



Community Development Department

Planning Division • Building Safety Division • Environmental Soils Division

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April 10, 2013

TO: The Honorable Jeff Barker, Chair
The Honorable Chris Garrett, Vice Chair
The Honorable Wayne Krieger, Vice Chair
House Judiciary Committee

FROM: Nick Lelack, Interim Director, Deschutes County Community Development Department

RE: **House Bill 3087**

Deschutes County Testimony on HB 3087

Deschutes County joins the Association of Oregon Counties and League of Oregon Cities in opposing HB 3087 which limits the amount of appeal fees that a county or city may charge for quasi-judicial review of a land use decision for the following reasons:

- **Disparity in Appeal Fees.** There is significant disparity in costs between counties' appeal fees. The reason is that planning services are funded differently by county. Some counties charge fees to cover the actual cost of services (ACS) and other counties subsidize their services resulting in lower fees. Fee-based organizations, such as Deschutes County, will have higher appeal fees than those that are subsidized. Appellants pay the appeal costs in fee-based counties. Tax payers pay all or most of the appeal costs in counties who subsidize their planning services. The key point is that local jurisdictions decide how to fund planning services, including the fees. HB 3087 requires tax payers to cover 90% of appeal fee costs in all counties similar to the state imposed \$250 appeal fee cap for administrative decisions. The outcome of HB 3087 in Deschutes County would be to increase application fees to cover this additional cost or shift the cost to County tax payers.
- **Real and Significant Appeal Costs.** Deschutes County requires applicants to submit a \$3,000 deposit to cover public hearing costs. Public hearings are conducted by a Hearings Officer – a land use attorney and independent arbiter (not a county employee) who represents a neutral third party in interpreting laws and rules and rendering decisions. Hearings Officers charge \$150 per hour and bill the County following the issuance of the decision. Any unexpended funds are returned to the applicant. Therefore, applicants pay a significant amount for the public hearing.

If a Hearings Officer's decision is appealed, the appeal fee to the Board of County Commissioners (BOCC) is \$2,490 plus 20% of the original application fee. If the BOCC declines to hear an appeal, 75% of the appeal fee is refunded. The reasons the appeal fee is \$2,490 plus 20% of the original application fee include the following:

- The County's Community Development Dept. (CDD) is primarily a fee supported department. Fees are intended to fund 100% of the department's services.
- County Legal Counsel is directly and significantly involved in an appeal of a Hearings Officer decision. Legal Counsel is generally not involved in the land use decision making process until an appeal is filed. Legal Counsel coordinates with the applicant and appellant and/or their attorneys, planning staff, attends the BOCC work sessions and public hearings, and participates in the drafting of the final BOCC decision. Legal Counsel bills CDD for time spent on appeals.
- CDD staff perform nearly all the same functions associated with the initial application including acceptance of appeals, review, coordination with the applicant and public (appellant), the preparation of staff reports, public notifications, and facilitating the public hearing process for the appeal process. The only efficiency is that the issues to be addressed on appeal are often narrower than in the original application
- The reason only 75 percent is refunded and not 100 percent is that staff must perform all necessary functions to accept an application, prepare staff reports in consultation with County Legal Counsel, and conduct a work session and/or public hearing with the BOCC to determine whether it will hear the appeal or not.
- **Economic Impact to Deschutes County.** Since 2000, 127 land use decisions have been appealed in Deschutes County, most of which are Hearings Officer decisions following public hearings. A recent 2012 example illustrates the economic impact of HB 3087 to Deschutes County. The appeal fee was \$2736. Under the HB 3087, the appeal fee would have been \$126. The County would be required to subsidize this appeal in the amount of \$2,610. Some appeal fees are higher. For example, a Conditional Use Permit/Site Plan Review application for a new development is be \$3,472. This hypothetical example would reduce the appeal fee to \$491 and result in an appeal fee subsidy of \$2,981.

The consequence is that Deschutes County would be required to raise fees or rely on General Fund transfers to subsidize appeal fees. In addition, the proposed appeal fee cap could invite additional appeals resulting in higher subsidies or fees for all applications.

- **Fee Waivers.** Deschutes County offers fee waivers for financial hardships or public benefits at the discretion of the Board of County Commissioners. This policy applies to appeal fees.

I appreciate the opportunity to provide the Committee with information regarding Deschutes County's planning services, fees, and position on HB 3087.

I have coordinated with the Board of County Commissioners on this testimony.

Please let me know if I can be of further assistance by contacting me at (541) 385-1708 or Nick.Lelack@deschutes.org.

cc: Deschutes County Board of Commissioners
 Alan Unger, Chair
 Tammy Baney, Vice Chair
 Anthony DeBone, Commissioner
 Tom Anderson, County Administrator