

Land Use Board of Appeals

Budget Presentation

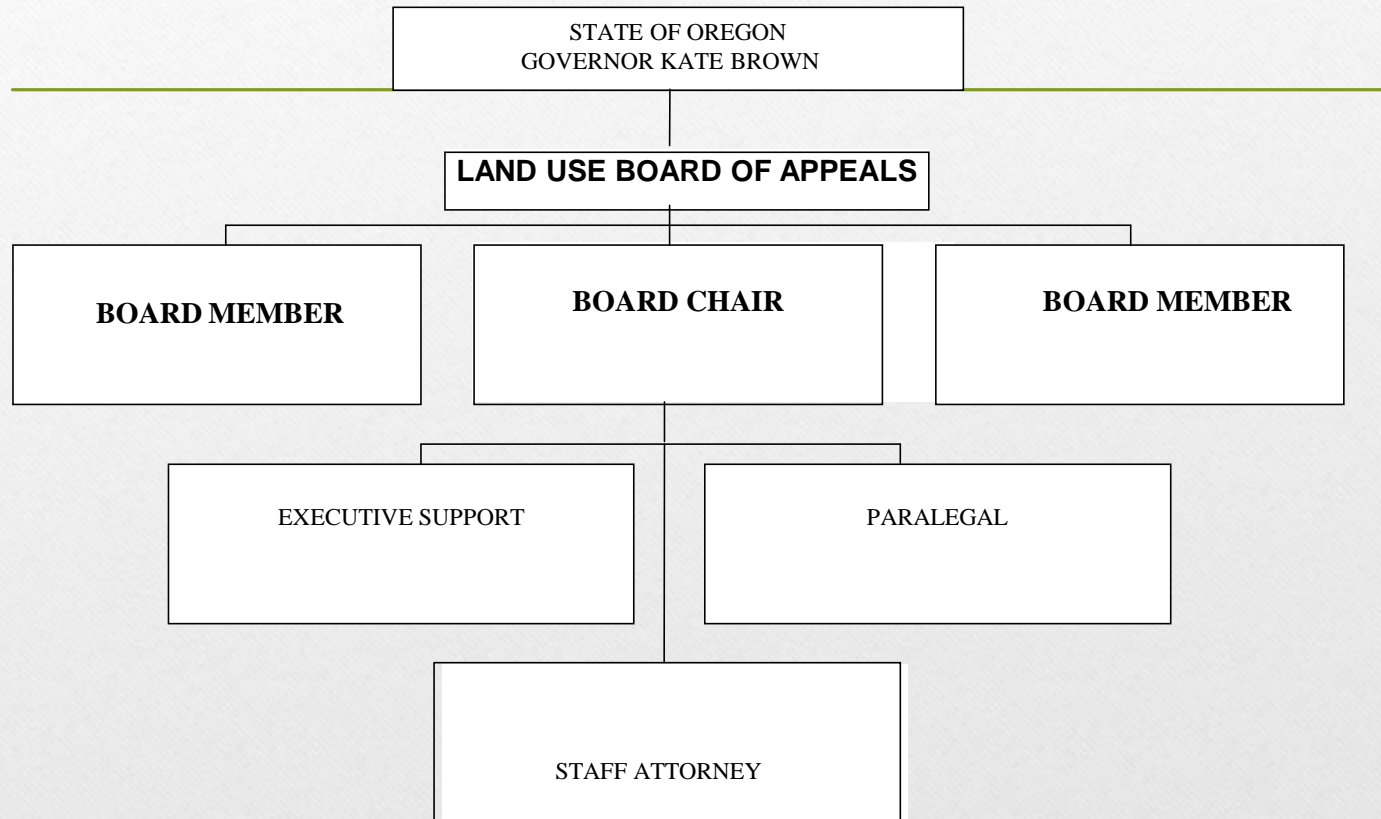
February 7, 2019

Melissa Ryan, Board Chair

1979 Senate Bill 435

- Created LUBA
- Replaced writ of review in circuit court
- Exclusive Jurisdiction to review “land use decisions”
- Defined “Land Use Decision”
- 3 Board Members
- Required to be attorneys/members of the Oregon State Bar

LUBA's Organization



LUBA Appeals

240 Cities

36 Counties

Special Districts

State Agencies

Two critical principles:

- Land use decisions should be **consistent** with the state and local **land use planning legislation** that they were adopted to implement.
- Where there is a dispute concerning whether a land use decision complies with applicable land use planning legislation, that dispute should be **resolved efficiently** and **according to sound principles of judicial review**.

This allows land use proposals that comply with the law to go forward without unreasonable delay and allows land use proposals that do not comply with applicable law to be amended or terminated in a timely and efficient manner.

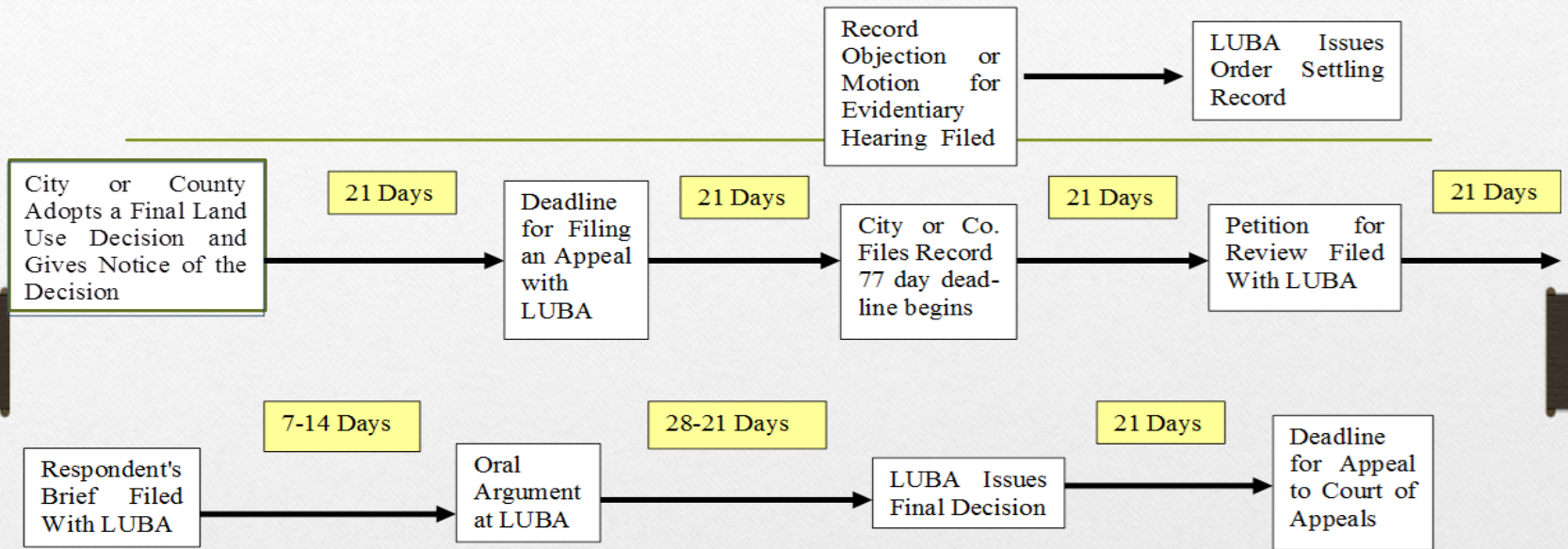
Performance Measure 1

Timely Resolve Appeals

LUBA review takes approximately 98 days from the time the appeal is filed:

- “Notice of Intent to Appeal” filed with LUBA
- Local Government files Record – **Day 21**
- Petition for Review Filed – **Day 42**
- Respondent’s Brief Filed – **Day 63**
- Oral Argument at LUBA – **Day 77**
- LUBA Issues Final Opinion – **Day 98**

LUBA REVIEW OF LAND USE DECISIONS



PM #1 (cont'd)

- Factors affecting performance
 - Caseload
 - Staffing (Turnover)
 - Complexity of Appeals
- Target is 90% of Final Opinions issued before deadline
- For the 1st 6 Quarters of 2017-19 LUBA's performance was 87%

Performance Measure 2

Timely Settle the Record

- Objections Resolved within 60 days of receipt
- Target is 95% of record objections resolved within 60 days
- 1st 6 Quarters of 2017-19 LUBA's performance is 98%

Performance Measure 3

Resolve All Issues

- Decide all legal issues that are presented in appeals.
- This legislative directive increases the chances that the local government will be able to adopt a decision on remand that finally resolves all legal issues.
- Target is 100%.
- LUBA met this target during the 1st 6 quarters of 2017-19.

Performance Measure 4

Decide Appeals Correctly

- LUBA opinions should be sustained on appeal to the Court of Appeals and the Supreme Court.
- The central goal of speedy resolution of land use disputes is furthered when very few LUBA decisions are appealed to the appellate courts and most of the decisions that are appealed are affirmed by the appellate courts.

PM #4 (cont'd)

- Factors affecting performance
 - Caseload
 - Staffing
 - New statutory and administrative enactments
- Target is 90%
- LUBA's sustained on appeal rate was 85% during the 1st 6 quarters of 2017-19

Performance Measure #5

Customer Service

- The nature of appellate review means that in almost all cases some parties will prevail, and some parties will not.
- This means that in almost all cases some parties to the appeal will not be satisfied with the outcome of that appeal.
- LUBA strives to conduct LUBA's review in a manner that leaves participants satisfied with the review process, for example: the assistance LUBA's staff provide to parties; making information on LUBA's procedures and case law available, timely response to questions, etc.

PM # 5 (cont'd)

- Six Measurement Variables
 - Accuracy of Information Given
 - Availability of Information
 - Expertise
 - Helpfulness
 - Timeliness
 - Overall

PM # 5 (cont'd)

- Target is 90%
- LUBA met target for all variables during the first six quarters of the current biennium except “accuracy,” which was 88%
- The Staff Attorney is a factor in this PM because the Staff Attorney is able to provide responses that LUBA Administrative Staff cannot and Board Members could not provide without raising ex parte contact concerns

Other Agency Goals

- Provide quick and easy access to LUBA final opinions.
- Speak at continuing legal education and other land use seminars.
- Conduct oral arguments locally.
- Make LUBA's headnote digest available on LUBA's web page.

Other Agency Goals (cont'd)

- Cost-Containment Strategies
 - Westlaw/Lexis Contracts
 - Website Improvements – Digitized early LUBA opinions
 - Local Records Returned, not Stored
 - Electronic Records Accepted by LUBA from local governments
 - Electronic Records for LUBA decisions appealed to the Court of Appeals
 - Archiving Streamlined
 - Publications Savings
 - Conference Calls

Other Agency Goals (cont'd)

- Cost-Containment Strategies (cont'd)
 - Land Use Fellowship (Willamette Law School)
 - Law Student Interns

Budget Drivers and Environmental Factors

- State Economy
- State Population Growth
- Resulting Impacts on Number of Development Proposals and Disputes over Development
- New Legislation that unsettles the existing legal framework:
Examples
 - 1993 HB 3661; Measures 37/49; Marijuana Legislation; M49 Transfer of Development Rights
 - Proposed Amendments to Housing Statutes
 - Proposed amendments to EFU statutes

Major Changes since 2012

- Since LUBA was created, shift in basic structure of economy to proposals at urban fringe
 - Increased conflicts between urban uses and resource uses
 - More complex regulations in urban areas
- De-emphasis on Periodic Review by DLCD (Reviewed by LCDC)
- Concurrent shift to complex Post-Acknowledgement Plan Amendments (Reviewed by LUBA)
- Board Member turnover 2018-19/Two Board Member retirements

Proposed Legislation That May Affect LUBA

- LUBA Standing (HB 2357)
- Amend Nonconforming Use Law for certain marijuana uses (SB 365)
- Housing (HB 2001)
- Amendments to “outdoor mass gathering” (OMG) statute
- Others?