

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of Amending)
Sections 1700, 1701, 1702 and)
1703 of the Columbia County)
Zoning Ordinance)
_____)

ORDINANCE NO. 90-5
(Appeals)

The Board of County Commissioners for Columbia County, Oregon ordains as follows:

SECTION 1. AUTHORITY.

This ordinance is adopted pursuant to ORS 203.035, 215.050 and 215.223.

SECTION 2. TITLE.

This ordinance shall be known as Ordinance No. 90-5.

SECTION 3. PURPOSE.

The purpose of this ordinance is to amend Section 1700 of the Columbia County Zoning Ordinance, "Appeals", to clarify the Board's authority and responsibility over land use decisions.

SECTION 4. AMENDMENT.

Section 1700 is amended to read as shown in the attached Exhibit "A" which is incorporated herein by this reference.

SECTION 5. FINDINGS.

Findings of fact and conclusions of law in support of this amendment are attached hereto, labeled Exhibit "B" and incorporated herein by this reference.

SECTION 6. SEVERABILITY.

If any portion of this ordinance, including Exhibit "A", is for any reason held invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion and such holdings shall not affect the validity of the remaining portion thereof.

SECTION 7. EMERGENCY.

This ordinance being immediately necessary to maintain the public welfare, health and safety, an emergency is declared to exist and this ordinance takes effect immediately upon its adoption.

REGULARLY PASSED AND ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS FOR COLUMBIA COUNTY, OREGON THIS 4th DAY OF April, 1990.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

Approved as to form
By: John K. [Signature]
Office of County Counsel

By: [Signature]
Chairman

Attest:

Chiee [Signature]
Recording Secretary

By: [Signature]
Commissioner

First Reading: 04-04-90
Second Reading: 04-04-90
Effective Date: 04-04-90

By: [Signature]
Commissioner

EXHIBIT "A"

Section 1700

APPEALS

1701

Appeal Procedures:

- .1 General Procedure: A land use decision by the Director, Commission or Design Review Board shall be final at the end of ten (10) calendar days following the date notice of the decision is mailed to the applicant, and other persons entitled to notice of the decision as provided by this ordinance or by state law, unless a notice of appeal is filed with the County Clerk's office. A notice of appeal can be obtained from the Planning Department and shall contain:
 - A. The name, address, and telephone number of the person filing the notice;
 - B. An identification of the decision sought to be reviewed, including the date the decision was made; and
 - C. In the case of decisions by the Planning Commission or Design Review Board, the specific reasons why the decision should be modified or reversed.
- .2 Any person entitled to notice of the decision as provided by this ordinance or by state law who desires to appeal the decision shall file the notice of appeal with the required fee. Failure to file a notice of appeal, or make payment of the required fee, within the designated time limit, shall be a jurisdictional defect and shall preclude review.
- .3 When a notice of appeal is properly and timely filed in compliance with this section, and timely payment of the filing fee is made, an appeal hearing shall be scheduled. Notice of the appeal hearing shall be given in accordance with the provisions of ORS 197.763, and other applicable provisions of state law.
- .4 A copy of ORS 197.763 is attached hereto, labeled Exhibit "A" and incorporated herein by this reference.

1702

Any land use decision by the Director or Design Review Board may be appealed to the Commission by the applicant, or other persons entitled to notice of the decision as provided by this ordinance or by state law. The appeal may concern the approval or denial of an application or any conditions attached to the approval of an application. A de novo hearing shall be held by the Commission within forty-two (42) calendar days after the filing date of the appeal notice.

1703

Appeal of a Planning Commission Action: Any land use decision by the Commission may be appealed to the Board of Commissioners by the Board of Commissioners, the applicant, or other persons entitled to notice of the decision as provided by this ordinance or by state law. The appeal may concern the approval or denial of an application or any conditions attached to the approval of an application. A de novo hearing shall be held by the Board of Commissioners within forty-two (42) calendar days after the filing date of the appeal notice.

ception to the definition of "needed housing" authorized by ORS 197.303 (3).

(8) As used in this section, "exception" means a comprehensive plan provision, including an amendment to an acknowledged comprehensive plan, that:

(a) Is applicable to specific properties or situations and does not establish a planning or zoning policy of general applicability;

(b) Does not comply with some or all goal requirements applicable to the subject properties or situations; and

(c) Complies with standards under subsection (1) of this section.

(9) An exception acknowledged under ORS 197.251, 197.625 or 197.630 (1) (1981 Replacement Part) on or before August 9, 1983, shall continue to be valid and shall not be subject to this section. [1983 c.827 §19a]

197.735 [1973 c.482 §7; repealed by 1977 c.665 §24]

197.740 [1973 c.482 §8; repealed by 1977 c.665 §24]

MISCELLANEOUS

197.747 Meaning of "compliance with the goals" for certain purposes. For the purposes of acknowledgment under ORS 197.251, board review under ORS 197.805 to 197.855 and periodic review under ORS 197.640 and 197.641 to 197.647, "compliance with the goals" means the comprehensive plan and regulations, on the whole, conform with the purposes of the goals and any failure to meet individual goal requirements is technical or minor in nature. [1983 c.827 §14; 1989 c.761 §9]

197.750 [1973 c.482 §5; repealed by 1977 c.665 §24]

197.752 Lands available for urban development. (1) Lands within urban growth boundaries shall be available for urban development concurrent with the provision of key urban facilities and services in accordance with locally adopted development standards.

(2) Notwithstanding subsection (1) of this section, lands not needed for urban uses during the planning period may be designated for agricultural, forest or other nonurban uses. [1983 c.827 §19]

197.755 [1973 c.482 §9; repealed by 1977 c.665 §24]

197.757 Acknowledgment deadline for newly incorporated cities. Cities incorporated after January 1, 1982, shall have their comprehensive plans and land use regulations acknowledged under ORS 197.251 no later than four years after the date of incorporation. [1983 c.827 §13]

197.760 [1973 c.482 §6; repealed by 1977 c.665 §24]

197.763 [1987 c.729 §15; repealed by 1989 c.761 §10 (197.763 enacted in lieu of 197.762)]

197.763 Conduct of local quasi-judicial land use hearings; notice requirements; hearing procedures. The following procedures shall govern the conduct of quasi-judicial land use hearings conducted before a local governing body, planning commission, hearings body or hearings officer on application for a land use decision and shall be incorporated into the comprehensive plan and land use regulations:

(1) An issue which may be the basis for an appeal to the board shall be raised not later than the close of the record at or following the final evidentiary hearing on the proposal before the local government. Such issues shall be raised with sufficient specificity so as to afford the governing body, planning commission, hearings body or hearings officer, and the parties an adequate opportunity to respond to each issue.

(2) Notice of the hearings governed by this section shall be provided to the applicant and to owners of record of property on the most recent property tax assessment roll where such property is located:

(a) Within 100 feet of the property which is the subject of the notice where the subject property is wholly or in part within an urban growth boundary;

(b) Within 250 feet of the property which is the subject of the notice where the subject property is outside an urban growth boundary and not within a farm or forest zone; or

(c) Within 500 feet of the property which is the subject of the notice where the subject property is within a farm or forest zone.

(3) The notice provided by the jurisdiction shall:

(a) Explain the nature of the application and the proposed use or uses which could be authorized;

(b) List the applicable criteria from the ordinance and the plan that apply to the application at issue;

(c) Set forth the street address or other easily understood geographical reference to the subject property;

(d) State the date, time and location of the hearing;

(e) State that failure of an issue to be raised in a hearing, in person or by letter, or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue precludes appeal to the board based on that issue;

(f) Be mailed at least:

(A) Twenty days before the evidentiary hearing; or

(B) If two or more evidentiary hearings are allowed, 10 days before the first evidentiary hearing;

(g) Include the name of a local government representative to contact and the telephone number where additional information may be obtained;

(h) State 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 will be provided at reasonable cost;

(i) State that a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing and will be provided at reasonable cost; and

(j) Include a general explanation of the requirements for submission of testimony and the procedure for conduct of hearings.

(4)(a) All documents or evidence relied upon by the applicant shall be submitted to the local government and be made available to the public at the time notice provided in subsection (3) of this section is provided.

(b) Any staff report used at the hearing shall be available at least seven days prior to the hearing. If additional documents or evidence is provided in support of the application, any party shall be entitled to a continuance of the hearing. Such a continuance shall not be subject to the limitations of ORS 215.428 or 227.178.

(5) At the commencement of a hearing under a comprehensive plan or land use regulation, a statement shall be made to those in attendance that:

(a) Lists the applicable substantive criteria;

(b) States that testimony and evidence must be directed toward the criteria described in paragraph (a) of this subsection or other criteria in the plan or land use regulation which the person believes to apply to the decision; and

(c) States that failure to raise an issue with sufficient specificity to afford the decision maker and the parties an opportunity to respond to the issue precludes appeal to the board based on that issue.

(6) Unless there is a continuance, if a participant so requests before the conclusion of the initial evidentiary hearing, the record shall remain open for at least seven days after the hearing. Such an extension shall not be subject to the limitations of ORS 215.428 or 227.178.

(7) When a local governing body, planning commission, hearings body or hearings officer reopens a record to admit new evidence or testimony, any person may raise

new issues which relate to the new evidence, testimony or criteria for decision-making which apply to the matter at issue.

(8) The failure of the property owner to receive notice as provided in this section shall not invalidate such proceedings if the local government can demonstrate by affidavit that such notice was given. The notice provisions of this section shall not restrict the giving of notice by other means, including posting, newspaper publication, radio and television. [1989 c.761 §10a (enacted in lieu of 197.762)]

Note: 197.763 was enacted into law by the Legislative Assembly in lieu of ORS 197.762 which was not added to or made a part of ORS chapter 197 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

197.765 [1973 c.482 §2a; repealed by 1977 c.665 §24]

197.767 [1987 c.729 §4; repealed by 1989 c.837 §34]

197.775 [1973 c.482 §11; repealed by 1977 c.665 §24]

197.780 [1973 c.482 §12; repealed by 1977 c.665 §24]

197.785 [1973 c.482 §13; repealed by 1977 c.665 §24]

197.790 [1973 c.482 §14; repealed by 1977 c.665 §24]

197.795 [1973 c.482 §10; repealed by 1977 c.665 §24]

LAND USE BOARD OF APPEALS

197.805 Policy on review of land use decisions. It is the policy of the Legislative Assembly that time is of the essence in reaching final decisions in matters involving land use and that those decisions be made consistently with sound principles governing judicial review. It is the intent of the Legislative Assembly in enacting ORS 197.805 to 197.855 to accomplish these objectives. [1979 c.772 §1a; 1983 c.827 §28]

197.810 Land Use Board of Appeals; appointment and removal of members; qualifications. (1) There is hereby created a Land Use Board of Appeals consisting of not more than three members appointed by the Governor subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565. The board shall consist of a chief hearings referee chosen by the referees and such other referees as the Governor considers necessary. The members of the board first appointed by the Governor shall be appointed by the Governor to serve for a term beginning November 1, 1979, and ending July 1, 1983. The salaries of the members shall be fixed by the Governor unless otherwise provided for by law. The salary of a member of the board shall not be reduced during the period of service of the member.

(2) The Governor may at any time remove any member of the board for inefficiency, incompetence, neglect of duty, malfeasance in office or unfitness to render effective service. Before such removal the Governor shall give the member a copy of

EXHIBIT "B"

COLUMBIA COUNTY PLANNING COMMISSION
Staff Report
January 8, 1990

FILE NUMBER: TA 6-89

APPLICANT: Columbia County/Land Development Services
St. Helens, OR 97051

REQUEST: Text Amendment to the Zoning Ordinance

I. BACKGROUND

The purpose of this Zoning Ordinance amendment is to change some of the text of Section 1700 which addresses the "Appeals" procedure. This is being proposed in order to clarify procedures for appeal in light of recent state court decisions, and to provide a means for clarification of the Board of Commissioners' authority and responsibility over land use decisions made by lower governing bodies.

Attachment 'A' is a copy of the present language, and Attachment 'B' is a copy of the proposed language. Verbage to be changed have been underlined and printed in bold type on Attachment 'B'.

II. FINDINGS

A. Section 1606 of the Zoning Ordinance states:

1606 Legislative Hearing: A request to amend the text of the Zoning Ordinance or to change a large area of the Zoning Map of Columbia County in order to bring it into compliance with the Comprehensive Plan are legislative hearings. Legislative hearings shall be conducted in accordance with the following procedures:

- .1 A legislative amendment to the Zoning Ordinance Text or Map may be initiated at the request of the Board of Commissioners, a majority of the Commission, or the Director, or any citizen of the County may petition the Commission for such a change.
- .2 Notice of a Legislative Hearing shall be published at least twice, one (1) week apart in newspapers of general circulation in Columbia County. The last of these notices shall be published no less than ten (10) calendar days prior to the Legislative Hearing. The mailing of notice to individual property owners is not required but shall be done if ordered by the Board of Commissioners.

Finding 1. This request is being initiated by the Board of Commissioners, and is being conducted in accordance with the procedures as listed above. As there is no specific property involved, individual notice to property owners is not being mailed.

B. Section 1608 of the Zoning Ordinance states:

1608 Consistency with the Comprehensive Plan: All amendments to the Zoning Ordinance Text and Map shall be consistent with the Comprehensive Plan Text and Maps.

- .1 The Commission shall hold a hearing to consider the proposed amendments and shall make a recommendation to the Board of Commissioners with regard to the proposed amendments. The Board of Commissioners shall hold at least one hearing to consider the proposed amendments. Both the Commission and the Board of Commissioners hearing will require notice in the manner outlined in Section 1612.

Finding 2. The proposed amendment is applicable only to the Zoning Ordinance Text, and not to any maps. The proposed amendment is consistent with the Comprehensive Plan.

The Board of Commissioners shall hold a hearing on this request on February 14, 1990.

III. CONCLUSION AND RECOMMENDATION

Approval of this request will ensure that the appeals procedure is in conformance with all required state laws, and will give the Board of Commissioners the authority to appeal any Planning Commission decisions.

Based upon this conclusion and the findings noted above, Staff recommends approval of this request.

Section 1700 APPEALS

1701 Appeal Procedures:

- .1 General Procedure: A decision by the Director, Board of Adjustment, Commission, or the Design Review Board shall be final at the end of ten (10) calendar days following the decision, unless a notice of appeal is filed with the County Clerk's office. A notice of appeal shall contain:
- A. The name, address, and telephone number of the person filing the notice;
 - B. An identification of the decision sought to be reviewed, including the date the decision was made; and
 - C. The specific reasons why the decision should be modified or reversed.
- .2 A person desiring to appeal the decision shall submit the notice with the required fee. Failure to file a notice of appeal, or payment of the required fee, within the designated time limit, shall be jurisdictional defect and shall preclude review. On request of a notice of appeal, a review or hearing shall be held within thirty (30) calendar days.
- .3 Notice of the appeal hearing shall be given in accordance with the provision of a quasi-judicial hearing - Section 1603.

1702 Appeal of a decision by the Director, Board of Adjustment, or Design Review Board shall be appealed to the Commission. This appeal may concern the denial of an application or any conditions attached to an application or any conditions attached to an application as part of an approval. Any interested or affected party may appeal this decision. A de novo hearing shall be held by the Commission within sixty (60) calendar days of the filing of the appeal.

- .1 Any member of the Commission who served on the Board of Adjustment or the Design Review Board when a decision was made and is subsequently appealed shall refrain from voting on the appeal.

1703 Appeal of a Planning Commission Action: Any action by the Commission may be appealed to the Board of Commissioners by any interested or affected person. This appeal may concern the denial of an application or any conditions attached to the approval of an application. A de novo hearing shall be held by the Board of Commissioners within thirty (30) calendar days after the filing of the appeal.

ATTACHMENT 'B'

Section 1700 APPEALS

1701 Appeal Procedures:

- .1 General Procedure: A decision by the Director, Commission, or the Design Review Board shall be final at the end of ten (10) calendar days following the date notice of the decision is sent to the applicant and other parties to the decision, as provided by state law, unless a notice of appeal is filed with the County Clerk's office. A notice of appeal shall contain:
 - A. The name, address, and telephone number of the person filing the notice;
 - B. An identification of the decision sought to be reviewed, including the date the decision was made; and
 - C. The specific reasons why the decision should be modified or reversed.
- .2 Any person entitled to notice pursuant to Subsection 1701.1 above who desires to appeal the decision shall submit the notice with the required fee. Failure to file a notice of appeal, or payment of the required fee, within the designated time limit, shall be a jurisdictional defect and shall preclude review. Upon receipt of a notice of appeal, a hearing shall be held within forty-two (42) calendar days.
- .3 Notice of the appeal hearing shall be given in accordance with the provisions of Oregon Laws 1989, Chapter 761, Section 102 or other applicable provisions of state law.

1702 Decisions by the Director or Design Review Board shall be appealed to the Commission. The appeal may concern the approval or denial of an application or any conditions attached to an application as part of an approval. A de novo hearing shall be held by the Commission within forty-two (42) calendar days after the filing of the appeal.

1703 Appeal of a Planning Commission Action: Any action by the Commission may be appealed by the Board of Commissioners or the applicant or other parties to the decision as provided by state law. This appeal may concern the approval or denial of an application or any conditions attached to the approval of an application. A de novo hearing shall be held by the Board of Commissioners within forty-two (42) calendar days after the filing of the appeal.