



Oregon

Tina Kotek, Governor

HPAC Work Group Recommendation Template

Last Update: June 21, 2023

Work Group

- Availability of land
- Land development permit applications
- Codes and design
- Workforce shortages
- Financing

Recommendation

Update the process for hearing appeals for residential housing development within UGBs Land Use procedures:

- *Require that appeals or call-up must be based on and required to state the specific approval criteria in question.*
- *Appeals should be directed to hearings officers, rather than planning commissions or city councils.*
 - o *In cities with no hearings officer, Council of Governments shall work to assign/contract hearings officers to provide the service around the state.*
- *Revise state law to remove requirement for one de novo hearing. Allow for jurisdictions to hear appeals either on the record or based on just the appeal issue(s).*
- *Previously approved applications under consideration with an appeal should have conditions of approval added/modified in order to address a denial/approval of the appeal issue, allowing an earlier approval of the project to still stand*
- *Legislature should define "adequate findings" in an effort to eliminate the need to respond endlessly to public comment/questions.*

Related Work Plan Topics

Streamlining the approval process and removing uncertainty.

Adoption Date

August 18, 2023

Adoption of Recommendation

*Conditionally adopted in Work Group Meeting on August 8, 2023
Adopted via email on August 18, 2023. Unanimous consent to move forward.*

Co-chairs Guidance: Standards for Analysis

1. Clearly describe the housing production issue that the recommended action(s) will address.

Appealing land use decisions provides an additional layer of uncertainty for developers/projects as well as can cause a delay in the project. In many jurisdictions, appeals can be brought forward by neighborhood associations without even having to pay a small fee. This can cause some neighborhood associations to appeal projects with the sole purpose of slowing the project down.

Appeals are also heard by planning commissions or city councils. The process of listening to neighbors of developments list hardships that are not approval criteria can be persuasive to these hearing bodies, especially when they aren't as familiar with the land use criteria and the requirements under state law. In some cases, developers end up making concessions to the project which they are not required to do under Oregon Land Use law in order to ensure their projects are approved and they don't have to go through an additional uncertain process of appealing to LUBA, which involves additional costs and delay.

Even when appeals are baseless and projects are approved without changes, the delay can result in the overall increase in the project cost due to increasing construction costs in an ever-changing global market.

These extra costs become incorporated into the overall cost of the project and result in increased housing prices that are passed onto the consumer.

2. Provide an overview of the housing production issue, including quantitative/qualitative context if available.

A great deal of uncertainty is present during the land use process. Even when projects go smoothly through administrative processes, where the applicant and the jurisdiction work together to ensure the criteria are met or can be satisfied through conditions, opponents can appeal the decision and, in many cases, not even have to state the reason for the appeal.

The appeal process can had an additional month onto the project. This extra time can be longer than a month if it is the first hearing and someone requests that the record be left open. This adds an additional 4 weeks on to the process.

Not knowing what the appeal issue is, or not be limited to one issue, causes the applicant and their design team to prepare for any slate of issues. The current hearings process in many jurisdictions allows the applicant 10 minutes to speak, the appellant 10 minutes to speak, an unknown amount of public testimony, and a 5 minutes applicant rebuttal. This is extremely challenging when testimony isn't limited to an issue, and the applicant must figure out how to address anything mentioned within a total of 15 minutes.

Hearing's officers are well-versed in land use law. Allowing the hearing to be done in front of a hearings officer helps to minimize the possibility that the hearing body (i.e. planning commission or city council) will be swayed by issues not pertaining to the approval criteria.

By limiting the appeal process to specific issues, the application could still be allowed, should the one issue not cause a massive change in the proposed project, with the use of conditions of approval. For example, if the issue is providing an additional access, a condition of approval can be added that would still allow for the project to be in substantial conformance.

3. To assess the issue and potential action(s), include subject matter experts representing all sides of the issue in work group meetings, including major government, industry, and stakeholder associations.

*The recommendation was sent to the following land use attorneys for their review:
Mike Robinson*

Alan Sorem

The recommendation was also discussed at the Codes and Design work group meeting on August 8, 2023. At that meeting, Lisa Anderson-Ogilve (planning director for the City of Salem) mentioned general support for this recommendation. She mentioned that they have to pay Hearings Officers, versus not paying Planning Commissions or City Councils, so they might have to be some consideration for increased costs. However, she also noted that staff time would be reduced because Hearing Officers are more familiar with state law and city code than most volunteer commissioners/councilors.

Kurt Krueger from the City of Portland agreed that using a Hearings Officer would ease staff time for making sure volunteer councilors are versed enough in land use to participate in quasi-judicial hearings.

4. Provide an overview of the expected outcome of the recommended action(s), including quantitative/qualitative context if available.

Constraining the way appeals are done and who can hear the appeal will still allow for public involvement. It just ensures that development applications can have be evaluated based on the code and are reviewed by people well-versed in the law.

This will likely cut back on the number of baseless appeals and revisions to projects that result from fear of a denial, that aren't required under code.

Moving appeal hearings to the Hearings Officer could also reduce the number of appeals sent to LUBA, as Hearings Officers are better versed on land use law. This helps projects get constructed faster and with lower costs (i.e. less carrying cost, risk of construction supply/cost issues).

5. Estimate of the time frame (*immediate, short, medium, long-term*), feasibility (*low, medium, high*), and cost (*low, medium, high*) for implementation of the recommended action(s).

Time Frame	Feasibility	Cost
<input type="checkbox"/> Long-term	X_ High	<input type="checkbox"/> High
<input type="checkbox"/> Medium-term	<input type="checkbox"/> Medium	<input type="checkbox"/> Medium
<input type="checkbox"/> Short-term	<input type="checkbox"/> Low	X_ Low
X_ Immediate		

This recommendation would likely save local jurisdictions money by way of staff time, as local staff would not have to spend as much time explaining matters of law to planning commissions/city councils. In addition, requiring that appeals be heard on specific issues will help limit the hearing process, requiring less time and expense for all involved to address issues actually able to be appealed.

SME testimony pointed out that cities pay hearings officers for the service, where planning commissioners and city councilors are not paid. Moving all appeals to hearings officers would mean they would need to pay more money for appeal hearings.

SME testimony also point out that not all cities have a hearings officer, so funds would need to be provided to them to pay for the service.

6. Provide a general overview of implementation, the who and how for the recommended action(s).

Revisions to state law would remove the requirement for a de novo hearing and pave the way for appeals to be limited to specific criteria listed by the appellant. Initial hearings would all be directed to the hearing's officer, rather than planning commissions or city councils.

State law should also be amended to include a definition for "adequate findings".

7. Outline the data and information needed for reporting to track the impact and implementation of the recommended action(s).

Jurisdictions could keep track of the number of appeals and the issues that were raised on appeal.

8. Identify any major externalities, unknowns, tradeoffs, or potential unintended consequences.

There could be a public perception that public involvement is being limited. This requires the public to have the ability to know about specific approval criteria. It is possible that this could cause some additional conversations between local jurisdictions and the public, in order to explain approval criteria.

Please include any relevant reports, data analyses, presentations, or other documents that would be informative and useful for the full HPAC as the recommendation is discussed and considered.