



Community Development Department

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February 25, 2015

TO: Senate Committee on Judiciary
The Honorable Floyd Prozanski, Chair
The Honorable Sara Gelser, Vice Chair

FROM: Nick Lelack, AICP, Director

RE: **SB 359: Appeal Fee Limits**

Deschutes County Opposition to SB 359

Deschutes County joins the Association of Oregon Counties and League of Oregon Cities in opposing SB 359 to limit the amount of appeal fees that a county or city may charge for quasi-judicial review of a land use decision for the reasons below.

- **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 is that local jurisdictions decide how to fund planning services, including the fees.

The State has an appeal fee limitation in law – the \$250 appeal fee cap for administrative (staff) decisions. The direct effect of this appeal fee cap in Deschutes County is that any controversial or complex application is sent to a public hearing, at the outset, for an initial local decision. Because the fee for that initial hearing is part of the application fee, that results in 100% cost to the applicant. The outcome of additional appeal fee legislation in Deschutes County would be to increase application fees to cover this additional cost or shift the cost to County tax payers.

- **Commitment to Goal 1**. Deschutes County demonstrates its commitment to Goal 1 of the Oregon Statewide Planning Program by its extensive public engagement and involvement in all land use planning activities – both quasi-judicial and legislative. For example, Deschutes County has and invests in:

- An online, update-to-date and user friendly Comprehensive Plan with specific chapters addressing local needs and issues;
- A state-of-the-art webpage that is continuously updated both with new information and data and in response to citizen requests (i.e., updated pending land use application links);
- A first class interactive online mapping program (DIAL);
- Bi-monthly newsletters;
- Utilization of social media;
- Regular public and stakeholder meetings in Bend and around the County;
- Requiring public hearings at the cost to the applicant of any complex or controversial land use application; and more.

Deschutes County is committed to implementing Goal 1.

- **Real and Significant Appeal Costs.** Deschutes County requires applicants to submit a \$3,000 to \$5,000 deposit to cover public hearing costs. Public hearings are conducted by a Hearings Officer – a land use attorney (not a county employee) who is a neutral third party in interpreting laws and rules and rendering decisions. Hearings Officers charge \$175 per hour and bill the County following the issuance of the decision. Any unexpended funds are returned to the applicant, and additional expenses are charged 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 \$2,640 plus 20% of the original application fee. Approximately 95% of appeal fees of Hearings Officer decisions cost \$3,000-\$4000. If the BOCC declines to hear an appeal, 75% of the appeal fee is refunded. The reasons the appeal fee is \$2,640 plus 20% of the original application fee include the following:

- The County’s Community Development Dept. (CDD) is a fee supported department. Fees are intended to fund 100% of the department’s services except long range planning.
- 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, 138 land use decisions have been appealed in Deschutes County, about half of which are Hearings Officer decisions following public hearings. A recent 2012 example illustrates the economic impact of SB 359 to Deschutes County. The appeal fee was \$2736. Under the SB 359, 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.
- **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.
- **Comprehensive User Fee Study.** Deschutes County is in the process of conducting its first ever Comprehensive User Fee Study. The County has hired professional firm to conduct the study, including the actual costs of conducting appeals. These costs are expected to be available by late March.
- **SB 359 Results.** If SB 359 becomes law, Deschutes County will be required to raise fees or rely on General Fund transfers to **subsidize appeal fees.**

Thank you for the opportunity to provide the Committee with information regarding Deschutes County's planning services, fees, and position on legislation to limit appeal fees.

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
Tom Anderson, County Administrator