

February 25, 2015

Senate Committee on Judiciary
Senator Floyd Prozanski, Chair
900 Court St NE
Salem, OR 97301

RE: City of Bend Testimony on Senate Bill 359

Chair Prozanski and Members of the Committee:

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The City of Bend is opposed to Senate Bill 359 as it pertains to appeals within Urban Growth Boundaries. It is our understanding that the intent of the bill is to address situations where jurisdictions charge excessive appeal fees beyond the cost of processing appeals in a manner that has the effect of discouraging public participation in local permitting processes. ORS 227.180 already addresses this by requiring that the fee for an appeal of a permit application:

"shall be reasonable and shall be no more than the average cost of such appeals or the actual cost of the appeal..."

JIM CLINTON
Mayor

Bend recently commissioned a fee study performed by a professional firm with extensive experience providing services to jurisdictions on the West Coast. The fee study calculated the true, average cost of providing all planning permitting services including the cost of appeals. It directly correlated the cost of the planning program, the volume of applications processed and the amount of staff time necessary to perform the work. It used a "closed loop" model where fees set at an excessive level, beyond the cost of the service, would be evident because the revenue output would be out of proportion to the volume and labor inputs.

SALLY RUSSELL
Mayor Pro Tem

VICTOR CHUDOWSKY
City Councilor

DOUG KNIGHT
City Councilor

NATHAN BODDIE
City Councilor

A citizen committee was established to assist in the study to ensure that the methodology was sound. The study was completed in April, 2014 and established a fee of \$2,706 for an appeal of a hearings officer or planning commission decision. This is the average cost of an appeal, which is consistent with ORS 227.180 as written today.

CASEY ROATS
City Councilor

BARB CAMPBELL
City Councilor

ERIC KING
City Manager

While we believe that the current statute is adequate to protect citizen involvement, assuming it's effectively enforced, we would request that if legislation establishing any sort of cap moves forward that a) the amount of the cap be set so as to deter "bad actors" yet not impact the ability of jurisdictions to recover actual costs, and b) that jurisdictions that base their fees on a professionally prepared, third-party fee study be exempted.

In addition, there is no rationale basis for relating the cost of an appeal fee to the original application fee, as the amount of work required to process an appeal may actually be greater in some cases than the cost of processing the application itself. The relationship between the two is highly variable.

Of further concern is that currently ORS 227.180 applies to the appeal of a hearings officer decision on a discretionary permit or zone change. SB 359 would

apply ORS 227.180 to the decision of a hearings officer **or other decision-making authority of the city**. This could be read to apply to limited land use decisions issued by a city under the provisions of ORS 197.195 as those decisions are made by "other decision-making authorities of the city."

Limited land use decisions were created in the early 1990s to provide a streamlined permitting process for uses inside a UGB that are permitted outright in the zoning district. To add appeals of limited land use decisions to ORS 227.180 would be a significant change from the regulations in place today. Again, it is unclear whether this is the intent of the bill. Regardless, we would like to see the bill amended to ensure that limited land use decisions are not affected.

Bend, like many other local jurisdictions, relies primarily on permit fees to fund the cost of providing development review services. If appeal fees are limited, one possible impact would be an increase in application fees for all applicants. We believe that, in principle, if applicants are to pay their own way, the same should be asked of appellants. Planning permit fees are not only paid by the developer who makes his or her living in the industry but by the homeowner who needs a variance to a setback for a home addition or who wants to do a property-line adjustment with their neighbor to create room to build a garage. These are the people who are most affected by high fees, which can make or break their projects.

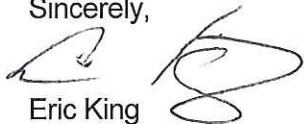
Another possible impact would be that jurisdictions could utilize general fund dollars to subsidize the operation of their planning departments, although that would reduce the amount of funding otherwise available for critical services.

Yet another possible outcome would be to simply stop reviewing land use appeals at local level, and send them straight to the state for review instead. We believe this is contrary to the intent of Oregon's land use system which emphasizes the importance of decision-making at the local level. It would also have the impact of increasing the cost to the state for processing land use appeals.

We believe that the best approach is for the Legislature to continue allowing fair, rationale cost recovery for local jurisdictions. We very much understand the need to deter bad actors and ensure public involvement in Oregon's land use system. But SB 359 fails to strike a workable balance.

Thank you for this opportunity to comment on this important issue.

Sincerely,



Eric King
City Manager