



CERTIFICATE AND ORDER for FILING ADMINISTRATIVE RULES WITH THE SECRETARY OF STATE

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of rule(s) adopted by the _____
Land Use Board of Appeals _____ on _____ November 1, 1979 _____
_____ (Agency) _____ (Date)
to become effective _____ November 1, 1979 _____
_____ (Date)

The within matter having come before the _____ Land Use Board of Appeals _____ after
_____ (Agency)
all procedures having been in the required form and conducted in accordance with applicable statutes and rules and being fully
advised in the premises:

NOW THEREFORE, IT IS HEREBY ORDERED THAT the following rule(s) be:
(List Rule Number(s) or Rule Title on Appropriate Lines Below)

Adopted:
(New Rules) _____ Land Use Board of Appeals of the State of Oregon _____
_____ Rules of Procedure _____

Temp. Perm.

Amended:
(Existing Rules) _____

Suspended:
(Temporary Only) _____

Repealed:
(Existing Rules) _____

as Administrative Rules of the _____ Land Use Board of Appeals _____
_____ (Agency)

DATED this _____ 1st _____ day of _____ November _____, 19 _____ 79

By: _____ Michael D. Reynolds _____
_____ (Authorized Signer)
Title: _____ Acting Chief Hearings Referee _____

Statutory Authority: _____ Oregon Laws 1979, Ch. 772 _____

Subject Matter: _____ Rules of Procedure governing appeals filed with the Land Use Board
_____ of Appeals after November 1, 1979 _____

Statement of Need Attached: Yes No

For Further Information Contact: _____ Land Use Board of Appeals _____ Phone: _____ 373-1265 _____

LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON
RULES OF PROCEDURE

1. Introduction

(A) Scope of Rules and Effective Date

These rules govern procedure for all appeals filed with the Land Use Board of Appeals after November 1, 1979.

(B) Legal Authority for Temporary Rules

1979 Oregon Laws Ch 772, Section 2a(4) provides that the Board shall adopt rules governing the conduct of review proceedings.

(C) Need For Temporary Rules

The Board was established with an effective date of November 1, 1979. The Board must adopt rules on that date in order to begin to discharge its statutory responsibilities. These rules may become effective on November 1, 1979 only if adopted by the emergency or temporary process.

(D) Principal Authorities Relied Upon

In adopting these rules, the Board relied upon the Rules of Appellate Procedure for the Supreme Court and Court of Appeals of the State of Oregon, March 1, 1979, and the rules governing procedure for review of petitions filed with the Land Conservation and Development Commission, OAR 660-01-010 to 660-01-200.

(E) Fiscal Impact

These rules will have no fiscal impact on the Board.

2. Purpose

The procedures established in these rules are intended to provide for the speediest practicable hearing and decision in the review of land use decisions while affording all interested persons reasonable notice and opportunity to participate, reasonable time to prepare and submit their cases, and a full and fair hearing. The procedures established in these rules seek to accomplish these objectives to the maximum extent consistent with the time limitations placed upon the Board in Oregon Laws 1979, Ch 772. These rules shall be interpreted to effectuate these policies and to promote justice. Technical violations of these rules which do not affect substantial rights or interests of parties or of the public shall not interfere with the review of a petition. The Board may vary these rules where necessary to effectuate the purposes set forth in this section. The Board may deviate from the strict requirements of these rules, to the extent legally permissible.

3. Definitions

In these rules, unless the context or subject matter otherwise requires:

(A) "Applicant" means the person who applied to the governing body for authorization for a particular land use activity.

(B) "Board" means the Land Use Board of Appeals.

(C) "Final decision or determination" means a decision or determination which has been reduced to writing and which bears the necessary signatures of the governing body.

(D) "Governing body" means a city, county or special district governing body or a state agency.

(E) "Land use decision" means:

(1) A final decision or determination made by a city, county or special district governing body that concerns the adoption, amendment or application of statewide planning goals, a comprehensive plan provision or zoning, subdivision or other ordinance that implements a comprehensive plan; or

(2) A final decision or determination of a state agency other than the Land Conservation and Development Commission, with respect to which the agency is required to apply the Statewide Planning Goals.

(F) "Notice" means the Notice of Intent to Appeal and refers to that document which must be filed with the Board in order to begin a review proceeding before the Board.

(G) "Person" means any individual, partnership, corporation, association, governmental subdivision or agency or public or private organization of any kind.

MDR (H) "Record" means all exhibits, actual transcripts and tape recordings of testimony of witnesses and governing body officials, the final decision including any findings of fact with respect thereto, and any other matter tendered or introduced into the proceedings of the governing body which the

~~petitioner specifically designates to be included as part of the record.~~

max (H) "Service" means delivery, either personally or by mail. The date of service, whether personally or by regular mail, is the date of actual delivery. The burden of proving proper service, if the issue arises, shall be upon the party making the service.

4. Notice of Intent to Appeal

(A) Contents of Notice

The Notice shall be in the form set forth in Appendix A and shall contain:

- (1) A caption which sets forth the name of the person filing the Notice, identifying that person as a petitioner, and the name of the governing body identifying that governing body as the respondent;
- (2) Below the caption the heading "Notice of Intent to Appeal";
- (3) The full title of the land use decision as it appears on the final decision;
- (4) The date of the land use decision.
- (5) A concise description of the land use decision;
- (6) The name, address and telephone number of each of the following:
 - (a) The petitioner, except that if the petitioner is represented by an attorney, then the petitioner's address and telephone number may be deleted and the

name, address and telephone number of the attorney shall be included;

(b) The applicant, if any (if other than the petitioner), except that if the applicant was represented by an attorney before the governing body, then the applicant's address and telephone number may be deleted and the name, address and telephone number of the applicant's attorney of record shall be included;

(c) The governing body and the governing body's legal counsel;

(d) Any other person who was designated as a party by the governing body and entitled as of right to written notice of the land use decision for which review is sought.

(7) A statement which advises all potential parties other than the governing body who are served with a copy of the Notice that in order to participate as a party in the review proceeding before the Board a Statement of Intent to Participate in such proceeding as required by Section 5 of these rules must be filed with the Board within 15 days of service of the Notice.

(8) Proof of service which conforms to Section 3^H(~~X~~) of *MOR* these rules.

(B) Filing Fee

The Notice shall be accompanied by a filing fee of \$50

and a deposit for costs in the amount of \$150. A separate check or money order shall be submitted for the filing fee and the deposit for costs. Cash will not be accepted.

(C) Filing and Service of Notice

The Notice must be filed with the Board and served on the governing body, the governing body's legal counsel, and all persons identified in the Notice as required by Section 4(A)(6) of these rules within 30 days from the date of the land use decision.

5. Statement of Intent to Participate

Any person identified in the Notice, other than the petitioner and governing body, who desires to participate as a party in the appeal shall file with the Board and serve on all parties designated in the Notice, a Statement of Intent to Participate. The Statement shall be filed with the Board and served on all parties within fifteen days of service of the Notice. The Statement may be in the form set forth in Exhibit B to these rules.

6. Record

(A) Contents

The record shall include all exhibits, the final decision including the findings or conclusions, all testimony and statements made in the course of the governing body's proceedings, and any other matter tendered or introduced into the governing body's proceedings which the petitioner specifically designates in the Notice to be included in the record. Unless the Board

otherwise directs, the record shall include written transcripts of all testimony and statements made in the course of the governing body's proceedings.

(B) Transmittal of Record

(1) The governing body shall, within 20 days after service of the Notice on the governing body, transmit to the Board the original or certified copy of the record of the proceeding under review. The governing body shall also serve copies of the record, exclusive of exhibits, on all persons who duly filed and served a Statement of Intent to Participate.

(2) The record shall be transmitted to the Board in suitable cover or folder, securely fastened, bearing on the outside the title of the case as it appears in the caption on the Notice and the governing body's numerical designation, if any, of the land use decision. Each page of the record shall be consecutively numbered at the bottom of the page. The record shall include an index and be prepared so that its contents appear in chronological order with the most recent item in the record appearing on top.

(C) Objections to Sufficiency or Accuracy of Record

Any objections as to the sufficiency or accuracy of the record must be filed with the Board:

(1) If by petitioner, within 10 days following service of the record on the petitioner, or

(2) If by respondent, within 10 days following service of the Petition for Review on respondent.

(D) Review of Exhibits

Any party to an appeal who desires to review any exhibits must make suitable arrangements with the secretary of the Board.

7. Petition for Review

(A) Filing and Service of Petition

The petition for review shall be filed with the Board and served on all parties within 20 days after transmittal of the record to the Board. Failure to file a petition for review within the time required will result in dismissal of the appeal and forfeiture of the filing fee and deposit for costs to the governing body. A copy of the petition for review shall be served on all persons who have filed a Notice of Intent to Participate.

(B) Specifications

The petition for review shall:

- (1) Contain an index in the front portion;
- (2) Not exceed 50 pages unless permission for an extended petition is allowed by the Board;
- (3) Set out on a cover page which shall be blue in color the full title of the review proceeding, including the names, addresses and telephone numbers of all parties or their attorneys who have filed Statement of Intent to

Participate in the review proceeding. All such parties shall be designated as respondents on the cover page of the petition for review;

(4) Be typewritten, in pica type, and double spaced with double space above and below each paragraph or less of quotations. Printed or used area shall not exceed 6 and 1/4 inches by 9 and 1/2 inches, exclusive of page numbers.

(5) Be on white pleading paper, without glaze, with surface suitable for both pen and pencil notations;

(6) Contain on the last page the name of the author of the petition for review and the name of the law firm or firms, if any, representing the petitioner.

(C) Contents

The petition for review shall contain petitioner's brief and shall:

(1) Set out the facts that establish that the petitioner has standing. If the petition challenges a legislative decision, the facts must show in what manner the interests of the petitioner have been adversely affected or in what manner the petitioner has been aggrieved. If the petition challenges a quasi-judicial decision, the facts must show that the petitioner appeared, either orally or in writing, in the proceeding below and that either the petitioner was entitled as a matter of right to notice and hearing prior to the making of the decision sought to be reviewed or the petitioner's interests were adversely affected or

the petitioner was aggrieved by the decision.

(2) Open with a clear and concise statement of the case which shall set forth in the following order and under separate headings:

- (a) The nature of the land use decision and the relief sought by the petitioner;
- (b) A succinct and clear summary of arguments appearing in the body of the petition for review;
- (c) A concise but complete summary of the facts of the appeal material to the determination of the question or questions presented for review. The summary shall be in narrative form with reference to the place in the record where such facts appear;
- (d) Any other matters necessary to inform the Board concerning the questions and contentions raised by petitioner, insofar as such matters are a part of the record, with reference to the portions of the record where such matters appear.

(3) Set forth clearly and succinctly each assignment of error under a separate and appropriate heading. Where several assignments of error present essentially the same legal question, they shall be combined so far as is practicable;

(4) Set forth a separate argument for each assignment of error or combination of assignments of error; and

(5) Contain a copy of the land use decision of which

review is sought, including the written findings of fact, statements of reasons and conclusions of law adopted by the governing body.

8. Respondent's Brief

(A) Filing of Brief

Respondent's brief shall be filed with the Board within 40 days after the date of transmittal of record. A copy of the respondent's brief shall be served on all persons who have filed a Notice of Intent to Participate or who have been allowed to intervene in the review proceeding.

(B) Specifications

Respondent's brief shall conform to the specifications required of the petition for review, except that the brief shall have a cover page which is red in color. If there is more than one respondent in the review proceeding, the cover page should specify which respondent is filing the brief.

(C) Contents of Brief

(1) The respondent's brief shall follow the form prescribed for the petition for review, omitting repetition of the assignments of error. Under the heading "Statement of the Case," the respondent shall specifically accept the petitioner's statement of the case or shall cite any alleged omissions or inaccuracies therein, and may state additional relevant facts or other matters as may apply to the decision. The additional statement shall refer to pages of the record in support of the additional matter

set forth but shall not repeat those portions of petitioner's statement with which respondent agrees.

(2) If respondent challenges petitioner's standing on the basis that the facts alleged in support of standing in petitioner's affidavit are not true, respondent shall state in its brief under a separate heading the true facts and in what manner the facts alleged by petitioner are untrue. If necessary in order to obtain sufficient information to dispute petitioner's allegations of standing respondent may take petitioner's deposition pursuant to ORS 183.425. Such deposition, if relied upon by respondent, shall be appended to respondent's brief.

9. Oral Argument

The parties shall be afforded an opportunity to present oral argument to the Board. The Board shall inform the parties of the time and place of oral argument and the amount of time allotted to each side. Unless otherwise requested by any of the parties and appropriate arrangements are made by such party or parties, all arguments before the Board shall be tape recorded only. The parties may with consent of the Board stipulate to submit a case to the Board on briefs without oral argument.

10. Special Evidentiary Hearing

The Board may upon written motion conduct a special evidentiary hearing when it appears that such a hearing is necessary

to reveal procedural irregularities not shown in the record and which, if proved, would warrant reversal or remand of the decision. The Board shall, based upon the evidence presented at the hearing, prepare findings of fact concerning the allegations.

11. Intervention

Any person whose interests were adversely affected or who was aggrieved by a land use decision, or, in the case of review of a quasi-judicial land use decision, who appeared before the governing body orally or in writing and who was either entitled as of right to notice and hearing prior to the making of the land use decision by the governing body or who was a person whose interests were adversely affected or who was aggrieved by the land use decision, may intervene in and become a party to any review proceeding before the Board involving that land use decision. Such intervention must be by written motion and must contain the facts which show that the person is entitled to intervene. The motion to intervene shall be filed within:

(A) 10 days after the filing of the petition for review, if intervention is sought as a petitioner, or

(B) 10 days after the filing of respondent's brief, if intervention is sought as a respondent.

The motion should set forth assignments of error or responses to assignments of error, as appropriate, with supporting argument. The motion shall contain intervenor's brief and shall conform to the specifications for the petition for review as set forth in

Section 7 of these rules. Where intervention is sought as a petitioner, the respondent or respondents shall have an additional 10 days within which to file a brief in response to the motion for intervention. Where intervention is sought as a respondent, no reply by the petitioner will be allowed without permission of the Board. The Department of Land Conservation and Development may intervene as a matter of right in any review proceeding in which the Statewide Goals have been alleged to have been violated.

12. Consolidation

The Board may, at the request of any party or on its own motion consolidate any petitions for review into one proceeding provided the petitions seek review of the same land use decision and involve the same or substantially similar issues.

13. Exceptions to Board's Recommendation

(A) Filing

When a petition alleges that a land use decision has violated one or more statewide planning goals, the Board's recommendation to the Land Conservation and Development Commission on such issues shall be submitted to the parties for their review. Parties may file a brief containing exceptions to the Board's recommendation provided the brief is filed with the Board within 10 days of the date of the recommendation.

(B) Contents

The brief may discuss any issue contained in the recom-

mendation with which the party filing the brief disagrees. The brief may also address the Board's recommendations as to whether oral argument should be allowed before the Commission. The brief shall include a cover page and a table of contents. The body of the brief shall not exceed 15 pages in length, exclusive of the table of contents and cover page.

(C) Failure to File Exceptions

A party will not be deemed to have waived any right to assert on appeal a portion or portions of the Board's recommendation by that party's failure to file a brief excepting to such portion or portions of the Board's recommendation.

14. Motions

(A) When Motion is Appropriate

Unless these rules or applicable statutes provide another form of application, a request for an order or relief shall be made by serving and filing a motion in writing for such order or relief.

(B) Time of Filing

A party seeking to challenge the failure of an adverse party to comply with any of the requirements of statutes or court rules shall make such challenges by motion filed with the Board and served on the adverse party within 10 days after the moving party obtains knowledge of such alleged failure. The adverse party may, within 10 days from the receipt of a motion under this rule, serve and file an answer.

(C) How Submitted

Parties shall submit all motions without oral argument unless otherwise directed by the Board. The motion shall show proof of service on all opposing counsel.

15. Miscellaneous Provisions

(A) Extension of Time

Any time deadlines established by these rules and not otherwise mandated by law for the filing of documents with the Board may be extended provided the party desiring the extension has obtained a written stipulation signed by all the parties to the review consenting to the extension. Any such stipulation shall automatically constitute a stipulation authorizing an extension of the time within which the Board is required to issue a final order by an amount of time equal to the extension stipulated by the parties.

(B) Cost Bill

If the Board awards costs, in whole or in part, to the prevailing party, the prevailing party shall be required to file a cost bill within 15 days of the date the final order is issued and shall serve a copy of the cost bill on all parties to the proceeding. The prevailing party may be awarded as costs statutory witness fees, if any are incurred, and cost associated with the court reporting of the proceedings before the Board if the proceedings have been so reported at the election of the prevailing party. In addition, if the prevailing party is the governing body, the governing

body may be awarded costs incurred in preparing the record. If the prevailing party is the petitioner, the petitioner may be awarded the cost of the filing fee. Any objections to the cost bill must be filed with the Board within 10 days after it is filed with the Board or the costs will be deemed allowed as a matter of course. Costs awarded against more than one party shall be divided equally among all such parties unless the Board otherwise directs.

(C) Cross Petition

Any person identified in the Notice as a respondent who desires to file a petition for review may do so by filing a cross petition for review. The cover page shall identify the petition as a cross petition and the party filing the cross petition. The cross petition must be filed within the time required for filing the petition for review and must comply in all respects with the requirements of this rule governing the petition for review, except that a Notice of Intent to Appeal need not have been filed by such party.

(D) Reply Briefs

Reply briefs shall not be allowed unless permission is first obtained from the Board. If allowed, the reply brief shall be confined solely to matters raised in the respondent's brief and the form shall be similar to the form of a respondent's brief. However, a petitioner may, as a matter of right, file a reply brief on the question of the Board's jurisdiction if that issue is raised in the

respondent's brief.

(E) Service of Documents on All Parties

All documents, written correspondence or other material filed with or submitted to the Board by any party shall also be served on all parties to the review proceeding. Any document filed with or submitted to the Board shall contain a proof of service on all parties.

(F) Copies of Documents to be Filed with the Board

The petition for review and any briefs or motions filed with the Board shall be filed together with four copies. The original and one copy shall be for the permanent Board file and one copy shall be for each of the Board's hearing referees.

(G) Conferences

On its own motion or at the request of any party, the Board may conduct one or more conferences. The Board shall provide reasonable notice advising all parties of the time, place and purpose of the conference.

(H) Computation of Time

The time provided in these rules for acts to be performed shall be computed by excluding the first day and including the last day. If the last day is Saturday, Sunday or other legal holiday, the act must be performed on the next judicial day.

(I) Address and Hours of the Board

The Board's address is 475 Cottage St. N.E., Salem, Oregon, 97301. The telephone number is 373-1265. The offices of the Board shall be open from 8:30 a.m. to 5:00 p.m. Monday through Friday, exclusive of legal holidays.

(J) Citations to Board Decisions

Citations to Board decisions shall be in the following form: _____ Or LUBA _____ ().

BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

Jane Smith)
 Petitioner)
 v.) LUBA No. _____
 Willamette County)
 Respondent)

NOTICE OF INTENT TO APPEAL

I.

Notice is hereby given that petitioner intends to appeal that land use decision of respondent entitled _____, which became final on _____ and which involves (set forth a brief statement of the nature of the decision).

II.

Petitioner, Jane Smith, is represented by (include name, address and telephone number of attorney).

Applicant, John Developer, was represented in the proceeding below by: (include name, address and telephone number of attorney).

Respondent, Willamette County, has as its mailing address and telephone number: _____ and has, as its legal counsel: _____.

Other persons, designated by Willamette County as parties to the proceeding below, include: (include names, addresses and

1 telephone numbers of all persons designated as parties).

2 III.

3 NOTICE:

4 Anyone designated in paragraph II of this Notice other
5 than respondent Willamette County who desires to participate as
6 a party in this case before the Land Use Board of Appeals must file
7 with the Board a Statement of Intent to Participate in this pro-
8 ceeding as required by Section ~~III~~⁵ of the Board's administrative *MOR*
9 rules, OAR _____. The Statement must be filed with the
10 Board within 15 days of service of this Notice.

11 _____
12 _____
13 Attorney for petitioner

14
15 CERTIFICATE OF SERVICE

16 I hereby certify that on _____, I served a true
17 and correct copy of this Notice of Intent to Appeal on all persons
18 listed in paragraph II of this Notice on _____ by
19 (a) registered or certified mail or (b) by personal delivery.

20 Dated: _____

21 _____
22 Signature
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BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

1			
2			
3	Jane Smith)	
4	Petitioner)	
5	v.)	LUBA No. _____
6	Willamette County)	
7	Respondent)	
8)	
9			

STATEMENT OF INTENT TO PARTICIPATE

_____ intends to participate
in the above captioned review proceeding.

Signature

[CERTIFICATE OF SERVICE]

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