



Josephine County, Oregon

Community Development – Planning Division

700 NW Dimmick, Suite C / Grants Pass, OR 97526

(541) 474-5421 / Fax (541) 474-5422

E-mail: planning@co.josephine.or.us

APPEAL APPLICATION

Planning Commission or Hearings Officer Decision

PETITIONER INFORMATION

Petitioner's Name(s): _____ Tel: _____

Mailing Address: _____

Representative: _____ Tel: _____

Mailing Address: _____

Email Address: _____

DECISION APPEALED

Rural Planning Commission

Hearings Officer

Date of Hearing: _____

Date of Decision: _____

Petitioner's Status: Owner/Applicant Party

If party status is claimed, state basis: _____

WRITTEN STATEMENT OF GROUNDS FOR APPEAL ATTACHED (Note: The statement must set out each ground or reason for the appeal. The grounds must be separately numbered and explained, and must be referenced to the applicable state or local goal, ordinance, law or rule).

ORIGINAL FILE INFORMATION

Owner's Name: _____ Tel: _____

Mailing Address: _____

Applicant's Name: _____ Tel: _____

Applicant's Address: _____

Legal Description: TWN _____ RNG _____ SEC _____ QQ _____ TAX LOT _____ ZONE _____

Original Application: _____

APPLICANT'S STATEMENT OF UNDERSTANDING

I, _____, have filed an **APPEAL APPLICATION PLANNING COMMISSION/HEARINGS OFFICER DECISION** with the Community Development – Planning Division to be reviewed and processed according to state and county requirements. I acknowledge the following disclosures:

1. I understand that any representations, conclusions or opinions expressed by staff in the pre-application review of this request do not constitute final authority or approval, and that I am not entitled to rely upon any such expressions in the place of final approval.
2. I understand I may ask questions and receive input from planning staff, but acknowledge that I am ultimately responsible for all information and documentation submitted with this application. I further understand planning staff cannot legally bind the county to any fact or circumstance that conflicts with state or local laws, and in the event a conflict occurs, all such statements or agreements are void.
3. I understand I have the burden of demonstrating my appeal is supported by applicable criteria. The criteria for approving or denying my request have been furnished to me as a part of this application and I acknowledge receipt.
4. I understand planning staff is entitled to ask for additional information or documentation any time after the submission of this application if it is determined such information is needed for the review of my appeal.
5. I understand that in some cases the Oregon Department of Land Conservation and Development (DLCD) may have authority to review, comment and appeal any decision rendered by the county.
6. I understand it is the function of the planning office to impartially review my application and to address all issues affecting it regardless of whether the issues promote or hinder the success of my appeal. I agree it is my sole responsibility to establish the case in favor of the appeal.
7. I understand I am entitled to have a lawyer or a land use consultant help me with my application and to appear with me (or for me) at any appointment, conference or hearing relating to it.
8. I understand the processing of my application may require a site visit, which may include officials from other agencies, and photographs are commonly taken. Advance notice of the visit will be provided when the site is also a personal residence.

DATE: _____, 20_____.

OWNER/APPLICANT *

OWNER/APPLICANT *

** If the applicant is someone other than the owner, a power of attorney must be on file from the owners authorizing the application*

APPEAL PROCEDURES PLANNING COMMISSIONER/HEARING OFFICER

WHAT IS AN APPEAL?

An appeal challenges a land use decision made by the Hearings Officer or the Rural Planning Commission by asking the Board of County Commissioners to review it. The application must contain a statement that specifically lists the grounds or reasons why you think the original decision-maker made a mistake. The grounds or reasons must cite the specific standards or criteria you think were incorrectly applied or overlooked, and then explain how this is so. The hearing for this kind of appeal is strictly limited to arguments, and only the evidence already in the record can be considered. All appeals are subject to the rules and procedures found in Article 33 of the Rural Land Development Code (RLDC) and applicable state law.

The following decisions may be appealed:

- ▶ Hearings Officer under the RLDC -- Article 23
- ▶ Planning Commission under the RLDC -- Article 24

HOW DO I FILE AN APPEAL?

An appeal may be filed by anyone who is a party in the action which is being appealed (see, Articles 11.030 and 31.100, of the RLDC, and ORS 215.416) within 10 days from the date the decision is given or mailed to the parties.

WHAT IS REQUIRED FOR A COMPLETE APPEAL APPLICATION?

An appeal is complete when an application from the planning office is submitted with all of the required information (petitioner, decision and file information), together with a written statement of appeal showing how the decision failed to follow or apply applicable review standards or criteria. In all cases a complete application must include the full filing fee.

WHAT IS THE EFFECT OF THE APPEAL?

An appeal will suspend all action on the application. No permits can be issued until the Board makes a decision on the appeal.

WHO WILL HEAR THE APPEAL?

All appeals are heard by the Board of County Commissioners.

HOW WILL THE APPEAL HEARING BE CONDUCTED?

Appeals are conducted according to the rules of procedure contained in Chapter 3 of the RLDC. You should review the rules prior to the hearing. The rules governing appeals are attached to this application. Read them carefully.

All appeals involving Hearings Officer or Planning Commission decisions are on the record, which means no new evidence or documentation is allowed in the appeal hearing (*there is a limited exception to this rule*), and the hearing will be strictly limited to arguments on the specific points raised in the statement of appeal. In this situation the burden of proof is on the one who appeals.

The Board may affirm, reverse or modify a decision on appeal. It may also send the decision back to the original decision-maker for further consideration or action. If more than one appeal is filed on an application, the Planning Director may consolidate all appeals and submit them for a single hearing before the Board.

IS THE PLANNING OFFICE ABLE TO HELP WITH MY APPEAL APPLICATION?

If requested, a planner may review your appeal application to make sure it is complete, but this must be done prior to the appeal deadline. Apart from this basic help, the planner is not allowed to suggest reasons for the appeal or help write or prepare the appeal application. You are entitled to ask the planner general, factual questions about applicable standards or criteria, but the answers are advisory only and are not binding (see, item #2, Applicants Statement of Understanding, on the second page of this application). Remember, you alone are responsible for the content and correctness of the appeal application.

LAND USE HEARING RULES

ARTICLE 33 - APPEAL OF DECISIONS

33.010 - PURPOSE

The purpose of this Article is to establish uniform procedures for the appeal of decisions rendered pursuant to this Code.

33.020 - APPEAL AUTHORITY

- A. Final actions made under the following review procedures may be appealed to the Board of County Commissioners:
 - 1. Planning Director - Article 22
 - 2. Hearings Officer - Article 23
 - 3. Rural 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. 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.

33.050 - 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.

To have standing to appeal a decision rendered under the procedures of this Code, persons or parties must have participated, either orally or in writing, in the local review process, and must have been granted standing under Section 31.100(B) of this Code by the Presiding Officer at the public hearing.

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 DECISION

Appeal from actions by Planning Director or Site Review Committee shall be heard de novo by the Board:

- A. 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;
- B. The report shall consist of all materials, documents, and exhibits considered by the Planning Director or the Site Review Committee in taking the action, including the final action under appeal, if one exists;
- C. The Planning Director is authorized to charge a reasonable fee for the preparation and copying of the report.

33.080 - ACTION OF THE HEARINGS OFFICER OR PLANNING COMMISSION

- 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 APPEAL (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.