

**Written Testimony for the Oregon House of Representatives
House Bill 3087**

**Committee on the Judiciary
Chair Jeff Barker**

April 10, 2013 at 1:00 P.M.

**by Bill Kirby
Beaverton City Attorney**

Chair Barker, members of the committee, my name is Bill Kirby. I am the City Attorney for the City of Beaverton. I am here today to speak in opposition to House Bill 3087.

House Bill 3087 would severely limit the fee a city or county charges for an appeal of a land use decision made by a local hearings officer or planning commission when reviewed by a city council, county board of commissioners or any other designated local entity conducting quasi-judicial reviews. These are fees paid for local appeals, not appeals to LUBA.

Under HB 3087, the local appeal fee would be limited 10 percent of the original land use application fee or \$1,000, whichever is less.

Today, I want to give you some examples of how House Bill 3087 would negatively impact a city like Beaverton, which charges modest, reasonable fees.

Beaverton charges one of two appeal fees in land use proceedings. On simple Type 1 (non-discretionary criteria) and Type 2 (limited discretionary criteria) matters, we charge a flat \$250 appeal fee. On more complex Type 3 (substantial discretionary criteria) and Type 4 (quasi-legislative) matters, we charge a flat \$1,439 appeal fee.

I want to focus on the effect House Bill 3087 would have on Type 3 and Type 4 appeals. Beaverton sets its appeal fees annually based on a good faith, reasonable estimate of the average cost of preparing for and conducting an appeal, as required by law. We similarly set all of our application fees annually using the same standard of good faith and reasonableness for processing various land use applications.

House Bill 3087 would limit the appeal fee a city or county could charge for review of city or county decisions on land use applications to just *ten percent* of the original land

use application fee. Remember, the proposed law would limit a local appeal fee to a fee of \$1000 or 10 percent of the original land use application fee, whichever is less.

Beaverton's land use applications fees for most Type 3 matters are in the range of \$2000 to \$3000. I've attached to this testimony a schedule showing examples of common land use applications and their associated fees, organized by proceeding type.

Because the city's most common Type 3 application fees are generally between \$2000 and \$3000, this means a city like Beaverton would be limited to an appeal fee of \$200 to \$300 for most Type 3 applications. This means House Bill 3087 would impose an 85% reduction of Beaverton's appeal fee on Type 3 land use proceedings.

The negative impact of House Bill 3087 is also present with regard to appeals of Type 4 (quasi-legislative) proceedings. These proceedings typically involve amendments to the city's comprehensive plan or its development code. Application costs for these complex proceedings are appropriately among the highest in Beaverton: \$4770 for a development code text amendment and \$5243 for a comprehensive plan amendment. Under House Bill 3087, we would be limited to a \$524 appeal fee for an appeal concerning a comp plan amendment, rather than our current \$1,439 appeal fee. That amounts to about a 65% reduction in a fee otherwise reasonably estimated to cover the city's actual costs of processing an appeal.

Now, beyond the significant fiscal hit House Bill 3087 would impose on a city like Beaverton, the bill may have unintended consequences. A low-cost fee may encourage a "roll-the-dice" mentality when it comes to appeals of local land use decisions. If it only costs \$300 to appeal a decision regarding a zone change, or \$287 to appeal a decision regarding a conditional use permit, why not take the chance if you didn't get everything you wanted from the hearing officer's or planning commission's initial decision?

We're sensitive that appeal fees should not discourage legitimate appeals or exceed actual staff costs. But by the same token, we know appeal fees shouldn't be set so low as to encourage spurious appeals or fail to support the work ordinarily required to process an appeal. It's a balancing act, and we think our appeal fee structure in Beaverton strikes the right balance between these two competing concerns, and the law is right to demand fair and reasonable fees.

In conclusion, we acknowledge that there may be examples of agencies overreaching the fair and reasonable standard in setting their appeal fees. At the same time, I fear House Bill 3087 would negatively impact the many for the misdeeds of a few.

There must be a better solution to this problem. We are ready, willing and able to work with others to craft an effective solution to this problem. Overcharging for appeals is a legitimate concern, but House Bill 3087 isn't the right solution.

Thank you for the opportunity to testify before you today. I would be happy to answer any questions.

Exhibit: City of Beaverton - Planning Division Fee Schedule - Examples Organized by Procedure Type

CITY OF BEAVERTON
PLANNING DIVISION FEE SCHEDULE
Example Organized by Procedure Type
JULY 1, 2012 TO JUNE 30, 2013

Type 1 (non-discretionary criteria)

LOT LINE ADJUSTMENT	\$457
FINAL LAND DIVISION (PARTITION)	\$882
FINAL LAND DIVISION (SUBDIVISION)	\$1,071
MINOR BUILDING ADDITIONS OR LANDSCAPING CHANGES	\$113
TEMPORARY USE PERMITS	\$189
DESIGN REVIEW I (COMPLIANCE LETTER)	\$113

Type 2 (limited discretionary criteria)

PRELIMINARY LAND DIVISIONS	\$3,833
MINOR SITE DEVELOPMENT ADJUSTMENTS	\$688
PARKING DETERMINATIONS	\$295
DIRECTOR'S INTERPRETATION	\$722
DESIGN REVIEW II	\$1,811
CONDITIONAL USE PERMIT (MINOR MODIFICATON)	\$686

Type 3 (substantial discretionary criteria)

VARIANCE (MAJOR)	\$2,118
MAJOR SITE DEVELOPMENT ADJUSTMENT	\$2,118
ZONE CHANGE	\$3,006
CONDITIONAL USE PERMITS (PUD, NEW USE, OR MAJOR MODIFICATION)	\$2,873
DESIGN REVIEW III	\$3,983

Type 4 (quasi-legislative)

COMPREHENSIVE PLAN AMENDMENT	\$5,243
DEVELOPMENT CODE TEXT AMENDMENT	\$4,770