seven days. If there is no appeal by the Planning Director, the signed Hearings Officer decision shall be mailed to those persons entitled to notice of a Type III Permit decision under MCC 37.0660(D). The mailed decision is the county's final decision on the application and may be appealed to the Land Use Board of Appeals (LUBA) within 21 days of the date the decision is mailed.

(2) If the Planning Director appeals the Hearings Officer decision, then notice of the appeal and public hearing before the Board shall be mailed as required in MCC 37.0640(B)(2). A staff report by the Planning Director shall also be available 14 days before the hearing. The Board shall then conduct a public hearing on the application under the provisions of MCC 37.0615. The Board's decision shall be mailed to those who submitted written comment, requested the decision in writing or provided oral testimony at a hearing on the matter. The mailed decision is the county's final decision on the application and may be appealed to LUBA within 21 days of when the signed decision is mailed. Any person who participated orally or in writing in the proceeding before the Hearings Officer or Board may appeal the final decision.

(C) Type III decisions involve the greatest amount of discretion and evaluation of subjective approval criteria, yet are not required to be heard by the Board. Applications evaluated through this process primarily involve conditional uses and some land divisions applications. The process for these decisions is controlled by ORS 197.763. Notice of the application and Hearings Officer hearing is published and mailed to the applicant, recognized neighborhood associations and property owners within 750 feet of the subject tract. Notice must be issued at least 20 days pre-hearing, and the staff report must be available at least 7 days pre-hearing. The Hearings Officer shall accept into the record all testimony and evidence relevant to the matter, prior to the close of the hearing. ~~The Hearings Officer decision is the County's final decision and is appealable to LUBA within 21 days of when the decision is final. The decision is final the day the signed Hearings Officer decision is mailed pursuant to 37.0660(D).~~

After the Hearings Officer issues a signed decision, the Planning Director may appeal the decision to the Board within seven days. If there is no appeal by the Planning Director, the signed Hearings Officer decision shall be mailed to those persons entitled to notice of a Type III decision under MCC 37.0660(D). The mailed decision is the county's final decision on the application and may be appealed to the LUBA within 21 days of the date the decision is mailed.

If the Planning Director appeals the Hearings Officer decision, then notice of the appeal and hearing before the Board shall be mailed as required in MCC 37.0640(B)(2). A staff report by the Planning Director shall also be available 14 days before the hearing. The Board shall then conduct a public hearing on the application under the provisions of MCC 37.0615. The Board's decision shall be mailed to those who submitted written comment, requested the decision in writing or provided oral testimony at a hearing on the matter. The mailed decision is the county's final decision on the application and may be appealed to LUBA within 21 days of when the signed decision is mailed.

(D) Type IV decisions include plan amendment and/or zone change applications of an individual parcel or tract. These applications involve substantial discretion and evaluation of subjective approval criteria. The process for these land use decisions is controlled by ORS 197.763. Notice of the application and Planning Commission hearing is published and mailed to the applicant, recognized neighborhood association and property owners within 750 feet. Notice must be issued at least 20 days pre-hearing, and the staff report must be available at least 7 days pre-hearing. At the evidentiary hearing held before Planning Commission all testimony and evidence relevant to the matter shall be accepted prior to the close of the hearing. If the Planning Commission denies the application, any party who appeared before the Planning Commission either in person or in writing, may appeal the Planning Commission's denial to Board of Commissioners within 14 days after the decision is signed. If no appeal is filed, the Planning Commission's denial shall become final upon the close of business on the last day of the appeal period. If the Planning Commission votes to approve the application, that decision is forwarded as a recommendation to the Board of Commissioners for final consideration. In either case, any review by the Board of Commissioners is recorded de novo, as if new, and all issues relevant to the applicable approval criteria may be considered. The Board's of Commissioners decision is the County's final decision and is appealable to LUBA within 21 days of when the signed Board order is mailed.

(E) PC review's are legislative actions which involve the adoption or amendment of the County's land use regulations, comprehensive plan, map inventories and other policy documents that affect the entire County, large areas, or multiple properties. These applications involve the greatest amount of discretion and evaluation of subjective approval criteria, and must be referred by majority vote of the entire Planning Commission onto the Board for final action prior to adoption by the County. The Board of Commissioners' decision is the County's final decision and is appealable to LUBA within 21 days of the signed Board order or ordinance is mailed.

Section 2. § 37.0540 is amended as follows:

37.0540 Assignment Of Decision Makers.

The following ~~County~~county entity or official shall decide the following types of applications:

(A) Type I Decisions. The Planning Director shall render all Type I decisions. The Planning Director's decision is the ~~County~~county's final decision on a Type I application.

(B) Type II Decisions. The Planning Director shall render the initial decision on all Type II permit applications. The Planning Director's decision is the ~~County~~county's final decision unless appealed to the Hearings Officer. Unless the Planning Director appeals the decision to the Board, the Hearing Officer decision on such an appeal is the ~~County~~county's final decision on a Type II application and is

appealable to LUBA. If the Planning Director appeals the decision to the Board, the Board's decision is the county's final decision on a Type II application and may be appealed to LUBA.

(C) Type III Decisions. The Hearings Officer shall render all Type III decisions. Unless the Planning Director appeals the decision to the Board, the Hearings Officer decision is the County's final decision on a Type III application and is appealable to LUBA. If the Planning Director appeals the decision to the Board, the Board's decision is the county's final decision on a Type III application and may be appealed to LUBA.

(D) Type IV Decisions. The Planning Commission shall render the initial decision on all Type IV permit applications. If the Planning Commission denies the Type IV application, that decision is final unless appealed to the ~~Board of Commissioners~~ Board in accordance with MCC 37.0640(A). If the Planning Commission recommends approval of the application, that recommendation is forwarded to the ~~Board of Commissioners~~ Board. The Board's decision is the County's final decision on a Type IV application and is appealable to LUBA.

(E) PC Actions. The Planning Commission shall review all PC actions. If the Planning Commission adopts by majority vote of the entire Planning Commission a resolution to recommend an action, the Planning Commission refers the resolution to the Board for final action. The Board's decision is the County's final decision on a PC application and is appealable to LUBA.

Section 3. § 37.0550 is amended as follows:

37.0550 Initiation Of Action.

Except as provided in MCC 37.0760, Type I - IV applications may only be initiated by written consent of the owner of record or contract purchaser, or by a government agency that has the power of eminent domain. PC (legislative) actions may only be initiated by the ~~Board of Commissioners~~ Board, Planning Commission, or Planning Director.

Section 4. § 37.0610 is amended as follows:

37.0610 Hearings Process - Type II Appeals, Type III Or Type IV Applications.

All public hearings on Type II, Type III, or Type IV applications shall be quasi-judicial and comply with the procedures of this section.

* * *

(G) Denial by a Hearings Officer of a Type III decision permit application, such as a Conditional Use or a Community Service Use, shall result in denial of all associated Type II decisions applied for at the same time that are subject to some part of the Type III decision. The Type II decisions for which this applies include, but are not limited to Design Review, Variances, Significant Environmental Concern, Willamette River Greenway, and Hillside Development Permits.

Section 5. **A new § 37.0615 is added as follows:**

37.0615 Review Procedures Before the Board of County Commissioners of an Appeal of a Hearings Officer Decision on a Type II or Type III Permit.

Review by the Board of County Commissioners (Board) of a Planning Director's appeal of a Hearings Officer decision on a Type II or Type III Permit shall be pursuant to the Multnomah County Home Rule Charter and implementing Rules, with the following additional requirements:

- (A) Notice of the hearing shall be given as required by MCC 37.0640(B)(2).
- (B) A staff report by the Planning Director shall be available 14 days before the hearing. The scope of argument and information in the staff report shall be limited to the record made before the Hearings Officer.
- (C) Any written testimony submitted by others shall be available 7 days before the hearing. The scope of argument and information in the written testimony shall be limited to the record made before the Hearings Officer and the staff report described in (B) above.
- (D) A written response to (C) is not allowed.
- (E) The following persons may present oral testimony:
 - (1) By the applicant (and/or the applicant's representative) and the Planning Director;
 - (2) Limited to the issues, evidence and arguments on the record that were made before the Hearings Officer;
 - (3) Limited to 10 minutes of argument on each side, with the provision that the Planning Director may reserve time from that 10 minutes for a rebuttal.
- (F) The Board will then deliberate and deliver an oral decision before the end of the hearing. The Board shall then direct staff to prepare an Order and Opinion that reflects the decision and direct the Chair to sign the same. Staff will then mail the signed Order and Opinion to those who submitted written comment, requested the decision in writing or provided oral testimony at a hearing on the matter. The mailed decision is the county's final decision on the application and may be appealed to LUBA within 21 days of the date the decision is signed by the Chair.

Section 6. **§ 37.0620 is amended as follows:**

37.0620 Hearings Notice - Type II Appeals, Type III Or Type IV Applications.

Except for appeals of Hearings Officer decisions by the Planning Director which have different notice requirements in MCC 37.0640(B), Notice for all public hearings for Type III, IV or an appeal of a Type II application shall conform to the requirements of this section. At least 20 days prior to the hearing, the County shall prepare and send, by first class mail, notice of the hearing to all owners of record, based upon the most recent Multnomah County records, of property within 750 feet of the subject tract and to any County-recognized neighborhood association or identified agency whose territory includes the subject property. The County shall further provide notice at least 20 days prior to a

hearing to those persons who have identified themselves in writing as aggrieved or potentially aggrieved or impacted by the decision prior to the required mailing of such notice. The County shall also publish the notice in a newspaper of general circulation within the County at least 20 days prior to the hearing. Notice of the hearing shall include the following information:

* * *

Section 7. **§ 37.0630 is amended as follows:**

37.0630 Posting Notice Requirements - Type III, Type IV Hearings.

The requirements of this subsection shall apply to Type III and Type IV hearings except those hearings resulting from an appeal of a Hearings Officer decision by the Planning Director.

(A) The County shall supply all of the notices which the applicant is required to post on the subject property, and shall specify the dates the notices are to be posted. The date of posting is ten days prior to the date of hearing. Failure to post the notice shall not be a procedural error.

* * *

Section 8. **§ 37.0640 is amended as follows:**

37.0640 Appeals.

Appeals of any decisions of the County must comply with the requirements of this section.

(A) Appeals by applicants or opponents of an application.

(1) Type I decisions by the Planning Director are not appealable to any other decision maker within the County.

(B2) A Notice of Appeal of a Type II decision by the Planning Director or Type IV decision by the Planning Commission must be received in writing by the Land Use Planning Division within 14 calendar days from the date notice of the challenged decision is provided to those entitled to notice. If the County's notice of decision is mailed, any appeal must be received by and at the Land Use Planning Division within 14 calendar days from the date of mailing. Late or improperly filed appeals shall be deemed a jurisdictional defect and will result in the automatic rejection of any appeal so filed.

(C3) The following must be included as part of the Notice of Appeal:

(1a) The County's case file number and date the decision to be appealed was rendered.

(2b) The name, mailing address and daytime telephone number for each appellant.

(3c) A statement of how each appellant has an interest in the matter and standing to appeal.

(4d) A statement of the specific grounds for the appeal.

(5e) The appropriate appeal fee. Failure to include the appeal fee within appeal period is deemed to be a jurisdictional defect and will result in the automatic rejection of any appeal so filed.

(D4) Standing to Appeal. Those who are entitled to appeal a Type II or Type IV decision include those who are entitled to notice under MCC 37.0620.

(E5) The Land Use Planning Division shall issue notice of the appeal hearing to all parties entitled to notice had the initial decision been subject to a hearing under MCC 37.0620. Notice of the appeal hearing shall contain the following information:

- (1a) The case file number and date of the decision being appealed;
- (2b) The time, date and location of the public hearing;
- (3c) The name of the applicant, owner and appellant (if different);
- (4d) The street address or other easily understood location of the subject property;
- (5e) A description of the permit requested and the applicant's development proposal;
- (6f) A brief summary of the decision being appealed and the grounds for appeal listed in the Notice of Appeal;
- (7g) A general explanation of the requirements for participation and the ~~County~~county's hearing procedures.

(F6) Appeal hearing, scope of review. Appeal hearings to a Hearings Officer shall comply with the procedural requirements of MCC 37.0610. Appeal hearings shall be de novo, as if new, and all issues relevant to the applicable approval criteria may be considered. However, written Planning Director interpretations, pursuant to MCC 37.0740, are to be given deference pursuant to MCC 37.0740(A).

(G7) The ~~County~~county has the standing to appeal to LUBA any Hearings Officer decision. The ~~County~~county also has standing to intervene in any appeal to LUBA from a County Hearings Officer decision.

(B) Appeals by the Planning Director of Hearings Officer Decisions.

(1) The Planning Director may appeal a Hearings Officer decision on a Type II or Type III Permit to the Board. That opportunity to appeal the decision is during the seven days following the signing of the decision by the Hearings Officer.

(2) A Notice of Appeal and Notice of Hearing before the Board shall be mailed at least 14 days prior to the hearing to those who submitted written comment, requested the decision in writing or provided oral testimony at a hearing on the matter, and DLCD at the discretion of the applicant. The following must be included as part of the Notice of Appeal and Notice of the Hearing (which may be one notice):

- (a) The county's case file number and date the decision to be appealed was rendered;

(b) The name, mailing address and daytime telephone number of the Planning Director or designee;

(c) A statement of the specific grounds for the appeal.

(3) Standing to Appeal. An appeal of a Hearings Officer decision on a Type II Permit or Type III Permit may only be filed by the Planning Director to the Board.

(4) Appeal hearing, scope of review. Appeal hearings to the Board shall comply with the procedural requirements of MCC 37.0615. The appeal hearing shall be on the record and the Board may substitute its decision for the decision of the Hearings Officer.

Section 9. § 37.0660 is amended as follows:

37.0660 Conditions Of Approval And Notice Of Decision.

(A) All ~~County~~county decision makers have the authority to impose reasonable conditions of approval designed to ensure that all applicable approval standards are, or can be, met.

(B) The applicant ~~retains~~has the burden of demonstrating that the applications complies with the approval criteria or ~~can and will~~ comply with the approval criteria through the imposition of conditions of approval. ~~Further, the applicant must file~~submit evidence demonstrating that an approval criteria can be met with the imposition of conditions as well as demonstrate a commitment to comply with conditions of approval.

* * *

Section 10. § 37.0740 is amended as follows:

37.0740 Interpretations.

(A) The Planning Director ~~shall have~~has the authority to decide all questions of interpretation or applicability to specific properties of any provision of the comprehensive framework plan, rural area plan, or other land use code. Any interpretation of a provision of the comprehensive framework plan, rural area plan or other land use code shall consider applicable provisions of the comprehensive framework plan, rural area plan, and the purpose and intent of the ordinance adopting the particular code section in question. ~~A request for an interpretation shall be processed as a Type II application.~~

(B) A person may specifically request an interpretation of a provision in the code. An application for an interpretation shall be processed as a Type II application. The Planning Director may refuse to accept an application for an interpretation if:

(1) The Planning Director determines that the question presented can be decided in conjunction with approving or denying a pending land use action application or if in the Planning Director's judgment the requested determination should be made as part of a decision on an application for a quasi-judicial land use or zone change permit not yet filed; or

(2) The Planning Director determines that there is an enforcement case pending in which the same issue necessarily will be decided.

(C) The Planning Director determination to not accept an application under paragraph (B) of this section is not a land use decision and shall be the county's final decision.

Section 11. **§ 37.0915 is amended as follows:**

37.0915 Violations

Any use of land, land division or adjustment to property boundaries or other activity by a person in violation of any provision of:

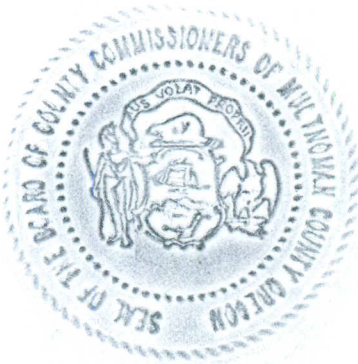
(A) MCC Chapters 33, 34, 35, 36 and 38; §§ 29.001 —~~29.011, 29.330~~ through 29.365 and 29.500 through 29.630; or the terms and conditions of any permit issued under those code provisions; or

* * *

Section 12. This ordinance, being necessary for the health, safety, and general welfare of the people of Multnomah County, an emergency is declared and the ordinance takes effect upon its signature by the County Chair.

FIRST READING AND ADOPTION:

June 23, 2005



BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Diane M. Linn, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By
Sandra N. Duffy, Assistant County Attorney