



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2524

Phone: (503) 373-0050

First Floor/Coastal Fax: (503) 378-6033

Second Floor/Director's Office Fax: (503) 378-5518

Third Floor/Measure 37 Fax: (503) 378-5318

Web Address: <http://www.oregon.gov/LCD>

November 15, 2007

TO: Land Conservation and Development Commission

FROM: Cora Parker, Interim Director
Mark Radabaugh, Central Oregon Regional Representative

SUBJECT: **Agenda Item 4c, November 28-30, 2007, Commission Meeting**



**APPEAL OF DLCD'S REMAND OF
CITY OF BEND'S PERIODIC REVIEW TASK 3
DEVELOPMENT CODE UPDATE**

I. AGENDA ITEM SUMMARY

The City of Bend periodic review Task 3, "Development Code Updates," was remanded by the department on January 19, 2007. The Central Oregon Builders Association and Palmer Homes (COBA-Palmer) appealed the remand, which the department received on February 9, 2007. The city, appellants and the department have agreed to pursue mediation of the issues involved in this matter. A first mediation meeting was conducted on April 9, 2007. Since April, parties have met formally on five occasions and drafted a proposed settlement. The proposed settlement was reviewed by the Bend City Council during workshops on August 13 and October 1, 2007. The City Council held a public hearing on the proposed settlement on October 3, 2007, and agreed to provide final approval after referring the matter to the Land Conservation and Development Commission for its consideration. A first reading of the adopting resolution occurred at the City Council's November 7, 2007 meeting. The appellants previously indicated they would withdraw their appeal when code language found in the settlement was approved by the City Council.

If you have questions about this agenda item, please contact Mark Radabaugh, Central Oregon Regional Representative, at (541) 318-2899, or mark.radabaugh@state.or.us.

II. REVIEW CRITERIA AND PROCEDURES

A. Criteria

OAR 660-025-0160(5) provides:

The Commission shall hear appeals based on the record unless the commission requests new evidence or information at its discretion and allows the parties an opportunity to review and respond to the new evidence or information. The written record shall consist of



the submittal, timely objections, the director's report, timely exceptions to the director's report, the director's response to exceptions and revised report if any, and the appeal if one was filed.

B. Procedures

Following the hearing, the Commission shall either approve the mediated settlement, approve the mediated settlement with modifications, or choose to extend the hearing to address the appeal in mediation.

If the Commission chooses to extend the period to address this task in mediation, the Commission must adopt a motion to continue the hearing to a date certain.

C. Discussion

On February 9, 2007, COBA-Palmer filed a timely appeal to five (5) of the seven (7) objections that it had identified. Those were examined in the department's January 19, 2007 order (Order No. 001718). Specifically, the appeal covered the following features of Bend's newly adopted Development Code:

1. Objection 1.1 – Residential Compatibility (Chapter 2.1.300(G)(3)).
2. Objection 1.2 – Setbacks (Chapter 2.1.300(C), (D) and (E)).
3. Objection 1.3 – Building Height (Chapter 2.1.899).
4. Objection 1.4 – Floor Area Ratio – (Chapter 2.1.400(1)(a)(i-ii)).
5. Objection 1.5 – Subdivision Approval Criteria (4.3.300(D)).

The appeal of these items deals primarily with meeting provisions of ORS 197.307 which generally cover the effect of need for certain housing in urban growth areas, approval standards for certain residential development and placement standards for approval of manufactured dwellings. The primary issues in the COBA-Palmer appeal challenged whether these new Development Code regulations were clear and objective and whether they adversely affected the cost and affordability of housing, and whether the department's remand of each of these objections caused them to be stayed until the City's response to the remand was complete. At the same time, COBA-Palmer also offered a mediation path, which the City accepted.

The results of the mediation effort are found in Attachment 1, which was provided to the Bend City Council on October 3, 2007, during its public hearing on the settlement proposal. Objections 1.1 through 1.4 are resolved under the settlement proposal. Both parties also agreed to work together to revise the City's subdivision approval criteria within one year from the department order, or January 19, 2008.

The department finds that the mediated settlement is in conformance with direction provided in its January 19, 2007, remand with respect to Objections 1.1 through 1.4, and supports the extension of time for Objection 1.5.

III. COMMISSION OPTIONS

The Commission shall:

1. Conduct the hearing on the appeal and its mediated settlement, and either
 - a. Approve the settlement agreement as provided from the Bend City Council on October 3, 2007, and direct the City Council to provide its final adoption, or
 - b. Modify the settlement language and include appropriate direction to the mediating parties.

The Commission may also ask the parties to extend their mediation, upon which the Commission must adopt a motion to continue the hearing to a date certain.

IV. DEPARTMENT RECOMMENDATION AND DRAFT MOTION

The department recommends that the Commission adopt a motion approving the settlement agreement and direct the Bend City Council to provide its final adoption of the agreement within sixty (60) days. The City Council's final adoption of the settlement agreement will effectively end the appeal by COBA-Palmer.

Proposed Motion: I move that the Commission approve the settlement language contained in Attachment 1 of the staff report and order that the Bend City Council provide final approval of the settlement language within sixty (60) days of this order.

Alternative Motion: I move the Commission not approve the settlement language contained in Attachment 1 of the staff report and instead _____.

ATTACHMENTS

1. Proposed settlement agreement – Exhibit A
2. October 4, 2007 letter from the City of Bend to DLCD reporting Council Actions
3. August 30, 2007 letter from COBA concerning withdraw of appeal
4. February 9, 2007 appeal by the Central Oregon Builders Association (COBA) and Palmer Homes
5. DLCD Remand Order 001718