

FILED
OCT 03 1983
NORMA PAULUS
SECRETARY OF STATE

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
(Agency)

on October 3, 1983
(Date)

to become effective _____ upon filing _____
(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 adopted: Perm. or Temp.
(List Rule Number(s) or Rule Title on Appropriate Lines Below)

Adopted:
(New Rules) 661-10-038

Amended:
(Existing Rules) Amendment of OAR 661-10-000 through 661-10-075 *JH*

NOTE: NEW AGENCY NUMBER is 662

Suspended:
(Temporary Only) _____

Repealed:
(Existing Rules) 661-10-060

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

DATED this 3rd day of October, 19 83

By: *J. L. G.*
(Authorized Signer)

Title: Chief Hearings Referee

Statutory Authority: Oregon Laws 1983, ch 827

Subject Matter: Amendment of Rules

Statement of Need Attached:

Fiscal Impact Attached:

For Further Information Contact: JOHN T. BAGG, CHIEF HEARINGS REFEREE Phone: 373-1265

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

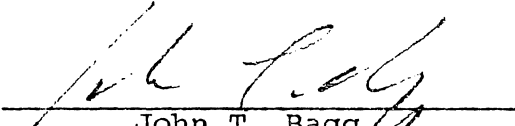
IN THE MATTER OF PROPOSED) Statutory Authority
AMENDMENTS TO RULES OF) Statement of Need
PROCEDURE FOR ALL APPEALS) Principal Documents Relied Upon
) Statement of Fiscal Impact

1. Statutory authority: The Board is required by 1983 Oregon Laws, Ch 827, Sec 28(b)(4), to adopt rules governing the conduct of review proceedings brought before it.

2. Documents relied upon: In preparing amendments to the Board's Procedural Rules, the Board relies upon its present rules of procedure (OAR 661-01-000 to OAR 661-10-075), the rules of appellate procedure for the Supreme Court and Court of Appeals of the State of Oregon (June 1, 1982) and the Attorney General's Model Rules of Procedure under the Administrative Procedure Act, November 17, 1981.

3. Fiscal Impact: These amendments will have no fiscal impact on the Board. The amendments will have a fiscal impact upon petitioners and respondents to review proceedings before the Board in that (1) the rules require a deposit for costs and further provide for distribution of costs after issuance of the Board's final order; (2) the amendments include a provision for mileage and fees for witnesses; and (3) the amendments control the award of attorney fees in certain circumstances.

Dated this 6th day of September, 1983.


John T. Bagg
Hearings Referee

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

Introduction

661-10-000 (1) Scope of Rules and Effective Date: These rules govern procedure for all appeals and petitions for review filed with the Land Use Board of Appeals on or after [April 29, 1980] October 3, 1983. [These rules also govern procedure for all appeals filed with the Board prior to April 29, 1980, provided no party is unduly surprised or its interests adversely affected.]

Petitions for Review filed prior to October 1, 1983, will be processed under the Board's Rules of Procedure adopted April 15, 1980.

(2) Legal Authority for Rules: [Oregon Laws 1979, Chapter 772, Section 2a(4)] 1983 Or Laws, ch 827, sec 28(b)(4), provides [that] the Board shall adopt rules governing the conduct of review proceedings.

(3) Principal Authorities Relied Upon: In adopting these rules, the Board [relied] relies upon its [temporary] existing Rules of Procedure adopted [November 1, 1979] April 15, 1980, and subsequent amendments thereto, the Rules of Appellate Procedure for the Supreme Court and Court of Appeals of the State of Oregon, [March 1, 1979] June 1, 1982, 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.] Attorney General's Model Rules of Procedure under

the Administrative Procedure Act, November 17, 1981.

(4) Fiscal Impact: [These rules will have a fiscal impact upon governing bodies in that they will be required to furnish a written record of the land use decision sought to be reviewed. If the governing body is the prevailing party in the appeal, however, there is a provision in the rules which provides, in the discretion of the Board, for reimbursement of all or a portion of these costs.]

The rules will have a fiscal impact upon petitioners and makers of land use decisions on appeal before the Board in that (1) the rules require a deposit for costs and further provide for distribution of costs after issuance of the Board's final order; (2) the rules include a provision for mileage and fees for witnesses; and (3) the rules control the award of attorney fees in certain circumstances.

Purpose

661-10-005 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, Chapter 772] 1983 Or Laws, ch 827.

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.

Definitions

661-10-010 In these rules, unless the context or subject matter otherwise requires:

(1) "Applicant" is the person identified by the governing body as having applied for authorization for a particular land use activity or having requested that the governing body take some action which resulted in a land use decision.

(2) "Board" means the Land Use Board of Appeals or any member thereof.

(3) "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.

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

(5) "Land use decision" [means] has the meaning given the term in ORS 197.015 as amended by 1983 Or Laws, ch 827, §1:

[(a) 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

(b) 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.]

(6) "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.

(7) "Party" means the petitioner, the governing body, and any person who files a Statement of Intent to Participate as provided in rule 661-10-020 or any other person who intervenes as provided in rule 661-10-050. "Party" does not include a state agency that files a brief pursuant to 1983 Or Laws, ch 827, sec 31(6).

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

(8) "Transmit" means to send with the United States Postal Service by first class mail or to deliver in person.

[(9) "Service" means delivery, either personally or by mail. The date of service, whether personally or by regular mail, is the date of actual delivery. Time for achieving service will be deemed complied with if actual delivery is attempted at the person's last known address within the time required, or the matter to be delivered is deposited in the mail, bearing first class postage and the person's last known

address, at least three days before the date by which service must be accomplished. The burden of proving proper service, if the issue arises, shall be upon the party making the service.]

Notice of Intent to Appeal

661-10-015 (1) Filing of Notice: The Notice must be delivered to and received by the Board for filing on or before the 21st day after the date the decision sought to be reviewed becomes final. A Notice received after that day will not be timely filed, and the appeal will be dismissed. The Notice must be served on the governing body, the governing body's legal counsel, and all persons identified in the Notice as required by rule 661-10-015(2)(f) within 21 days from the date of the land use decision.

(2) Contents of Notice: The Notice shall be substantially in the form set forth in Exhibit 1 and shall contain:

(a) 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.

(b) Below the caption the heading "Notice of Intent to Appeal";

(c) The full title of the land use decision as it appears on the final decision.

(d) The date of the land use decision.

(e) A concise description of the land use decision.

(f) 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 whom the governing body's records indicate was mailed written notice of the land use decision for which review is sought.

(g) A statement which advises all persons whose name, address and telephone number are required to appear in the notice as provided in subsection (f) of this section, other than the governing body, that in order to participate in the review proceeding before the Board a Statement of Intent to Participate in such proceedings as required by rule 661-10-020 must be filed with the Board within 15 days of service of the Notice.

(h) Proof of service upon all persons required to be named

in the Notice which conforms to rule 661-10-010(9).

[(2)] (3) Filing Fee and Deposit for Costs: 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 in the amount of \$150. Cash will not be accepted.

[(3) 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 subsection (1)(f) of these rules within 30 days from the date of the land use decision.]

Statement of Intent to Participate

661-10-020 (1) Any person identified in the Notice, other than the petitioner and governing body, who desires to participate as a party in the appeal shall within 15 days of service of the Notice upon such person, file with the Board and serve on all parties designated in the Notice, a Statement of Intent to Participate. [Any person identified in the Notice who fails to file a Statement of Intent to Participate may not later intervene in the proceeding as provided in rule 661-10-050.] The Statement may be in the form set forth in Exhibit 2 of these rules.

(2) Unless otherwise advised in writing, the Board shall designate as respondents all persons filing a Statement of

Intent to Participate.

Record

661-10-025 (1) Contents: Unless the Board otherwise orders, or the parties otherwise stipulate, the record shall include at least the following:

(a) The final decision including the findings and conclusions;

(b) All exhibits, maps, documents or other written materials;

(c) All written testimony submitted in the course of the governing body's proceeding;

(d) Minutes of the proceeding as required by law.

(2) Transmittal of Record:

(a) (A) The governing body shall, within [20] 21 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 may, however, retain any large maps or other large documents which are difficult to duplicate until the time for submission of the governing body's brief.

(B) Contemporaneously with transmittal, [T]the governing body shall serve a copy of the record, exclusive of large maps and other large documents which are difficult to duplicate, on the petitioner and shall furnish a copy of the record to any other party provided such other party reimburses the governing

body for the reasonable expense incurred in copying the record so furnished.

(b) The record shall:

(A) Be transmitted to the Board in suitable cover or folder, bearing 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;

(B) Include a table of contents;

(C) Be securely fastened together;

(D) Contain consecutive numbering of pages with the page number appearing at the bottom of each page;

(E) Be prepared so that its contents appear in chronological order with the most recent item in the record appearing on top.

(3) Objections to Sufficiency or Accuracy of Record:

(a) Prior to filing an objection with the Board as provided in this section, a party shall first attempt to resolve the matter with the governing body or its legal counsel. When the governing body or its legal counsel transmits amendments or additions to the record in order to resolve the matter without objection, the date of such transmittal shall be considered the date of transmittal of the record for the purposes of computing time limits for issuance of the Board's final opinion and order. The date of receipt of such amendments by the Board shall be the date for computing the time limits for submittal of the petition for review and

the respondent's brief. If objection is thereafter filed with the Board, the objection shall state that the party filing the objection was not able to resolve the matter with the governing body.

(b) Any objection that the record does not include all matters before the governing body, that the record contains matters not before the governing body, that the minutes do not accurately reflect the testimony submitted to the governing body or that the record is in any other manner insufficient or inaccurate shall be filed with the Board within 10 days following service of the record on the person filing the objection.

(c) If the objection is to the completeness or accuracy of the minutes, the party making the objection shall demonstrate with particularity how the minutes are defective. Upon such a demonstration the Board shall require the governing body to produce any additional evidence it has supporting the accuracy and completeness of the contested minutes. If the evidence is to be found in a taped record, the relevant portion of the taped record shall be submitted to the Board in typewritten form.

(d) The Board may conduct a conference to consider any objections filed concerning the record.

(e) Filing of an objection to the sufficiency or accuracy of the record shall suspend the time for the filing of the petition for review, the respondent's brief and the time within

which the Board must make a final decision. When the objection is settled by the parties or when the Board rules on the objection, the Board will issue a letter or order declaring the record settled. The date of issuance of the letter or order shall be considered the date of transmittal of and receipt of the record for the purposes of computing time limits for other events provided in these rules and 1983 Or Laws, ch 827.

(4) Review of Maps or Other Large Documents: Any party to an appeal who desires to review any large maps or other large documents must make suitable arrangements with the governing body or the Secretary of the Board.

Petition for Review

661-10-030 (1) Filing and Service of Petition

The petition for review shall be filed with the Board and served on the governing body and all parties who have filed a Notice of Intent to Participate or intervened within [20] 21 days after the date the record is received by 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.

(2) Specifications: The petition for review shall:

- (a) Contain a table of contents in the front portion;
- (b) Not exceed 50 pages, exclusive of appendices, unless permission for an extended petition is allowed by the Board;
- (c) 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 Statements 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, unless otherwise indicated pursuant to rule 661-10-020(2);

(d) 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.

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

(f) 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.

(3) Contents

The petition for review shall contain petitioner's brief and shall[: (a) S] set out the facts that establish that the petitioner has standing.

(a) 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.

(b) If the petition challenges an amendment to an acknowledged comprehensive plan or land use regulation or a new land use regulation, the facts must show that the person

participated either orally or in writing in the local government proceedings leading to adoption of the amendment.

(c) The provisions of paragraph (2) do not apply where (a) the local government determines that the goals do not apply to an amendment or new regulation; or (b) where the local government has submitted the amendment or new regulation with less than 45 days notice provided in ORS 197.610 under a local government determination that emergency circumstances exist requiring expedited review; or (c) where an amendment to an acknowledged comprehensive plan or land use regulation or a new land use regulation differs from the proposal submitted under ORS 197.610 to such a degree that the notice under ORS 197.610 did not reasonably describe the nature of the local government final action.

(d) 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.

(e) 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.

(f)[(c)] 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.

(g)[(d)] Set forth a separate argument for each assignment of error or combination of assignments of error; and

(h)[(e)] 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.

(4) Amended Petition: A petition for review which fails to comply with subsections (2) or (3) of this section may, with permission of the Board, be amended. The Board shall determine whether to allow an amended petition for review to be filed in

accordance with the provisions in rule 661-10-005.

Respondent's Brief

661-10-035 (1) Filing of Brief: Respondent's brief shall be [served and] filed with the Board within [40] 42 days after the date the record is received by the Board. A copy of the respondent's brief shall be served on the petitioner and all persons who have filed a Statement of Intent to Participate or who have been allowed to intervene in the review proceeding.

(2) 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.

(3) Contents of Brief:

(a) 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.

(b) If respondent challenges petitioner's standing on the basis that the facts alleged in support of standing 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 and OAR 661-10-045(6). Such deposition, if relied upon by respondent, shall be appended to respondent's brief, or filed with the Board and served on all parties as soon as is practicable.

(4) Amended Brief: The Board may allow the filing of an amended brief in accordance with the provisions for filing an amended petition for review contained in 661-10-034(4).

State Agency Briefs

661-10-038 A state agency that wishes to file a brief pursuant to 1983 Or Laws, ch 827, sec 31(6) shall file the brief within the time set for respondent's brief.

Oral Argument

661-10-040 (1) The parties shall be afforded an opportunity to present oral argument to the Board. The Board shall set a time for oral argument, generally within seven days of the filing of respondent's brief. The Board shall inform the parties of the time and place of oral argument. Unless the

Board otherwise orders, petitioner and respondent shall each be allowed 30 minutes for oral argument. Unless otherwise required 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.

(2) A state agency which has filed a brief pursuant to 1983 Or Laws, ch 827, sec 31(6) and Rule 10 may move to argue orally before the Board. The motion must be filed at least five (5) days prior to the date set for oral argument.

Special Evidentiary Hearing

661-10-045 (1) The Board may upon written motion conduct a special evidentiary hearing [when it appears that such a hearing is necessary to reveal] in the case of disputed allegations of unconstitutionality of the decision, standing, ex parte contacts or other procedural irregularities not shown in the record and which, if proved, would warrant reversal or remand of the decision. A special evidentiary hearing may also be held to consider claims of irreparable injury in requests for stays under 1983 Or Laws, ch 827, sec 34. [The Board shall, based upon the evidence presented at the hearing, prepare findings of fact concerning the allegations.]

(2) A motion for a special evidentiary hearing shall contain:

(a) A statement explaining with particularity what facts the moving party will present at the hearing and how those facts will affect the outcome of the Board's review proceeding.

(b) Whenever possible, the motion will contain affidavits supporting the request for hearing and the facts the moving party wishes to prove.

(3) Conduct of Hearing

(a) If allowed, and insofar as the Board finds it practical, the hearing shall be conducted in the following manner:

(A) The moving party shall present its evidence including that of any witnesses;

(B) The other party(ies) shall have the opportunity to present evidence disputing that of the moving party;

(C) The moving party shall be allowed brief rebuttal testimony;

(b) Any member of the Board or parties to the proceeding shall have the right to question, examine or cross-examine any witnesses;

(c) The burden of presenting evidence in support of a fact or proposition rests on the proponent of the fact or proposition;

(d) The hearing may be continued with recesses as determined by the Board;

(e) The Board may set reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious

or immaterial matter;

(f) Exhibits shall be marked and the markings shall identify the person offering the exhibits. The exhibits shall be preserved by the Board as part of the record of the Board's proceeding.

(4) Evidentiary Rules

(a) Evidence of a type commonly relied upon by reasonably prudent persons in conduct of their serious affairs shall be admissible.

(b) Irrelevant, immaterial or unduly repetitious evidence shall be excluded.

(c) All offered evidence, not objected to, will be received by the Board subject to its power to exclude irrelevant, immaterial or unduly repetitious matter.

(d) Evidence objected to may be received by the Board with rulings on its admissibility or exclusion to be made at or any time before the time a final order is issued.

(e) Any time ten days or more before a hearing or at such other time as the Board may specify, any party may serve on an opposing party a copy of any affidavit, certificate or other document the party proposes to introduce in evidence. Unless the opposing party requests cross-examination of the affiant, certificate preparer or other document preparer or custodian, within five days prior to hearing, or at such other time as the Board may specify, the affidavit or certificate may be offered and received with the same effect as oral testimony.

(f) If the opposing party requests cross-examination of the affiant, certificate preparer or other document preparer or custodian as provided in rule 661-10-045(4)(3) and the opposing party is informed within five days prior to the hearing, or at such other time as the Board may specify, that the person will not appear for cross-examination, the affidavit, certificate or other document may be received in evidence, provided the Board determines that:

(A) The contents of the affidavit, certificate or other document is of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs; and

(B) The party requesting cross-examination would not be unduly prejudiced or injured by lack of cross-examination.

(5) The filing of any motion for evidentiary hearing will suspend the time limits for any other event in the review proceeding including the issuance of the Board's final order. If the Board grants the request for hearing, the time limits for other events shall continue to be suspended until the close of the evidentiary hearing. The Board shall schedule any evidentiary hearing not less than ten days after the time the Board issues an order granting the motion for evidentiary hearing or at such other times as the parties may agree. If the Board denies a request for an evidentiary hearing, the time for all future events will begin to run upon the date the Board issues its order denying the hearing.

(6) Depositions, Subpenas

(a) On petition of any party to a proceeding before the Board, the Board may order testimony of any witness to be taken by deposition in the same manner prescribed by law for depositions in civil actions (ORCP 38-40). Depositions may also be taken by the use of audio or audio visual recordings. The petition for depositions shall set forth:

(A) The name and address of the witness whose testimony is desired.

(B) A showing of relevance and materiality of the testimony.

(C) A request for an order that the testimony of the witness be taken before an officer named in the petition for that purpose.

(b) Should the Board order an evidentiary hearing, the Board shall issue subpoenas to any party to a contested case upon request upon a showing of relevance and reasonable scope of the evidence sought. Subpoenas may also be issued under the signature of the attorney of record of a party.

(c) Witnesses appearing pursuant to subpoena, other than parties or officers or employes of the Board, shall be tendered fees and mileage as prescribed by law for witnesses in civil actions. The party requesting the subpoena shall be responsible for service of the subpoena and tendering the witness and mileage fees to the witness.

Intervention

661-10-050 (1) Except for those persons identified in the Notice of Intent to Appeal as required by rule 661-10-015[1](2)(f), any person who can show entitlement to standing under rule 661-10-020(3), (a) through (e) [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 the time for:

(a) Filing the petition for review, if intervention is sought as a petitioner, or the time for

(b) Filing the respondent's brief, if intervention is sought as a respondent.

(2) 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 rule 661-10-025. Where intervention

is sought as a respondent, no reply by the petitioner will be allowed without permission of the Board.

Consolidation

661-10-055 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.

[Exceptions to Board's Recommendation

661-10-060 (1) 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, or such other period of time as the Board may require.

(2) Contents: The brief may discuss any issue contained in the recommendation with which the party filing the brief disagrees. The brief may also address the Board's recommendation as to whether oral argument should be allowed before the Commission. The brief shall include a cover page and table of contents. The body of the brief shall not exceed 15 pages in length, exclusive of the table of contents and

cover page.

(3) 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.]

Motions

661-10-065 (1) 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.

(2) Time of Filing: A party seeking to challenge the failure of an adverse party to comply with any of the requirements of statutes or Board 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.

(3) 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.

Final Order of Board

661-10-070 (1) An Order of the Board shall be deemed

final when the cover page of the order containing the caption of the appeal:

(a) States that it is the "Final Opinion and Order";

(b) Indicates whether the decision being reviewed is affirmed, reversed or [reversed and] remanded;

(A) The Board will reverse a land use decision when:

1. The governing body exceeded its jurisdiction; or

2. The decision is unconstitutional; or

3. The decision violates a provision of applicable law

and is prohibited as a matter of law.

(B) Reversal of a decision vacates the decision.

(C) The Board will remand a land use decision for further proceedings when:

1. The findings are insufficient to support the decision;

or

2. The decision is not supported by substantial evidence in the whole record; or

3. The decision is flawed by procedural errors that prejudice the substantial rights of the petitioner(s); or

4. The decision improperly construes the applicable law.

(D) Remand of a decision reinvests the maker of the land use decision with jurisdiction over the issues remanded.

(c) Contains the date of the final order;

(d) Has received a time and date stamp of the Land Use Board of Appeals.

(2) When an order of the Board becomes final it shall be

made available to interested members of the public. The Board may charge \$.[25] 10 per page for copies of its final orders or other orders furnished to members of the public.

Miscellaneous Provisions

661-10-075 Extension of Time:

(a) Except as provided in subsection (b) of this section, any time deadline established by these rules for the filing of documents with the Board, other than the Notice of Intent to Appeal and the Petition for Review, may be extended by the Board upon motion of the party seeking the extension. The motion shall state the reasons for the granting of the extension and must be filed with the Board within the time required for performance of the act for which an extension of time is requested.

(b) A motion which seeks to extend the time for filing the petition for review or respondent's brief must be accompanied by a written stipulation signed by all the parties to the appeal consenting to the extension. A written stipulation consenting to an extension of time for filing respondent's brief must also contain a provision consenting to 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.

(c) The Board may extend the time within which the Board must make a final decision on a petition for review on its own

motion or at the request of one of the parties if the Board finds that the ends of justice served by granting the extension outweigh the best interests of the public and the parties in having a decision within 77 days. The factors the Board shall consider in determining whether to grant an extension under this subsection of these rules are as follows:

(A) Whether the failure to grant a continuance in the proceeding would be likely to make a continuation of the proceeding impossible resulting in a miscarriage of justice; or

(B) Whether the case is so unusual or so complex, due to the number of parties or the existence of novel questions of fact or law, that is unreasonable to expect adequate consideration of the issues within the 77 day time limit.

(d) Other than the time limit within which to file the notice of intent to appeal, any time limit established by these rules, including the time within which the Board must issue its final decision, may be extended upon consent of all the parties.

(e) Except when ordered by the Board, the filing of a motion to dismiss will not stay or suspend any time limit established by these rules or the provisions of 1983 Or Laws, ch 727.

(2) Cost Bill and Attorney's Fees

(a) In order for the Board to award costs, in whole or in part, to the prevailing party, the prevailing party shall 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 costs 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. Costs awarded against more than one party shall be divided equally among all such parties unless the Board otherwise directs.

(b) A party seeking an award of attorney's fees shall file a petition therefor within 15 days of the date the final order is issued and shall serve a copy of the petition on all parties to the proceeding. Any objections to the petition for attorney's fees and expenses must be filed with the Board within 10 days after the petition is filed.

(3) 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.

(4) 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. Reply briefs shall have a gray cover.

(5) [Service of Documents on All Parties] Filing and Service: [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.]

(a) With the exception of the notice of intent to appeal, which must be filed in the manner specified in rule 661-10-015(1), anything to be filed with the Land Use Board of Appeals may be accomplished by:

(A) Delivery to the Board on or before the date due; or
(B) Mailed on or before the date due by first class mail with the United States Postal Service.

(b) Service

(A) A copy of anything filed under these rules must,

contemporaneously with filing, be served by the filing party or attorney on all parties to the cause.

(B) Service may be in person or by first-class mail. Service by United States Postal Service mail is complete on deposit in the mail.

(C) All service copies must include a certificate showing the date of filing or mailing to the Board.

(D) Anything filed with the Board shall contain either an acknowledgment of service by the person served or proof of service in the form of a statement of the date of personal delivery or deposit in the mail and the names and addresses of the persons served, certified by the person who made service.

(E) Proof of service shall appear on or be affixed to anything filed.

(6) Copies of Documents to be Filed With the Board:

(a) The petition for review and any briefs filed with the Board shall be filed together with four copies.

(b) Any other document filed with the Board, except documents to be included as part of the record on review, shall be filed together with one copy.

(7) 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.

(8) Appearances Before the Board: A party to a proceeding before this Board may appear on his own behalf or be

represented by an attorney. Appearances by a person other than an individual shall be by attorney, in all cases. As used in this Rule, attorney means an active member of the Oregon State Bar.

(9) 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.

(10) Address and Hours of the Board: The Board's address is [475 Cottage Street, NE, Suite 219, Salem, Oregon 97301] 106 State Library Building, Salem, Oregon, 97310. 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.

(11) Citations to Board Decisions: Citations to Board decisions shall be in the following form:

_____ Or LUBA _____ ().

EXHIBIT 1
(661-10-015)

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

Jane Smith,)	
)	LUBA No. _____
Petitioner,)	
)	
vs.)	
)	
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 mailed written notice of the land use

decision by Willamette County, as indicated by its records in this matter, include: (include names, addresses and telephone numbers of all persons whom the governing body's records indicate were mailed written notice of the land use decision).

NOTICE:

Anyone designated in paragraph II of this Notice other than Respondent Willamette County who desires to participate as a party in this case before the Land Use Board of Appeals must file with the Board a Statement of Intent to Participate in this proceeding as required by rule 661-10-020. The Statement must be filed with the Board within 15 days of service of this Notice.

Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on _____, I served a true and correct copy of this Notice of Intent to Appeal on all persons listed in paragraph II of this Notice pursuant to rule 661-10-010(8) by (a) mail or (b) personal delivery. [INDICATE WHICH]

Dated: _____

Signature

EXHIBIT 2
(661-10-020)

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

Jane Smith,)	
)	LUBA No. _____
Petitioner,)	
)	
vs.)	
)	
Willamette County,)	
)	
Respondent.)	

STATEMENT OF INTENT TO PARTICIPATE

_____ intends to participate in the above captioned review proceeding.

Signature

CERTIFICATE OF SERVICE

I hereby certify that on _____, I served a true and correct copy of this Statement of Intent to Participate on all persons listed in paragraph II of the Notice of Intent to Appeal pursuant to rule 661-10-010(8) by (a) mail or (b) personal delivery. [INDICATE WHICH]

Dated: _____

Signature