

ANNOTATED MINUTES

*Tuesday, December 14, 1993 - 9:30 AM
Multnomah County Courthouse, Room 602*

BOARD BRIEFINGS

- B-1 Review of Land Use Appeal Hearing Practices and Procedures. Request Board direction on a strategy for the Processing of Appeals of Hearings Officer/Planning Commission Decisions on Quasi-Judicial Land Use Applications. Presented by R. Scott Pemble, Laurence Kressel and Representatives from Clackamas County Counsel, Portland City Attorney and Metro Legal Counsel.*

**PRESENTATION AND RESPONSE TO BOARD QUESTIONS BY
LAURENCE KRESSEL, ADRIENNE BROCKMAN, SCOTT PEMBLE
AND MIKE JUDD. BOARD DISCUSSION AND COMMENTS.
DISCUSSION TO CONTINUE FOLLOWING AFTERNOON
PLANNING MEETING.**

- B-2 Briefing and Discussion of Program Measurements and Program Narrative. Presented by Dave Warren and Gary Blackmer.*

**PRESENTATION AND RESPONSE TO BOARD QUESTIONS BY
DAVE WARREN AND GARY BLACKMER.**

*Tuesday, December 14, 1993 - 1:30 PM
Multnomah County Courthouse, Room 602*

PLANNING ITEMS

Chair Beverly Stein convened the meeting at 1:40 p.m., with Vice-Chair Gary Hansen, Commissioners Sharron Kelley and Dan Saltzman present, and Commissioner Tanya Collier excused.

- P-1 LD 2-93/MC 1-93 Review the November 24, 1993 Planning and Zoning Hearings Officer Decision DENYING Tentative Plan for the Type I Land Division Requested, a Partition Resulting in Three Lots; and DENYING the Request to Use Easements as a Means of Access to Proposed Parcels 1 and 3, for Property Located at 17903 NW ST. HELENS ROAD.*

DECISION READ, NO APPEAL FILED, DECISION STANDS.

- P-2 C 7-93 First Reading of a Proposed ORDINANCE Amending Sections of MCC 11.45, the Multnomah County Land Division Ordinance*

**PROPOSED ORDINANCE READ BY TITLE ONLY. COPIES
AVAILABLE. COMMISSIONER SALTZMAN MOVED AND
COMMISSIONER KELLEY SECONDED, APPROVAL OF THE
FIRST READING. PLANNER DAVE PRESCOTT PRESENTATION**

AND RESPONSE TO BOARD QUESTIONS. COUNSEL JOHN DuBAY COMMENTS AND RESPONSE TO BOARD QUESTIONS. FIRST READING UNANIMOUSLY APPROVED. SECOND READING SCHEDULED FOR 1:30 P.M., TUESDAY, DECEMBER 28, 1993.

AT 1.55 P.M., THE BOARD RESUMED DISCUSSION OF LAND USE APPEAL PRACTICE AND PROCEDURES FROM MORNING BRIEFING. MR. PEMBLE PRESENTED STAFF RECOMMENDATIONS. MR. DuBAY AND MR. PEMBLE RESPONSE TO BOARD QUESTIONS. BOARD DISCUSSION. BOARD DIRECTED STAFF TO PREPARE CODE AMENDMENT TO NO LONGER REQUIRE TRANSCRIPT PREPARATION, AND TO LOOK INTO SOME TYPE OF BOARD ROOM SIGNAGE WITH INSTRUCTIONS FOR PUBLIC PROCESS AND PROCEDURES FOR APPEAL HEARINGS. CHAIR STEIN DIRECTED THAT STAFF REPLY TO SURVEY PARTICIPANTS ADVISING OF THE CHANGES TO BE MADE IN CONNECTION WITH THEIR RESPONSE.

There being no further business, the meeting was adjourned at 2:40 p.m.

**OFFICE OF THE BOARD CLERK
for MULTNOMAH COUNTY, OREGON**


Deborah L. Bogstad

*Tuesday, December 14, 1993 - 2:45 PM
Multnomah County Courthouse, Room 602*

WORK SESSION

WS-1 Program Measurements and Program Narrative for the Department of Library Services.

PRESENTATION AND RESPONSE TO BOARD QUESTIONS BY DAVE WARREN, GINNIE COOPER, PAUL MILLIUS, CHING HAY, MEGANNE STEELE, JEANNE GOODRICH AND MARGARET EPTING.

*Wednesday, December 15, 1993 - 8:30 AM
Multnomah County Courthouse, Room 602*

WORK SESSIONS

WS-2 Program Measurements and Program Narrative for the Multnomah County Sheriff's Office.

**PRESENTATION AND RESPONSE TO BOARD QUESTIONS BY
SHERIFF BOB SKIPPER, LARRY AAB, RANDY AMUNDSON,
STEVE TILLINGHAST, JOHN SCHWEITZER, AND JAN
LANGFORD.**

WS-3 *Program Measurements and Program Narrative for the District Attorney's Office*

**PRESENTATION AND RESPONSE TO BOARD QUESTIONS BY
MICHAEL SCHRUNK.**

*Thursday, December 16, 1993 - 9:30 AM
Multnomah County Courthouse, Room 602*

REGULAR MEETING

Chair Beverly Stein convened the meeting at 9:32 a.m., with Commissioners Sharron Kelley and Dan Saltzman present, Commissioner Tanya Collier excused and Vice-Chair Hansen to arrive late.

CONSENT CALENDAR

**UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY
COMMISSIONER SALTZMAN, THE CONSENT CALENDAR WAS
UNANIMOUSLY APPROVED.**

DEPARTMENT OF ENVIRONMENTAL SERVICES

C-1 *ORDER in the Matter of the Execution of Deed D940971 for Certain Tax Acquired
Property to AAA Structures, Inc.*

ORDER 93-388.

REGULAR AGENDA

NON-DEPARTMENTAL

R-6 *First Reading and Possible Adoption of an ORDINANCE Repealing Multnomah
County Ordinances 632 and 751, and Creating the Multnomah Commission on
Children and Families, and Declaring an Emergency*

**PROPOSED ORDINANCE READ BY TITLE ONLY. COPIES
AVAILABLE. COMMISSIONER SALTZMAN MOVED AND
COMMISSIONER KELLEY SECONDED, APPROVAL OF THE
FIRST READING AND ADOPTION. CHAIR STEIN
EXPLANATION. BOARD COMMENTS. ORDINANCE 780
UNANIMOUSLY APPROVED.**

R-7 *In the Matter of the Appointments of Judith Armatta, Kathy Dimond, Bernie Guisto,
Chisao Hata, David Jordan, Kay Lowe, Janice Nightingale, Roby Roberts, Steve*

Fulmer, Muriel Goldman, Betty Jean Lee, Sharon McCluskey, Thach Nguyen, Blanca Ruckert, Jana Shouter, Cornetta Smith, Luther Sturdevant, Maria Tenorio, Pauline Anderson, Jacki Cottingim, Mimi Gray, Samuel Henry, Mark Rosenbaum, Joseph Tam, Kay Toran, Nan Waller and Diane Walton to the MULTNOMAH COMMISSION ON CHILDREN AND FAMILIES

CHAIR STEIN PRESENTATION AND INTRODUCTION OF APPOINTEES AND COMMISSION CHAIR PAULINE ANDERSON. MS. ANDERSON COMMENTS. UPON MOTION OF COMMISSIONER SALTZMAN, SECONDED BY COMMISSIONER KELLEY, R-7 WAS UNANIMOUSLY APPROVED.

CHAIR STEIN INTRODUCED NEWLY APPOINTED COMMISSION DIRECTOR HELEN RICHARDSON. MS. RICHARDSON COMMENTS.

The Board recessed at 9:54 a.m. and reconvened at 10:02 a.m. Vice-Chair Hansen arrived at 10:03 a.m.

R-1 Presentation in the Matter of Employee Service Awards Honoring Multnomah County Employees with Five to Thirty Years of Service.

BOARD COMMENTS IN APPRECIATION OF COUNTY EMPLOYEES. BOARD GREETED, ACKNOWLEDGED AND PRESENTED 5 YEAR AWARDS TO MATHEW DELENIKOS, RICHIE GOSS, LYLE HALVERSON, JUANITA JOHNSON, DANIEL PINKNEY AND SANDRA RORICK OF DCC; JAMES CRAFT, PAUL DAILEY, BETTY HOPKINS, ROBERT MASSEY AND MICHAEL TROJAN OF DES; LORNA SCHILLING OF DLS; JOHN DuBAY OF NOND; LINDA BAILEY, ALLISON BELCHER, DEBORAH DANNER, WILLIAM GROSSIE, KRISTINA OGILVIE, CAROLINE SULLIVAN AND DUANE WILLHITE OF DSS; 10 YEAR AWARD PRESENTED TO MARY FARRIER OF DCC. 15 YEAR AWARDS PRESENTED TO WILLIAM BENDER, SIDNEY DICKERSON AND BONNIE SCOTT OF DCC; THOMAS DANIELS, JAMES KOCH, CURTIS MEADE, SANDRA MOORHEAD, GLORIA PICKERING, WILLIAM SMITH, SAVANA SWAIN AND FRANCINE YUNKER OF DES. 20 YEAR AWARDS PRESENTED TO JAMES MASON, KATHLEEN STALLINGS AND EDNA THOMPSON OF DCC; DONALD COURSER AND PAMELA GULLEY OF DES. 25 YEAR AWARDS PRESENTED TO MICHAEL GILSDORF AND ROBERT SULLIVAN OF DES. 30 YEAR AWARD PRESENTED TO STANLEY BUCKNUM OF DLS.

R-2 PUBLIC HEARING and Consultation Regarding Cancellation of Real Property Taxes for 335 Real Property Tax Accounts Located within Multnomah County, in the Approximate Amount of \$876,046.60

VICE-CHAIR HANSEN AND ERIC STEN PRESENTATION, EXPLANATION AND INTRODUCTION OF MAXINE

FITZPATRICK. HEARING HELD, NO ONE WISHED TO TESTIFY.

DEPARTMENT OF ENVIRONMENTAL SERVICES

- R-3 *RESOLUTION in the Matter of Approval of an Intergovernmental Agreement for Management of the "Willamette Shore Line" Right of Way*

COMMISSIONER SALTZMAN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-3. SCOTT PEMBLE PRESENTATION, EXPLANATION AND INTRODUCTION OF SHARON KELLY-MEYER AND JENNIFER RYAN. RESOLUTION 93-389 UNANIMOUSLY APPROVED.

- R-4 *RESOLUTION in the Matter of Creating an Interim Multnomah County Advisory Fair Board.*

COMMISSIONER KELLEY MOVED AND COMMISSIONER SALTZMAN SECONDED, APPROVAL OF R-4. HANK MIGGINS EXPLANATION AND RESPONSE TO BOARD QUESTIONS. BOARD RECOGNITION AND ACKNOWLEDGEMENT OF FAIR TASK FORCE MEMBERS IN AUDIENCE. RESOLUTION 93-390 UNANIMOUSLY APPROVED. RICK SANDERS TESTIMONY IN SUPPORT OF ADVISORY FAIR BOARD.

NON-DEPARTMENTAL

- R-5 *RESOLUTION in the Matter of Multnomah County's Participation in a Cities/County Coordinating Committee*

AT THE REQUEST OF CHAIR STEIN AND UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER SALTZMAN, IT WAS UNANIMOUSLY APPROVED THAT R-5 BE CONTINUED THURSDAY, DECEMBER 23, 1993.

SHERIFF'S OFFICE

- R-8 *Ratification of Intergovernmental Agreement Contract 800544 Between the City of Portland and Multnomah County, Providing Sheriff's Office Access to the 800 MHZ, Simulcast and Trunking Radio System*

AT THE REQUEST OF CHAIR STEIN AND UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER HANSEN, IT WAS UNANIMOUSLY APPROVED THAT R-8 BE CONTINUED THURSDAY, DECEMBER 23, 1993.

DEPARTMENT OF COMMUNITY CORRECTIONS

- R-9 *Budget Modification DCC #2 Requesting Authorization to Increase ADAPT Grant Revenue and Move Sanctions and Services Revenue to Program Development Budget within the Southeast Division Budget*

COMMISSIONER HANSEN MOVED AND COMMISSIONER SALTZMAN SECONDED, APPROVAL OF R-9. TAMARA HOLDEN EXPLANATION. BUDGET MODIFICATION UNANIMOUSLY APPROVED.

- R-10 *Budget Modification DCC #3 Requesting Authorization to Increase Personal Services and Decrease Materials and Services in the Day Reporting Center within the West District Division Budget*

COMMISSIONER SALTZMAN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-10. TAMARA HOLDEN EXPLANATION. BUDGET MODIFICATION UNANIMOUSLY APPROVED.

DEPARTMENT OF LIBRARY SERVICES

- R-11 *Budget Modification DLS #2 Requesting Authorization to Increase the Department of Library Services Indirect Cost Rate from 6.14% to 6.9%, as Specified in the 1993-94 Indirect Cost Rate Agreement*

COMMISSIONER KELLEY MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF R-11. CHING HAY EXPLANATION AND RESPONSE TO BOARD QUESTIONS. BUDGET MODIFICATION UNANIMOUSLY APPROVED.

DEPARTMENT OF HEALTH

- R-12 *Ratification of Intergovernmental Agreement Contract 201744 Between the Oregon Office of Medical Assistance (OMAP) and Multnomah County, for the Provision of Fully Capitated Health Services to Medicaid Clients through CareOregon, for the Period February 1, 1994 through September 30, 1994*

COMMISSIONER HANSEN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-12. TOM FRONK AND MARY LOU HENNRICH PRESENTATION, EXPLANATION AND RESPONSE TO BOARD QUESTIONS. STAFF TO PROVIDE BOARD WITH QUARTERLY FINANCIAL UPDATES. BOARD COMMENTS. AGREEMENT UNANIMOUSLY APPROVED.

- R-13 *Ratification of Intergovernmental Agreement Contract 201104 Between the Oregon Office of Medical Assistance (OMAP) and Multnomah County, Wherein the Health Department Acts as a Dental Care Organization (DCO) to Provide Members of OMAP's Oregon Health Plan with Prepaid Dental Services on a Capitated Basis, for the Period February 1, 1994 through September 30, 1994*

COMMISSIONER KELLEY MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF R-13. MR. FRONK EXPLANATION. AGREEMENT UNANIMOUSLY APPROVED.

CHILDREN AND FAMILIES SERVICES DIVISION

- R-14 *Request for Approval in the Matter of a Grant Award from the Oregon Commission on Children and Families, Juvenile Justice and Delinquency Prevention Office, to Provide Partial Funding for the Roosevelt Cluster Coordinator Position, for the Retroactive Period July 1, 1993 through September 30, 1993*

COMMISSIONER HANSEN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-14. REY ESPANA EXPLANATION. AGREEMENT UNANIMOUSLY APPROVED.

DEPARTMENT OF ENVIRONMENTAL SERVICES

- R-16 *Ratification of Intergovernmental Agreement Contract 301174 Between Metro and Multnomah County, Transferring Effective January 1, 1994, the Operation and Management of Regional Parks, Natural Areas, Golf Courses, Cemeteries and Trade Spectator Facilities Presently Owned and Operated by Multnomah County, to Metro, Including Transfer of all Personnel and Financial Assets of the County's Recreation Fund, Phase I, and Effective July, 1996, Transfer of County Ownership of Those Facilities and Associated Property to Metro, Phase II*

COMMISSIONER HANSEN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-16. BETSY WILLIAMS SUBMITTED AN AMENDED AGREEMENT FOR BOARD CONSIDERATION. MS. WILLIAMS PRESENTATION, EXPLANATION AND RESPONSE TO BOARD QUESTIONS. TESTIMONY IN OPPOSITION TO TRANSFER FROM TOM CROPPER AND RICK SANDERS. BOARD RESPONSE TO MR. SANDERS. BOARD COMMENTS. UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER HANSEN, THE AMENDMENTS WERE UNANIMOUSLY APPROVED. THE AGREEMENT AS AMENDED WAS UNANIMOUSLY APPROVED. MR. MIGGINS COMMENTS IN SUPPORT OF EXCELLENT EXPO STAFF.

PUBLIC COMMENT

- R-15 *Opportunity for Public Comment on Non-Agenda Matters. Testimony Limited to Three Minutes Per Person.*

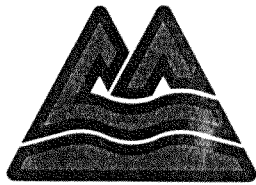
There being no further business, the meeting was adjourned at 11:15 a.m.

**OFFICE OF THE BOARD CLERK
for MULTNOMAH COUNTY, OREGON**



Deborah L. Bogstad

12-16-93.MIN/deb



MULTNOMAH COUNTY OREGON

OFFICE OF THE BOARD CLERK
SUITE 1510, PORTLAND BUILDING
1120 S.W. FIFTH AVENUE
PORTLAND, OREGON 97204

BOARD OF COUNTY COMMISSIONERS

| | | |
|------------------|--------------|----------|
| BEVERLY STEIN • | CHAIR • | 248-3308 |
| DAN SALTZMAN • | DISTRICT 1 • | 248-5220 |
| GARY HANSEN • | DISTRICT 2 • | 248-5219 |
| TANYA COLLIER • | DISTRICT 3 • | 248-5217 |
| SHARRON KELLEY • | DISTRICT 4 • | 248-5213 |
| CLERK'S OFFICE • | 248-3277 • | 248-5222 |

AGENDA

MEETINGS OF THE MULTNOMAH COUNTY BOARD OF COMMISSIONERS

FOR THE WEEK OF

DECEMBER 13, 1993 - DECEMBER 17, 1993

Tuesday, December 14, 1993 - 9:30 AM - Board Briefings.Page 2

Tuesday, December 14, 1993 - 1:30 PM - Planning ItemsPage 2

Tuesday, December 14, 1993 - 2:45 PM - Work SessionPage 2

Wednesday, December 15, 1993 - 8:30 AM - Work SessionsPage 3

Thursday, December 16, 1993 - 9:30 AM - Regular Meeting.Page 3

Thursday Meetings of the Multnomah County Board of Commissioners are taped and can be seen at the following times:

Thursday, 10:00 PM, Channel 11 for East and West side subscribers

Thursday, 10:00 PM, Channel 49 for Columbia Cable (Vancouver) subscribers

Friday, 6:00 PM, Channel 22 for Paragon Cable (Multnomah East) subscribers

Saturday 12:00 Noon, Channel 21 for East Portland and East County subscribers

INDIVIDUALS WITH DISABILITIES MAY CALL THE OFFICE OF THE BOARD CLERK AT 248-3277 OR 248-5222, OR MULTNOMAH COUNTY TDD PHONE 248-5040, FOR INFORMATION ON AVAILABLE SERVICES AND ACCESSIBILITY.

Tuesday, December 14, 1993 - 9:30 AM

Multnomah County Courthouse, Room 602

BOARD BRIEFINGS

B-1 Review of Land Use Appeal Hearing Practices and Procedures. Request Board direction on a strategy for the Processing of Appeals of Hearings Officer/Planning Commission Decisions on Quasi-Judicial Land Use Applications. Presented by R. Scott Pemble, Laurence Kressel and Representatives from Clackamas County Counsel, Portland City Attorney and Metro Legal Counsel. 9:30 AM TIME CERTAIN, 90 MINUTES REQUESTED.

B-2 Briefing and Discussion of Program Measurements and Program Narrative. Presented by Dave Warren and Gary Blackmer. 11:00 AM TIME CERTAIN, 1 HOUR REQUESTED.

Tuesday, December 14, 1993 - 1:30 PM

Multnomah County Courthouse, Room 602

PLANNING ITEMS

P-1 LD 2-93/MC 1-93 Review the November 24, 1993 Planning and Zoning Hearings Officer Decision DENYING Tentative Plan for the Type I Land Division Requested, a Partition Resulting in Three Lots; and DENYING the Request to Use Easements as a Means of Access to Proposed Parcels 1 and 3, for Property Located at 17903 NW ST. HELENS ROAD.

P-2 C 7-93 First Reading of a Proposed ORDINANCE Amending Sections of MCC 11.45, the Multnomah County Land Division Ordinance. 1 HOUR REQUESTED.

Tuesday, December 14, 1993 - 2:45 PM

Multnomah County Courthouse, Room 602

WORK SESSION

WS-1 Program Measurements and Program Narrative for the Department of Library Services. 2:45 PM TIME CERTAIN, 2 1/4 HOURS REQUESTED.

MIKE SUPP
APRIL 1994

Wednesday, December 15, 1993 - 8:30 AM

Multnomah County Courthouse, Room 602

WORK SESSION

- WS-2 *Program Measurements and Program Narrative for the Multnomah County Sheriff's Office. 8:30 AM TIME CERTAIN, 2 HOURS REQUESTED.*
- WS-3 *Program Measurements and Program Narrative for the Department of Community Corrections. 10:30 AM TIME CERTAIN, 1 1/2 HOURS REQUESTED.*
-

Thursday, December 16, 1993 - 9:30 AM

Multnomah County Courthouse, Room 602

REGULAR MEETING

CONSENT CALENDAR

DEPARTMENT OF ENVIRONMENTAL SERVICES

- C-1 *ORDER in the Matter of the Execution of Deed D940971 for Certain Tax Acquired Property to AAA Structures, Inc.*

REGULAR AGENDA

NON-DEPARTMENTAL

- R-1 *Presentation in the Matter of Employee Service Awards Honoring Multnomah County Employees with Five to Thirty Years of Service. 9:30 AM TIME CERTAIN, 30 MINUTES REQUESTED.*
- R-2 *PUBLIC HEARING and Consultation Regarding Cancellation of Real Property Taxes for 335 Real Property Tax Accounts Located within Multnomah County, in the Approximate Amount of \$876,046.60. 10:00 AM TIME CERTAIN, 10 MINUTES REQUESTED.*

DEPARTMENT OF ENVIRONMENTAL SERVICES

- R-3 *RESOLUTION in the Matter of Approval of an Intergovernmental Agreement for Management of the "Willamette Shore Line" Right of Way. 10:15 AM TIME CERTAIN, 15 MINUTES REQUESTED.*
- R-4 *RESOLUTION in the Matter of Creating an Interim Multnomah County Advisory Fair*

Board. 10:30 AM TIME CERTAIN, 15 MINUTES REQUESTED.

NON-DEPARTMENTAL

- R-5 *RESOLUTION in the Matter of Multnomah County's Participation in a Cities/County Coordinating Committee (CONTINUED FROM DECEMBER 9, 1993. PLEASE NOTE: CHAIR STEIN WILL BE REQUESTING A CONTINUANCE TO DECEMBER 23, 1993.)*
- R-6 *First Reading and Possible Adoption of an ORDINANCE Repealing Multnomah County Ordinances 632 and 751, and Creating the Multnomah Commission on Children and Families, and Declaring an Emergency*
- R-7 *In the Matter of the Appointments of Judith Armatta, Kathy Dimond, Bernie Guisto, Chisao Hata, David Jordan, Kay Lowe, Janice Nightingale, Roby Roberts, Steve Fulmer, Muriel Goldman, Betty Jean Lee, Sharon McCluskey, Thach Nguyen, Blanca Ruckert, Jana Shouter, Cornetta Smith, Luther Sturdevant, Maria Tenorio, Pauline Anderson, Jacki Cottingim, Mimi Gray, Samuel Henry, Mark Rosenbaum, Joseph Tam, Kay Toran, Nan Waller and Diane Walton to the MULTNOMAH COMMISSION ON CHILDREN AND FAMILIES*

SHERIFF'S OFFICE

- R-8 *Ratification of Intergovernmental Agreement Contract 800544 Between the City of Portland and Multnomah County, Providing Sheriff's Office Access to the 800 MHZ, Simulcast and Trunking Radio System*

DEPARTMENT OF COMMUNITY CORRECTIONS

- R-9 *Budget Modification DCC #2 Requesting Authorization to Increase ADAPT Grant Revenue and Move Sanctions and Services Revenue to Program Development Budget within the Southeast Division Budget*
- R-10 *Budget Modification DCC #3 Requesting Authorization to Increase Personal Services and Decrease Materials and Services in the Day Reporting Center within the West District Division Budget*

DEPARTMENT OF LIBRARY SERVICES

- R-11 *Budget Modification DLS #2 Requesting Authorization to Increase the Department of Library Services Indirect Cost Rate from 6.14% to 6.9%, as Specified in the 1993-94 Indirect Cost Rate Agreement*

DEPARTMENT OF HEALTH

- R-12 *Ratification of Intergovernmental Agreement Contract 201744 Between the Oregon Office of Medical Assistance (OMAP) and Multnomah County, for the Provision of*

Fully Capitated Health Services to Medicaid Clients through CareOregon, for the Period February 1, 1994 through September 30, 1994

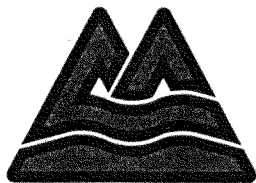
- R-13 *Ratification of Intergovernmental Agreement Contract 201104 Between the Oregon Office of Medical Assistance (OMAP) and Multnomah County, Wherein the Health Department Acts as a Dental Care Organization (DCO) to Provide Members of OMAP's Oregon Health Plan with Prepaid Dental Services on a Capitated Basis, for the Period February 1, 1994 through September 30, 1994*

CHILDREN AND FAMILIES SERVICES DIVISION

- R-14 *Request for Approval in the Matter of a Grant Award from the Oregon Commission on Children and Families, Juvenile Justice and Delinquency Prevention Office, to Provide Partial Funding for the Roosevelt Cluster Coordinator Position, for the Retroactive Period July 1, 1993 through September 30, 1993*

PUBLIC COMMENT

- R-15 *Opportunity for Public Comment on Non-Agenda Matters. Testimony Limited to Three Minutes Per Person.*



MULTNOMAH COUNTY OREGON

OFFICE OF THE BOARD CLERK
SUITE 1510, PORTLAND BUILDING
1120 S.W. FIFTH AVENUE
PORTLAND, OREGON 97204

BOARD OF COUNTY COMMISSIONERS

| | | |
|------------------|--------------|----------|
| BEVERLY STEIN • | CHAIR • | 248-3308 |
| DAN SALTZMAN • | DISTRICT 1 • | 248-5220 |
| GARY HANSEN • | DISTRICT 2 • | 248-5219 |
| TANYA COLLIER • | DISTRICT 3 • | 248-5217 |
| SHARRON KELLEY • | DISTRICT 4 • | 248-5213 |
| CLERK'S OFFICE • | 248-3277 • | 248-5222 |

SUPPLEMENTAL AGENDA

Thursday, December 16, 1993 - 9:30 AM

Multnomah County Courthouse, Room 602

REGULAR MEETING

- R-16 *Ratification of Intergovernmental Agreement Contract 301174 Between Metro and Multnomah County, Transferring, Effective January 1, 1994, the Operation and Management of Regional Parks, Natural Areas, Golf Courses, Cemeteries, and Trade/Spectator Facilities Presently Owned and Operated by Multnomah County to Metro, Including Transfer of All Personnel and Financial Assets of the County's Recreation Fund (Phase I); and Effective July, 1996, Transfer of County Ownership of Those Facilities and Associated Property to Metro (Phase II)*

MEETING DATE: DEC 14 1993

AGENDA NO: B-1

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Review of land use appeal hearing practices and procedures

BOARD BRIEFING **Date Requested:** December 14, 1993

Amount of Time Needed: 2 hours

REGULAR MEETING: **Date Requested:** _____

Amount of Time Needed: _____

DEPARTMENT: Chair's Office

DIVISION: _____

CONTACT: Sharon Timko

TELEPHONE #: 248-3960

BLDG/ROOM #: 106/1410

PERSON(S) MAKING PRESENTATION: Scott Pemble, Larry Kressel and others

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☒ POLICY DIRECTION ☐ APPROVAL ☐ OTHER

SUMMARY (Statement of rationale for action requested, personnel and fiscal/budgetary impacts, if applicable):

Request Board direction on a strategy for the processing of hearings officer/Planning Commission decision's on quasi-judicial land use applications.

BOARD OF
COUNTY COMMISSIONERS
1993 DEC -8 AM 9:26
MULTNOMAH COUNTY
OREGON

SIGNATURES REQUIRED:

ELECTED OFFICIAL: Beverly Stein

OR

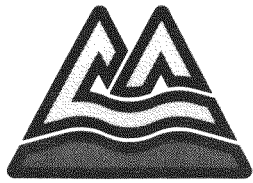
DEPARTMENT MANAGER: _____

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Office of the Board Clerk 248-3277/248-5222

0516C/63

6/93



MULTNOMAH COUNTY OREGON

DEPARTMENT OF ENVIRONMENTAL SERVICES
DIVISION OF PLANNING
AND DEVELOPMENT
2115 S.E. MORRISON STREET
PORTLAND, OREGON 97214
(503) 248-3043

BOARD OF COUNTY COMMISSIONERS
BEVERLY STEIN • CHAIR OF THE BOARD
DAN SALTZMAN • DISTRICT 1 COMMISSIONER
GARY HANSEN • DISTRICT 2 COMMISSIONER
TANYA COLLIER • DISTRICT 3 COMMISSIONER
SHARRON KELLEY • DISTRICT 4 COMMISSIONER

TO: BOARD OF COUNTY COMMISSIONERS

FROM: R. SCOTT PEMBLE, PLANNING DIRECTOR

TODAY'S DATE: DECEMBER 6, 1993

REQUESTED PLACEMENT DATE: DECEMBER 14, 1993 BRIEFING

RE: REVIEW OF LAND USE APPEAL HEARING PRACTICES AND PROCEDURES

I. RECOMMENDATION/ACTION REQUESTED:

Request Board direction on a strategy for the processing of appeals of Hearings Officer/Planning Commission Decision's on Quasi-Judicial land use applications.

II. BACKGROUND/ANALYSIS:

The Board has asked staff to review current practices regarding the handling of land use appeals. The current Zoning Code requires the Board to hear all appealed cases. Appeals of Hearings Officer/Planning Commission decisions on quasi-judicial land use matters can be handled by one of three basic appeal models. The Board may choose to hear none, some or all land use appeals.

Currently, in the Portland Metro region, all three models are in use. The Clackamas County Board directs all appeals to LUBA, choosing not to hear appeals of Hearings Officer decision's. The Portland City Council only hears some appeals. The Multnomah County Board and Metro Council (Urban Growth Boundary amendments) hear all appeals. (The Metro Council hears all Urban Growth Boundary cases because the Hearing Officer decision is reported to the council as a recommendation.)

Representatives of each of the above mentioned jurisdiction will be present at the Board briefing to explain their jurisdiction's process and share their observations on the pros and cons of each approach. All of the representatives have extensive background in land use and will be able to comment on the merits of several different models.

As outlined in the Chair's December 6, 1993 memo, the Board will be asked to direct staff concerning their preference for one of the above models. If the Board directs staff to prepare Zoning Code amendments to

implement either the hear "All" or "Some" model, the Board will need to provide staff with a second set of directions concerning "Scope of Review." Again, the representatives at the Board Briefing have considerable land use experience and can comment on the pros and cons of the "De Novo", "On the Record", or the "On the Record Plus" scope of review approaches.

III. FINANCIAL IMPACTS:

Each alternative has a different fiscal impact. The hear "None" model will shift personnel costs between Planner and Attorney. Processing local appeals involve the cost of a staff Planner, Clerical staff (preparation of notices and the record), and some County Counsel time. Passing the appeal directly to LUBA will involve more County Counsel time, less Clerical time (no notice requirements and reduce some of the record keeping cost) and perhaps reduce the amount of time a Planner will spend preparing a case for an appeal hearing. County Counsel staff time cost more than either the cost for Planner or Clerical time. Consequently, under the hear "None" model, the bottom line cost will vary depending on the County Counsel time needed to prepare for a particular case. The cost for the hear "None" model, however, should be less than the cost for either of the other two approaches.

The hear "All" model represents the most expensive alternative, assuming most cases will also be appealed to LUBA. The costs of handling all appeals will include all the local cost (Hearings Officer and Board hearing) and all the LUBA cost mentioned above.

The costs associated with the hear "Some" appeal model, again assuming most cases will be appealed to LUBA, should be slightly more than the hear "None" model but less than the hear "All" model. This explanation is based on the assumption that some of the local cost (Board hearing notice and record keeping) will be eliminated by reducing the number of Board hearings.

IV. LEGAL ISSUES:

The Board must establish within the Zoning Code the procedure for considering appeals and stipulate when a local decision is final. The Board has the option to hear none, some or all appeals. A local decision is final when all local appeals (remedies) have been exhausted.

Also, within the County Zoning Ordinance, the "Scope of Review" must be detailed, if the Board continues to hear appeals (some or all).

V. CONTROVERSIAL ISSUES:

Two issues are consistently raised concerning the question of an appropriate appeal process. One deals with the expertise of the hearing body to deliberate issues (substantively and procedurally) and the other issue concerns the expectation of the public to involve the policy-maker in the application/interpretation of local policy. Responses to a recent survey of public participants at Board appeal hearings split on the issue of expertise and policy maker involvement. Some respondents praised the Board while others criticized the Board's understanding of the process and issues.

VI. LINK TO CURRENT COUNTY POLICIES:

In most instances, the application of the County's land use policy requires the implementation of the County's zoning ordinance. The interpretation of this ordinance usually requires the involvement of a tribunal. Currently the Hearings Officer and the Board perform this role. The Board has the local option to limit their involvement.

VII. CITIZEN PARTICIPATION:

Citizens who have participated in public hearings have evaluated the County's hearing process. Survey results reflect a divergence of public opinion.

VIII. OTHER GOVERNMENT PARTICIPATION:

Local governments must provide a quasi judicial process to deliberate land use requests. Metro area governments use several different models to hear the appeals to these quasi judicial decisions. Representatives from several local governments have been scheduled to discuss their processes and share insights with the Board.

RECEIVED DEC 07 1993



Beverly Stein, Multnomah County Chair

Room 1410, Portland Building
1120 S.W. Fifth Avenue
P.O. Box 14700
Portland, Oregon 97204
(503) 248-3308

MEMORANDUM

TO: Commissioner Collier
Commissioner Hansen
Commissioner Kelley
Commissioner Saltzman

FROM: Chair Stein *Beverly Stein*

DATE: December 6, 1993

RE: December 14 Board Briefing on Land Use Appeal Hearings

The purpose of this memorandum is to outline the agenda for the December 14 Board Briefing, provide materials for your review and inform you of the specific questions the Board will be asked to deliberate.

The flow chart on page 2 outlines the questions that the Board will consider.

The main focus of the briefing is to decide whether the Board should hear land use appeals, and if we continue to hear appeals then what process should we use. Representatives from other jurisdictions have been invited to share the pro's and con's of alternative strategies for addressing land use appeals.

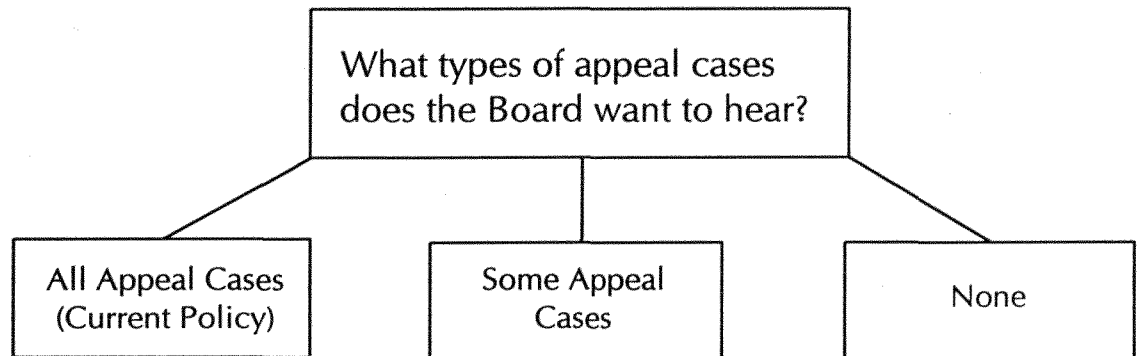
In addition, please review the attached "Appeal Hearing Evaluation" which is based on a survey of participants' reactions to the appeal hearings. The participants were asked to rate the appeal hearings and provide comments. This information will provide a public perspective for the discussion on whether the Board should hear land use appeals and if so, what procedures should we use.



QUESTIONS THE BOARD WILL CONSIDER

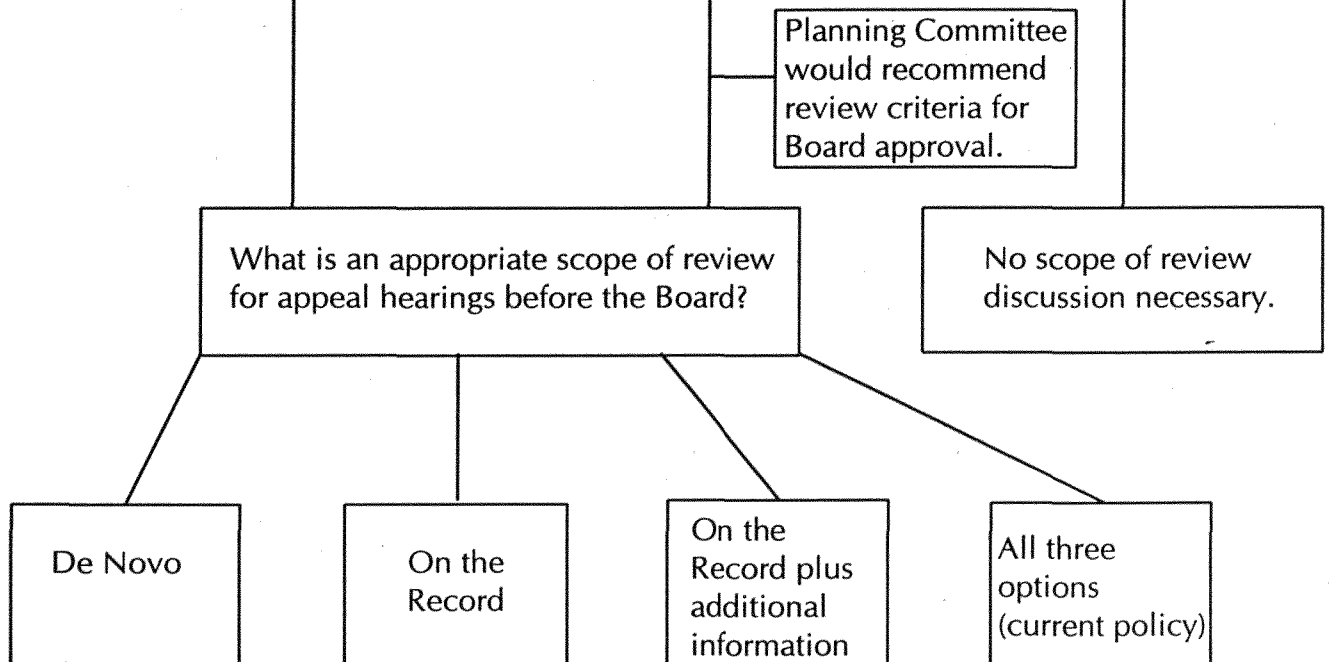
Step I

Options



Step II

Options



Step III Appeal Hearing and Hearings Officer Evaluation

Below is the agenda, with comments, for the briefing.

I. **Quasi-Judicial Roles and Responsibilities of the Board in Land Use Appeal Cases** - Larry Kressel, Multnomah County Counsel

II. **Should the Board hear quasi-judicial land use appeals?**

OPTIONS:

- A. The Board hears **no** appeals - Mike Judd, Office of Clackamas County Counsel.
- B. The Board hears **some** appeals - Adrian Brockman, Office of City Attorney.
- C. The Board hears **all** appeals (current policy) - Larry Shaw, Office of Metro Legal Counsel. (Metro has a similar situation, however, the information is presented in a different format.)

In the case of hearing *some appeals*, criteria are used to determine which cases are heard. Criteria can be developed based on a number of different approaches. I have attached the criteria Lane County use as an example of one approach. If we decide to hear *some appeals*, the Planning Commission would recommend review criteria to the Board.

Choosing *some appeals* should reduce the number of appeal hearings before the Board; however, the Board will still have to decide, based on the criteria, what cases the Board should hear.

At this point in the briefing, we will discuss whether it is necessary to modify the current policy. Our options are to hear *all appeals* (current policy), *no appeals* or *some appeals*. I will be asking the Board to make a decision.

If we decide to hear no appeal cases, the briefing will be concluded, and County Counsel will prepare the necessary changes to the ordinance.

~~If we decide to hear *all* or *some* of the appealed cases, the next step is to discuss the scope of review procedures.~~

II. **Scope of Review Determination** - Larry Kressel

- A. De Novo
- B. On the Record
- C. On the Record plus Additional Evidence

Larry Kressel will briefly review the current scope of review procedures.

Commissioner Collier requested an opinion of scope of review procedures from Christopher Thomas, land use attorney (see attachments). Mr. Thomas recommends appeals before the Board be on the record. Only under two circumstances would Mr. Thomas recommend new information be introduced and only if the case was remanded back to the hearings officer for review of the new information. Mr. Thomas states "cases should be remanded for the taking of new evidence only under two circumstances: (1) the evidence is newly discovered, and the offering party could not reasonably have been expected to discover the evidence at the time of the initial hearing, and (2) for substantial public policy reasons, the governing body itself would like additional evidence on a particular issue".

At this point, we will discuss scope of review procedures and determine if we need to modify the existing policy.

Finally, we will evaluate the use of the hearings officers at the appeal hearings before the Board. As you may recall, we approved the use of hearings officers as a trial measure. Now is the time for us to review the results.

III. Hearings Officer Evaluation

- A. Report on the appeal hearings and the use of hearings officers at the appeal hearings before the Board - Scott Pemble.

Scott Pemble conducted a mini-survey of persons involved in appeal hearings before the Board. He has prepared a findings report for our review (see attachment).

We will discuss whether we want to continue having the hearings officer present at the appeal hearing and the financial implications.

IV. Wrap-Up

- A. Clarify the Board's directions.

In sum, it is my intent to use this briefing as a forum to discuss and possibly change our land use appeal procedures. We all, at one time or another, have felt frustrated with the process. This is our opportunity to initiate changes to efficiently and effectively review land use appeal cases to better serve the citizens of Multnomah County.



MULTNOMAH COUNTY OREGON

DEPARTMENT OF ENVIRONMENTAL SERVICES
DIVISION OF PLANNING
AND DEVELOPMENT
2115 S.E. MORRISON STREET
PORTLAND, OREGON 97214
(503) 248-3043

BOARD OF COUNTY COMMISSIONERS
BEVERLY STEIN • CHAIR OF THE BOARD
DAN SALTZMAN • DISTRICT 1 COMMISSIONER
GARY HANSEN • DISTRICT 2 COMMISSIONER
TANYA COLLIER • DISTRICT 3 COMMISSIONER
SHARRON KELLEY • DISTRICT 4 COMMISSIONER

December 3, 1993

TO: BOARD OF COUNTY COMMISSIONERS

FROM: R. SCOTT PEMBLE, PLANNING DIRECTOR

RE: EVALUATION OF BOARD HEARINGS ON PLANNING ITEMS AND HEARINGS OFFICER PARTICIPATION

I. BACKGROUND

The Board requested an evaluation of hearings on Land Use appeals and Hearings Officer participation at the Board's hearing on appealed cases. Four land use hearings have been held since the Board requested an evaluation of the hearing process. In three cases the Board made changes to the Hearings Officer decision. In two instances the Board reversed the Hearings Officer's decision, in one case the Board upheld the Hearings Officer's decision but modified a condition, and one case the Board upheld the Hearings Officer's decision.

All public participants at these four hearings were asked to respond to an "Appeal Hearing Evaluation" form (See Exhibit 1). Public participants include the applicant, appellant, appellant's and/or applicant's representative(s), expert witnesses, proponents and opponents. Fourteen people have participated in the four appeal hearings. Twelve of the fourteen participants responded to phone interviews. As a follow-up to two phone interview attempts, two participants were sent an evaluation form, however, no response has been received.

II. HEARING PARTICIPANTS ANALYSIS

The following comments summarize public participants reactions to the hearing process and their reactions to the involvement of the Hearings Officer at the hearing. (See Exhibit 2 for a summary of all responses.) Reference to "participants" below refers to those public participants responding to the survey.

- * Most of the hearing participants responding to the questionnaire indicated that both the location (11/11)¹ and time (8/11) of their hearing was convenient.
- * Most of the participants (10/12) had previous experiences with land use hearings, only two rookies.
- * Two thirds (8/12) of the participants indicated they needed more time to present their case.

¹ 11/11 = 11 out of 11 people responding to the questionnaires believed the location of the hearings was convenient. This same notation is used throughout this report.

BOARD MEMO LAND HEARING EVALUATION

DECEMBER 3, 1993

PAGE 2

- * Over half (7/12) the participants understood the hearing process.
- * Less than half (5/12) the participants believed their hearing was fair. This is a surprising response because out of the 12 hearing participants, only 4 persons were on the losing side of the Board's decision. Staff expected this response to correlate to the number of persons aggrieved by the Board's decision (*i.e.*, the four persons who lost would believe the hearing was unfair, particularly if the Hearings Officer decision was reversed by the Board).
- * Over half (7/12) the participants rated the quality of their hearing as average or better. Reasons given for poor and below ratings include the following statements:
 - Didn't feel the Hearings Officer should have participated at the Board hearing.
 - Confusion about who speaks when.
 - No rebuttal opportunity to the Board's comments.
 - No printed rules explaining how the Board hearings are conducted.
 - The Board did not discuss issues raised by any of the parties at the hearing.
 - Board did not take enough time to consider the case.
 - Board did not understand the process.
 - Board did not understand the arguments nor legal points.
 - Board relies on staff (Planning and County Counsel) and Hearings Officer, did not make their own decision.
- * Less than half the participants (5/12) liked the outcome of the hearing. This response is surprising for the same reason listed above. (*i.e.*, only 4 persons were on the losing side of the Board's decision.)
- * The following summarizes the participants responses to the question: "Please add other comments you wish to make."
 1. Four respondents thought it was inappropriate for the Hearings Officer to participate at the Board hearing. One of the respondents thought the contrary.
 2. One participant appreciated the Board's sincere discussion and deliberation and felt they had reviewed the materials before the hearing.
 3. One participant was concerned because new information was introduced at a hearing "on the record."
 4. One participant believed the Hearings Officer based their decision on legal expertise while the Board did not have comparable expertise.
 5. Two participants indicated the need to provide more time for all interested parties to make their comments. The opponents to the appeal may not have a well orchestrated presentation, consequently several persons may consume all the time allotted to the opponents side of the discussion.
 6. One participant thought there was too much time allocated to the Hearings Officer to present their decision. Also, they viewed the Hearings officer as advocating their decision, instead of explaining their decision.

III. HEARINGS OFFICER COST

The following table displays the Hearings Officer cost for both hearings (theirs and the Board's) and the outcome of the Board hearing. The Hearings Officer hearing cost includes the site visits, case file review, research, hearing(s), and decision writing.

Table 1
Hearings Officer Costs

| <u>CASE NUMBER</u> | <u>HEARING OFFICER HEARING</u> | <u>COST</u> <u>BOARD HEARING</u> | <u>TOTAL</u> | <u>BOARD ACTION</u> |
|----------------------|--------------------------------|-------------------------------------|--------------|---------------------|
| CU 20-93 | \$828.75 | \$243.75 | \$1072.50 | Reversed |
| CU 17-93 HV 9-93 | \$942.50 | \$260.60 | \$1203.10 | Upheld |
| DR 14-93 CU 5-91a | \$1,365.00 | \$260.00 | \$1625.00 | Modified |
| CU 21-93 | \$682.50 | \$225.33 | \$907.83 | Reversed |
| TOTAL | \$3818.75 | \$989.68 | \$4808.43* | |
| % OF TOTAL * | 79.4 % | 20.6 % | 100 % | |

APPEAL HEARING EVALUATION

CASE NUMBER: _____

OUR GOAL IS TO PROVIDE THE BEST LAND USE PLANNING SERVICE POSSIBLE. PLEASE ASSIST US AND TAKE A MINUTE TO ANSWER THE FOLLOWING QUESTIONS. THANK YOU.

1. Have you had previous experience with Land Use Hearings? Yes___ No___

If "**Yes**", please indicate your involvement in past Land Use Hearings. (Check all applicable responses)

- A) Representing Applicant or other person(s) _____
- B) Applicant _____
- C) Expert Witness _____
- D) Proponent or Opponent _____

2. Was the location of the Hearing convenient? Yes___ No___

If "**No**", please suggest another location. _____

3. Was the time of day of the Hearing convenient? Yes___ No___

If "**No**", please suggest another time. _____ AM___ PM___

4. Did you have enough time to present your case? Yes___ No___

5. Was the hearings process understandable? Yes___ No___

If "**No**", please suggest how the Hearing may be improved.

6. Do you believe the Hearing was fair? Yes___ No___

7. How would you rate the overall quality of the Hearing? (Check One)

Excellent___ Good___ Average___ Poor___ Bad___

8. Were you satisfied with the outcome of the Hearing? Yes___ No___

9. Please add any other comments you wish to make?

Board Hearing Evaluation: Public Perspective

| Case Number | # Responding | Hear Experience | | Location | | Time of Day | | Presentation Time | | Understand | | Fair | | Hear Rating | | | | Like Outcome | | | |
|-------------|--------------|-----------------|----|----------|----|-------------|----|-------------------|----|------------|----|------|----|-------------|------|---------|------|--------------|-----|----|---|
| | | Yes | No | Yes | No | Yes | No | Yes | No | Yes | No | Yes | No | Excellent | Good | Average | Poor | Bad | Yes | No | |
| | | | | | | | | | | | | | | | | | | | | | |
| CU 21-93 | 4 | 4 | 0 | 4 | 0 | 4 | 0 | 4 | 0 | 1 | 3 | 2 | 2 | 3 | 1 | 1 | 2 | 0 | 0 | 2 | 2 |
| | 1 | 1 | 0 | 1 | 0 | 1 | 0 | 1 | 0 | 1 | 0 | 1 | 0 | 1 | 0 | 1 | 1 | | | 1 | 0 |
| | 1 | 1 | | 1 | 0 | 1 | 0 | 0 | 1 | 0 | 1 | 0 | 1 | 0 | 1 | | 1 | | | | 1 |
| | 1 | 1 | | 1 | 0 | 1 | 0 | 0 | 1 | 0 | 1 | 1 | 0 | 1 | 0 | | 1 | | | 0 | 1 |
| | 1 | 1 | | 1 | 0 | 1 | 0 | 0 | 1 | 1 | 0 | 1 | 0 | 1 | 0 | 1 | | | | 1 | 0 |
| CU 20-93 | 2 | 1 | 1 | 2 | 0 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 0 | 1 | 0 | 1 | 0 | 0 |
| | 1 | 0 | 1 | 1 | 0 | 0 | 1 | 1 | 0 | 1 | 0 | 0 | 1 | 0 | 1 | | | 1 | | 1 | 0 |
| | 1 | 1 | 0 | 1 | 0 | 1 | 0 | 0 | 1 | 0 | 1 | 1 | 0 | 1 | 0 | 1 | | | | 1 | 0 |
| CU 17-93 | 3 | 2 | 1 | 2 | 0 | 1 | 1 | 1 | 2 | 2 | 1 | 0 | 3 | 0 | 0 | 1 | 0 | 2 | 1 | 2 | |
| HV 9-93 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 1 | 0 | 1 | 0 | 1 | | | | 1 | 0 | 1 |
| | 1 | 1 | 0 | 1 | 0 | 0 | 1 | 0 | 1 | 1 | 0 | 0 | 1 | | | 1 | | | 1 | 0 | |
| | 1 | 1 | 0 | 1 | 0 | 1 | 0 | 0 | 1 | 1 | 0 | 0 | 1 | | | | | 1 | 0 | 1 | |
| DR 14-93 | 3 | 3 | 0 | 3 | 0 | 2 | 1 | 1 | 2 | 2 | 1 | 1 | 2 | 0 | 1 | 0 | 0 | 2 | 0 | 3 | |
| CU 5-91a | 1 | 1 | 0 | 1 | 0 | 1 | 0 | 1 | 0 | 1 | 0 | 1 | 0 | 1 | 0 | 1 | | | 0 | 1 | |
| | 1 | 1 | 0 | 1 | 0 | 0 | 1 | 0 | 1 | 0 | 1 | 0 | 1 | 0 | 1 | | | | 1 | 0 | 1 |
| | 1 | 1 | 0 | 1 | 0 | 1 | 0 | 0 | 1 | 1 | 0 | 0 | 1 | | | | | 1 | 0 | 1 | |
| Total | 12 | 10 | 2 | 11 | 0 | 8 | 3 | 4 | 8 | 7 | 5 | 5 | 7 | 1 | 3 | 5 | 1 | 4 | 5 | 7 | |

MOSKOWITZ & THOMAS

ATTORNEYS AT LAW

2000 S.W. 1ST AVENUE

SUITE 400

PORTLAND, OREGON 97201

TELEPHONE (503) 227-1116

FAX (503) 227-3015

Christopher P. Thomas

Steven A. Moskowitz

September 28, 1993

Commissioner Tanya Collier
Multnomah County Commission
1120 S.W. Fifth Avenue, Suite 1500
Portland, OR 97204

Subject: Land Use Hearings Officer

Dear Commissioner Collier:

You and I have discussed briefly my thoughts about the land use hearings officer process. Specifically, we discussed my view on whether participants in land use hearings should be required to present all their evidence to the land use hearings officer, with no new evidence being allowed in an appeal hearing before the County Commission. The appeal hearing thus would be limited to argument about whether the hearings officer's recommended findings and conclusions are proper, based on the evidence presented at the hearings officer's hearing.

We have discussed this question because of my interest in the issue and because of my background as former City Attorney for Portland, where I on occasion participated in the land use hearing process (although I was not the principal land use attorney in the City Attorney's Office); and because I currently serve as a hearings officer for Metro in urban growth boundary amendment cases. The City allows the introduction of new evidence during appeal hearings before the City Council; whereas Metro requires all evidence to be provided to the hearings officer and does not allow new evidence during appeals to the Metro Council.

For the reasons expressed below, I strongly believe that participants should be required to present all their evidence to the hearings officer. Parties should not be allowed to present new evidence in an appeal hearing. I believe this provides the best process, organizationally, and it provides the fairest process.

Fairness Consideration. In 1973, the Oregon Supreme Court decided the case Fasano v. Washington County Commission, 264 Or 574, 507 P2d 23 (1973). This is a famous land use case in Oregon and, perhaps more significantly, is a key case in the evolution of land use law in the United States. As a general rule, prior to Fasano, a developer seeking authority to build a project that required a land use approval would request the approval, lobby the Planning Commission and the County Commission or City Council, and get an ordinance passed granting the approval (such as a zone change or a conditional use). In that era, institutionalized, established, active, ongoing neighborhood associations did not exist; notice requirements were minimal; and opposition to such approvals arose mostly if a citizen happened to find out about the proposal and assembled an ad hoc group to oppose the proposal. In this context, the developer, who often had a history of political contributions, who had current funding, and who had greater lobbying and technical sophistication, had a tremendous advantage. This was exacerbated by the fact that land use approvals generally were upheld in court appeals unless the deciding body's decision was "arbitrary or capricious." In other words, there was a perception, largely justified, that developers controlled the land use process.

In Fasano, the Supreme Court stepped in and said this was not acceptable. The Court said that when the land use decision-making process is dealing in the narrowed down realm of specific developments (as distinguished from broad zoning decisions), the process must be fair as to both the proponent and the opponent. The Court recognized that having a fair process - a better balanced playing field - would restrain the process of change. The Court concluded, however, that this was a price worth paying. In language that represents the core of the change of land use thinking in Oregon - and throughout the United States - the Court said:

"However, having weighed the dangers of making desirable change more difficult against the dangers of the almost irresistible pressures that can be asserted by private economic interests on local government, we believe that the latter dangers are more to be feared."
(264 Or at 587-88)

In order to correct this power imbalance between "private economic interests" (developers) and the average citizenry, the Supreme Court mandated several basic elements of "fair process":

1. Persons wishing to participate in a land use hearing must have an opportunity to present and rebut evidence and to have that evidence heard;

2. The hearing body (hearings officer/Planning Commission/County Commission or City Council) must be impartial (i.e., no lobbying);
3. A record must be made of the hearing; and
4. The hearing body must make findings of fact based on the evidence demonstrating that its conclusion is consistent with the legal standards governing the land use decision.

Since the Fasano decision, the Supreme Court has elaborated on and refined the requirements set out in that case. Further, the Oregon Legislature has established detailed and comprehensive requirements for land use processes, to an extent that the legislated requirements largely have supplanted the Court-established requirements. Nevertheless, the underlying rationale of the Fasano case still stands: The land use decision-making process should be fair, with no party being in a position to exert such political pressure on the decision-makers that the decision is made based on that pressure, rather than on the relationship between the facts established at the hearing and the legal standards governing the decision. Thus, in setting a land use process, this requirement of a basic, non-politicized process is something the County Commission should bear in mind.

Organizational Considerations. A second factor the Commission should consider is organizational practicalities. Land use decision making has become quite complex. There are many standards that apply to most land use decisions, and it is vital to arriving at timely and sustainable decisions that the process be well organized and conducted with expertise. A well organized process involves a number of steps:

1. Notice to all potentially interested parties that contains enough information for them to decide whether to participate in the decision-making process;
2. An identification of the legal standards that will govern the decision;
3. An opportunity for each interested party to present the evidence that the party believes is relevant to the decision; to hear the evidence presented by others; and to provide rebuttal evidence;
4. An opportunity for each interested party to present arguments about how the evidence presented relates to the applicable legal standards;

5. The preparation of written findings of fact, conclusions of law, and decision, based on the hearing record, and a notice thereof to interested parties;
6. An appeal process where interested parties can challenge the findings of fact, conclusions of law, and decision.

Theoretically, it is not necessary that each step of this process be segregated in the above order. For example, steps 3 and 4 usually are combined so that parties present their factual evidence and make their arguments in one combined presentation. And, significant to the question we have discussed, it is possible to allow the introduction of new factual evidence and the making of new arguments during the appeal process, as well as during an initial hearing process.

Focusing in on the question whether new evidence and arguments should be allowed during the appeal process, there are pros and cons to allowing this. On the pro side are the following:

1. Persons may not have realized the significance of the matter at the time of receiving the initial notice and thus may not have presented relevant evidence they otherwise would have presented;
2. Parties may not have realized what issues would be critical to the decision and thus may not have presented as much evidence on an issue as, in retrospect, they would like;
3. Parties may have discovered new evidence since the initial hearing.

On the con side are the following:

1. Given the complexity of land use decision-making, the best way to arrive at timely and sustainable decisions is to have a qualified, experienced hearings officer assemble the evidence, organize the evidence and legal standards, and prepare recommended findings of fact, conclusions, and decision for consideration by the appeals body. This is a difficult task and is one that the appeals bodies are not experts at doing.
2. If parties are required to present all evidence and arguments at the initial hearing, they will do so. If they are given a "second bite of the apple" at an appeal hearing, this will cause them to take the

initial hearing less seriously, thus diminishing the value of the initial hearing.

3. If the parties are allowed to introduce new evidence or arguments at an appeal hearing, this can create an element of surprise. If it does, then the surprised party logically could ask for a further opportunity to gather and present evidence or arguments. There is no clear end point to the process.

There no doubt are other pro and con arguments that can be made, but these highlight some of the main considerations.

Recommendation. As indicated at the beginning of this letter, I believe parties should be permitted to provide evidence only at the initial hearing, before the hearings officer.

From a fairness perspective, I believe this is the best way to arrive at fair decision-making. Historically, developers were able to exert "almost irresistible pressures" on local government, which in the pre-Fasano days created an unfair land use decision-making process. Interestingly, since then the tables have turned on developers, to some extent. Today, there are established, active, ongoing, institutionalized neighborhood associations; there are excellent notice requirements; and those opposing development proposals have access to sophisticated resources. Today, neighborhood groups are capable of turning out in large numbers and, in some cases, are themselves capable of creating "almost irresistible pressures" on local government. I realized the extent of this political power shift about a year ago, when a neighborhood association representative brainstormed with me the pros and cons of a proposed Portland ordinance requiring that all evidence be presented at the initial land use hearing. At that time, strictly for practical organizational reasons, I advocated for the Portland ordinance (which I had no part in developing). To my great interest, the neighborhood association opposed the ordinance because it felt it benefited from having the opportunity to bring massive numbers of people to the appeal hearing in order to exert political pressure on the decision makers. The association actually did not want the decision to be made based on the legal standards and the factual evidence. To me, this was a very dangerous proposition. Fairness in the decision-making process is a value worth protecting as an end in itself, whether the fairness helps the developer or the opponent. If this is true, then the County should establish a land use decision-making process that minimizes the opportunity for anyone - developer, neighborhood group, whoever - to exert "almost irresistible pressures" on the decision makers. By requiring all evidence to be presented at the initial hearing, the County in effect would be limiting any

Commissioner Tanya Collier, September 28, 1993

Page 6

appeal hearing to the restricted issue of the relationship between the evidence and the legal standards. In my view, this would dampen the ability of any person to use the appeal hearing as an opportunity to exert inappropriate political pressure on the decision makers. For this reason, I believe a restricted appeal hearing is fairer.

From an organizational perspective, my experience has been that the process works much better when all evidence must be presented to the hearings officer. When that is required, people know they must make their best case at the initial hearing and they do so. The arguments on appeal then are much more precise and focused on the real issues on which the decision will turn. On the other hand, when evidence is allowed to be presented on appeal, people do not make their best case at the initial hearing and the appeal process often becomes confused.

For these reasons, I believe it would be a significant advancement for the County to require that all evidence in land use cases be presented to the hearings officer and that new evidence not be allowed on appeal. If a person has a valid reason for wanting to provide new evidence, the matter should be remanded to the hearings officer to reopen the hearing, receive the evidence, and issue revised findings, conclusions, and decision. I believe this will be the best way to assure fair and high quality decision-making.

Please let me know if I can be of further assistance.

Very truly yours,

A handwritten signature in cursive script, appearing to read "C. P. Thomas".

Christopher P. Thomas

MOSKOWITZ & THOMAS

ATTORNEYS AT LAW
2000 S.W. 1ST AVENUE
SUITE 400

PORTLAND, OREGON 97201
TELEPHONE (503)227-1116
FAX (503)227-3015

Christopher P. Thomas

Steven A. Moskowitz

September 30, 1993

Commissioner Tanya Collier
Multnomah County Commission
1120 S.W. Fifth Avenue, Suite 1500
Portland, OR 97204

Subject: County Land Use Appeals

Dear Commissioner Collier:

This is in response to your inquiry of September 24, 1993, a copy of which is enclosed. I will respond to your questions in the order asked.

1. What is the role of the governing body in land use appeals? A land use case involves two main elements: (1) The facts of the particular situation, and (2) the legal standards applicable to the type of land use approval the applicant has requested. The general role of a land use decision maker is to determine the facts, identify the applicable legal standards, apply the legal standards to the facts, and determine the outcome that this application of legal standards to facts dictates.

Of course, although the role I just have described sounds fairly mechanical, in real life the land use decision maker must exercise both judgment and discretion. For one thing, the facts and the legal standards may not be clear. If they are not, the decision maker must do its best to identify the relevant facts and to determine the meaning of the legal standards. For another thing, the application of legal standards to facts may require judgment - for example, the imposition of conditions of approval to mitigate negative impacts often involves determination of what level of mitigation costs is reasonable and what level of negative impacts is acceptable.

Nevertheless, however easy or difficult the matter is, the fundamental job of the land use decision maker, ultimately the governing body, is to apply the applicable legal standards to the relevant facts and determine the decision that arises out of that application.

Please note that this is very different than the governing body's role in adopting legislation. In the legislative arena, the governing body's role is to figure out what the public policy should be and then establish that public policy through legislation. In the land use arena, the governing body does this when it adopts the Comprehensive Plan and, although constrained by the Comprehensive Plan, when it adopts the zoning code. When an applicant comes in with a specific development, however, even one involving a zone change, the governing body's role is quite different. The governing body no longer is supposed to determine what would be good public policy - that determination already is contained in the Comprehensive Plan and overall zoning code. Rather, the governing body is supposed to apply the standards established by the Zoning Code (and Comprehensive Plan, as appropriate) to the facts of the particular case. So long as this is done, the outcome of the decision-making process will be, by definition, consistent with public policy. (Note that if a governing body believes the outcome is not consistent with public policy, that simply means that the governing body does not like the policy set by the Comprehensive Plan and/or zoning code. The governing body's role in that case is to make the decision required by the current legal standards, but then amend the zoning code and/or Comprehensive Plan so the situation does not repeat itself.)

2. What is the purpose of the appeals process? I believe the appeals process should offer parties an opportunity to do three things: (1) to question whether the hearings officer correctly determined the facts based on the evidence presented; (2) to question whether the hearings officer correctly identified and interpreted the applicable legal standards; and (3) to question whether the hearings officer correctly applied the legal standards to the facts in reaching a decision.

Please note that in answering this question, I have implicitly taken the position that all evidence of the facts of a specific situation should be presented first to the hearings officer. I do not believe an appeal body should hear new factual evidence. Rather, it should look only to the record made before the hearings officer to decide whether the hearings officer correctly determined the facts. I have set out my reasons for this in a separate letter, which I am enclosing with this letter.

3. What is an appropriate scope of review? I believe I have answered this mostly in my answer to the previous question. In essence, I believe the review should be de novo, but on the record made before the hearings officer. Thus there would be no new evidence permitted, but the governing body would exercise its independent judgment based on the evidence contained in the record and the applicable legal standards.

4. Under what circumstances should each of the scope of review options be exercised? As you can see, I have not recommended options. As indicated in my enclosed letter, however, I believe it is appropriate for the governing body to remand a case to the hearings officer for the receiving of additional evidence and the making of any revisions in the findings, conclusion, and decision that the hearings officer believes appropriate based on any new evidence. Frankly, I believe cases should be remanded for the taking of new evidence only under two circumstances: (1) the evidence is newly discovered, and the offering party could not reasonably have been expected to discover the evidence at the time of the initial hearing, and (2) for substantial public policy reasons, the governing body itself would like additional evidence on a particular issue.

5. What is the most beneficial use of hearings officers in the appeals process? I believe the main job of the hearings officer should be to organize and present a land use matter in a way that will enable the governing body to efficiently make a good decision. In line with this, the hearings officer must:

- (1) Receive all evidence. If there is a question about the relevance of evidence submitted, the hearings officer should decide whether the evidence is relevant and state that decision in the recommended findings, conclusions, and decision so the governing body can review the decision and reach its own conclusion on relevance.
- (2) Identify all applicable legal standards. If there is a question about what the standards are, or what they mean, the hearings officer should decide what the standards are and what they mean and state the decision in the recommended findings, conclusion, and decision so the governing body can review the decision and reach its own conclusion.

- (3) Recommend findings of fact based on the evidence. This should include identifying areas where the facts are debatable so that the governing body can review the proposed findings and reach its own conclusion.
- (4) Apply the applicable standards to the facts, to reach conclusions as to the standards. Here too, where a conclusion is debatable, the hearings officer should identify it so the governing body can review the conclusion and reach its own decision.
- (5) Recommend a decision based on the conclusions.

As may be apparent from this description, the hearings officer primarily provides a service to the governing body, organizing the case, identifying the critical issues, making recommendations for how to decide the critical issues, and presenting the matter and especially the critical issues to the governing body so that the governing body can reach its own conclusion on those critical issues. It is important that the hearings officer accept this role, which is different than being an advocate for a particular outcome.

In this context, there is debate about what the hearings officer's role should be once she/he has prepared recommended findings, conclusions, and decision. Some believe the hearings officer should "disappear" at that point, so as not to get into a defensive, advocacy role. Others believe that the hearings officer should give an oral presentation to the governing body, highlighting the critical issues and emphasizing places where the governing body, on the record, might reach a different conclusion; and answering questions. I have had experience with both approaches. Although it requires a more mature hearings officer, I believe that having the hearings officer give a presentation is a better approach. Also, if the governing body reaches a different conclusion on an issue, I believe it is best to ask the hearings officer to revise the recommended findings, conclusion, and decision to conform to the governing body's decision. (A good hearings officer will do the best job of making revisions and will be the most efficient at doing it.)

In a further related issue, I believe it is appropriate in most land use cases for the hearings officer's decision to become the final action, if there is no appeal, simply as a matter of efficiency.

6. Should appellants be limited to issues raised in the notice of appeal? I believe it is important that parties raise issues in the initial hearing and, if not then, at least in the notice of appeal. This is partly a matter of good organization of the appeal process: everyone should know at the outset of an appeal what issues to spend time on. It also is a matter of getting the parties to take the early stages of the process seriously, which will make for a more efficient and effective process in the long run.

7. How can we best define an appeals process to minimize LUBA reversals? I believe the approach I have outlined is the best way to reach decisions that will be sustained on appeal. In particular, this approach will minimize the amount of chaos at governing body hearings - by avoiding the introduction there of new evidence and new issues that no one has thought about. Instead, it will have issues arise and be presented in a relatively orderly fashion and will help the governing body focus on those issues that are the "turning points" for a particular case. This is the best way to avoid reversal on appeal.

8. Under what circumstances should a hearings officer be reversed? As I have indicated above, a good hearings officer actually will point out to the governing body where it might reach a contrary conclusion. In those areas, the governing body should feel free to exercise its own independent judgment. A good hearings officer makes a recommendation, but actually wants the governing body to exercise independent judgment on these "turning point" issues. Outside those areas, the hearings officer effectively is saying that it would be very hard or impossible to sustain legally a different conclusion. Although appellants can argue to the contrary, and should be listened to, I believe the governing body would be wise to think very carefully before reversing a hearings officer under that circumstance.

I hope I have provided you with the kinds of responses that will be helpful. Please feel free to call me if there is anything else I can do.

Very truly yours,



Christopher P. Thomas

application to be reconsidered by the Hearings Official, then to receive reconsideration by the Hearings Official, the applicant must first agree to a 30-day waiver of any statutory application timelines, and such a waiver shall be in addition to any other waivers already given.

(4). Appeal of Reconsidered Decisions. Reconsidered decisions may be appealed to the Board within 10 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.

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) Initiating an Elective Review. Following the acceptance of an appeal from a Hearings Official decision and following an indication from the Hearings Official not to reconsider the decision, the Board shall determine whether or not they wish to conduct an on the record hearing for the appeal.

(3) Hearing Deadline. The determination mentioned in LC 14.600(2) above shall be held by the Board within 14 days of the expiration of the appeal period from the Hearings Official decision.

(4) Decision Criteria.

(a) Within seven days of the determination mentioned in LC 14.600(2) above, the Board shall adopt a written decision to have a hearing on the record for the appeal or not to further review the appeal.

(b) The order shall show compliance with one or more of the following criteria:

i. The issue is of Countywide significance.

ii. The issue will reoccur with frequency and there is a need for policy guidance.

iii. The issue involves a unique environmental resource.

iv. The Planning Director or Hearings Official recommends review.

(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.

TYPE II - LAND USE DECISION

| | | | | |
|----------------------------------|---|--|--|---|
| LAND USE ACTION | <ul style="list-style-type: none"> • Zoning & Comp. Plan Errors • Greenway Review • Convenience Store Review • Essential Service Provider Review • Excavation & Fill Review • Hazardous Substance Review • Industrial Park Review • Interim Resource Protection Review • Substandard Lot Review • Minor Subdivision | Demolition Review in historic design districts | Minor Design Review | Adjustments (Variances) |
| STAFF REPORT PREPARATION | Staff | Staff | Staff | Staff |
| INITIAL DECISION | STAFF | STAFF | STAFF | STAFF |
| APPEALABLE TO/BY De Novo Hearing | HEARINGS OFFICER applicant or citizens | LANDMARKS COMMISSION applicant or citizens | DESIGN COMMISSION applicant or citizens | ADJUSTMENT COMMITTEE applicant or citizens |
| PREPARATION OF FINAL DECISION | Staff/Hearings Officer Prevailing Party | Staff/Prevailing Party | Staff/Prevailing Party | Staff/Prevailing Party |
| APPEALABLE TO: | LUBA | LUBA | LUBA | LUBA |

TYPE III - LAND USE DECISION

| | | | |
|---|---|---|---|
| LAND USE DECISION | <ul style="list-style-type: none"> • Comp Plan Amendment • Zone Change • Major Conditional Use Review • Conditional Use Marta Review • Environmental Review • Greenway Review (Goal Exception) • Nonconforming Use Review • Planned Unit Development • Interpretations • Major Subdivision • Major Partition | Demolition of historic landmark in historic design district | Major Design Review |
| STAFF REPORT PREPARATION | Staff | Staff | Staff |
| INITIAL DECISION | HEARINGS OFFICER | LANDMARKS COMMISSION | DESIGN COMMISSION |
| PREPARATION OF DECISION | Hearings Officer | Staff | Staff |
| Appealable To\By De Novo Hearing | COUNCIL applicant/citizens | COUNCIL applicant/citizens | COUNCIL applicant/citizens |
| PREPARATION OF FINAL DECISION | Staff/Prevailing Party/City Attorney | Staff/Prevailing Party/City Attorney | Staff/Prevailing Party/City Attorney |
| APPEALABLE TO: | LUBA | LUBA | LUBA |

CHAPTER 33.730 QUASI-JUDICIAL PROCEDURES

Sections:

General

33.730.010 Purpose

Basic Procedures

33.730.020 Type II Procedure

33.730.030 Type III Procedure

33.730.040 Final Council Action Required

General Information on Procedures

33.730.050 Pre-Application Conference

33.730.060 Application Requirements

33.730.070 Written Notice Requirements

33.730.080 Posting Requirements

33.730.090 Reports and Record Keeping

33.730.100 Public Hearing Requirements

33.730.110 Ex Parte Contact

After a Final Decision

33.730.120 Recording an Approval

33.730.130 Expiration of an Approval

33.730.140 Requests for Changes to Conditions of Approval

General

33.730.010 Purpose

This chapter states the procedures and requirements for quasi-judicial reviews. It contains the step-by-step processing requirements. The chapter also describes the rules of conduct for all people involved in the quasi-judicial review process. The assignment of procedures to specific reviews is done in the chapter that establishes the review. The assignment of the review body is done in Chapter 33.720, Assignment of Review Bodies.

The regulations provide standardized methods for processing quasi-judicial land use reviews. The requirements provide clear and consistent rules to ensure that the legal rights of individual property owners and the general public are protected. The rules implement state law, including the requirement that all quasi-judicial reviews must be completed within 120 days of filing a complete application. The Type II and Type III procedures, with their varying levels of review, provide the City with options when assigning procedures to each quasi-judicial review in this Title. The Type I procedure is an administrative procedure and is not used for quasi-judicial reviews.

The Type II procedure is the shorter and simpler of the two quasi-judicial reviews. It is intended for reviews which involve lesser amounts of discretion, lower potential impacts, or both. The Type III procedure is the longer and more in-depth review. It is intended for reviews which involve the most discretion or the greatest potential impacts.

Basic Procedures

33.730.020 Type II Procedure

The Type II procedure is an administrative process, with the opportunity to appeal the Director's decision to another review body.

- A. Pre-application conference.** A pre-application conference is optional unless it is a specific requirement of a review. See 33.730.050, Pre-Application Conference.
- B. Application.** The applicant must submit an application on the appropriate form and accompanied by the correct fee. The application must contain all information required by 33.730.060, Application Requirements, and any additional information required for the specific type of land use review.
- C. Preliminary notice.** Upon receipt of an application, the Director will mail a notice of the request to all property owners within 150 feet of the lot when within the Urban Growth Boundary (UGB) and within 500 feet when outside the UGB, to the recognized organization(s) in which the lot is located, and to all recognized organizations within 400 feet of the lot. See 33.730.070 B, Type II notice of request.
- D. Processing time.** Upon determining that the application is complete, the Director will make a decision on the case within 14 days. The applicant may extend this time limit.
- E. Administrative decision.**
 - 1. In making the decision, the Director may consult with the owner, applicant, other citizens, City agencies, and other public and private organizations to solicit information relevant to the request. The decision is based on the Director's findings, which are based on an evaluation of the facts and the applicable code regulations.
 - 2. The decision report will be prepared as provided in 33.730.090, Reports and Record Keeping, and must be kept with the public record of the case.
 - 3. A copy of the decision report will be mailed to the owner, applicant if different, the recognized organization(s) in which the site is located, and will be made available to the public.
- F. Notice of decision (pending appeal).** The Director will file the notice of decision (pending appeal) by the next working day after the decision is made. Within 5 days of filing the notice of decision, the Director will mail a notice of the decision to all property owners within 150 feet of the lot when within the Urban Growth Boundary (UGB) and within 500 feet when outside the UGB, to the recognized organization(s) in which the lot is located, to all recognized organizations within 400 feet of the lot, and to the City Auditor. See 33.730.070 E, Notice of decision (pending appeal).
- G. Ability to appeal.** The Director's decision is final unless appealed. The decision may be appealed by the applicant, the owner, and those entitled to notice. The appeal must be submitted to the Director within 14 days of the day the notice of decision is mailed. The review body for the appeal will be as stated in 33.720, Assignment of Review Bodies.

H. When no appeal is filed. If no one appeals the decision, an approved request takes effect on the day after the last day to appeal.

I. When an appeal is filed. Appeals must comply with this subsection.

1. Content of the appeal. The appeal must be submitted on forms provided by the Director. All information requested on the form must be submitted in order for the appeal form to be accepted. The appeal request must include:
 - The file number and land use review(s) appealed;
 - The appellant's name, address, signature, phone number;
 - A statement of which approval criteria the decision violates; and
 - The required fee.
2. Notification of appeal hearing. The Director will file a copy of the appeal within 3 days of its receipt to the City Auditor and the applicant, unless the applicant is also the appellant. Within 5 days of the receipt of the appeal, the Director will send a notice of the appeal hearing to the applicant and all persons and recognized organizations which received the notice of the decision. See 33.730.070 F, Notice of an appeal hearing.
3. Scheduling of hearing. The Director will schedule a public hearing to take place at least 21 days from the mailing of the notice of appeal.
4. Submit report to review body. The Director will forward the decision report and a copy of the appeal to the review body and make the report and copy of the appeal available to the public at least 7 days prior to the date of the hearing.
5. Appeal hearing. Appeal hearings must comply with the provisions of 33.730.100, Public Hearing Requirements, and 33.730.110, Ex Parte Contact.
6. Appeal decision. The review body may adopt the decision report of the Director, modify it, or reject it based on information presented at the hearing and in the record.
 - a. The Hearings Officer will make a written decision in the form of a report and mail notice of the decision within 17 days of the hearing.
 - b. Other review bodies. Other review bodies will make all deliberations and decisions at the hearing.
7. Amended decision report. If the review body modifies or rejects the decision report, an amended report with findings supporting the decision must be prepared. For review bodies other than the Hearings Officer, the Director will prepare the amended decision report and mail notice of the decision within 17 days of the hearing. The report must comply with 33.730.090, Reports and Record Keeping.
8. Notice of final decision. When the Hearings Officer is the review body, the Hearings Officer will mail notice of the decision. For other review bodies, the Director will mail notice of the decision. Within 17 days of the hearing, the Hearings Officer or Director will mail notice of the review body's final decision to the City Auditor, applicant, owner, and to any recognized organizations or persons who responded in writing to the appeal notice, testified at the hearing, or requested notice of the decision. In the case of multiple signatures on a letter or petition, the

person who submitted the letter or petition or the first signature on the petition will receive the notice. See 33.730.070 G, Notice of final decision.

9. Effective date of decision. The review body's decision takes effect on the day the notice is mailed.
10. Appeal decision final. The appeal decision of the review body is final and may not be appealed to another review body within the City.

33.730.030 Type III Procedure

A Type III procedure requires a public hearing before an assigned review body.

- A. **Pre-application conference.** A pre-application conference is required for all requests processed through a Type III procedure. See 33.730.050, Pre-Application Conference.
- B. **Application.** The applicant must submit an application on the appropriate form and accompanied by the correct fee. The application must contain all information required by 33.730.060, Application Requirements, and any additional information required for the specific type of land use review.
- C. **Processing time.** Upon determining that the application is complete, the Director will schedule a public hearing to take place within 51 days. The applicant may extend the time limit.
- D. **Notice of a request.**
 1. Mailed notice. At least 20 days before the scheduled hearing, the Director will mail a notice of the request to all properties within 400 feet of the site when inside the Urban Growth Boundary (UGB) and within 500 feet when outside the UGB, to the recognized organization(s) in which the lot is located, and to all recognized organizations within 1,000 feet of the lot. See 33.730.070 C, Type III notice of request.
 2. Posting notice on the site. The applicant must place a public notice about the request on the site. The posting must meet the standards of 33.730.080 below.
- E. **Decision by review body.**
 1. Bureau of Planning recommendation. The Director will prepare a report with recommendations, and file the report with the review body and make the report available to the public at least 10 days prior to the hearing. A copy will be mailed to the applicant and to any recognized organizations whose boundaries include the site.
 2. Public hearing. The public hearing will be conducted by the assigned review body. It will be held in accordance with the requirements of 33.730.100, Public Hearing Requirements.
 3. Review body decision. The review body may adopt the Director's report and recommendation, modify it, or reject it based on information presented at the hearing and in the record.

- a. Hearings Officer. The Hearings Officer will make a written decision in the form of a report and mail notice of the decision within 17 days of the hearing.
 - b. Other review bodies. Other review bodies will make all deliberations and decisions at the hearing.
4. Amended decision report. If the review body modifies or rejects the Director's report, an amended report with findings supporting the decision will be prepared. For review bodies other than the Hearings Officer, the Director will prepare the amended decision report and mail notice of the decision within 17 days of the hearing. The report must comply with 33.730.090, Reports and Record Keeping.
 5. Notice of decision (pending appeal). When the Hearings Officer is the review body, the Hearings Officer will mail notice of the decision. For other review bodies, the Director will mail notice of the decision. Within 17 days of the hearing, the Hearings Officer or Director will mail notice of the review body's decision (pending appeal) to the City Auditor, applicant, owner, and to any recognized organizations or persons who responded in writing to the appeal notice, testified at the hearing, or requested notice of the decision. In the case of multiple signatures on a letter or petition, the person who submitted the letter or petition or the first signature on the petition will receive the notice. See 33.730.070 E, Notice of decision (pending appeal).
- F. Ability to appeal.** The review body's decision is final unless appealed. The decision may be appealed by the applicant, the owner, and those who have testified orally or in writing at the hearing, provided that the testimony was directed to a specific approval criterion. The appeal must be submitted to the Director within 14 days of the day the notice of decision is mailed. The review body for the appeal will be the City Council.
- G. When no appeal is filed.** If no one appeals the decision, an approved request takes effect on the day after the last day to appeal.
- H. When an appeal is filed.** Appeals must comply with this subsection.
1. Content of the appeal. The appeal must be submitted on forms provided by the Director. All information requested on the form must be submitted in order for the appeal form to be accepted. The appeal request must include:
 - The file number and land use review(s) appealed;
 - The appellant's name, address, signature, phone number, and relationship to the land use action;
 - A statement of which approval criteria the decision violates; and
 - The required fee.
 2. Notice of the appeal hearing. The Director will file a copy of the appeal within 3 days of its receipt to the City Auditor and the applicant, unless the applicant is also the appellant. Within 5 days of the receipt of the appeal, the Director will send a notice of the appeal hearing to the City Auditor, applicant, the review body, and all persons and recognized organizations which received the notice of the decision. See 33.730.070 F, Notice of an appeal hearing.
 3. Scheduling of hearing. The City Auditor will schedule a public hearing to take place at least 21 days from the mailing of the notice of appeal.

4. Submit report to City Council. The Director will forward the appeal as filed, the review body's decision report, and a transcript if requested and paid for, to City Council at least 7 days prior to the date of the hearing.
5. Appeal hearing. Appeal hearings must comply with the provisions of 33.730.100, Public Hearing Requirements, and 33.730.110, Ex Parte Contact. Appeals heard by City Council may be heard "on the record" and must also conform to any rules of procedure adopted by Council for their use. The Director will represent the review body in appeals heard by City Council.
6. Appeal decision and findings.
 - a. The City Council may adopt the review body's decision report, modify it, or reject it based on information presented at the hearing and in the record. If City Council modifies or rejects the decision report, an amended report with findings supporting the decision must be prepared as provided in Subparagraph b. below. The report must comply with 33.730.090, Reports and Record Keeping.
 - b. The Council may make a tentative action and direct that proposed findings and a decision be prepared. If the prevailing party is represented by a land use professional or attorney, the prevailing party must provide findings and conclusions to support the Council's decision. If the prevailing party is not represented by a planning professional or attorney, the Director will provide findings and conclusions to support the Council's decision. Prior to final Council adoption, all findings must be reviewed and approved by the City Attorney. The findings and decision must be adopted by Council vote. An additional public hearing is not required if the vote is at a subsequent public meeting. City Council decisions are in the form of an Order of the Council except when an ordinance is required due to the type of land use request (Comprehensive Plan Map amendments or Statewide Planning Goal exceptions). In these instances, the ordinance serves in lieu of the Order of Council.
7. Notice of the final decision. Within 5 days of final Council action, the City Auditor will mail the notice of final decision to the applicant, owner, and to any recognized organizations or persons who responded in writing to the appeal notice, testified at the hearing, or requested notice of the decision. In the case of multiple signatures on a letter or petition, the person who submitted the letter or petition or the first signature on the petition will receive the notice. See 33.730.070 G, Notice of final decision.
8. Effective date of decision. The City Council's decision takes effect on the day the notice of decision is mailed by the City Auditor.
9. Appeal decision final. The appeal decision of City Council is final and may not be appealed to another review body in the City.

33.730.040 Final Council Action Required

In the case of certain quasi-judicial land use reviews, such as Comprehensive Plan Map amendments and Statewide Planning Goal exceptions, final City Council action is required in addition to the normal Type III procedure. In these cases, the initial processing of the land use review is the same except the decision of the initial review body becomes a recommendation to

Metro Urban Growth Boundary (UGB) Land Use Appeals Procedure

Metro's quasi-judicial land use decision procedure may not be an example of an elected board hearing "all appeals." It applies to only plan amendments, one class of land use decision. Metro does not decide the variety of greater and lesser city and county land use permits. Its quasi-judicial decisions are UGB amendments, legally a comprehensive plan amendment.

Procedure Summary:

- application by annual deadline (includes applicable city/county position)
- staff review and recommendation to Hearings Officer (copy to parties)
- evidentiary hearing by Hearings Officer creates record
 - staff report
 - petition evidence
 - opponent evidence
 - exhibits marked for record
- Proposed Order (with Findings)/hearing record (30 days after hearing)
- written exceptions to Hearings Officer's Proposed Order by all parties (20 days)
- Metro Council Decision: Approve, Remand, Deny Petition
 - based on Proposed Order, record (includes staff recommendation), written exceptions
 - consider requests to submit additional evidence
 - parties' opportunity to comment on Proposed Order (argument, not new evidence)
 - adopt or amend Hearings Officer's Proposed Order (or remand for more evidence)

Multnomah County Questions Answered:

- Council makes the only final decision based on Hearings Officer's record and Proposed Order and parties' written exceptions with the staff recommendation in the record.
- Staff report accompanies petition to Hearings Officer prior to evidentiary hearing and contract Hearings Officer prepares a proposed decision with finding.

Metro Urban Growth Boundary (UGB) Land Use Appeals Procedure

Page 2

- Council final decision is like an automatic "appeal," because the Hearings Officer's "decision" is a recommendation that either party can "appeal" by written exceptions.
- Exceptions occur in most cases, often resulting in changes to parts of the Hearings Officer's Proposed Order which are drafted by staff and Metro General Counsel.

Assessment:

For comprehensive plan amendments, like Metro's UGB decisions, final decision by elected officials with some case preparation is the norm. Contract Attorney Hearings Officers, like Chris Thomas, provide Metro the advantages of (1) an independent review based on the legal criteria, (2) a complete, professional evidentiary hearing record for the parties and the elected Council, and (3) clear isolation of case preparation costs. The common criticism of non-elected Hearings Officer's decision-making is avoided because the Hearings Officer makes no final decision. The contested issues are focused by the Proposed Order, written exceptions, and party argument before the elected Council.

The primary criticism of the process itself is the difficulty at Council consideration to keep argument by the parties away from "new evidence" by the "losing" party. But, the focusing of the legal criteria and the evidence presented to the Hearings Officer by the process aids in identifying "new evidence" and limits confusion. Also, the process depends on elected officials' preparation for final decision by familiarizing themselves with the record.

On scope of review, I concur with Chris Thomas' reported comments recommending appeals on the record. Metro's process allows the Council to vote to hear new evidence or remand for more evidence before the Hearings Officer. Allowing new evidence is rare. Generally new evidence is only allowed when it is newly-discovered, not available at the evidentiary hearing.

**Decision Process for METRO Council
UGB Amendments)**

| | Hearings Decisions |
|-------------------------------------|-----------------------------|
| Type of Decision | UGB Amendment |
| Report Preparation | Staff/Hearings Officer |
| Initial Decision (On the Record) | MSD Council |
| Preparation of Decision | Staff/General Legal Counsel |
| Appealable To: | LUBA |
| By: | applicant/citizens |
| Preparation of Final Decision | |
| Appealable To: | |

CLACKAMAS COUNTY LAND USE APPEAL PROCESS

1500 apps.
350 HO's

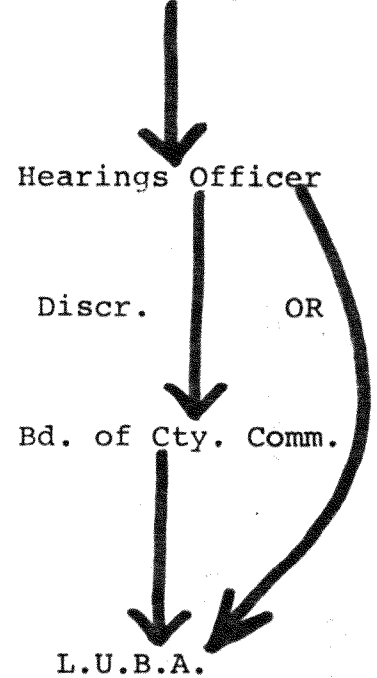
Planning Director
Decisions (other
than Interpret-
ations)



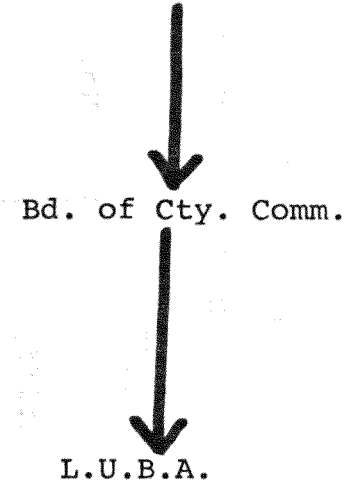
Hearings Officer
Decisions
(e.g. zone change,
cond. use, large
subdivisions)



Planning Director
Interpretations
(e.g. meaning of
terms, non-
conforming uses)



Comp Plan Amendments
Planning Commission
(recommendation)



MODEL

PRO

ALL

1. Working Knowledge. Over time, the Board will be exposed to all aspects (operational and policy implications) of the Comprehensive Plan and Zoning Code. Consequently, members of the Board will be in a better position to formulate their own views concerning the need for change to specific land use policy and regulations.
2. Maximum response to constituents. The Board has the potential of being an active participant in all land use decisions.
3. Interpret Policy. The Board will get a chance to influence how policy in the plan and code are interpreted. This assures consistency with the original intent of the plan and code.

SOME (Type, Criteria, Type + Criteria)

1. Improved Efficiency. Reduce the number of hearing cases and only hear important cases. The criteria used to select "important" cases will have different implications:
 - a) "Type" method - easy application, no debates.
 - b) "Criteria" method - allows a person and/or Board to choose cases to be heard.

CON

1. Less Efficiency. The Board will spend time on some cases that may not have policy implications and/or have limited application on a county-wide basis.
 2. Procedural Errors. The more hearings held at the local level increases the opportunity for procedural error.
 3. Cost Savings. Appeal Hearings at the Board level increase the cost of Land Use Planning Services between 26% to 30%.
-
1. Procedural Errors. The more hearings held at the local level increases the opportunity for procedural error. This approach will reduce the number of cases that will be heard by the Board, however, two hearings will be allowed for some types of cases.
 2. Cost Savings. Appeal Hearings at the Board level increase the cost of Land Use Planning Services between 26% to 30%.
 3. Limit Policy Discussion. "Type" method may limit Boards review of a case that has policy implications, an important case.
 4. Increased Ex Parte Contact. "Criteria" method requires some person or body to determine on a case-by-case basis whether a case will be heard. This may result in

increased ex parte contact with Board members given two possible decisions for each appealed cases (*i.e.*, whether to hear the case, and if heard, the merits of the case)

5. Same level of Public Debate. The "Criteria" method may result in comparable level of debate and challenge that now occur with the Scope of Review discussion.
6. Another Decision. The "Criteria" method adds another decision to the Appeal process.

NONE

1. Clarifies Board Role. Board focus is on Policy development and review, not policy interpretation.
2. Least Cost. Reduces cost of hearings by approximately 25% to 30%.
3. Speeder Decision Making. This option eliminates a time consuming process in the method for making final land use decisions.
1. Limited Working Knowledge. Over time, the Board will not be exposed to all aspects (operational and policy implications) of the Comprehensive Plan and Zoning Code. Consequently, members of the Board will have other views concerning the need for change to specific land use policy and regulations.
2. Minimum response to constituents. The Board will not be able to respond directly to a constituents concern(s).

Decision Process for Multnomah County Planning & Zoning Actions

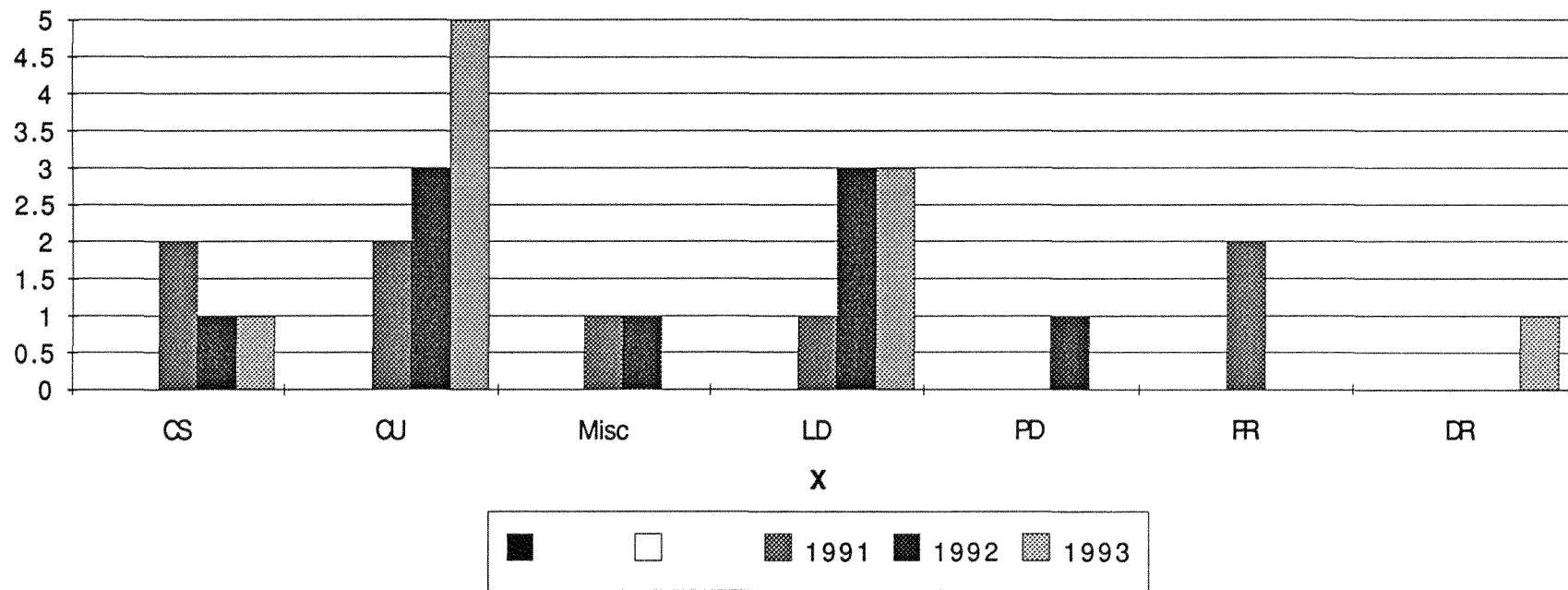
| Hearings Decisions | | | Administrative Decisions |
|-------------------------------|--|--|---|
| Type of Decision | Comprehensive Plan Amendment Ordinance Interpretation | Zone Change Conditional Use Community Service Planned Development Modification of Conditions Appeal of Admin. Decision Variance Subdivision | Health Hardship Variances Exception Administrative Decision Willamette Greenway Sig. Environmental Concern Hillside Development Erosion Control Design Review Land Divisions Flood Plain Review |
| Report Preparation | Staff | Staff | Staff |
| Initial Decision | Planning Commission | Hearings Officer | Planning Director |
| Preparation of Decision | Planning Commission | Hearings Officer | Staff |
| Appealable To: | Board of County Commissioners | Board of County Commissioners | Hearings Officer |
| By: | applicant/citizens | applicant/citizens | applicant/citizens |
| Preparation of Final Decision | Staff/Prevailing Party | Staff/Prevailing Party | Hearings Officer |
| Appealable To: | LUBA | LUBA | Board of County Commissioners as an appeal of a Hearings Officer Decision (Ultimately appealable to LUBA) |

Appeal Cases

[illegible]

Appeal Cases Chart 2

Cases Appealed to the Board



MODEL

PRO

ALL

1. Working Knowledge. Over time, the Board will be exposed to all aspects (operational and policy implications) of the Comprehensive Plan and Zoning Code. Consequently, members of the Board will be in a better position to formulate their own views concerning the need for change to specific land use policy and regulations.
2. Maximum response to constituents. The Board has the potential of being an active participant in all land use decisions.
3. Interpret Policy. The Board will get a chance to influence how policy in the plan and code are interpreted. This assures consistency with the original intent of the plan and code.

SOME (Type, Criteria, Type + Criteria)

1. Improved Efficiency. Reduce the number of hearing cases and only hear important cases. The criteria used to select "important" cases will have different implications:
 - a) "Type" method - easy application, no debates.
 - b) "Criteria" method - allows a person and/or Board to choose cases to be heard.

CON

1. Less Efficiency. The Board will spend time on some cases that may not have policy implications and/or have limited application on a county-wide basis.
 2. Procedural Errors. The more hearings held at the local level increases the opportunity for procedural error.
 3. Cost Savings. Appeal Hearings at the Board level increase the cost of Land Use Planning Services between 26% to 30%.
-
1. Procedural Errors. The more hearings held at the local level increases the opportunity for procedural error. This approach will reduce the number of cases that will be heard by the Board, however, two hearings will be allowed for some types of cases.
 2. Cost Savings. Appeal Hearings at the Board level increase the cost of Land Use Planning Services between 26% to 30%.
 3. Limit Policy Discussion. "Type" method may limit Boards review of a case that has policy implications, an important case.
 4. Increased Ex Parte Contact. "Criteria" method requires some person or body to determine on a case-by-case basis whether a case will be heard. This may result in

increased ex parte contact with Board members given two possible decisions for each appealed cases (*i.e.*, whether to hear the case, and if heard, the merits of the case).

5. Same level of Public Debate. The "Criteria" method may result in comparable level of debate and challenge that now occur with the Scope of Review discussion.
6. Another Decision. The "Criteria" method adds another decision to the Appeal process.

NONE

1. Clarifies Board Role. Board focus is on Policy development and review, not policy interpretation.
2. Least Cost. Reduces cost of hearings by approximately 25% to 30%.
3. Speeder Decision Making. This option eliminates a time consuming process in the method for making final land use decisions.
1. Limited Working Knowledge. Over time, the Board will not be exposed to all aspects (operational and policy implications) of the Comprehensive Plan and Zoning Code. Consequently, members of the Board will other views concerning the need for change to specific land use policy and regulations.
2. Minimum response to constituents. The Board will not be able to respond directly to a constituents concern(s).

Appealed Cases

| | CS | CU | MC | LD | PD | PR | DR |
|------|----|----|----|----|----|----|----|
| 1991 | 2 | 2 | 1 | 1 | | 2 | |
| 1992 | 1 | 3 | 1 | 3 | 1 | | |
| 1993 | 1 | 5 | | 3 | | | 1 |

MEETING DATE: DEC 14 1993

AGENDA NO: B2

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Program Narrative and key results (performance measurements) for 1994-95 Budget

BOARD BRIEFING

Date Requested: 12/14

Amount of Time Needed: 1 hour

DEPARTMENT: Nondepartmental DIVISION: Planning & Budget

CONTACT: Dave Warren TELEPHONE #: 248 - 3822
BLDG/ROOM #: 160 / 1400

PERSON(S) MAKING PRESENTATION: Dave Warren and Gary Blackmer

ACTION REQUESTED:

☒ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☐ APPROVAL ☐ OTHER

SUMMARY (Statement of rationale for action requested, personnel and fiscal/budgetary impacts, if applicable):

Briefing and discussion with the Board of program measurements and program narrative. This briefing will be background preparation for the work sessions on 12/14, 12/15, 12/21, and 12/22

SIGNATURES REQUIRED:

ELECTED OFFICIAL: M. Steinhilber

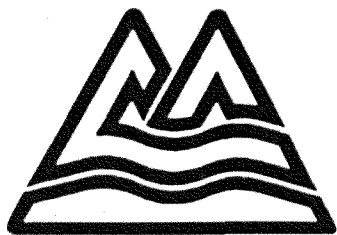
OR

DEPARTMENT MANAGER: _____

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions?: Call the Office of the Board Clerk 248-3277/248-5222

BOARD OF
COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON
1993 DEC -9 AM 8:42




MULTNOMAH COUNTY, OREGON

BOARD OF COUNTY COMMISSIONERS
BEVERLY STEIN
DAN SALTZMAN
GARY HANSEN
TANYA COLLIER
SHARRON KELLEY

PLANNING & BUDGET
PORTLAND BUILDING
1120 S.W. FIFTH - ROOM 1400
P. O. BOX 14700
PORTLAND, OR 97214
PHONE (503)248-3883

TO: Board of County Commissioners

FROM: Dave Warren, Budget Manager 

TODAY'S DATE: December 8, 1993

REQUESTED PLACEMENT DATE: December 14 and December 15

SUBJECT: Review of Program Narratives and Key Results (performance measurements) for 1994-95 Budget

I. Recommendation / Action Requested:

The set of briefings is intended to give the Board two forms of information to react to prior to the 1994-95 budget process -- the program narratives for the programs that will be considered in the budget, and the performance measurements (key results) that departments will begin to track and include with their budget requests. This offers an opportunity for the Board to note improvements that would make the narrative descriptions more useful to Commissioners, and to suggest and discuss changes to the program measurements. It also offers a time for Commissioners and departments to begin to identify policy, service, and program issues that should be fleshed out during the budget process.

II. Background / Analysis:

In May, Planning & Budget and staff hired by the Board began the process of refining the program budget and preparing the format for the 1994-95 budget document. In August, the Board approved the skeleton of the budget format and the array of programs to build budget requests around. In September and October, department staff and Planning & Budget staff worked to build the narrative explanation of these programs and to prepare measurements that will track the "key results" of these programs. In November, Planning & Budget incorporated the proposed narrative and measurements into a unified document. That document is now available for the Board to review.

The budget preparation process parallels the Board's policy discussions that will establish urgent benchmarks to be addressed over time. Reacting to those benchmarks will be one of the tasks for departments in preparing their 1994-95 budget requests during January and February 1994.

This portion of the budget process identifies the ongoing expectations of County programs. The objectives for each program specific to 1994-95 will be identified as part of the budget preparation process in January / February 1994.

The 1994-95 budget preparation process will also attempt to identify and thoroughly discuss major issues for the County.

III. Financial Impact:

N/A

IV. Legal Issues:

N/A

V. Controversial Issues:

N/A

VI. Link to Current County Policies:

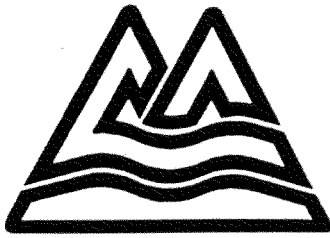
This set of hearings is part of the overall process directed by the Board in January 1993. Its goal is to reconfigure the budget process and document to give the Board more program and policy - related information.

VII. Citizen Participation:

In November, CBAC's began to review the proposed measurements. Each CBAC has been asked to comment on the measurements for their relevant departments. The CBAC comments will be available by December 15. CBAC members have been asked to present their suggestions to the Board at the scheduled briefings as well.

VIII. Other Government Participation:

N/A



MULTNOMAH COUNTY, OREGON

BOARD OF COUNTY COMMISSIONERS

BEVERLY STEIN
DAN SALTZMAN
GARY HANSEN
TANYA COLLIER
SHARRON KELLEY

PLANNING & BUDGET

PORTLAND BUILDING
1120 S.W. FIFTH - ROOM 1400
P. O. BOX 14700
PORTLAND, OR 97214
PHONE (503)248-3883

TO: Department Managers
FROM: Dave Warren *DCW*
DATE: December 6, 1993
SUBJECT: Board Review of the Proposed Narrative and Measurements for the 1994-95 Budget

At the November 30 Board and Department Managers retreat, the Board requested that times be scheduled where they could review the performance measures developed as the first step in the 1994-95 budget process. Here is a *proposed* schedule for those meetings.

| | | | | |
|---|-------------|-----------|-------|---------------|
| Overview of training effort (Warren / Blackmer) | 1 hour | Tuesday | 12/14 | 11:00 - 12:00 |
| Library | 2 1/4 hours | Tuesday | 12/14 | 2:45 - 5:00 |
| Sheriff's Office | 2 hours | Wednesday | 12/15 | 8:30 - 10:30 |
| Community Corrections | 1 1/2 hours | Wednesday | 12/15 | 10:30 - 12:00 |
| Environmental Services | 3 hours | Tuesday | 12/21 | 9:00 - 12:00 |
| Health | 1 1/2 hours | Tuesday | 12/21 | 2:00 - 3:30 |
| Auditor | 20 minutes | Tuesday | 12/21 | 3:30 - 3:50 |
| Management Support Services | 1 hour + | Tuesday | 12/21 | 3:50 - 5:00 |
| Juvenile Justice | 1 hour | Wednesday | 12/22 | 8:30 - 9:30 |
| Aging Services | 1 hour | Wednesday | 12/22 | 9:30 - 10:30 |
| Children and Family Services | 1 1/2 hours | Wednesday | 12/22 | 10:30 - 12:00 |
| District Attorney | 3/4 hour | Wednesday | 12/22 | 1:15 - 2:00 |
| Time for overflow | 3 hours | Wednesday | 12/22 | 2:00 - 5:00 |

I would welcome your thoughts about how to proceed in these sessions. We anticipate paging through the narrative budget document, division by division, and discussing the proposed narrative and measurements with the Commissioners. That may prove tedious or unfocused, and I would hate to have this turn out to be a waste of your time and the Board's. Please let me know.

Also, please let me know if the time scheduled above is no good for you and you have arranged to swap with another department. Before we give the Board copies of the proposed narrative and measures, I would like the document to be in the order of the hearings.

c. Office of the Board Clerk

December 6, 1993

Sent to

Aging

McConnell

Juvenile

Ogburn

Eighmey

Children and Family Services

Poe

Clark

Espana

Health

Odegard

Lauck

DCC

Holden

Kaeser

DA

Schrunk

Simpson

Sheriff

Skipper

Aab

Owen

DES

Williams

Oswald

Duncan, Lance

Payne

Library

Cooper

Goodrich

Epting

Multnomah County
**Program
Performance
Budget**

December 1993

Slide 1

Key Questions

- **Why is the budget changing?**
- **How will it be different?**
- **What needs to be done?**

Multnomah County

Slide 2

8/93

Why is change needed?

- **Lack of public confidence**
- **Growing problems**
- **Funding reductions**
- **Current approach isn't working**

Slide 3

What are we trying to do?

- **Communicate better**
- **Improve decision making**
- **Focus on results**

Slide 4

How will the budget be different?

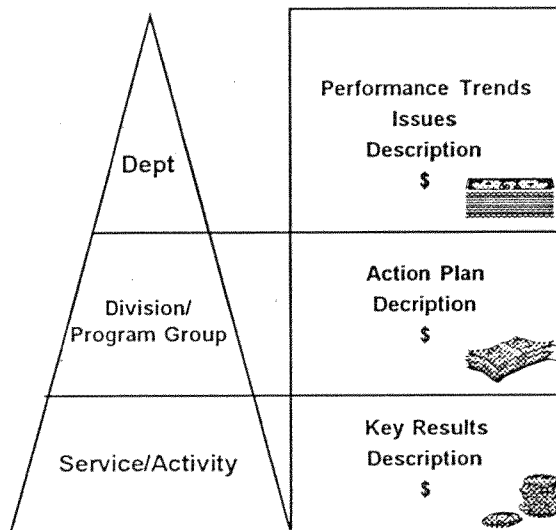
- More narrative
- Broader view
- Policy making agenda
- Management plan
- Significant changes identified
- Performance measures

Slide 5

Program Performance Budget Framework

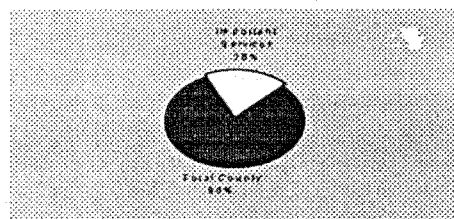
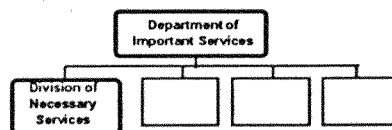
| | |
|--------------------|--|
| Community level | Benchmarks |
| Major program area | Trends / Results |
| Department level | Performance Trends/ Issues & Opportunities |
| Division level | Action Plan |
| Service level | Key Results |

Slide 6



Slide 7

Department of Important Services



Slide 8

Department of Important Services

Vision

Strategies

Partnerships

Slide 9

Department of Important Services

| | 1992-93 | 1993-94 | 1993-94 | 1994-95 |
|--------------------|---------|---------|---------|---------|
| Budget Overview | Actual | Adopted | Revised | Budget |
| Staffing FTE | | | | |
| Departmental Costs | | | | |
| Program Revenues | | | | |

Departmental Services

Slide 10

Department of Important Services

Issues and Opportunities

Issue 1:

Major Alternatives

Chair's Recommendation:

Issue 2:

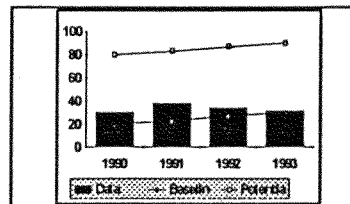
Major Alternatives:

Chair's Recommendation:

Slide 11

Department of Important Services

Performance
Trends



Recent
Accomplishments

Slide 12

| Necessary Division | Important Dept |
|--------------------|----------------|
|--------------------|----------------|

Description

Action Plan

Significant Changes

FTE's

Dollars

Slide 13

| Necessary Division | Important Dept |
|--------------------|----------------|
|--------------------|----------------|

| | 1992-93 | 1993-94 | 1993-94 | 1994-95 |
|-----------------|---------|---------|---------|---------|
| | Actual | Adopted | Revised | Budget |
| Budget Trends | | | | |
| Staffing Levels | | | | |

Personal Services
Contractual Services
Materials and Supplies
Capital Outlay
Total Costs

Net Revenues Required

Program Revenues

| | 1992-93 | 1993-94 | 1993-94 | 1994-95 |
|---------------------------|---------|---------|---------|---------|
| | Actual | Adopted | Revised | Budget |
| Costs by Activity/Service | | | | |

A
B
C
Total Costs

| | 1992-93 | 1993-94 | 1993-94 | 1994-95 |
|------------------------------|---------|---------|---------|---------|
| | Actual | Adopted | Revised | Budget |
| Staffing by Activity/Service | | | | |

A
B
C
Total Staffing

Slide 14

Activity/Service Name

Necessary Division
Department of Important Services

Description

| | 1992-93 | 1993-94 | 1993-94 | 1994-95 |
|-------------|---------------|----------------|----------------|------------------|
| Key Results | <u>Actual</u> | <u>Adopted</u> | <u>Revised</u> | <u>Estimated</u> |

| Significant Changes | FTE | Dollars |
|---------------------|-----|---------|
|---------------------|-----|---------|

| | 1993-94 | 1994-95 |
|----------------|----------------|------------------------------|
| Budget Changes | <u>Adopted</u> | <u>Request</u> <u>Change</u> |

Staffing Level
Costs
Program Revenues
Net Revenue Required

Slide 15

The description explains
services and activities

1. What is this service trying to accomplish?
2. What problem does this service address?
3. What limits are there to County discretion?

Slide 16

**Performance Measures are
never perfect**

**Performance Measures are
never complete**

**Performance Measures are like
a language**

Slide 17

**Speedometer
Battery
Oil Pressure
Odometer
Fuel level
Brake
Temperature
Turn signal
Door open
Seatbelt unbuckled
Headlights on
Key in ignition bell
Tachometer
Washer fluid level
30,000 mile tune-up light**

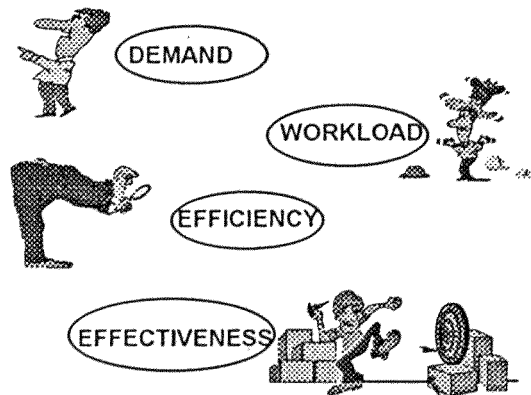
Slide 18

Direction and progress

Not just the bills for the gasoline

Slide 19

Types of Measurement



Slide 20

DEMAND or NEED

- Eligible populations
- Service area size
- Deficient conditions
- Requests/Applications
- Complaints



Slide 21

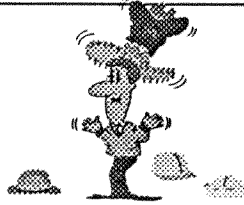
DEMAND or NEED

- Not a performance measure
- Useful for describing why the service is being provided



Slide 22

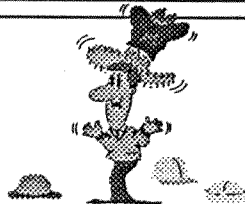
WORKLOAD



- Units of output
- Transactions processed
- People served
- Time spent

Slide 23

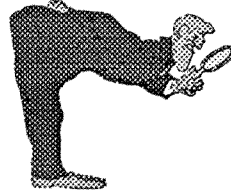
WORKLOAD



- Not a performance measure
- Useful for management decision-making
- One component of an efficiency measure

Slide 24

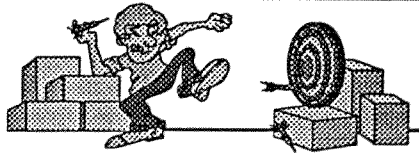
EFFICIENCY or COST Performance Measure



- Number of (output) per hour worked
- Unit cost per (output)

Slide 25

EFFECTIVENESS or IMPACT Performance Measure



- Objectives accomplished
- Response Time
- Workload as % of demand
- Reduce deficient conditions
- Customer satisfaction
- Error rate

Slide 26

What's important to measure?

Results...NOT activities

- Results are the point at which a good or service is delivered
- Activities are the actions which lead to the delivery of a good or service

If you only measure activities you may not get results...Measuring results causes the right activities to be done.

Slide 27

What's important to measure?

Example

Most people care only that a paycheck is on time and correct. They don't think or care about the activities that produce that result.

A payroll function could perform six of seven activities required to produce a paycheck very well, yet if that one activity is overlooked - a paycheck may not be produced.

Slide 28

Key Results :

**Performance measures of
efficiency or effectiveness
which are directly linked to
services in the budget**

Slide 29

Why present “key results”?

- **TO IMPROVE COMMUNICATION**
 - Clarifies purpose
 - Informs citizens, policy-makers and other County program managers
 - Establishes accountability
- **TO ESTABLISH OUR COMMON DIRECTION**
 - Towards County goals
 - Towards State benchmarks

Slide 30

**Key Results are
measurements of:**

Efficiency:

**doing the RIGHT things with
the BEST use of resources**

- How much was done?
- What did it cost?

Slide 31

Efficiency Measures ...

- Report on the **COST** of work accomplished

Examples:

- Cost per traffic sign
- Maintenance costs per lane mile
- Restaurant Inspections per FTE
- Cost per person for successful completion of Alcohol and Drug Treatment program
- Administrative cost per tax dollar collected

Slide 32

**Key Results are
measurements of:**

Effectiveness:

doing the RIGHT things WELL

- Customer satisfaction
- Quality of work
- Societal benefit

Slide 33

Effectiveness Measures...

- 1. Measure product and service quality**
- 2. Measure customer satisfaction with product/service**
- 3. Measure impact on community**

Slide 34

1. Examples of quality measures

- **Accuracy**
 - % of accurate determinations of financial eligibility
- **Timeliness / Responsiveness**
 - % of nursing facility abuse/neglect incidents investigated within 24 hours
- **Conformance to Standards**
 - % of EMS responses within 4 minutes
- **Customer Satisfaction**

Slide 35

2. Examples of customer satisfaction indicators

- **Customer complaints**
 - Number of complaints filed on facility cleanliness
- **Customer survey**
 - Citizen satisfaction survey of library services

Slide 36

3. Examples of impacts on the client/community

- Changes in client behavior
 - Recidivism rate within one year for DUII clients treated
- Statistics about community problems
 - Reported cases of communicable diseases
- Measures of client abilities
 - Reading scores of juvenile clients

Slide 37

Department:
Service/ Activity:

Prepared by:
Date:

| | 1991-92 | 1992-93 | 1993-94 | 1994-95 |
|------------------|---------------|---------------|-----------------|------------------|
| Key Result Label | <u>Actual</u> | <u>Actual</u> | <u>Estimate</u> | <u>Projected</u> |

Definition:

Source:

BUD J

Demonstrates:

Baseline:

Potential:

Slide 38

Key Result

(The following examples are taken from Adult and Family Services Division)

Key Result Label: name of the measurement

Example: Agency cost per job placement

Slide 39

Definition

Include specific descriptions of the type of service, client or standard.

How is measure calculated?

Simple enough so someone from outside the department could calculate it.

What does job placement mean?

Example: sum of costs divided by total job placements

Slide 40

Source

Describe where data is gathered from.

Example: Costs come from LGFS,
job placements come from State
JOBS System

Slide 41

Demonstrates

What is measure intended to show?

- ✓ Changes in client behavior or abilities
- ✓ Statistics about community
- ✓ Linkages to Benchmarks discussed here

Example: demonstrates efficiency of
employment and training program

Slide 42

Baselines

Baselines for each performance measure should be developed using one of the following criteria:

- ✓ Actual Performance
- ✓ Industry Averages
- ✓ Estimates/informed judgement

Example: baseline is average of 1991 cost per job placement.

Slide 43

Potentials

- ✓ Best performance
- ✓ Industry Best
- ✓ Desired Potential

Example: assuming maximum job placements is 700, costs would not exceed \$3,400 per placement

Slide 44

Performance Trends :

**Effectiveness measures
which are priority concerns
of the Department (such as
Oregon Benchmarks)**

Slide 45

**Performance measures: a
challenging endeavor**

- **Creative process**
- **Consider available resources**
- **Consider proxy measures**
- **multi-year commitment**

Slide 46