

207 DECISION

207-1 Decision Types

After review of all evidence submitted into the record the Review Authority may:

- 207-1.1 Approve or deny all or part of the application;
- 207-1.2 Approve all or part with modifications or conditions of approval as described in Section 207-5;
- 207-1.3 Defer a decision as provided in Section 207-6;
- 207-1.4 Dismiss without prejudice due to procedural error or remand to correct a procedural error.

207-2 Announcement of Decision

No decision is final for the purposes of reconsideration or appeal until it has been reduced to writing and signed by the Review Authority or its designee. If a public hearing has been held, the Review Authority may announce a tentative decision at the close of the public hearing, but shall in any case announce a date certain on which the decision shall be adopted or issued. If no public hearing has been held, the decision shall be announced in writing and made available to all parties as simultaneously as reasonably possible.

207-3 Basis for Decision

An approval or denial of a development action shall be based upon substantial evidence in the record that addresses the pertinent standards and criteria set forth in the applicable provisions of State law, the Comprehensive Plan, this Code and other applicable laws as determined by the Review Authority.

207-4 Findings and Conclusions

The Review Authority shall provide brief and concise findings of fact, conclusions of law and an order for all development approvals, conditional approvals or denials. The findings and order shall set forth the criteria and standards considered relevant to the decision, state the facts relied upon and briefly indicate how those facts support the decision. In the case of denial, it shall be sufficient to address only those standards upon which the applicant failed to carry the burden of proof or, when appropriate, the facts in the record that support denial.

207-5 Conditions of Approval

- 207-5.1 The Review Authority may impose conditions on any Type II or III development approval. Such conditions shall be designed to protect the public from potential adverse impacts of the proposed use or development or to fulfill an identified need for public services within the impact area of the proposed development. Conditions shall not restrict densities to less than that authorized by the development standards of this Code.

207-5.2 In addition to conditions imposed pursuant to Section 207-5.1, a condition is valid and enforceable when the applicant has:

- A. Requested the condition;
- B. Consented to the condition in writing or on the record; or
- C. Established or commenced the development or use (other than a valid nonconforming use) prior to approval; or
- D. Submitted graphics or other application materials that were reviewed and approved by the Review Authority; the application must substantially comply with the application materials except as modified by the Review Authority.

207-5.3 Contract for Conditions:

When the approval requires a contract, conditions shall be set forth in a contract executed by the County and the applicant and approved as to form by legal counsel for the County. If a contract is required, no development permit shall be effective until the conditions are recorded. As a condition of approval, the County may require that the contract or a memorandum thereof be filed in the County Deed Records and shall appear in the chain of the title of the subject property, if recording is required. In addition to any personal remedy, the condition shall constitute a burden running with the land in favor of Washington County and, unless otherwise provided, shall be removed only with the written authorization of the Board of County Commissioners. The contract shall be enforceable by and against the parties, their heirs, successors and assigns. The contract, however, shall not restrict the authority of Washington County from taking future development actions affecting the property.

207-5.4 Assurance of Compliance with Conditions:

A bond, cash deposit or other security acceptable to the Review Authority may be required from the applicant in an amount sufficient to ensure compliance with a condition of approval.

207-5.5 Time Limits on Conditions:

Conditions shall be fulfilled within the time limitations set forth or a reasonable time if no time limitations are specified. Failure to fulfill a condition within said time may result in initiation of revocation of the approval, citation or such other enforcement action as the County deems appropriate.

207-5.6 Failure to Fulfill Previous Conditions:

Notwithstanding any other provision, the Review Authority shall refuse to issue an approval with conditions, and deny an application, upon a determination that the applicant, or any officer, or principal of the applicant, willfully has failed to fulfill conditions of approval imposed in any previous development action and a determination that such a decision would encourage compliance or is necessary to protect the public from future noncompliance.

207-5.7 Modification or Removal of Conditions:

Modification or removal of conditions of approval may be sought on appeal or as a new development action. A new development action shall be processed through the same procedure as was used to impose the conditions. Modification or removal of conditions of approval shall only be granted if the Review Authority determines that:

- A. The applicant or owner has demonstrated that a mistake of law or fact occurred, and that the mistake was substantial enough to warrant modification or removal of conditions to correct the mistake; or
- B. The condition(s) could not be implemented for reasons beyond reasonable control of the permit holder and the modification will not require a significant modification of the original decision; or
- C. The circumstances have changed to the extent that the condition(s) is no longer needed or warranted; or
- D. The different condition(s) would better accomplish the purpose of the original condition.

207-6 Continuances by Planning Commission

207-6.1 The Planning Commission may continue the public hearing and defer a decision to a date certain. No new notice is required for hearings continued to a date certain. Any deferral to a date certain that exceeds thirty (30) days without consent of the applicant shall be in the form of an order setting forth the reasons for deferral. Such a deferral may be treated as a denial by the applicant for purposes of reconsideration and appeal if the applicant files a petition for review within fourteen (14) calendar days of written notice of the deferral.

207-6.2 An indefinite deferral shall require new notice to all persons identified in Section 204. An indefinite deferral without the consent of the applicant shall be in the form of an order setting forth the reason for deferral and may be treated by the applicant as a denial for purposes of reconsideration and appeal if the applicant files a petition for review within fourteen (14) calendar days of written notice of the deferral.

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208 RECONSIDERATION OF DIRECTOR, HEARINGS OFFICER OR PLANNING COMMISSION DECISIONS**208-1 Reconsideration as Extraordinary Remedy**

Reconsideration of a Type I decision on a development action or Type III quasi-judicial plan amendment decision is available only as an extraordinary remedy upon a determination by the Review Authority that:

- 208-1.1 The party requesting reconsideration has sufficiently alleged in writing that a mistake of law or fact occurred;
- 208-1.2 The alleged mistake, if found to have occurred, was a substantial factor in the decision; and
- 208-1.3 Reconsideration is appropriate to avoid delay or hardship which may be caused by an appeal.

208-2 Motion for Reconsideration

A motion for reconsideration must be filed with the Director within seven (7) calendar days of the date the notice of decision is provided. The motion shall address the factors set forth in 208-1 above. The applicable fee adopted by the Board of County Commissioners shall be submitted with the request.

A motion for reconsideration may be filed by the applicant, the Director, or a party of record.

208-3 Motion for Reconsideration Does Not Stop Appeal Period From Running

Filing a motion for reconsideration is not a precondition to appealing the decision and does not stay the deadline for filing an appeal. To preserve the right to appeal, a party must file a petition for review as provided in Section 209. If the initial Review Authority grants reconsideration, and ultimately rules in favor of the party filing for reconsideration, the party may terminate its appeal.

208-4 Motion for Reconsideration as Nonpublic Hearing Item

Motions seeking reconsideration of a Type III quasi-judicial plan amendment decision shall be summarily decided by the Review Authority as a nonpublic hearing item at the first reasonably available opportunity. For a Type I decision, within seven (7) calendar days, the Director shall issue a written notice of the decision to grant or deny the motion for reconsideration to the party requesting reconsideration. The decision as to whether to reconsider is not subject to appeal.

208-5 Process for Reconsideration

- 208-5.1 Upon granting the motion to reconsider a Type III quasi-judicial plan amendment decision, the Review Authority shall schedule and notify the parties of a new public hearing on the merits of the issues raised. The reconsideration of the decision shall be limited to the issues raised in the motion for reconsideration and the merits of the

issues raised. Such hearing shall be held at the next reasonably available opportunity.

- 208-5.2 Upon granting the motion to reconsider a Type I decision, the Director shall notify the parties of the reconsideration of the application on the merits of the issues raised. The reconsideration of the decision shall be limited to the issues raised in the motion for reconsideration and the merits of the issues raised. The review shall be done at the next reasonably available opportunity.

208-6 Reconsideration and Appeals

If the motion for reconsideration is denied or the decision is not altered upon reconsideration, any appeal timely filed shall be processed in accordance with Section 209. If the motion is granted and the Review Authority modifies the previous decision, the parties to the initial decision shall be notified within ten (10) days of the decision and may appeal the decision as modified pursuant to Section 209.

208-7 Limited Reconsiderations

No decision shall be reconsidered more than once.

209 APPEALS

209-1 Decision

A decision of the Review Authority for quasi-judicial plan amendments may be appealed within fourteen (14) calendar days after written notice of the decision is provided to the parties, or a decision by the Review Authority for all other development actions pursuant to Section 209-2 may be appealed within twelve (12) calendar days after written notice of the decision is provided to the parties when:

- 209-1.1 A party files a complete petition for review with the Director;
- 209-1.2 The Director files a complete petition for review; or
- 209-1.3 The Board of County Commissioners by Minute Order directs that an appeal be initiated. The grounds for directing an appeal shall be set forth in the Minute Order.

209-2 Appeal Authority

209-2.1 Type I or II Actions

The Hearings Officer or Planning Commission as designated by Resolution and Order of the Board shall hear appeals from Type I and II decisions of the Director. The Hearings Officer or the Planning Commission shall be the final decision-maker for the County on appeals of the final decision of the Director for Type I or II actions.

209-2.2 Type III Actions

- A. The Board of County Commissioners shall hear appeals of decisions of the Hearings Officer and Planning Commission for Type III quasi-judicial plan amendments and Type III development actions in transit oriented districts. The Board shall be the final decision-maker for the County on appeals of these actions.
- B. For all other Type III development actions, the Hearings Officer or the Planning Commission shall be the final decision-maker for the County.

209-3 Petition for Review

209-3.1 A petition for review shall contain the following:

- A. The name of the applicant and the County case file number;
- B. The name and signature of each petitioner and statement of the interest of each petitioner to determine party status. Multiple parties may join in filing a single petition for review, but each petitioner shall designate a single Contact Representative for all contact with the Department. All Department communications regarding the petition, including correspondence, shall be with this Contact Representative;
- C. The date that notice of the decision was sent as specified in the notice;

- D. The nature of the decision and the specific grounds for appeal. Unless otherwise directed by the appellate authority, the appeal of Type I and III decisions shall be limited to the issue(s) raised in the petition;
 - E. The number of pages of the petition and a statement that all pages are present; and
 - F. A statement setting forth the appeal fee specified in the Notice of Decision;
- 209-3.2 The petition for review shall be submitted with the appeal fee specified in the Notice of Decision to be paid by cash, check or money order;
- 209-3.3 In quasi-judicial plan amendment appeals to the Board, a request for a partial or full de novo hearing as provided in Section 209-5.4, if desired;
- 209-3.4 In quasi-judicial plan amendment appeals to the Board, a request for waiver of transcript preparation as provided in Section 209-4.1 if desired; and
- 209-3.5 Failure to file a petition for review with the Department of Land Use and Transportation by 5:00 p.m. on the due date, with the fee specified in the Notice of Decision, shall be a jurisdictional defect. Failure to amend a petition to correct any other identified deficiency within fourteen (14) calendar days of notice thereof shall be a jurisdictional defect.
- 209-4 Transcript Requirements for Appeals of Quasi-Judicial Plan Amendment Decisions**
- 209-4.1 A transcript shall be prepared for all quasi-judicial plan amendment appeals of public hearing items unless waived by Minute Order of the Board. A transcript shall not be required for any other type of appeal to the Board. The Board may choose to waive the transcript requirement for quasi-judicial plan amendments only if:
- A. The hearing is de novo; or
 - B. Waiver is consented to by all parties, and the Board, by Minute Order, determines that the issues raised in the petition are such that the usefulness of a transcript is outweighed by the cost, delay or hardship of preparing the transcript.
- 209-4.2 Unless and until the Board approves a request for waiver of a transcript pursuant to Section 209-4.1, the Director shall promptly provide the appellant with a written estimate of the cost for preparation of a transcript by the County. The appellant shall within fourteen (14) days of notification pay the estimated cost or notify the Director in writing that the appellant will prepare the transcript. The appeal may be dismissed if the appellant fails to pay the cost for preparation of a transcript unless the Board approves a request for waiver of transcript pursuant to Section 209-4.1.
- 209-4.3 In lieu of a transcript prepared by the County and payment of the required fee, the County shall allow any party to an appeal proceeding held on the record, at the party's own expense, to prepare a complete transcript of the public hearing by the review authority or a transcript of relevant portions of the hearing provided:

- A. When a transcript is prepared for only relevant portions of the public hearing, all parties, including staff, shall agree and stipulate to the portions of the hearing that are relevant and should be transcribed. The transcript shall then be prepared for those stipulated portions of the hearing. If the parties cannot agree, then the preparer of the transcript shall prepare a complete transcript of the hearing. If the Board finds that a partial transcript would have been sufficient, the preparer shall be reimbursed by the party requesting preparation of a complete transcript for the cost of preparation of the unnecessary portions of the transcript.
- B. The transcript shall be prepared within four (4) weeks from the date that the Department provides the appellant with a written estimate of the cost of a Department prepared transcript pursuant to 209-4.2.
- C. A Certificate of Typist shall be submitted with the completed transcript. The Certificate of Typist shall contain the following:
 - (1) The name of the applicant and the county case file number;
 - (2) The name of the person who provided the tape(s) of the hearing;
 - (3) The number of pages of the transcript and that all pages are present; and
 - (4) A sworn notarized statement that the transcript constitutes a true and accurate record of the complete or stipulated portions of the proceedings;
- D. The appeal may be dismissed if the appellant fails to either pay the fee required by Section 209-4.2 or to provide a transcript and Certificate of Typist within the time prescribed in Section 209-4.3 B. and 209-4.3 C.

209-5 Nature of Hearing

- 209-5.1 All hearings on appeal shall be conducted as public hearings in accordance with Section 205.
- 209-5.2 Review of the final decision of the Director in Type II actions shall be de novo. At the public hearing of an appeal of a Type II action, participants shall be limited to the applicant, those who made the appeal and those persons that were entitled to be mailed a public notice of pending review of the Type II action pursuant to Section 204-3.1, and those who made written comments as prescribed in Section 202-2.3.
- 209-5.3 Appeal to the Board of all final decisions of the Hearings Officer shall be confined to the record except as provided in Section 209-5.8. Except as provided in Section 209-5.4 through Section 209-5.6, appeal to the Board of all final decisions of the Planning Commission on quasi-judicial plan amendments shall be confined to the record. The record shall include:
 - A. All materials received as evidence at any previous stage;
 - B. Verbatim Record:

- (1) For quasi-judicial plan amendments, unless waived by the Board, a verbatim record of the hearing below, in the form of audio tapes, together with a transcription thereof prepared pursuant to Section 209-4.2 or 209-4.3, or the minutes thereof if no verbatim record is available due to mechanical failure or inadvertent error.
- (2) In appeals of all other development actions, unless waived by the Board, a verbatim record of the hearing below in the form of audio tapes or the minutes thereof if no verbatim record is available due to mechanical failure or inadvertent error. However, a party may prepare all or a portion of the transcript for submission to the Board;

- C. The findings and conclusions supporting the action being appealed; and
- D. Oral and written argument from the parties as defined by Section 205-3.1, or their representatives presented during the hearing or appeal but not including new evidence.

209-5.4 A party, or the Director, may request that the Board conduct a de novo or partial de novo hearing on appeal for a quasi-judicial plan amendment. The party filing the petition for review must make such a request as part of the petition. Any other party must make such a request no more than seven (7) calendar days after the deadline for filing a petition for review has expired. When practicable, the requesting party shall advise the other parties and attempt to gain their consent. The request shall:

- A. Reference the name, case number and date of the decision;
- B. Contain the name and address of the requesting party;
- C. Indicate the reasons for the request without addressing the merits of the land use action; and
- D. Indicate any persons known to be opposed to the request.

209-5.5 The request for a de novo hearing for appeal of a quasi-judicial plan amendment shall be decided by the Board as a nonpublic hearing item, except that the Board may make such provision for notice to the parties and may take such testimony as it deems necessary to fully and fairly address significant procedural or substantive issues raised. The Board shall grant the request only upon findings that:

- A. A de novo hearing is necessary to fully and properly evaluate a significant issue relevant to the proposed development action;
- B. The substantial rights of the parties will not be significantly prejudiced; and
- C. The request is not necessitated by improper or unreasonable conduct of the requesting party or by a failure to present evidence that was available at the time of the previous review.

- 209-5.6 Hearings before the Board of County Commissioners on items on appeal, either on the record, partial de novo, or de novo hearings, shall have the following time limitations:
- A. If the item is heard on the record, the appealing party will have fifteen (15) minutes to present his/her arguments. The opposition will have fifteen (15) minutes to present their arguments. The appealing party will also have five (5) minutes for rebuttal.
 - B. For partial de novo hearings, the appealing party will have twenty (20) minutes to present his/her arguments. The opposition will have twenty (20) minutes to present their arguments. The appealing party will also have five (5) minutes for rebuttal.
 - C. For a completely de novo hearing, the appealing party will have thirty (30) minutes to present his/her arguments. The opposition will have thirty (30) minutes to present their arguments. The appealing party will also have five (5) minutes for rebuttal.
 - D. The Board Chairman retains the authority to allow additional time as he/she deems appropriate and only if the party requesting the additional time has delivered to the Director or County Administrator, at least one (1) week in advance of the hearing, a written statement of the reasons for the request for additional time.
- 209-5.7 In conjunction with determining whether to conduct a de novo hearing for the appeal of a quasi-judicial plan amendment, the Board may remand the matter to the prior Review Authority. The decision on whether to remand shall not be appealable. Upon remand, the appealing party shall be entitled to return of the appeal fee less actual costs incurred by the County. Appeal from a decision on remand shall be taken as any other appeal.
- 209-5.8 Notwithstanding the above, on appeal of a quasi-judicial plan amendment, the Board may solicit or admit new evidence during a hearing on the record for the appeal of any decision, including decisions by the Hearings Officer, after considering the factors listed in Section 209-5.5.

209-6 Decision of the Board

- 209-6.1 Decisions of the Board are governed by Section 207.
- 209-6.2 In addition to the decisions listed in Section 207-1, on appeal of a quasi-judicial plan amendment, the Board may remand consideration of the appeal of a quasi-judicial plan amendment to the prior Review Authority for further proceedings as the Board directs.

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210 RECONSIDERATION OF BOARD DECISION FOR THE APPEAL OF QUASI-JUDICIAL PLAN AMENDMENTS

- 210-1** The Board may reconsider a decision for appeal of a quasi-judicial plan amendment on its own motion or upon a petition for reconsideration filed by a party with the Director within seven (7) calendar days after written notice of the decision is provided.
- 210-2** Filing a petition for reconsideration is not necessary to exhaust administrative remedies and perfect an appeal to a body of competent jurisdiction.
- 210-3** The motion or petition shall state the alleged errors necessitating reconsideration. A fee may be established by Resolution and Order.
- 210-4** The Board shall summarily decide whether to reconsider at the time the motion is made or at the next reasonably available regular Board meeting following filing of the petition. Reconsideration shall require the consent of three (3) Commissioners.
- 210-5** If reconsideration is granted, the matter shall be scheduled for a public hearing before the Board at the next reasonably available hearing date. Notice of the hearing shall be sent by mail no later than twenty (20) calendar days prior to the hearing to all persons who made an appearance of record below. The hearing shall be conducted as a hearing on the record and new evidence or testimony shall be limited to grounds upon which the motion or petition for reconsideration was granted.
- 210-6** No final decision shall be reconsidered by the Board more than once. If more than one petition for reconsideration is received in the seven (7) calendar day period provided in Section 210-1, the petitions shall be consolidated.

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211 DATE OF FINAL DECISION

211-1 Decisions of the Director, the Hearings Officer or Planning Commission on an application shall be deemed final and effective upon expiration of the appeal period if no petition for review is filed within that time. Decisions of the Hearings Officer or Planning Commission on a Type III application, except Type III development applications in transit oriented districts, or on appeal of a Director decision on a Type I or II application, shall be deemed final and effective on the date notice of the decision was provided to the parties. Once final and effective, a decision cannot be appealed.

211-2 Decisions of the Board on an application shall be deemed final as follows:

211-2.1 If no petition for reconsideration is timely filed, the decision shall be deemed final on the date notice of the decision was provided to the parties.

211-2.2 If a petition for reconsideration is filed and denied, the decision shall be deemed final on the date notice of the denial of reconsideration is provided to the parties.

211-2.3 If a petition is filed and reconsideration granted, the decision shall be deemed final on the date notice of the decision on the development, as reconsidered, is provided.

211-3 Only a final decision of the Board, or the Hearings Officer on decisions for which the Hearings Officer is the final decision-maker, is appealable to the Land Use Board of Appeals.

211-4 For purposes of appeals to LUBA, a written decision of the Director or Hearings Officer is final on the date it is signed.

212 REMAND FROM APPELLATE BODIES

When an application may be remanded from an appellate body, such as the Land Use Board of Appeals, to the County for further proceedings, the Review Authority may decide whether the matter shall proceed before the Review Authority or a subordinate review authority, such as the Hearings Officer or Director. For applications where the decision of the Board was appealed, the Board shall decide at a regular meeting as a nonpublic hearing item whether the matter shall proceed before the Board or a subordinate review authority.

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