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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

LUBA 4-2023

CHAPTER 661

LAND USE BOARD OF APPEALS

FILED

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ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Responding to need for guidance regarding in-person oral argument.

EFFECTIVE DATE: 10/11/2023 THROUGH 03/31/2024

AGENCY APPROVED DATE: 10/11/2023

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NEED FOR THE RULE(S):

The proposed amendments are necessary to clarify the circumstances in which LUBA will conduct oral argument in person rather than remotely by video conference.

JUSTIFICATION OF TEMPORARY FILING:

LUBA was recently made aware of a lack of clarity in the current wording of its rule governing oral argument before LUBA. In response to the COVID-19 pandemic, LUBA began conducting all oral arguments via telephone and then, via a remote video conferencing platform. Recently, LUBA received a request from some parties to an appeal to conduct oral argument in person. To be fair and equitable for all parties appearing before LUBA, and to provide clarity for all current and future oral arguments, a temporary rule is required. LUBA has many pending appeals and expects more appeals to be filed before a permanent rulemaking process can be undertaken. Were LUBA to start the process of permanent rulemaking without first adopting a temporary rule, parties to appeals would face a level of uncertainty regarding in person oral argument that LUBA would like to avoid by filing this temporary rule, while also beginning the process to adopt the rule permanently.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

These amendments amend various provisions of OAR chapter 660, division 10, which is available at <https://secure.sos.state.or.us/oard/displayChapterRules.action?selectedChapter=125>.

AMEND: 661-010-0040

RULE TITLE: Oral Argument

RULE SUMMARY: Clarifies how requests for in-person oral argument shall be made.

RULE TEXT:

- (1) Only parties who have submitted briefs shall be allowed to present oral argument to the Board. The Board shall not consider issues raised for the first time at oral argument.
- (2) If a party waives the right to present oral argument, the Board shall consider the case based on that party's brief and

the briefs and oral arguments presented by other parties. The parties may, with consent of the Board, stipulate to submit a case to the Board on briefs without oral argument. If a party fails to appear at the time set for oral argument, the Board may deem the cause submitted without oral argument as to that party. A party's failure to so appear shall not preclude oral argument by other parties.

(3) The Board shall inform the parties of the time and place of oral argument. A party shall seek the consent of other parties before requesting a change in the scheduled time or date for oral argument.

(a) Unless the Board otherwise orders, petitioner(s) shall be allowed 15 minutes for oral argument. Petitioner(s) may reserve up to 5 minutes for rebuttal following respondents' oral argument, to respond to arguments made during respondents' oral argument. Multiple petitioners shall share the 15 minutes. Requests for an overlength oral argument shall be submitted to the Board in writing at any time after the record is received but in no event later than seven days after the petition for review is filed, shall state whether all parties join in the request, and shall state the reasons why an overlength oral argument will assist the Board in resolving the appeal.

(b) The respondent(s) shall be allowed 15 minutes to respond. Multiple respondents shall share the 15 minutes.

(c) The Board shall record all arguments, but any party may also arrange at its own expense to record the argument in some other manner.

(d) For purposes of this rule, "in-person oral argument" means all parties and participating board members physically appear in a hearing room and "remote oral argument" means all parties and participating board members appear by video conference call. Except as otherwise provided below, the case will be set for remote oral argument.

(i) The Board may determine that the needs of the Board will be best served by in-person oral argument and may direct the parties to appear for in-person oral argument.

(ii) A party may move in writing for in-person oral argument at any time after the record is received but in no event later than seven days after the petition for review is filed. A motion for in-person argument must explain the circumstances that support the request and demonstrate good cause for arguing in-person. Good cause does not include a mere preference for in-person argument. The moving party must confer with all other parties and shall include a statement of compliance with this section at the time of filing their motion that states that no party objects, or that states that a party objects to in-person oral argument and, if the other parties' reasons for objecting are known, the motion shall set out those reasons. Any party may file a response to a motion for in-person oral argument within seven days after the filing of the motion for in-person oral argument.

(4) A state agency which has filed a brief pursuant to ORS 197.830(8) may move to argue orally before the Board. The motion shall be filed with the brief.

(5) Demonstrative exhibits presented at oral argument shall be limited to copies of materials already in the record, including reductions or enlargements, or materials created during the party's presentation at oral argument.

(6) The Board may conduct oral argument by telephone or video conference call.

STATUTORY/OTHER AUTHORITY: ORS 197.820(4)

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