

# CHAPTER 3 - PUBLIC HEARINGS, NOTICES & APPEALS

## ARTICLE 30 - BASIC PROVISIONS

### 30.010 - PURPOSE

The purpose of Chapter 3 is to prescribe procedures for the conduct of public hearings, public notice requirements, and the appeal of decisions reached as a result of the review procedures described in Chapter 2.

### 30.020 - APPLICATIONS

- A. All documents, evidence, exhibits and other information relied upon by the applicant in support of a Development Permit or any application reviewed and decided without a public hearing shall be submitted to the Planning Office no later than 5:00 p.m. on the date notice is mailed.
- B. All documents, evidence, exhibits and other information relied upon by the applicant in support of an application that involves a public hearing shall be submitted to the Planning Office by 5:00 p.m. 21 days prior to the first scheduled date of the public hearing.
- C. If additional documents, evidence, exhibits and other information are submitted in support of an application between the 21st day before the first scheduled date of public hearing and the public hearing, any participant in the hearing shall be entitled to request and receive a continuance of the hearing or have the record left open, subject to the specific rules governing such requests as set forth in Section 31.120.J.
- D. Unless a continuance has otherwise been provided, any participant may request any time before the conclusion of the initial evidentiary hearing that the record be left open for at least 7 days after the hearing.
- E. Review of an application or a public hearing on an application shall not be scheduled or noticed until the application is deemed complete by the Planning Director.

### 30.030 - STAFF REPORTS

Staff reports shall be available for public inspection at least 7 days prior to the date of the public hearing.

### 30.040 - GENERAL PROCEDURES

- A. The Planning Director shall develop forms to be used for all applications and the appeal of all applications set out in this Chapter.
- B. The burden of proof is on the applicant and/or the appellant to complete the forms and to substantiate the information presented on the application and/or appeal forms.

- C. The Planning Director may reject applications or appeals which are not complete.
- D. In the context of this Chapter, the term "applicant" shall have the following meaning:
  - 1. When the original review or hearing body hears and decides on the application, the applicant is the person(s) submitting the application;
  - 2. When a decision is appealed, the applicant is the person(s) filing the appeal, unless the appeal results in a *de novo* hearing, in which case the individual or organization submitting the application continues to be the applicant.

## **ARTICLE 31 - PUBLIC HEARINGS**

### **31.010 - PURPOSE**

This Article shall govern the conduct of all quasi-judicial and legislative land use hearings within Josephine County, as well as the Urban Growth Boundary of Cave Junction, which are held or made by the Board or its designates. Such hearings include all proceedings before the Hearings Officer, Planning Commission, or the Board, and may involve comprehensive plan changes, zone changes, subdivision or partition platting, Conditional Use Permit, changes in non-conforming uses, appeals, and the interpretation and administration of ordinances, codes, laws, and items referred by the Planning Director, as well as all other official actions upon application or request.

### **31.020 - SPECIAL HEARINGS**

- A. The Planning Director may process any question or decision regarding the administration of this code by a special hearing before the Planning Commission or the Hearings Officer if the issue is complex, will have a substantial impact on the area, or if questions of a substantive nature are raised. The presiding officer of the hearing body assigned to hear the matter shall be consulted before the matter is scheduled.
- B. The Planning Director may appoint a special fact-finder(s) to investigate any circumstance or question concerning this code. The Planning Director shall consult with Legal Counsel prior to appointing a special fact-finder(s):
  - 1. The Planning Director shall establish the scope of the investigation and the procedures which will be followed during the inquiry;
  - 2. The special fact-finder(s) shall report to the Planning Director and shall submit their results and/or findings as a recommendation to the Director.
- C. Notice of a special hearing shall be given in accordance with Article 32.
- D. The special hearing shall be conducted according to the rules set out in Article 31.

### **31.030 - REQUESTS FOR HEARING**

- A. A hearing as provided in these rules shall be initiated in one of the following ways:
  - 1. By motion of the Board or the Planning Commission;
  - 2. By an application filed with the Planning Director in conformance with code requirements and this Article; or
  - 3. By written directive of the Planning Director.
- B. In cases where the hearing is initiated by a motion of the Board or Planning Commission:

1. The motion shall set forth the specific issue or issues to be considered in the hearing and shall identify, if appropriate, those who will be recognized as parties to the proceedings for the purpose of notice as required by Article 32 of this code. The motion may relate to new matters, matters for rehearing, or previous decision requiring clarification or explanation;
  2. The decision to issue or not issue a motion shall lie entirely within the discretion of the Board or Planning Commission, and the reason or reasons for the action need not be specified in the motion;
  3. In all cases, the Board or Planning Commission shall cause notice of the hearing to be given in accordance with Article 32 of this code.
- C. In cases where the hearing is initiated by application, the application shall meet all the requirements for the type of application submitted as set out in Chapters 4 and 5.
- D. In cases initiated at the direction of the Planning Director, the Director shall prepare a written statement of the matter to be considered. The statement shall include the following:
1. The name of the hearing body that will hear the request, as determined at the Director's discretion; and
  2. A statement of the factual background or circumstances giving rise to the request, the applicable criteria, and the issue or issues requiring resolution.
- E. In the event the request involves specific property or properties, notice of the hearing shall be given in accordance with Article 32 of this code.

### **31.040 - NATURE OF HEARING**

- A. Land use hearings conducted pursuant to this Article which are quasi-judicial administrative determinations shall be conducted according to the rules and procedures governing those actions. All applicants are entitled to a notice of the hearing, to an opportunity to be heard, to present and rebut evidence before an impartial hearing body, to have the proceedings recorded, and to have a decision rendered in accordance with the facts on record and the law.
- B. Land use hearings conducted pursuant to this Article which are legislative determinations shall be conducted according to the rules and procedures governing those actions. Notice of the hearing shall be published and the public shall be invited to testify, to present and rebut evidence before an impartial hearing body, to have the proceedings recorded, and to have a decision rendered.
- C. Hearings held pursuant to this Article are proceedings and the applicant(s) shall appear in person or through an attorney or authorized representative.

### **31.050 - PRESIDING OFFICER**

- A. The hearing body shall designate one of its members to preside over the proceedings. The presiding officer shall have the authority to:
1. Regulate the course and decorum of the meetings;
  2. Dispose of procedural requests or similar matters;
  3. Rule on offers of proof and relevancy of evidence;
  4. Impose reasonable limitations on the number of witnesses heard and set reasonable time limits for oral presentations, cross-examination, and rebuttal testimony;
  5. Question any person appearing, and allow other members to question the person;
  6. Waive, at the presiding officer's discretion, the application of any Section of this Article where the circumstances of the hearing indicate it would be expedient and proper to do so, provided the waiver does not act to prejudice or deny any party their substantial rights as provided in this code or otherwise by law;
  7. Take any other actions as authorized by the Board or Commission to appropriately conduct the hearing.
- B. All procedural decisions of the presiding officer shall be those of the hearing body unless the presiding officer is overruled by a majority vote of the members of the hearing body.

### **31.060 - CONDUCT OF PARTICIPANTS**

Proceedings shall, at all times, be orderly and respectful. No person shall be heard until they state their name and address for the record. The presiding officer may terminate the hearing when necessary or refuse to recognize anyone who:

- A. Is disorderly, abusive, and/or disruptive;
- B. Takes part in or encourages audience demonstrations, including applause, cheering, display of signs, or other conduct disruptive of the hearing;
- C. Testifies without first receiving recognition from the presiding officer and stating their full name and residential address;
- D. Presents irrelevant, immaterial, or repetitious evidence.

### **31.070 - BURDEN AND NATURE OF PROOF**

- A. The burden of proof shall be on the applicant. The more a proposed use or structure changes existing land use patterns, or causes impacts on surrounding lands or the

community, the greater the burden of proof shall be on the applicant to show the request complies with all applicable criteria. The applicant shall address all of the applicable standards and criteria as identified by hearing body. Regarding appeals from decisions made after the initial evidentiary public hearing, the burden of proof shall be upon the appellant. Regarding appeals that result in the initial evidentiary public hearing, the burden of proof shall remain with the applicant. The applicant may present rebuttal evidence to the information in the staff report, as appropriate, to meet the requirements of this subsection.

- B. The decision of the hearing body shall be supported by substantial evidence in the record. The applicant shall address the required criteria and present evidence as appropriate to the specific proposal. In addition to the standards and criteria for the specific type of application, the hearing body shall deem the following criteria applicable to its decisions:
1. Conformance with the Josephine County Comprehensive Plan to include its Goals and Policies;
  2. Conformance with applicable state laws, rules, and regulations pertaining to land use and the specific proposal, including the applicable Oregon Administrative Rules in Chapter 660 and guidelines contained in the statewide planning goals;
  3. Conformance with this code, the building code, health code, and similar requirements as they relate to the specific proposal;
  4. Conformance with general development considerations, such as the preservation of the character of the area involved, the properties peculiar suitability for particular uses, the conservation of property values, and the current direction of building development;
  5. Whether or not a mistake has been made in the original Comprehensive Plan designation;
  6. Whether or not a change of circumstances has occurred so that the existing condition within the vicinity of the proposal no longer conforms to the intent of the Comprehensive Plan, or applicable codes.

### **31.080 - DISCLOSURE RULE**

A. **Pre-Hearing/Ex parte Contact:**

1. Members of the hearing body shall avoid significant ex parte and pre-hearing contacts with interested parties to the proposal so that their deliberations and recommendations can be based on the evidence presented at the time of the public hearing. Any contacts shall be revealed at the commencement of the hearing or when identified, and:

- a. If the contacts have not significantly impaired the member's impartiality or ability to vote on the matter, the member shall so state and may participate; or
  - b. If the contacts have significantly impaired the member's impartiality and ability to vote on the matter, the member shall so state and shall abstain from voting on the matter. The member may be counted for purposes of forming a quorum.
2. Parties to the request may challenge the impartiality of a member of the hearing body based on ex parte contact. The disqualification of a challenged member is discretionary and shall be determined by a majority vote of the unchallenged members. A quorum is not required for a vote of disqualification. In no case shall any member participate in a vote concerning his or her own disqualification;
  3. Contact with county staff does not constitute ex parte contact.

**B. Conflict of Interest:**

1. In addition to the ex parte and pre-hearing contacts, no member of the governing body shall participate in any vote on a proposal when:
  - a. The member (or spouse, brother, sister, child, parent, father-in-law, mother-in-law, or any business in which the member has a financial interest, or any business which the member is negotiating for) has a direct or substantial financial interest in the proposal;
  - b. The member has an interest in property within the area entitled to receive notice of the public hearing under Article 32;
  - c. The member has a relationship with the applicant or other participants so that the member is unable to be reasonably impartial in reaching a decision;
  - d. For any other reason specified by state law;
  - e. No other official or employee of the county who has a financial interest or other private interest in the proposal shall participate in discussion with or give an official opinion on the proposal without first declaring for the record the nature and extent of the conflict of interest.
2. Parties to the request may challenge the impartiality of a member of the hearing body based on conflict of interest. The disqualification of a challenged member is discretionary and shall be determined by a majority vote of the unchallenged members. A quorum is not required for a vote of disqualification. In no case shall any member participate in a vote concerning his or her own disqualification.

### **31.090 - CHALLENGE FOR BIAS, PREJUDICE, OR CONFLICT OF INTEREST**

- A. Any applicant or opponent of a proposal may challenge the qualification of any member to participate in such hearing and decision because of bias, prejudice or conflict of interest.
- B. The challenge shall be in writing and shall state the facts relied upon for the challenge.
- C. The challenge must be submitted, to the Planning Director not less than 48 hours preceding the time set for the public hearing, unless good cause is shown as to why the submission could not be made in a timely manner.
- D. The Director shall attempt to notify the challenged member before the hearing.
- E. The challenged member(s) shall have an opportunity at the hearing:
  - 1. To agree with the challenge and withdraw from participation in the Hearing and decision; or
  - 2. To disagree with the challenge and respond orally and in writing.
- F. The challenge and any response shall be incorporated into the record of the hearing.

### **31.100 - PARTIES**

- A. Person(s) speaking at the hearing shall identify themselves as:
  - 1. A witness only; or
  - 2. A party as defined in Section 11.030; or
  - 3. A county or other public official.
- B. Persons appearing at a hearing either orally or in writing (including those representing an organization) shall state at the beginning of their testimony the facts which support their status as a party (as defined in Section 11.030) or a witness:
  - 1. Persons who were not entitled to notice, but who claim party status because they will be adversely affected or aggrieved by the decision, shall identify and document the facts showing how they will be adversely affected or aggrieved. Persons who fail to do so shall be witnesses;
  - 2. At the close of their statement of facts on how they will be adversely affected or aggrieved, the presiding officer will promptly rule on whether that person will be treated as a party or not;
  - 3. The ruling of the presiding officer on this point shall be the ruling of the hearing body unless the hearing body votes to overruled the presiding officer.



4. After party and/or witness status has been determined, anyone challenging the ruling shall be heard immediately and the presiding officer (or the hearing body) may change its decision on party status.

### **31.110 - RULES OF EVIDENCE**

- A. All evidence offered and not properly objected to may be received unless otherwise excluded by the hearing body. Evidence received at the hearing shall be of the same quality as the evidence used by reasonable persons in the conduct of their everyday affairs.
- B. All documents or evidence relied upon by the applicant shall be submitted to the Planning Director as specified in Section 30.020.B and shall be made available to the public for inspection.
- C. All evidence received by the hearing body shall be made a part of the record of the case, except for matters stipulated to and matters judicially noticeable. No other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference (if the document so incorporated is a public record not exempt from inspection).
- D. Cross-examination shall be at the discretion of the hearing body. Any cross-examination question shall be directed to the presiding officer who will determine if the cross-examination will benefit the hearing body. If the presiding officer determines the question will help in the decision, the presiding officer will ask the question to the party or witness appropriate to answer. In all cases, cross-examination shall be conducted in a non-inflammatory manner. The presiding officer may terminate cross-examination if it becomes disruptive to the hearing.
- E. Judicial notice may be taken of any applicable federal, state or local statute/ordinance, rule, regulation, general fact, and/or scientific fact within the experience, technical competence, or specialized knowledge of a member of the hearing body, staff, or technical witness called by either side. Opportunity will be given for rebuttal of these facts.
- F. No decision shall be rendered except upon consideration of the whole record, or portions as may be cited by the hearing body, and as supported by, and in accordance with, reliable, probative, and substantial evidence.
- G. The hearing body at its discretion may be represented by the Legal Counsel.

### **31.120 - ORDER OF PROCEDURE**

The presiding officer shall conduct the hearing in an orderly fashion within the guidelines in this Section. However, the technical rules of parliamentary procedure shall be avoided so the hearing may be conducted in a clear, simple and fair manner.

- A. **Quorum.** The presiding officer shall establish a quorum:

1. If a member of the hearing body must leave prior to the close of the particular proposal at hand, losing the quorum, the presiding officer shall so state, and shall proceed with the hearing for purposes of taking evidence and testimony;
  2. The members shall not vote on the proposal until the absent member has reviewed the evidence and testimony taken;
  3. At the close of the hearing, the hearing body shall continue the request to a date and time certain for deliberation and decision when the absent member can participate;
  4. If the request cannot be continued to a date and time certain during the public hearing, the Planning Director shall reschedule the request as soon as possible and give new notice as set out in Article 32;
  5. If a quorum is not present, a hearing body may take action to continue the agenda until a date and time certain.
- B. **Commencement.** The presiding officer shall announce the nature and purpose of the hearing, summarize the rules for the conduct of the hearing, identify the name of each applicant, and describe the general nature of each proposal. In addition, the presiding officer shall announce the following:
1. All testimony and evidence must be directed toward the standards and criteria as determined applicable by the hearing body.
  2. Any participant who fails to raise an issue in a hearing, in person or by letter, with sufficient specificity to afford the hearing body an opportunity to respond to that issue, is precluded from using the issue in any subsequent appeal of the decision (called the *raise it or waive it* rule);
- C. **Abstentions.** The presiding officer shall inquire of the hearing body whether any member wishes to abstain from participation in the hearing on a specific proposal:
1. Any member so abstaining shall identify the reasons for the record and shall not participate in the discussion of, or vote on the proposal;
  2. Any member whose participation has been challenged by an allegation of bias, prejudice, conflict of interest, or pre-judgment, or who has been subject to significant ex parte or pre-hearing contacts with proponents or opponents, may make a statement explaining the nature of the conflict or bias for the record, and shall announce whether the member will participate in the hearing as set forth in Section 31.080.
- D. **Objection to Jurisdiction.** The presiding officer shall inquire of the audience if there are any objections to the jurisdiction of the hearing body to hear the matter. Objections, if any, shall be noted in the record, and the matter shall proceed or terminate at the discretion of the hearing body.

- E. **Criteria.** The presiding officer shall request the planner present at the hearing to present and explain the standards and criteria that must be considered in reviewing the request.
- F. **Staff Report.** The presiding officer shall have the planner summarize the staff report and indicate the possible actions that can be taken by the review body.
- G. **Proponent's Case.** The presiding officer shall allow the applicant or appellant to comment and present evidence in support of the application or appeal as follows:
1. 10 minutes for the proponent to make introductory comments and present evidence;
  2. 5 minutes for each witness called by the proponent;
  3. 5 minutes for each audience member speaking in favor of the proposal;
  4. 5 minutes for cross-examination of planning staff regarding the Staff Report subject to the general rules of cross-examination set out in Section 31.110.D; and
  5. The time allocations for the proponent's case may be adjusted at the discretion of the hearing body to expedite the hearing or promote fairness.
- H. **Opponent's Case.** The presiding officer shall allow opponents to comment and present evidence in opposition to the proposal as follows:
1. 10 minutes for a representative of the opponents to make introductory comments and present evidence;
  2. 5 minutes for each witness or party to speak in opposition to the proposal;
  3. 5 minutes for cross-examination of planning staff regarding the Staff Report subject to the general rules of cross-examination set out in Section 31.110.D; and
  4. The time allocations for the opponent's case may be adjusted at the discretion of the hearing body to expedite the hearing or promote fairness.
- I. **Rebuttal.** The presiding officer shall allow the applicant to cross-examine the opponent by addressing questions to the presiding officer, and otherwise rebut any new matters presented by the opponents or their witnesses. The hearing body may allow the opponent to offer surrebuttal to the applicant's rebuttal if:
1. The applicant provides new arguments, issues or evidence in the rebuttal; and
  2. The opponent's responses are specifically limited to the new arguments, issues or evidence submitted in rebuttal only.

J. **Additional Evidence or Testimony.** Prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional evidence or testimony regarding the application. The following Rules shall govern requests to submit additional evidence or testimony:

1. The hearing body shall grant the request by taking one of the following actions:
  - a. **CONTINUE THE HEARING** – For at least 7 days to a date, time and place certain. The hearing body shall allow persons to present and rebut new evidence and testimony at the continued hearing. If new written evidence is submitted at the continued hearing, any person may request the record be left open 7 days to submit additional written evidence or testimony in response to the new written evidence. The request must be made prior to the close of the continued hearing; or
  - b. **LEAVE THE RECORD OPEN** – For additional written evidence or testimony for at least 7 days.
2. Whenever the record is left open under subsection 1 above, and new evidence is submitted during the opened period, any participant in the hearing may file a written request for an opportunity to respond to the new evidence. The written request must be filed with the Planning Director on behalf of the hearing body within 7 days after the record closes. The record shall thereupon reopen for at least 7 additional days, during which time any person may submit new written evidence and testimony and raise new issues which relate to the new evidence, testimony or criteria that was submitted during the previous open period. If the Planning Director determines the written request is timely, the Director shall provide appropriate notice to the participants stating the record has been reopened and specify the new date the record will close. All new written evidence and testimony, or statements regarding new issues, shall be delivered to the Planning Director within the reopened period for placement in the record. It shall not be necessary for the hearing body to reconvene or to take formal action on a request to submit additional evidence or testimony when action to leave the record open is required pursuant to these rules. Under these circumstances, authority of the hearing body to reopen the record and to specify the length of time it shall remain open is delegated to the Planning Director.
3. Beyond the mandatory requirements of subsections 1 and 2 immediately above, the hearing body is authorized to grant any other continuance, or leave the record open, subject to whatever reasonable guidelines and time limits it deems necessary or helpful to accomplish its fact finding and deliberating duties.
4. Unless waived, the applicant shall be entitled at least 7 days after the record finally closes to submit final written arguments in support of the application. The final arguments shall be considered part of the record, but shall not include any new evidence.

5. The time required by continuances or extensions under this subsection shall not toll the 120/150 day time limit specified in ORS 215.427 unless the continuance or extension is requested or agreed to by the applicant.
6. For the purpose of these rules, the following definitions apply:
  - a. “Argument” means assertions and analysis regarding the satisfaction or violation of legal standards or policy believed relevant by the proponent to a decision. “Argument” does not include facts.
  - b. “Evidence” means facts, documents, data or other information offered to demonstrate compliance or noncompliance with the standards believed by the proponent to be relevant to the decision.
- K. **Summation.** The presiding officer shall allow the proponent and opponent 5 minutes, or other reasonable time limit determined by the hearing body, to summarize their arguments.
- L. **Discussion.** At the close of the proponent’s and the opponent’s summation, the Planning Staff shall review the applicable criteria, the evidence submitted, and the staff recommendation. The members of the hearing body shall be allowed to openly discuss the proposal and further question planning staff or any party appearing for or against the proposal.
- M. **Close of Hearing.** The presiding officer shall close the public hearing when certain that all of the testimony has been heard, and all questions have been answered:
  1. If there should be a need to discuss the proposal with any person who is not a member of the hearing body, the presiding officer shall re-open the public hearing for that purpose;
  2. Upon satisfaction of the situation, and an opportunity for comment and/or rebuttal by the proponent, the opponent and staff, the presiding officer shall again close the public hearing.

### **31.130 - FINAL ACTION**

- A. At the close of the public hearing, the hearing body may:
  1. **ON A QUASI-JUDICIAL APPLICATION:**
    - a. Approve the application as submitted;
    - b. Deny the application;
    - c. Approve the application with certain conditions as it deems appropriate;  
or
    - d. Continue the application for further study, a site visit, deliberations, or a decision to a date and time certain.

2. **ON A LEGISLATIVE MATTER:**

- a. Approve the matter as submitted;
  - b. Deny the matter;
  - c. Approve the matter with conditions as it deems appropriate; or
  - d. Continue the matter for further study, a site visit, deliberations, or a decision to a date and time certain.
- B. The decision of the hearing body shall be made after the hearing is closed and deliberations are completed, and shall be in the form of a motion, duly seconded, and approved by a majority of the members. The presiding officer shall poll each member regarding their vote and the reasons for it. All members shall state their vote for the record.
- C. A quasi-judicial decision of the hearing body shall not become final until written findings of fact are prepared and approved by a majority vote of the participating members, signed by the presiding officer or a designate, and mailed as required by Article 33. The findings shall include the criteria, standards for approval, the facts relied on in making the decision, and a statement showing how the facts, when applied to the criteria, justify the final action.
- D. A legislative matter shall become final upon the second reading of the Ordinance, in a public meeting. Notice of the adoption shall be sent to DLCD. Local notice of the adoption shall be deemed given by a notice of the date for the second reading by publication.

**31.140 - RECORD OF PROCEEDINGS AND DECISIONS**

- A. The presiding officer of the hearing body shall designate a person to record the proceedings electronically or stenographically. The proceedings shall not be transcribed unless required for appeal, review, or unless otherwise ordered by the Board, Planning Commission or Hearings Officer.
- B. All exhibits received in evidence shall be marked or otherwise made readily available and identifiable for purposes of review. Evidence or exhibits of unusual size or bulk, which cannot be conveniently held, shall not be received. All exhibits received into the record shall be retained by the Planning Director on behalf on the hearing body, and shall be made accessible for inspection or copying by interested persons, subject to a reasonable copying fee. When all appeal periods have expired, the Planning Director is authorized to dispose of the exhibits.
- C. The Planning Director shall hold all sound recordings made of hearings items for the following time periods after the date of the last meeting on that item. The tapes shall be made available for inspection or copying by interested persons, subject to a reasonable charge for copying:

1. If a meeting is fully transcribed, hold the tapes for 90 days;
  2. If the meeting is summarized in minutes, hold the tapes for 1 year;
  3. If the meeting is summarized in formal findings, hold the tapes for 5 years;
  4. If minutes or findings are not done, the tape cannot be erased and must be kept forever.
- D. Findings of the decision are to be compiled for each decision made at a public hearing. The responsibility for preparation of this document shall be determined by the presiding officer of the hearing body at the close of the hearing.
- E. Notice of the decision shall be mailed to the participants who are determined in the hearing to have party status, and by courtesy to anyone otherwise requesting notice of the decision. Copies of the findings of decision may be reviewed and copied at the Planning Office (Hearings Officer and Planning Commission decisions) or the Commissioner's Office (Board of Commissioner decisions).

## ARTICLE 32 - PUBLIC NOTICE

### 32.010 - PURPOSE

The purpose of public notice is to provide an opportunity for affected or interested persons to participate in Josephine county's land use review and decision-making process.

### 32.020 - NOTICE SCHEDULE

- A. The Planning Director shall determine the type of notice required for each decision, and may provide additional notice, in such a way that all persons reasonably determined to be potentially affected by a local land use decision receive actual notice.
- B. The notice requirements for the various types of land use, development, and land division decisions are set forth in Sections 32.030 through 32.060.

### 32.030 - MAILED NOTICE

- A. **Notice Prior to Decision.** All quasi-judicial land use procedures shall include notice of the proposed action by first class mail at least fifteen days prior to the date of review for all applications processed by the Planning Director without a hearing, or twenty days prior to hearings before the Hearings Officer, Planning Commission or Board of County Commissioners.
  - 1. **PERSONS AND ORGANIZATIONS.** Notice prior to decision shall be given to the following persons and organizations:
    - a. The applicant and subject property owner;
    - b. To all property owners, or contract purchasers of record, as shown on the most recent property tax assessment role where such property is located:
      - [1] Within 100 feet of the property which is the subject of the notice where the property is wholly or in part within an urban growth boundary;
      - [2] Within 250 feet of the property which is the subject of the notice where the property is outside an urban growth boundary and not within a farm or forest zone;
      - [3] Within 750 feet of the property which is the subject of the notice where the property is within a farm or forest zone;
      - [4] To each mailing address for tenants of a mobile home park for an application involving property encompassing all or part of a mobile home park. The applicant shall provide a mailing list of all tenants of the park;



- [5] To a public airport owner for a zone change if:
  - [a] The zone could permit development of a structure greater than 35 feet in height, and the property is inside the runway "approach surface" as defined by the Oregon Department of Transportation; and
  - [b] The subject property is within 5,000 feet of the side or end of a runway.
- [6] To all property owners within 1500 feet of a parcel when a change of comprehensive plan designation and zone change, or a zone change is proposed;
- [7] To all property owners within 1500 feet of a proposed quarry, mining, or processing operation;
- [8] To the Citizen Advisory Committee, if any are certified in the area the application is located;
- [9] Mailed notice may be given to additional individuals and organizations whenever the Planning Director or hearing body determines the additional notice is necessary or helpful to provide fair and effective notice to those who may be adversely affected by the proposed land use decision.
- [10] Public agencies providing transportation facilities or services, metropolitan planning organizations and the Oregon Department of Transportation if the proposed land use action will affect the agency's transportation facilities.

2. **CONTENT OF NOTICE PRIOR TO DECISION.** Notices given prior to decisions made by the Planning Director, Hearings Officer, Planning Commission and Board of Commissioners shall contain the following information:

- a. The date, time, and location of the hearing;
- b. Nature of the application and the proposed use or uses which could be authorized;
- c. A list of the applicable criteria from the comprehensive plan, this code, and state goals by reference only. A statement shall be included indicating where the criteria can be viewed or copies purchased;
- d. A description of the subject property, reasonably calculated to give notice of its actual location;

- e. A statement that failure to raise an issue in a hearing, in person or by letter, with sufficient specificity to afford the review or hearing body an opportunity to respond to the issue precludes a local or LUBA appeal based on that issue (*raise it or waive it*);
- f. Name of a local government representative to contact and the telephone number where additional information may be obtained;
- g. Statement that a copy of the application, all documents and evidence relied upon by the applicant and applicable criteria are available for inspection at no cost and copies will be provided at a reasonable cost;
- h. Statement that a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing and copies will be provided at a reasonable cost;
- i. A general explanation of the requirements for submission of testimony and the procedure for the conduct of hearings.

**B. Notice After Decision:**

- 1. **PLANNING DIRECTOR DECISIONS MADE WITHOUT A HEARING.** In cases where the Planning Director makes quasi-judicial land use decisions without a public hearing, the Director shall cause written notice of the decision to be mailed to all persons and organizations as listed in Article 32.030.A.1 above, together with any other additional persons or organizations who will be adversely affected by the proposed decision. The content of the notice shall include, at a minimum, all of the following information:
  - a. An explanation of the nature of the application and the uses that will be authorized by an approval;
  - b. The street address or other information that clearly describes the location of the proposed use;
  - c. The name, telephone number and address of the planner or other person who can be contacted for information about the decision;
  - d. An explanation that copies of the application, documents, evidence and standards and criteria involved in the decision can be inspected and copied;
  - e. An explanation that any person who is adversely affected or aggrieved, or who is entitled to receive notice, may appeal the decision pursuant to the requirements of Article 33 (*Appeal of Decisions*) within 12 days from the date of the Planning Director's decision;

- f. An explanation that the decision will not become final until the period for appeal has expired without an appeal;
- g. An explanation that any person who is mailed notice of the decision cannot appeal directly to LUBA; and
- h. The appeal hearing shall be a *de novo* hearing (that is, a fully open, evidentiary hearing that is held “of new”).

- 2. **HEARINGS OFFICER, PLANNING COMMISSION AND BOARD OF COMMISSIONER DECISIONS MADE AFTER A HEARING.** Notice of the final action on a quasi-judicial land use request made at the conclusion of a public hearing shall be given to all participants who established party status in the hearing pursuant to Article 31.100.

### **32.040 - PUBLISHED NOTICE**

Notice by publication shall be given for any quasi-judicial land use application that proposes to change the zone or plan maps for specific properties. Published notice shall also be given for any legislative land use action that proposes to amend any element of the county’s comprehensive plan (maps, data bases, goals and policies, land use regulations, etc.). In all such cases, 10 days’ advance notice of the hearing shall be published in a newspaper of general circulation in the county or, in the case the plan as it is to be heard concerns only part of the county, it is published in the territory so concerned.

### **32.050 - CONTINUANCES**

Hearings may be continued when necessary to gather additional information, to visit sites, or to respond to new testimony or other evidence presented in a first or subsequent hearing. Additional or further notice shall not be required as long as the date, time and place for the continuation is made during a duly noticed hearing. If an application is continued without setting a date, time and place certain during a duly noticed hearing, the continued hearing shall be noticed in full compliance with the requirements of this Article. New notice required for a continuance may require a renoticing notice fee as required by the hearing body.

### **32.060 - RECEIPT OF NOTICE**

Failure of any person or organization to receive notice shall not nullify a land use decision.

## **ARTICLE 33 - APPEAL OF DECISIONS**

### **33.010 - PURPOSE**

The purpose of this Article is to establish uniform procedures for the appeal of land use decisions made pursuant to this code.

### **33.020 - APPEAL AUTHORITY**

- A. Final actions made under the following review procedures may be appealed to the Board of Commissioners:
  - 1. Planning Director - Article 22
  - 2. Hearings Officer - Article 23
  - 3. Planning Commission - Article 24
- B. Recommendations to another review or hearing body do not constitute a final action and cannot be appealed.

### **33.030 - TIME LIMITS, NOTICE REQUIREMENTS & STANDING FOR APPEALS**

Final decisions described in Section 33.020 may be appealed to the Board subject to the time limits and noticing and standing requirements as follows:

- A. Final decisions by the Planning Director, Hearings Officer, or the Planning Commission may be appealed to the Board by a party filing a statement of appeal with the Planning Director within:
  - 1. 10 days after written notice of the decision is given or mailed for final decisions hearings made by a Hearings Officer or the Planning Commission; or
  - 2. 12 days after written notice of a Planning Director decision made without a public hearing.
- B. Notice is deemed given when:
  - 1. It is mailed to the last known address of the party (the date of mailing shall be established by the postmark for the bulk mailing that included the individual notice); or
  - 2. It is personally given to the person or organization.
- C. A party shall mean a person or organization deemed by the decision-maker to be a party as defined in Section 11.030. Party status may be challenged on appeal by any party to the appeal, the Planning Director, or the Board. Any challenge shall be settled by the Board as its first order of business in the appeal hearing.

- D. Notice for appeal hearings shall be given only to those individuals or organizations that were deemed to have party status in the record for the hearing under appeal, unless the appeal results in an initial evidentiary hearing, in which case notice of the appeal hearing shall comply fully with the requirements of Article 32.030.B.1.

### **33.040 - STATEMENT OF APPEAL**

- A. A statement of appeal shall be on a form supplied by the Planning Director and shall contain the following information:
1. How the comprehensive plan, this code, or other applicable federal, state or local law or rule, or evidence, was incorrectly interpreted or applied in the decision;
  2. What information in the record of decision was pertinent to the decision, but was not considered by the review body. This may include the comprehensive plan, this code, applicable state law, or other evidence;
  3. Each ground or reason for appeal must be separately numbered and explained, and the appeal hearing will be strictly limited to the items specified in the statement of appeal;
- B. The ground or reason for the appeal must have been raised at the review or hearing body with sufficient specificity to allow the review or hearing body an opportunity to respond to the issue.
- C. The statement of appeal shall be accompanied by the following:
1. The required filing fee;
  2. In cases involving an appeal on the record, the statement shall also be accompanied by a deposit, in an amount established by the Planning Director, to cover the estimated cost of producing a typewritten summary of the testimony in the hearing;
  3. In the event the deposit is insufficient to cover the cost of the preparation of the typewritten summary, the Planning Director shall mail written notice to the appellant of the balance due;
    - a. Within 10 days from the mailing of the notice of completion of the summary, appellant shall tender to the Director the balance due for the cost of the summary;
    - b. Failure to tender the balance is a jurisdictional defect and the appeal shall be dismissed;
    - c. Any part of the deposit in excess of the actual cost of the summary shall be returned to the appellant.

- D. In the event more than one party files an appeal, the Planning Director shall require equal deposits from each appellant. The final cost of the typewritten summary, shall be shared equally by all appellants.
- E. Failure to submit a statement of appeal in conformance with the requirements of this Section shall be considered a jurisdictional defect, and the appeal shall be dismissed.

**33.050 - EFFECT OF APPEAL**

- A. Failure to file an appeal within the specified time or in the manner prescribed in Sections 33.030 and 33.040 shall nullify the appeal and the decision shall be final.
- B. The effect of an appeal to the Board shall be to stay or suspend the appealed action.

**33.060 - STANDING TO APPEAL**

In order to have standing to appeal any decision rendered under the procedures of this code, one of the following requirements must be met:

- A. **Decisions Made Without A Hearing.** The person or organization seeking to appeal a decision made without a public hearing must demonstrate one of the following circumstances:
  - 1. The person or organization was entitled to notice for the original hearing and submitted written comments or objections into the record; or
  - 2. The person or organization is able to establish before the Board during the appeal hearing that the person or organization was adversely affected or aggrieved by the decision under appeal.
- B. **Decisions Made After A Hearing.** The person or organization participated, either orally or in writing, in the hearing under appeal and was granted party status under Section 31.100.B of this code by the presiding officer at the public hearing.

**33.070 - APPEAL OF PLANNING DIRECTOR DECISIONS**

Appeals from decisions made by the Planning Director without a hearing shall be heard by the Board as a *de novo* hearing (a fully, open evidentiary hearing). Within 14 days from the filing of the statement of appeal, the Planning Director shall prepare a report of the action under appeal, and mail notice to the parties indicating the report is available for inspection and/or copying. The report shall consist of all materials, documents, and exhibits considered by the Planning Director in taking the action, including the final action under appeal, if one exists. The Planning Director is authorized to charge a reasonable fee for the preparation and copying of the report.

**33.080 - APPEAL OF HEARINGS OFFICER OR PLANNING COMMISSION DECISION**

- A. Appeals from decisions made by a Hearings Officer or the Planning Commission shall be to the Board, and shall be confined to the record made at the hearing under appeal. The record shall include:
1. All materials, pleadings, memoranda, stipulations, motions, exhibits, and documents submitted by any party to the action as evidence in the hearing;
  2. All materials submitted by the Planning staff in the hearing;
  3. The tape recording, if one exists, of the hearing;
  4. A typewritten summary of the testimony given at the hearing. The typewritten summary shall be prepared by the Planning Director or a designate;
  5. The findings of fact entered by the hearing body.
- B. Within 21 days of filing of the statement of appeal, the Planning Director shall cause the record to be compiled, including the written summary of testimony, and mail notice to the parties indicating the record is available for inspection and/or copying. The Planning Director is authorized to charge a reasonable fee for paper or tape copying.
- C. Any party wishing to challenge the composition or completeness of the record, or the accuracy of the typewritten summary of the testimony, shall file written objections within 14 days from the date of the mailing of the notice of completion of record. In addition:
1. Objections to the accuracy of the summary of testimony shall be accompanied by a verbatim transcript for the portion(s) of the hearing which supports each challenged point;
  2. Controversy concerning any of these matters shall be settled by the Board as its second order of business at the appeal hearing, after questions about party status, if any exist, are settled.
- D. The parties to an appeal from any action by the Hearings Officer or Planning Commission shall be allowed to present oral or written arguments concerning any ground or reason for appeal specified in the statement of appeal, but no new matters or evidence shall be submitted unless permitted pursuant to Section 33.080.E.
- E. A party to an appeal from any action by the Hearings Officer or Planning Commission may request permission to submit evidence not contained in the record for an appeal when all of the following criteria are met:

1. The evidence was not reasonably available to the party at the time of the original hearing, and the facts supporting this conclusion are documented by affidavit(s);
2. The evidence is substantially relevant to issues raised in the appeal. Evidence is substantially relevant when, in the opinion of the Board, it has special value to prove relevant criteria, so that consideration of the new evidence is likely to alter deliberations;
3. The evidence to be introduced was made available to all parties to the appeal at least 20 days prior to the hearing, and there is no significant prejudice or unfairness to another party. In addition:
  - a. If it becomes available within 20 days of the hearing, a continuance may be requested by the proponent in order to meet the 20 day rule;
  - b. The Board may grant a continuance so the new evidence will meet the 20 day rule provided the continuance serves the public interest; and
  - c. If the applicant is the party asking the privilege of introducing evidence, the request shall be accompanied by request for a reasonable extension of the 150 day time limit specified in ORS 215.429.

### **33.090 - ACTION OF THE BOARD OF COUNTY COMMISSIONERS**

- A. In addition to appeals authorized by other provisions in this Chapter, the Board may order its own review of final decisions made by the Planning Director or a hearing body. Review under these circumstances shall be governed by the provisions of this Article including the creation of the record. A summary of testimony as required by Section 33.040.C shall be prepared at the county's expense.
- B. The Board may affirm, reverse, or amend the decision under appeal, and may impose additional or different conditions as may be necessary to carry out its decision. The Board may also return the proceeding to the Planning Director or hearing body for additional consideration or action. The return shall contain specific instructions regarding the nature and scope of the matter to be considered.
- C. The Board shall make written findings and conclusions as part of its written decision. This document will constitute the final action of the Board for appeal and other purposes.
- D. The Board may cause supplemental or replacement findings and conclusions, based on the record for the decision, to be prepared and signed after the original findings and conclusions have been executed. When supplemental or replacement findings and conclusions are prepared and signed, this document shall constitute the final action of the Board for appeal and other purposes in lieu of the original findings and conclusions.



- E. The Board may open the record for clarification on a part of the record.
- F. The Board by its own motion only, may choose to hear any appeal de novo. The decision to do so must be made within 10 days of receiving a statement of appeal.
- G. An appeal of a decision of the Board to the Land Use Board of Appeals (LUBA), shall follow the procedures outlined in ORS 197.805 to 197.860.

### **33.100 - CONSOLIDATION OF APPEALS**

In the event the final action for a single land use or land division is subject to concurrent appeals, the Board is authorized to consolidate the appeals into a single proceeding. In this event, the presiding officer may modify the rules of procedure contained in this Chapter, or implement new rules, which facilitate the merger of the appeal applications and the taking of evidence, testimony and argument. The decision of the Board shall be documented in a single set of findings of fact which shall act as the formal decision and final action on all of the appeals for the purpose of further appeals.

### **33.110 - REMANDS FROM THE LAND USE BOARD OF APPEAL (LUBA)**

In all cases, a copy of the opinion on remand shall be filed with the Planning Director to be included in the permanent file.

### **33.120 - PARTICIPATION BEFORE LAND USE BOARD OF APPEALS (LUBA)**

The county shall not file or participate in an appeal before LUBA unless the Board specifically authorizes the filing or participation through the county's Legal Counsel. Otherwise, the filing for any appeal or review before LUBA, or any other judicial body, shall be the responsibility of the participant whose interests are, or may be, affected by an affirmation, modification, reversal, or remand upon appeal or review.

### **33.130 - REMAND HEARINGS**

Hearings to consider remanded land use decisions shall be governed by the applicable rules for applications, hearings and appeals as set forth in this code, except as follows:

- A. A remand proceeding shall be initiated by an appeal application on forms prescribed by the Planning Director, together with the fee for remand hearings. The application must be filed within 45 days from the date of the final opinion and order remanding the county's decision. Except as provided in subsection B below, only the applicant as defined in Section 11.030 of this code may file a remand application.
- B. All remand proceedings shall be conducted exclusively by the Board unless the Board delegates jurisdiction to another review body by resolution. This grant of jurisdiction is intended to supersede any other grant of jurisdiction in this code. In addition, the Board reserves the right to initiate a remand proceeding pursuant to Section 31.030 of this code.

- C. The applicant in a remand proceeding shall specify in the application whether the remand hearing will be confined to the record of the earlier proceeding or whether the remand hearing will involve the introduction of new evidence. In the event the remand hearing is confined to the earlier record, the applicant shall submit amended findings with the remand application. The remand hearing shall be confined to the earlier record unless the review body opens the record for new evidence pursuant to Sections 33.080.E or 33.090.F.
- D. Participation in the remand hearing shall be strictly limited to those persons or organizations who were legal parties in the higher appeal. Procedures shall therefore be limited in the following respects:
1. Written notice shall be given only to the persons or entities who were parties to the higher appeal.
  2. Only parties to the higher appeal may present arguments (in the case of a hearing on the record), or present evidence, witnesses, testimony and arguments (in the event new evidence is allowed) in the remand hearing.
  3. Josephine County shall always be considered a party in the remand proceeding even if it did not submit briefs or make arguments in the higher appeal(s).
- E. The remand hearing shall not consider any issue or issues other than those specified for remand in the remanding decision, and no other evidence, testimony or arguments shall be allowed regarding other issues within the scope of the Board's original action.
- F. The following special time limits shall apply to remand applications:
1. The review body shall take final action on a remand application within 90 days of the effective date of the final remand order; and
  2. The effective date of the final order is the last day for filing a petition for judicial review of a final order of LUBA, or if judicial review of LUBA's order is sought by the Oregon Court of Appeals or the Supreme Court, the 90-day period shall not begin until final resolution of the judicial review; and
  3. In any case, the 90 day period shall not begin until the applicant requests in writing that the county proceed with the application on remand; and
  4. The 90 day period may be extended for a reasonable period of time at the request of the applicant; and
  5. The 90 day period applies only to decisions wholly within the authority and control of the county; and
  6. The 90 day period does not apply to a remand proceeding concerning an amendment to an acknowledged comprehensive plan or land use regulation or

the adoption of a new land use regulation that was forwarded to the Director of Land Conservation and Development under ORS 197.610.

- G. The prevailing party shall prepare the findings of fact for the decision on remand unless the Board designates someone else to prepare them.