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PERMANENT ADMINISTRATIVE ORDER

LUBA 1-2019
CHAPTER 661
LAND USE BOARD OF APPEALS

<p>FILED 12/24/2019 9:48 AM ARCHIVES DIVISION SECRETARY OF STATE & LEGISLATIVE COUNSEL</p>

FILING CAPTION: Amendments shorten certain due dates; add attorney fees provisions; eliminate automatic suspension for certain motions.

EFFECTIVE DATE: 01/01/2020

AGENCY APPROVED DATE: 12/24/2019

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RULES:

661-010-0000, 661-010-0030, 661-010-0045, 661-010-0065, 661-010-0067, 661-010-0075

AMEND: 661-010-0000

RULE TITLE: Introduction

NOTICE FILED DATE: 10/28/2019

RULE SUMMARY: Effective Date of Rule Amendments

OAR 661-010-0000: This amendment proposes a change to make clear that all proceedings commenced by a notice of intent to appeal (NITA) filed after January 1, 2020 shall be governed by the proposed rule amendments.

RULE TEXT:

Scope of Rules and Effective Date: All proceedings commenced by a notice of intent to appeal filed after January 1, 2020 shall be governed by these rules. Proceedings commenced on or before January 1, 2020 shall be governed by OAR 661-010-0005 through 661-010-0075 as effective on the date the notice of intent to appeal was filed, except that OAR 661-010-0040 as effective January 1, 2019 shall apply to all proceedings pending on that date, no matter when commenced.

STATUTORY/OTHER AUTHORITY: ORS 197.820(4)

STATUTES/OTHER IMPLEMENTED: ORS 197.805

AMEND: 661-010-0030

RULE TITLE: Petition for Review

NOTICE FILED DATE: 10/28/2019

RULE SUMMARY: Discretion to Shorten Petition for Review Due Date After Denying an Objection to the Record

OAD 661-010-0030(1): This amendment proposes to change the requirement that a Petition for Review is due 21 days after the date the local government record is received by LUBA, to reflect that it is within the Board's discretion to alter the deadline for the Petition for Review, consistent with 2019 legislative amendments to ORS 197.830(10)(a).

The following explains the Board's decision to amend its rule to provide that it is within the Board's discretion to alter the deadline for the Petition for Review pursuant to ORS 197.830(10)(a). Pursuant to House Bill (HB) 3272 (2019), the legislature amended ORS 197.830(10)(a) to provide that: "If the board denies a petitioner's objection to the record, the board may establish a new deadline for the petition for review to be filed that may not be less than 14 days from the later of the original deadline for the brief or the date of denial of the petitioner's record objection." Accordingly, the proposed amendment conforms LUBA's rules of procedures to the newly amended statute.

RULE TEXT:

(1) Filing and Service of Petition: Unless the Board orders otherwise pursuant to ORS 197.830(10)(a), the petition for review together with four copies shall be filed with the Board within 21 days after the date the record is received or settled by the Board. See OAD 661-010-0025(2) and 661-010-0026(6). The petition shall also be served on the governing body and any party who has filed a motion to intervene. Failure to file a petition for review within the time required by this section, and any extensions of that time under OAD 661-010-0045(9) or 661-010-0067(2), shall result in dismissal of the appeal and forfeiture of the filing fee and deposit for costs to the governing body. See OAD 661-010-0075(1)(c). Co-petitioners who file a single Notice of Intent to Appeal shall be limited to a single, joint petition for review.

(2) Specifications of Petition: The petition for review shall:

(a) Begin with a table of contents and authorities;

(b) Not exceed 11,000 words, unless permission for a longer petition is given by the Board. Headings, footnotes, and quoted material count toward the word-count limitation. The front cover, table of contents, table of authorities, appendices, certificate of service, any other certificates, and the signature block do not count toward the word-count limitation.

(c) If a party does not have access to a word-processing system that provides a word count, a brief is acceptable if it does not exceed 38 pages;

(d) Have blue front and back covers of at least 65-pound weight paper. The front cover page shall state the full title of the proceeding, and the names, addresses and telephone numbers of all parties unrepresented by an attorney. If a party is represented by an attorney, the name, address and telephone number of the attorney shall be substituted for the party. If there is more than one petitioner, the cover page shall specify which petitioner(s) are filing the petition. An intervenor shall be designated as either petitioner or respondent in accordance with OAD 661-010-0050;

(e) Briefs must be legible and capable of being read without difficulty. The print must be black. Briefs must be prepared using proportionately spaced type. The style must be in font such as Times New Roman, and may not be smaller than 14 point type both for text and for footnotes;

(f) Be double spaced, except that quotations and footnotes may be single-spaced with double space above and below each paragraph of quotation;

(g) Have text printed on only one side of the page; however, text may be printed on both sides of the page if the paper is sufficiently opaque to prevent material on one side from showing through, and the petition is bound along the left-hand

margin so that the pages lie flat when open;

(h) Be printed on 8-1/2 by 11 inch paper, with numbers for each line of text and page numbers on the top of each page of text;

(i) Have inside margins of 1-1/4 inches, outside margins of 1 inch, top and bottom margins of 3/4 inch; and

(j) Be signed on the last page by the author. In cases where multiple unrepresented petitioners or intervenors-petitioners file a single petition for review, the petition for review shall be signed by all petitioners or intervenors-petitioners who wish to join the petition for review.

(k) A signed certificate of compliance with the above-listed specifications for the petition for review shall be appended after the final page of the petition. See Exhibit 7. The certificate of compliance must include a statement that:

(A) The brief complies with the word-count limitation in paragraph (2)(b) of this subsection for briefs and OAR 661-010-0039 for reply briefs by indicating the number of words in the brief. The person preparing the certificate may rely on the word count of the word-processing system used to prepare the brief. If the attorney, or a self-represented party, does not have access to a word-processing system that provides a word count, the certificate must indicate that the attorney, or self-represented party does not have access to such a system and that the brief complies with paragraph (2)(c) of this subsection for briefs and OAR 661-010-0039 for reply briefs.

(B) The brief complies with the font limitation in paragraph (2)(e) of this subsection by indicating that the size is not smaller than 14 point for both the text of the brief and footnotes.

(3) If the Board determines that the petition for review fails to conform with the requirements of section (2) of this rule, it shall notify the author, and a brief conforming with the requirements of section (2) shall be filed within three (3) days of notification by the Board. The Board may refuse to consider a brief that does not substantially conform to the requirements of this rule.

(4) Contents of Petition: The petition for review shall:

(a) State the facts that establish petitioner's standing;

(b) Present a clear and concise statement of the case, in the following order, with separate section headings:

(A) The nature of the land use decision or limited land use decision and the relief sought by petitioner;

(B) A brief summary of the arguments appearing under the assignments of error in the body of the petition;

(C) A summary of the material facts. The summary shall be in narrative form with citations to the pages of the record where the facts alleged can be found. Where there is a map in the record that helps illustrate the material facts, the petitioner shall include a copy of that map in the summary of the material facts or attach it as an appendix to the petition.

(c) State why the challenged decision is a land use decision or a limited land use decision subject to the Board's jurisdiction;

(d) Set forth each assignment of error under a separate heading. Each assignment of error must demonstrate that the issue raised in the assignment of error was preserved during the proceedings below. Where an assignment raises an issue that is not identified as preserved during the proceedings below, the petition shall state why preservation is not required. Each assignment of error must state the applicable standard of review. Where several assignments of error present essentially the same legal questions, the argument in support of those assignments of error shall be combined;

(e) Contain a copy of the challenged decision, including any adopted findings of fact and conclusions of law; and

(f) Contain a copy of any comprehensive plan provision, ordinance or other provision of local law cited in the petition, unless the provision is quoted verbatim in the petition.

(5) The petition for review may include appendices containing verbatim transcripts of relevant portions of media recordings that are part of the record.

(6) Amended Petition: A petition for review which fails to comply with section (4) of this rule 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 OAR 661-010-0005.

(7) Cross Petition: Any respondent or intervenor-respondent who seeks reversal or remand of an aspect of the decision on appeal regardless of the outcome under the petition for review may file a cross petition for review that includes one

or more assignments of error. A respondent or intervenor-respondent who seeks reversal or remand of an aspect of the decision on appeal only if the decision on appeal is reversed or remanded under the petition for review may file a cross petition for review that includes contingent cross-assignments of error, clearly labeled as such. The cover page shall identify the petition as a cross petition and the party filing the cross petition. The cross petition shall 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.

STATUTORY/OTHER AUTHORITY: ORS 197.820(4)

STATUTES/OTHER IMPLEMENTED: ORS 197.830(11), (12), (13)(a)

AMEND: 661-010-0045

RULE TITLE: Taking Evidence Not in the Record

NOTICE FILED DATE: 10/28/2019

RULE SUMMARY: Motions to Take Evidence

OAR 661-010-0045(9); OAR 661-010-0065(4); OAR 661-010-0067(2): Modifies the rule, and all references to it, so that the filing of a motion to take evidence no longer automatically suspends subsequent appeal deadlines. The intent behind the rule as amended is to avoid undue delay by making it clear that filing a motion to take evidence no longer automatically suspends the appeal.

RULE TEXT:

(1) Grounds for Motion to Take Evidence Not in the Record: The Board may, upon written motion, take evidence not in the record in the case of disputed factual allegations in the parties' briefs concerning unconstitutionality of the decision, standing, ex parte contacts, actions for the purpose of avoiding the requirements of ORS 215.427 or 227.178, or other procedural irregularities not shown in the record and which, if proved, would warrant reversal or remand of the decision. The Board may also upon motion or at its discretion take evidence to resolve disputes regarding the content of the record, requests for stays, attorney fees, or actual damages under ORS 197.845.

(2) Motions to Take Evidence:

(a) A motion to take evidence shall contain a statement explaining with particularity what facts the moving party seeks to establish, how those facts pertain to the grounds to take evidence specified in section (1) of this rule, and how those facts will affect the outcome of the review proceeding.

(b) A motion to take evidence shall be accompanied by:

(A) An affidavit or documentation that sets forth the facts the moving party seeks to establish; or

(B) An affidavit establishing the need to take evidence not available to the moving party, in the form of depositions or documents as provided in subsection (2)(c) or (d) of this rule.

(c) Depositions: the Board may order the testimony of any witness to be taken by deposition where a party establishes the relevancy and materiality of the anticipated testimony to the grounds for the motion, and the necessity of a deposition to obtain the testimony. Depositions under this rule shall be conducted in the same manner prescribed by law for depositions in civil actions (ORCP 38-40).

(d) Subpoenas: the Board shall issue subpoenas to any party upon a showing that the witness or documents to be subpoenaed will provide evidence relevant and material to the grounds for the motion. Subpoenas may also be issued under the signature of the attorney of record of a party. Witnesses appearing pursuant to subpoena, other than parties or employees of the Board, shall be tendered fees and mileage as prescribed by ORS 44.415(2) 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.

(3) Any party may file a response within 14 days of the date of service of the motion to take evidence. The response shall specifically state what facts alleged in the motion are contested, with references to where contrary facts are found in the record or in affidavits or documents appended to the response.

(4) If the Board grants the motion to take evidence, the Board shall so notify the parties, and indicate whether it will decide the motion on the submitted materials, whether it will allow depositions or discovery of evidence under section (2), or whether it will schedule an evidentiary hearing on the motion.

(5) Conduct of Hearing:

(a) Where the Board schedules an evidentiary hearing, the hearing shall be conducted in the following order, insofar as the Board finds it practical:

(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 rebutting that of the moving party;

- (C) The moving party may present surrebuttal evidence;
- (b) Any witness is subject to cross examination by opposing parties.
- (c) Any member of the Board may question any witness;
- (d) The burden of presenting evidence in support of a fact or proposition rests on the proponent of the fact or proposition;
- (e) The Board may continue a hearing, and may set time limits for any hearing;
- (f) Exhibits shall be marked to identify the party offering the exhibits. The exhibits shall be preserved by the Board as part of the record.
- (6) 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 evidence not objected to shall be received by the Board, subject to the Board's power to exclude irrelevant, immaterial or unduly repetitious matter.
 - (d) Evidence objected to may be received by the Board. Rulings on the admissibility of such evidence, if not made at the hearing, shall be made at or before the time a final order is issued.
 - (e) Any time 14 days or more before a hearing, any party may serve on every other party an affidavit, certificate or other document the party proposes to introduce in evidence. Unless cross-examination of the affiant, certificate preparer or other document preparer or custodian is requested within seven days prior to hearing, the affidavit or certificate may be offered subject to the same standards and received with the same effect as oral testimony. If cross-examination is requested, and the requestor is informed within seven days prior to the hearing that the requested witness will not appear for cross-examination, the affidavit, certificate or other document may be received in evidence if the Board determines that the party requesting cross-examination would not be unduly prejudiced or injured by lack of cross-examination.
 - (7) Prehearing Conference: The Board, on its own motion or at the request of any party, may call a prehearing conference to consider:
 - (a) Simplification of the issues;
 - (b) The possibility of obtaining admissions of fact and documents which will avoid unnecessary proof;
 - (c) Limitation of the number of witnesses;
 - (d) The form and substance of any prehearing order;
 - (e) Such other matters as may aid in the disposition of the appeal.
 - (8) Proposed Prehearing Order: The Board, with or without a prehearing conference, may require that the parties prepare and sign a proposed prehearing order to be filed with the Board on or before a date specified by the Board. The order shall contain:
 - (a) A statement of contentions of law of each party;
 - (b) A concise statement of all contentions of fact to be proved by each party;
 - (c) A statement of all agreed facts;
 - (d) A list of witnesses and a summary of their testimony;
 - (e) A list of exhibits and a statement of the contents of each;
 - (f) Such other matters as the Board may require in order to expedite the hearing and appeal.
 - (9) Effect on Time Limits: Unless the Board orders otherwise, the filing of a motion to take evidence shall not suspend the time limits for all other events in the review proceeding, including the issuance of the Board's final order. Unless the parties agree otherwise, the Board shall schedule any evidentiary hearing not less than ten days after the order granting the motion to take evidence is issued.

STATUTORY/OTHER AUTHORITY: ORS 197.820(4)

STATUTES/OTHER IMPLEMENTED: ORS 197.835(2)(b)

AMEND: 661-010-0065

RULE TITLE: Motions

NOTICE FILED DATE: 10/28/2019

RULE SUMMARY: Motions to Take Evidence

OAR 661-010-0045(9); OAR 661-010-0065(4); OAR 661-010-0067(2): Modifies the rule, and all references to it, so that the filing of a motion to take evidence no longer automatically suspends subsequent appeal deadlines. The intent behind the rule as amended is to avoid undue delay by making it clear that filing a motion to take evidence no longer automatically suspends the appeal.

RULE TEXT:

(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 filing a motion in writing for such order or relief. A motion shall show proof of service on all parties.

(2) Time of Filing: A party seeking to challenge the failure of an opposing party to comply with any of the requirements of statutes or Board rules shall make the challenge by motion filed with the Board and served on all parties within 14 days after the moving party obtains knowledge of such alleged failure. However, motions to dismiss for lack of jurisdiction may be filed at any time. An opposing party may, within 14 days from the date of service of a motion, file a response.

(3) How Submitted: Parties shall submit all motions without oral argument unless otherwise directed by the Board. A party that desires a telephone conference on a motion shall include a request for a telephone conference in its motion or response. The Board may, at its discretion, conduct a telephone conference with the parties to consider any motion.

(4) Effect of Filing Motion: Except as provided in OAR 661-010-0026(6) with regard to objections to the record, or as may otherwise be ordered by the Board on its own motion, the filing of a motion shall not suspend the time limits for other events in the review proceeding.

STATUTORY/OTHER AUTHORITY: ORS 197.820(4)

STATUTES/OTHER IMPLEMENTED: ORS 197.805

AMEND: 661-010-0067

RULE TITLE: Extensions of Time

NOTICE FILED DATE: 10/28/2019

RULE SUMMARY: Motions to Take Evidence

OAR 661-010-0045(9); OAR 661-010-0065(4); OAR 661-010-0067(2): Modifies the rule, and all references to it, so that the filing of a motion to take evidence no longer automatically suspends subsequent appeal deadlines. The intent behind the rule as amended is to avoid undue delay by making it clear that filing a motion to take evidence no longer automatically suspends the appeal.

RULE TEXT:

- (1) In no event shall the time limit for the filing of the notice of intent to appeal be extended.
- (2) Except as provided in this section, in no event shall the time limit for the filing of the petition for review be extended without the written consent of all parties. Written consent may include facsimile signatures. The Board may, on a motion of a party or its own motion, extend the deadline for filing the petition for review to allow time to rule on a motion to dismiss or a motion to take evidence. Written consent to extend the deadline for filing record objections shall automatically extend the deadline for filing the petition for review for the same number of days granted to extend the deadline for filing record objections, unless the consenting parties expressly provide otherwise.
- (3) All other time limits may be extended upon oral or written consent of all parties, the Board's motion or motion of a party. Written consent may include facsimile signatures.
- (4) A motion for extension of time shall state the reasons for granting 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. A motion for extension of time that is not accompanied by a written consent by all parties to the requested extension shall state whether all parties to the appeal have agreed to the motion for extension of time, orally or otherwise.
- (5) Any agreement by the parties allowing an extension of time shall automatically extend the time for subsequent filings, as well as the issuance of the Board's final order by an amount of time equal to the extension agreed to by the parties.
- (6) In the event the Board extends the deadline for issuance of its final order without consent of the parties, it shall enter the findings required by ORS 197.840.

STATUTORY/OTHER AUTHORITY: ORS 197.820(4)

STATUTES/OTHER IMPLEMENTED: ORS 197.830(13)(a)

AMEND: 661-010-0075

RULE TITLE: Miscellaneous Provisions

NOTICE FILED DATE: 10/28/2019

RULE SUMMARY: Attorney Fees

OAR 661-010-0075(1)(e): Modifies the current rule regarding attorney fees to add additional bases upon which LUBA shall award attorney fees pursuant to 2019 legislative amendments to ORS 197.830(15)(b) and (c).

The Board proposes to amend its rule to add additional bases under which the Board shall award attorney fees in order to conform to HB 3272 (2019), which modified ORS 197.830(15)(b), and Senate Bill (SB) 8A (2019) which added a new subsection (c) to ORS 197.830(15). These amendments are intended to reflect that the Board shall award reasonable attorney fees against a party who the board finds presented a position or filed any motion without probable cause. In addition, the proposed amendment adds that the Board shall award attorney fees and expenses to a prevailing respondent that is the applicant or local government, upon affirming a quasi-judicial land use decision approving an application that is only for the development of publicly supported housing, as defined in ORS 456.250.

RULE TEXT:

(1) Cost Bill and Attorney Fees:

(a) Time for Filing: The prevailing party may file a cost bill or a motion for attorney fees, or both, no later than 14 days after the final order is issued. The prevailing party shall serve a copy of any such cost bill or motion for attorney fees on all parties.

(b) Recoverable Costs: Costs may be recovered only for the items set forth in this subsection.

(A) If the petitioner is the prevailing party, the petitioner may be awarded the cost of the filing fee.

(B) If the governing body is the prevailing party, the governing body may be awarded copying costs for the required number of copies of the record, at 25 cents per page, whether or not the governing body actively participated in the review.

(C) Costs awarded to the governing body pursuant to this section shall be paid from the deposit required by OAR 661-010-0015(4) and shall not exceed the amount of that deposit.

(D) If an intervenor under OAR 661-010-0050 or a state agency under OAR 661-010-0038 is the prevailing party, the intervenor or state agency may be awarded the cost of the fee to intervene or to file a state agency brief.

(c) Forfeit of Filing Fee and Deposit: If a record has been filed and a petition for review is not filed within the time required by these rules, and the governing body files a cost bill pursuant to this section requesting forfeiture of the filing fee and deposit, the filing fee and deposit required by OAR 661-010-0015(4) shall be awarded to the governing body as cost of preparation of the record. See OAR 661-010-0030(1).

(d) Return of Deposit: After any award of costs under subsection (b) of this section is made, any amount of the deposit remaining shall be returned to petitioner.

(e) Attorney Fees:

(A) Attorney fees shall be awarded by the Board to the prevailing party as specified in ORS 197.830(15)(b) and (c); a motion for attorney fees shall include a signed and detailed statement of the amount of attorney fees sought.

(B) Attorney fees shall be awarded to the applicant, against the governing body, if the Board reverses a land use decision or limited land use decision and orders a local government to approve a development application pursuant to ORS 197.835(10).

(C) Attorney fees shall be awarded to the applicant, against the person who requested a stay pursuant to ORS 197.845, if the Board affirms a quasi-judicial land use decision or limited land use decision for which such a stay was granted. The amount of the award shall be limited to reasonable attorney's fees incurred due to the stay request, and together with

any actual damages awarded, shall not exceed the amount of the undertaking required under 197.845(2).

(f) Responses and Objections: Any response to a motion for attorney fees, together with any objections to the detailed statement of the amount of attorney fees sought, shall be filed with the Board within 14 days after the date of service of the motion. Objections to the cost bill shall be filed with the Board within 14 days after the date of service of the cost bill.

(g) If a cost bill, a motion for attorney fees, or both are filed, and the Board's decision is appealed to the Court of Appeals, the Board shall act on the cost bill or motion for attorney fees after an appellate judgment is issued and any further Board proceedings necessitated by that judgment are concluded.

(2) Filing and Service:

(a) Filing:

(A) Documents may not be filed by facsimile. Documents filed with the Board may include facsimile signatures.

(B) Except as provided in OAR 661-010-0015(1)(b) with regard to the notice of intent to appeal, filing a document with the Board is accomplished by:

(i) Delivery to the Board on or before the date due; or

(ii) Mailing on or before the date due by first class mail with the United States Postal Service. If the date of mailing is relied upon as the date of filing, the date of the first class postmark on the envelope mailed to the Board is the date of filing.

(b) Service:

(A) Any document filed with the Board, other than the record as provided in OAR 661-010-0025(3), or the record after withdrawal for reconsideration as provided in OAR 661-010-0021(6), must also be served on all parties contemporaneously. Service on two or more petitioners unrepresented by an attorney is accomplished by serving the lead petitioner designated under OAR 661-010-0015(3)(f)(A). Service on two or more intervenors unrepresented by an attorney is accomplished by serving the lead intervenor designated under OAR 661-010-0050(2).

(B) Service may be in person, or by first-class mail. Mail service is complete on deposit in the mail.

(C) Service copies of documents other than the Notice or the record shall include a certificate showing the date of filing with the Board (see Exhibit 5).

(D) Documents filed with the Board shall contain either an acknowledgement of service by the person served or proof of service by a statement certified by the person who made service of the date of personal delivery or deposit in the mail, and the names and addresses of the persons served (see Exhibit 6).

(c) Recycled Paper. Parties filing anything with the Board, including but not limited to notices of intent to appeal, records, motions, and briefs, are encouraged to use recycled paper if recycled paper is readily available at a reasonable price in the party's community. Further, parties are encouraged to use paper containing the highest available content of post-consumer waste, as defined in ORS 279.545, that is recyclable in the office paper recycling program in the party's community.

(3) Number of Copies Required: Unless these rules provide otherwise, all documents filed with the Board shall be filed with one copy. No copy of a record transmitted pursuant to OAR 661-010-0025(2), or a record after withdrawal for reconsideration transmitted pursuant to OAR 661-010-0021(6), is required.

(4) Copying Fee: The following fees shall be charged for certified copies or scans of Board nonexempt public records as defined in ORS 192.410, 192.501, 192.502, and 192.505:

(a) 25 cents per page for copies or scans of any Board transcript or document of public record.

(b) \$10 for a copy of a cassette tape, compact disc or similar media disc in the record.

(c) \$20 for a copy of a videocassette tape in the record.

(d) The Board shall also charge the actual cost of copying and mailing oversized exhibits, plans or maps.

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

(6) Appearances Before the Board: An individual shall either appear on his or her own behalf or be represented by an

attorney. A corporation or other organization shall be represented by an attorney. In no event may a party be represented by someone other than an active member of the Oregon State Bar. In the event someone other than an active member of the Oregon State Bar files a notice of intent to appeal on behalf of a corporation, other organization, or another individual, the individual filing the notice of intent to appeal will be given an opportunity to provide an amended notice of intent to appeal that conforms with this section. If an amended notice of intent to appeal is not filed within the time set by the Board, the Board will dismiss the appeal.

(7) Lead Petitioner or Intervenor:

(a) A lead petitioner is responsible for notifying the other petitioners of documents and communications received from the Board and other parties, but each petitioner remains responsible for his or her own representation.

(b) A lead intervenor is responsible for notifying the other intervenors of documents and communications received from the Board and other parties, but each intervenor remains responsible for his or her own representation. A lead intervenor's responsibilities under this subsection extend only to intervenors who joined in the lead intervenor's motion to intervene and does not extend to intervenors who filed separate motions to intervene.

(8) Computation of Time: Time deadlines in these rules shall be computed by excluding the first day and including the last day. If the last day is Saturday, Sunday or other state or federal legal holiday, the act must be performed on the next working day.

(9) Address and Hours of the Board: The Board's address is 775 Summer Street NE, Suite 330, Salem Oregon, 97301-1283. The telephone number is (503) 373-1265. The Board's office shall be open from 8:30 a.m. to 12:00 p.m., and 1:00 p.m. to 5:00 p.m. Monday through Friday.

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

(a) Reported Cases: John Doe v. XYZ County, 5 Or LUBA 654 (1981).

(b) Unreported Cases: John Doe v. XYZ County, ___ Or LUBA ___ (LUBA No. 80-123, February 15, 1981).

(11) Motion to Transfer to Circuit Court:

(a) Any party may request, pursuant to ORS 34.102, that an appeal be transferred to the circuit court of the county in which the appealed decision was made, in the event the Board determines the appealed decision is not reviewable as a land use decision or limited land use decision as defined in 197.015(10) or (12).

(b) A request for a transfer pursuant to ORS 34.102 shall be initiated by filing a motion to transfer to circuit court not later than 14 days after the date a respondent's brief or motion that challenges the Board's jurisdiction is filed. If the Board raises a jurisdictional issue on its own motion, a motion to transfer to circuit court shall be filed not later than 14 days after the date the moving party learns the Board has raised a jurisdictional issue.

(c) If the Board determines the appealed decision is not reviewable as a land use decision or limited land use decision as defined in ORS 197.015(10) or (12), the Board shall dismiss the appeal unless a motion to transfer to circuit court is filed as provided in subsection (11)(b) of this rule, in which case the Board shall transfer the appeal to the circuit court of the county in which the appealed decision was made.

(12) Transfer from Circuit Court: When any appeal of a land use or limited land use decision is transferred to LUBA from circuit court, the petition for writ of review filed in the circuit court shall be treated as the notice of intent to appeal, and the case shall proceed as provided in LUBA's rules, subject to the following:

(a) No additional filing fee shall be required;

(b) After an appeal is transferred to LUBA, the Board, by letter, will establish a deadline for the petitioner to submit the deposit for costs and a deadline for the respondent to transmit the record.

(13) Transfer from the Oregon Department of Land Conservation and Development: Where the Director of the Oregon Department of Land Conservation and Development transfers a matter to LUBA pursuant to ORS 197.825(2)(c)(A), the case shall proceed as provided in LUBA's rules, subject to the following:

(a) The date of the notice from the Director making the transfer shall begin the running of a 21-day period within which one or more parties in the proceedings before the department may file a notice of intent to appeal with LUBA. A notice filed thereafter shall not be deemed timely filed, and the appeal shall be dismissed.

(b) Except as provided in this section, the notice of intent to appeal shall conform to the requirements of OAR 661-010-

0015, including payment of the filing fee and deposit for costs. The notice of intent to appeal shall identify the local government as the respondent, rather than the Oregon Department of Land Conservation and Development or the Land Conservation and Development Commission.

(c) On receipt of a notice of intent to appeal, the Board shall, by letter, establish a deadline for the respondent to file the portion of the local record necessary to review the transferred matter. In all other respects, an appeal of a transferred matter shall proceed according to LUBA's rules.

(14) All briefs and motions filed with the Board shall comply with the rules in OAR 661-010-0030(2) with respect to type size, spacing, paper size and printing, numbering and margins.

[ED. NOTE: Exhibits referenced are available from the agency.]

STATUTORY/OTHER AUTHORITY: ORS 197.820(4)(a), (b)

STATUTES/OTHER IMPLEMENTED: ORS 34.102, 197.830(9), (13)(a) & (15), 197.835(10), 197.845(3)