



American Planning Association
Oregon Chapter

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Making Great Communities Happen

February 24, 2015

RE: Testimony from the Oregon Chapter of the American Planning Association on SB 359

Dear Chair Prozanski, Members of the Senate Committee on Judiciary,

The Oregon Chapter of the American Planning Association (OAPA) represents over 800 professional and citizen planners in the State of Oregon. Rather than support or oppose SB 359, amendments that would cap appeal fees for local government reviews, APA would like to offer some background that may inform the committee members' consideration of this bill.

Currently, state law allows local governments to charge fees to defray the costs associated with acting on an appeal of a hearings officer's decision. These fees must be "reasonable" and cannot exceed the "average cost of such appeals or the actual cost of the appeal." ORS 215.422(1)(c) and 227.180(1)(c). This authorizes a local government to recover their costs associated with processing an appeal. Although LUBA has said that a local government decision establishing a fee and applying it are both "land use decisions," subject to LUBA's review, the burden of showing that the fee is unreasonable or does not reflect the actual appeal costs rests with a challenger, who does not have the same access to information as a local government. As often, local government appeal proceedings are on the record depriving a challenger of the opportunity to submit evidence showing that the fee is unreasonable when applied in any event.

The proposed amendments would cap the fee a local government could charge for processing a quasi-judicial appeal to 10% of the application cost or \$1,000 whichever is less. OAPA is concerned about the potential impacts on our membership who work for cities and counties in Oregon. As the Association of Counties and the League of Oregon Cities have testified, adoption of this proposal would result in local governments having to fund the cost of processing appeals through their general fund, placing these costs on tax payers and placing other planning programs or services currently provided at risk. OAPA is cognizant that, depending on the nature of the appeal, these costs can be significant. For context, the City of Portland currently caps the appeal fee at 50% of the development cost up to a maximum of \$5,000. In the City of Hillsboro, the appeal fee is 50% of the application fee with no cap. In Jackson County, the appeal fee is the actual cost of processing the appeal, plus a \$4,025 deposit for costs with no cap.

However, OAPA is also concerned about providing broad access for participation in the land use system. Goal 1, Citizen Participation has little meaning if the high cost of filing an appeal effectively deprives individuals or groups from seeking review. State law already sets a cap on filing fees for appealing a staff decision made without a hearing to a hearings officer at \$250. ORS 215.416(11)(b) and 227.175(10)(b). This suggests some historical legislative support for not using appeal fees as cost recovery method but that policy may incentivize local government to seek recovery of actual or average costs when a hearings officer's decision is subject to further appeal.

OAPA has no objection to a varied local government approach to balancing the cost-recovery component for processing appeals but that variety cannot go so far as to restrict access based on the jurisdiction where the appeal might be filed. As a result, APA proposes that this legislation be revised to realize some cost-recovery component.

Based on the foregoing, OAPA would support joining with other parties to craft amendments that would allow cities and counties to exceed the \$1000 maximum appeal fee when that larger fee amount is developed in the course of a fee study, and actually reflects the time a local government would spend on such appeal. This enhanced appeal fee would be higher than what's proposed in SB 359, but would require a local government to show the work completed to justify the additional expense. A local government would need to complete the fee study that included an appeal from a planning commission or hearings officer to the governing body, and adopt the fee based on this study. If they didn't the bill would limit them to the proposed amount.

Thank you for the opportunity to comment on this legislation.

Sincerely,

Jason Franklin, AICP, President
Oregon Chapter of the American Planning Association