IN THE COURT OF APPEALS OF THE STATE OF OREGON

STANLEY ROBERTS and REBECCA ROBERTS,
Petitioners,

v.

CITY OF CANNON BEACH,
Respondent,

and

HAYSTACK ROCK LLC, and OREGON COAST ALLIANCE,
Respondent-Intervenors.

LUBA No. 2020-116

CA A176601

EXPEDITED PROCEEDING UNDER ORS 197.850 AND ORS 197.855

BRIEF OF AMICUS CURIAE STAFFORD LAND COMPANY

Attorneys and Parties on following page

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Bryan W. Cavaness, OSB #880295
Stafford Land Company
8840 SW Holly Lane
Wilsonville OR 97070
Tel: (503) 305-7647
Email: bryan@staffordlandcompany.com
Attorney for Amicus Curiae Stafford Land Company

W. Michael Gillette, OSB #660458
Schwabe Williamson & Wyatt, P.C.
1211 SW Fifth Avenue, Suite 1900
Portland, OR 97204
Tel: (503) 786-2927
Email: wmgillette@schwabe.com
Attorney for Petitioners

Wendie L. Kellington, OSB #832589
Kellington Law Group PC
P.O. Box 159
Lake Oswego, OR 97034
Tel: (503) 636-0069
Email: wk@klgpc.com
Attorney for Petitioners

William K. Kabeiseman, OSB #944920
Bateman Seidel
1000 SW Broadway, Suite 1910
Portland, OR 97205
Tel: (503) 972-9968
Email: billkab@batemanseidel.com
Attorney for Respondent

Sean T. Malone, OSB #081060
Attorney at Law
259 E 5th Avenue, Suite 200-C
Eugene, OR 97401
Tel: (303) 859-0403
Email: seanmalone8@hotmail.com
Attorney for Respondent-Intervenor Oregon Coast Alliance

William L. Rasmussen, OSB #064782
Miller Nash, LLP
111 SW Fifth Avenue, Suite 3400
Portland, OR 97204
Tel: (503) 205-2308
Email: william.rasmussen@millernash.com
Attorney for Respondent-Intervenor Haystack Rock LLC

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B. Nature of the Decision to be Reviewed

Amicus Curiae accepts Petitioners' statement.

C. Statutory Basis for Appellate Jurisdiction

Amicus Curiae accepts Petitioners' statement.

D. Effective Date for Purposes of Appeal

Amicus Curiae accepts Petitioners' statement.

E. Nature and Jurisdictional Basis of Agency Action

Amicus Curiae accepts Petitioners' statement.

F. Questions Presented on Appeal

1. Is this court's holding in *Tirumali v. City of Portland*, 169 Or App 241, 246, 7 P3d 761 (2000) (*Tirumali II*), *viz*., that standards that can plausibly be interpreted in more than one way that will lead to different results are not "clear and objective" as that term is used in state statutes, still a correct statement of the law?

2. Are the only permissible exceptions to the prohibition on the reduction in housing density imposed by ORS 227.175(4)(c) those exceptions expressly provided for under ORS 227.175(4)(e), or may a city use "clear and objective standards" as an additional exception that will permit the city to reduce the maximum housing

density below what is allowed by the zoning?

G. Summary of Arguments

1. LUBA made a decision unlawful in substance when it concluded, among other things, that a county standard that could be interpreted in multiple plausible ways and that therefore could lead to different outcomes is a "clear and objective" standard consistent with state statutory requirements for review of proposals for housing.

2. LUBA made a decision unlawful in substance when it concluded that a city could use clear and objective standards to thwart ORS 227.175(4)(c)-(f)'s prohibition on cities reducing the density of housing proposals below the maximum allowed by the zone in any instance other than one of the two exceptions expressly identified in that statute.

H. Summary of Material Facts

Amicus Curiae accepts Petitioners' statement.

II. FIRST ASSIGNMENT OF ERROR

LUBA made a decision that is unlawful in substance by failing to apply the law that an ambiguous standard is not clear and objective.

A. Preservation

Petitioner directly raised the issue of clear and objective standards, and multiple plausible interpretations, in the second assignment of error, which LUBA

incompletely addressed in its opinion. *Roberts v. City of Cannon Beach* __ Or LUBA __ (LUBA No. 2020-116, July 23, 2021) (slip op at 18-29).

B. Standard of Review

This court is required to reverse a LUBA decision that is unlawful in substance. ORS 197.850(9)(a).

This court owes LUBA no deference on questions of state law. *Recovery House VI v. City of Eugene*, 150 Or App 382, 389, 946 P2d 342 (1997).

C. Argument[1]

1. Petitioners Have It Right.

Amicus Curiae Stafford Land Company (Stafford) fully agrees with the articulation of errors in Petitioners' brief.

This case is about interpreting important housing laws enacted by the legislature with the hard work of many people, including housing advocates and the housing industry. *See*, *e.g.*, 2017 Or laws Ch. 745 § (SB 1051); 2019 Or Laws 639; (HB 2001); 2019 Or Laws 640 §16; §17; §18 (HB 2003) (recent legislative enactments concerning clear and objective standards and other requirements pertinent to the approval of housing). LUBA's decision significantly undermines those laws and cannot be reconciled with them (or, indeed, with LUBA's own precedents).

[1] The standards cited in this brief are appended at Appendix 1.

The legislature's command in at least four different statutes governing city land use decisions is that any city standards applied to housing must be "clear and objective". Those statutes are ORS 197.307(4)[2]; ORS 197.831[3]; ORS 227.173(2)[4]; 227.175(4)(a)[5] The legislative principle is that, if standards are both clear and objective, developers and local officials alike do not need lawyers, or expensive and time-consuming appeals processes, to argue about the meaning of ambiguous and subjective standards that had historically made the delivery of housing time-consuming, expensive and ultimately illusory. *See*, *e.g.*, Rec. 1254 (testimony of Oregon LOCUS regarding reasons for supporting HB 2007A-6 amendments); Rec. 1259 (testimony of Oregon Housing Alliance regarding effect of HB 2007/SB 1051 if passed). The goal of the legislature is clear: standards applied to all types of housing are to be capable of only one clear and objective interpretation, and,

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[2] "a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of housing,"

[3] "In a proceeding before the Land Use Board of Appeals or an appellate court that involves an ordinance required to contain clear and objective approval standards, conditions and procedures for needed housing, the local government imposing the provisions of the ordinance shall demonstrate that the approval standards, conditions and procedures are capable of being imposed only in a clear and objective manner."

[4] Standards applied to housing "must be s clear and objective on the face of the ordinance."

[5] "A city may not deny an application for a housing development located within the urban growth boundary if the development complies with clear and objective standards, including clear and objective design standards ***."

therefore simple and inexpensive to apply. *See*, *e.g.*, Rec. 1251 (testimony of sponsor Speaker Kotek discussing importance of clear and objective standards for housing).

The "interpretation" by the city at issue here that LUBA "deferred to" as "plausible" is not clear, it is not objective. At issue is the city's oceanfront setback program for which there were four optional methods of application. Among the city's choices were a default 15-foot setback[6] that the city could have applied, and three other candidates. The city exercised its discretion to pick the option that rendered a city residential subdivision lot essentially unbuildable. The setback that the city ultimately picked was not the default 15-foot setback. Rather, the city picked, and LUBA deferred to as plausibly applicable *and* clear and objective, the "average of affected buildings setback" in CBMC 17.42.050(A)(6)(c). That standard is not clear and objective and in holding that it was, LUBA returned the state's ability to deliver housing on residentially zoned city lots to its desperate status before the legislature intervened in 2017 and 2019.[7]

The so-called clear and objective standard at issue applies to "lots abutting the

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[6] CBMC 17.42.050(A)(6)(h). And if the Ocean setback did not apply the 15-foot "R1" zone setback could have applied. CBMC 17.10.040(B)(5).

[7] Prior to these amendments, the "clear and objective" requirement applied only to "needed housing," which was defined to apply only to cities of a certain size. With these amendments, the "clear and objective" requirement was applied to all housing, including needed housing. Rec. 1241-42 (Enrolled SB 1051, Section 5, amending ORS 197.307(4) to include housing).

oceanshore" (CBMC 17.42.050(A)(6)), defined as applying to a "lot which abuts the Oregon Coordinate Line or a lot where there is no buildable lot between it and the Oregon Coordinate Line." CBMC 17.04.320. Meanwhile, "lot" is defined to mean "a plot, parcel, or tract of land," with those latter terms not further defined. CBMC 17.04.315. The exercise then requires one to "[d]etermine the affected buildings" that are a certain distance away from the subject property north and south, then "determine the setback for each [affected] building from the Oregon Coordinate Line" and then to "calculate the average of the setbacks of each of the buildings."

While none of the key terms are defined, the obvious relevance of this standard is that it is limited to situations where there are "affected buildings" (plural) with setbacks to "average." But in order to deny the application, the city applied the "average of affected buildings" setback to the instant situation where there was only one building within the requisite distance. That building happens to occupy several subdivision lots and enjoys an extraordinary setback from the ocean, to which Petitioners' small subdivision lot was, by the city's reckoning, necessarily subjugated. *See*, Rec. 1627-28 (showing dwelling to north straddling subdivision lots). The city imposed not an "average" setback, but instead a requirement to be in exact parity with the setback of the only building. Nothing in the code required the city to apply the "averaging of affected buildings" setback where there was just one building to work with instead of the standard 15-foot setback, other than the city's

desire to do so.

To affirm the city's discretionary choice to interpret a standard that, as written, applies only where there are multiple buildings (plural) with setbacks to "average," but which the city chooses to apply to a situation where there was just one building and then to demand parity with the setback (not an average) of that building, LUBA erroneously invoked a maxim of interpretation (CBMC 1.04.040(B)) that changed the standard's meaning. The invoked maxim is that, unless the context requires otherwise, the singular means the plural. LUBA ignored the inescapable linguistic fact that the maxim has *no role* where the words and context of the standard at issue reveal that it is written to apply *only* when there is more than one house setback to measure in order to come up with an "average." A standard that requires multiple measurements to come up with an "average" cannot be converted to a standard that allows its application to just one measurement and to demand parity with it. Exact equivalence is not an average.

Further, if it is "plausible" to interpret the disputed standard to mean something entirety different than its words and context indicate, then it is also "plausible" to interpret the standard to mean what is expressly written. In such circumstances, an appellate authority that LUBA ignored in this instance, *Tirumali v. City of Portland,* 169 Or App 241, 246, 7 P3d 761 (2000), holds*:*

> "We emphasize that our inquiry here is not to determine what the relevant terms in fact mean *but only to determine*

> *whether they can plausibly be interpreted in more than one way. If so, they are ambiguous, and it would follow that the relevant city provisions are not 'clear and objective,'* ORS 197.015(10)(b)(B), and that they cannot be applied without interpretation, ORS 197.015(10)(b)(A)."

Tirumali should have controlled here, but instead LUBA ignored that precedent. The Court of Appeals has relatedly held that the term "objective" means no evaluation or judgment is required to apply the standard, *i.e.*, no discretion is needed or exercised. *State ex rel Schrodt v. Jackson County*, 262 Or App 437, 445, 324 P3d 615 (2014) (*citing Buckman Community Assn. v. City of Portland*, 168 Or App 243, 245 n 1, 5 P3d 1203 (2000) ("In the land use context, 'the term discretion and its derivatives refer to a decision that requires the application of judgment or some form of evaluation as distinct from 'nondiscretionary decisions' that can be made solely by reference to objective criteria.'"). However, while cited at LUBA, LUBA also ignored these precedents of this court.

Remarkably, in the challenged decision, LUBA acknowledged the correct "lack of ambiguity" standard when it recited the dictionary definitions of the terms "clear" and "objective":

> "We have explained that the term 'clear' means 'easily understood' and 'without obscurity or ambiguity,' and that the term 'objective' means 'existing independent of mind.' *Nieto v. City of Talent*, __ Or LUBA __ (LUBA No 2020-100, Mar. 10, 2021) (slip op at 9 n 6)."

Roberts v. City of Cannon Beach __ Or LUBA __ (LUBA No. 2020-116, July 23,

2021) (slip op at 19). However, aside from the casual mention of these two critical terms and their associated definitions, LUBA never makes any attempt to apply the "ambiguity" test in this case.

Rather, LUBA spends five pages addressing interpretations of the oceanfront setback, including making the determination that the City could plausibly interpret the term "average" to include a single value and to demand that the Petitioners' have parity with it. LUBA should have recognized that its interpretive machinations meant it was no longer operating in "clear and objective" territory. In fact, LUBA did not conclude that the term "average" could only be plausibly interpreted in one manner, as ORS 197.831 required the city to demonstrate. Rather, LUBA recognized that the term can be interpreted in at least two different ways, as noted in Petitioners' LUBA brief. *Roberts v. City of Cannon Beach* __ Or LUBA __ (LUBA No. 2020-116, July 23, 2021) (slip op at 14-16). As a result, the standard is ambiguous and it follows that, under *Tirumali*, it is not clear and objective and cannot be applied to the instant housing application. LUBA erred in concluding otherwise.

LUBA's opinion makes LUBA's case law on what it means for a standard to be clear and objective unpredictable and unprincipled. But the nature of the "clear and objective" requirement that the legislature adopted means that there should not be any uncertainty at all - clear should mean clear and objective should mean

objective. Illustrating LUBA's inconsistency in reviewing application of the clear and objective standard, LUBA recently (correctly) decided that a standard that requires an applicant for housing to prove that "[t]he proposal allows for the development of adjacent property in accordance with the provisions of this code" is not clear and objective. *Knoll v. City of Bend*, __ Or LUBA __ (LUBA No. 2021-037, August 20, 2021). In *Knoll*, LUBA decided that the term "allows" is unclear and ambiguous because it is subject to multiple interpretations, *Id.,* (slip op at 6); and decided that the term "development" is "capable of being applied in multiple ways in a manner that allows the city to exercise significant discretion in choosing which interpretation it prefers." *Id.* at 10. On what principled basis is *Knoll* distinguishable from the case here? The answer is none.

If the rule in this case is allowed to stand, no one will know whether a standard is clear and objective until it gets to LUBA and even then not until LUBA deems the local government's interpretation of the standard to be plausible or not. That is not what the words "clear and objective" mean or what the legislature intended.

Moreover, LUBA decided that ORS 197.831 applies to this proceeding. ORS 197.831 requires that, both at LUBA *and on review here*, "the local government imposing" the standard "shall demonstrate" that the standard is "capable of being imposed *only* in a clear and objective manner." That finding is simply not possible in this case and LUBA erred in deciding otherwise. *Roberts v. City of Cannon Beach*

__ Or LUBA __ (LUBA No. 2020-116, July 23, 2021) (slip op at 29). LUBA should be reversed.

The words, purpose, policy, context and legislative history simply reveal *no* legislative appetite for ambiguous standards to be "plausibly interpreted" and then blessed as "clear and objective." *See*, Rec. 334-352; 1235-1492 (legislative history). LUBA's decision in this case has introduced subjectivity into the analysis of whether a standard is clear and objective, and does so in a manner that changes from case to case with no ascertainable principled methodology. Merely observing the fact that LUBA introduced its own subjectivity into the analysis in search of "plausibility", demonstrates LUBA erred.

This court should affirm the rule of law in all cases that if there is an ambiguous local standard capable of multiple interpretations that can lead to differing outcomes, then the standard is not clear and objective merely because LUBA wants to extend deference to a "plausible" interpretation. The legislature's test is whether the standard is clear and objective *on its face* and capable of being imposed only in a clear and objective manner, not whether there is an interpretation of an ambiguous standard that LUBA thinks is plausible. ORS 227.173(2); ORS 197.831. Nothing in the plain words used in the statute or the legislative history betrays a legislative intent that standards will pass muster if they are not in fact clear and not in fact objective.

LUBA should be reversed.

III. SECOND ASSIGNMENT OF ERROR

LUBA erred in deciding that so long as a city applies clear and objective standards, it can ignore the statutory command of ORS 227.175(4)(c), (d), (e) and (f) to not reduce the density or height of housing below the maximum allowed by the zone. LUBA's error is evident because state law *always* requires housing to be subjected to only "clear and objective" standards.

A. Preservation

Petitioner directly raised the issue of the proper interpretation of ORS 227.175(4) in the third assignment of error and LUBA addressed the issue in its decision. *Roberts v. City of Cannon Beach* __ Or LUBA __ (LUBA No. 2020-116, July 23, 2021) (slip op at 29-42).

B. Standard of Review

This court is required to reverse a LUBA decision that is unlawful in substance. ORS 197.850(9)(a).

This court owes LUBA no deference on questions of state law. *Recovery House VI v. City of Eugene*, 150 Or App 382, 389, 946 P2d 342 (1997).

C. Argument

Perhaps the most egregious error of all in this case is LUBA's gutting of ORS 227.175(4)(c), (e) and (f) by deciding that cities are free to reduce the density or height of housing below the maximum allowed, for any reason they please, so long as they do so under standards that are "clear and objective." Since the law requires

that *all* standards applied to housing be clear and objective, LUBA, with a sweep of its pen, has deprived ORS 227.175(4)(e) - the only reasons that the *legislature* gave as permissible reasons to reduce density or height - of *any* possible effect or meaning thereby violating ORS 174.010. [8]

First and foremost, there can be no dispute that ORS 227.175(4)(c), (e) and (f) applies to this case. LUBA decided it does and no one has challenged that determination. *Roberts v. City of Cannon Beach* __ Or LUBA __ (LUBA No. 2020-116, July 23, 2021) (slip op at 32). Relatedly, it also cannot be disputed at this point that neither of the exceptions that the legislature adopted in ORS 227.175(4)(c) apply, because LUBA decided they do not. *Roberts v. City of Cannon Beach* __ Or LUBA __ (LUBA No. 2020-116, July 23, 2021) (slip op at 33-34, 38). Again, no party has challenged that determination, so that it has become the law of this case. *See, e.g., Beck v. City of Tillamook*, 313 Or 148, 153, 831 P2d 678 (1992); *Mill Creek Glen Protection Assoc. v. Umatilla County*, 88 Or App 522, 527, 746 P2d 728 (1987) (both demonstrating that proposition).

When LUBA decided that the statute applies, and that the reason the city

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[8] ORS 174.010 provides:

> "In the construction of a statute, the office of the judge is simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all."

elected to not apply the statute is not based on either of the two enumerated permissible exceptions, LUBA was required as a matter of law to reverse the city. However, and inexplicably, that was not to be. Instead, LUBA affirmed the city, deciding that the city's drastic reduction of the floor area of Petitioners' home was an authorized reduction in density because it was based upon "clear and objective standards." Nothing in the text of the statute authorizes a reduction in density on that basis.[9] To come up with that interpretation of ORS 227.175(4)(c), (d), (e) and (f), LUBA had to add an exception that had been omitted from the express language of those provisions.

Specifically, LUBA erroneously held "ORS 227.175(4)(c) does not prohibit a city from applying clear and objective standards that reduce floor area below the maximum floor area that is allowed in the relevant zone." *Roberts v. City of Cannon Beach* __ Or LUBA __ (LUBA No. 2020-116, July 23, 2021) (slip op at 36; slip op at 39-41). LUBA reads the statute backwards – the statute only allows two express exceptions to the application of the statute; all other possible exceptions are prohibited. All other prohibited exceptions need not be explicitly stated.

Going still further, LUBA erroneously decided that, "in addition to any clear and objective standards that may incidentally reduce floor area, ORS 227.175(4)(e)

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[9] ORS 227.175(4)(f)(A) provides that "Authorized density level" as used in the statute includes "the maximum floor area ratio that is permitted under local land use regulations."

allows the city to exercise discretion and apply 'subjective, value-laden analyses' that result in floor area reduction if the city establishes that such a reduction is necessary to resolve a health, safety, or habitability issue on the property to be developed, on adjoining properties, or in the community." *Roberts v. City of Cannon Beach* __ Or LUBA __ (LUBA No. 2020-116, July 23, 2021) (slip op at 39). ORS 227.175(4)(e) does no such thing.

LUBA's invention of the idea that there is something about ORS 227.175(4)(e) that is actually an *authorization* to apply "subjective value laden standards" to housing in the two circumstances it outlines, finds no support anywhere. ORS 227.175(4)(e) was adopted in a legislative program designed to get rid of "subjective value laden standards", and follows ORS 227.175(4)(a), which requires all standards applied to housing be clear and objective. ORS 227.175(4)(e) says nothing that so much as suggests that it undermines or changes the hard-fought principle that only clear and objective standards may be applied to housing. In fact, it doubles down on the principle and makes clear that the maximum density and height of housing can be reduced *only* if it is "necessary" to resolve a health, safety or habitability issue or to comply with a protective measure adopted pursuant to a statewide planning goal. LUBA's decision that cities are free to reduce the density or height of housing *for any other reason they please*, under "clear and objective standards" lacks any reason, not to mention finds no support in the text, context,

purpose, policy or legislative history of the statute.

Adding insult to injury, LUBA found something particularly compelling about the city's denial. LUBA concluded that, when a city denies an application based on the application of a clear and objective criterion, then it does not matter that the application of that clear and objective criterion also results in a situation where a conforming development experiences a reduced floor area ratio. *Roberts v. City of Cannon Beach* __ Or LUBA __ (LUBA No. 2020-116, July 23, 2021) (slip op at 36; 39). LUBA's logic is circular. The flaw in that logic is revealed when a conforming application is considered: if the applicant is forced to submit a conforming application (*i.e.*, an application that complies with clear and objective criteria as LUBA and the city see it), then the resulting "development" would be conditioned to have its floor area ratio being reduced from 3000 sq. ft. (the maximum "floor area ratio in the city code) down to less than 1399 sq. ft and in the neighborhood of 600 sq. ft. of livable area. Rec. 128, 129. In that scenario, the ORS 227.175(4)(c) prohibition against cities forcing reductions in density for housing applications is rendered meaningless despite there being no "denial." That result frustrates the obvious legislative intent behind ORS 227.175(4)(c), which is to promote the development of housing at the maximum density levels authorized by the zoning for the property.

Properly interpreted ORS 227.175(4)(b), ORS 227.173(2), ORS 197.307(4)

and ORS 197.831 plainly require that *all* standards applied to housing must be clear and objective. Nothing admits of a legislative intention to authorize subjective value laden standards creeping in anywhere. Consequently, all standards for housing are inevitably required to be clear and objective. And, ORS 227.175(4)(c) and (d), plainly say cities are not allowed to reduce the density or height of housing below the maximum allowed, *for any reason* other than *the limited exceptions in ORS 227.175(4)(e)*.

The housing program the legislature established in 2017 and 2019, including in the subsection (ORS 227.175(4)(a)) immediately before ORS 227.175(4)(c), requires that in *all* cases only clear and objective standards can be applied to housing. There is *nothing* in ORS 227.175(4)(c), (d), (e) and (f) that remotely suggests a legislative intent to turn that program on its head, to say, instead, that ORS 227.175(4)(e) authorizes "subjective value-laden judgments" and then to say, as a result of the foregoing, that the commands of ORS 227.175(4)(c) and (d) can be ignored by the application of "clear and objective" standards that achieve precisely what the legislature went to the trouble to prohibit.

It must be stressed that ORS 227.175(4)(c), (d), (e) and (f) are a part of the 2017 and 2019 legislative program that addressed "barriers to development" to housing that were undermining the state's ability to deliver housing to all of its citizens. Rec. 350. Those barriers, which the legislature intended to remove,

included the application of standards that were not clear and objective *and* that prevented housing being developed at the maximum densities and heights allowed by the code and upon which cities based their buildable lands inventories, required by Statewide Planning Goal 10 (Housing). One goal of the legislation was to hold cities accountable to achieve their Goal 10 obligations. Rec. 342.

The problem the legislature intended to solve was ubiquitous; the legislature intended to remove barriers to both the establishment of "market rate" and "affordable" housing. Rec. 1250; 1251. On this, the legislative history explains that the state's housing "shortfall is at ***all*** price points." (Emphasis in original.) Rec. 1254. The history explains "while it may seem counterintuitive, addressing a shortage of housing at higher income levels or price points is critical for housing affordability." *Id.*

Regarding density reductions, the legislature expressly and broadly defined the problem it wanted to solve, being the "reduc[tion in] density" to include city standards that reduced either the number of units or the "maximum floor area ratio" allowed. ORS 227.175(4)(f). It gave *just two reasons* that density or height could be reduced. No others. LUBA's creation of a third reason that swallows the limited exceptions the legislature authorized, is inexcusable.

This court should reverse LUBA's erroneous expansion of the express legislative exemptions to the requirements of ORS 227.175(4).

IV. CONCLUSION

Amicus Curiae respectfully requests that this court reverse LUBA and restore the housing program that the legislature, housing advocates and housing industry worked hard to establish.

Respectfully submitted this 2nd day of September 2021.

STAFFORD LAND COMPANY

By: */s/ Bryan W. Cavaness*
Bryan W. Cavaness, OSB #880295
8840 SW Holly Lane
Wilsonville OR 97070
Telephone: (503) 305-7647
Email: bryan@staffordlandcompany.com
Attorney for Amicus Stafford Land Company

APP-1

Construction of Statutes

ORS 174.010
General rule for construction of statutes

In the construction of a statute, the office of the judge is simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all.

Location: https://newyork.public.law/laws/n.y._vehicle_and_traffic_law_section_1214.

Original Source: § 1214 — Opening and Closing Vehicle Doors, https://www.nysenate.gov/legislation/laws/VAT/1214 (last accessed Dec. 13, 2016).

Comprehensive Land Use Planning

ORS 197.015
Definitions for ORS chapters 195, 196, 197 and ORS 197A.300 to 197A.325

As used in ORS chapters 195, 196 and 197 and ORS 197A.300 (Definitions for ORS 197A.300 to 197A.325) to 197A.325 (Review of final decision of city), unless the context requires otherwise:

(1) "Acknowledgment" means a commission order that certifies that a comprehensive plan and land use regulations, land use regulation or plan or regulation amendment complies with the goals or certifies that Metro land use planning goals and objectives, Metro regional framework plan, amendments to Metro planning goals and objectives or amendments to the Metro regional framework plan comply with the goals.

(2) "Board" means the Land Use Board of Appeals.

(3) "Carport" means a stationary structure consisting of a roof with its supports and not more than one wall, or storage cabinet substituting for a wall, and used for sheltering a motor vehicle.

(4) "Commission" means the Land Conservation and Development Commission.

(5) "Comprehensive plan" means a generalized, coordinated land use map and policy statement of the governing body of a local government that interrelates all functional and natural systems and activities relating to the use of lands, including but not limited to sewer and water systems, transportation systems, educational facilities, recreational facilities, and natural resources and air and water quality management programs. "Comprehensive" means all-inclusive, both in terms of the geographic area covered and functional and natural activities and systems occurring in the area covered by the plan. "General nature" means a summary of policies and proposals in broad categories and does not necessarily indicate specific locations of any area, activity or use. A plan is "coordinated" when the needs of all levels of governments, semipublic and private agencies and the citizens of Oregon have been considered and accommodated as much as possible. "Land" includes water, both surface and subsurface, and the air.

(6) "Department" means the Department of Land Conservation and Development.

(7) "Director" means the Director of the Department of Land Conservation and Development.

(8) "Goals" means the mandatory statewide land use planning standards adopted by the commission pursuant to ORS chapters 195, 196 and 197.

(9) "Guidelines" means suggested approaches designed to aid cities and counties in preparation, adoption and implementation of comprehensive plans in compliance with goals and to aid state agencies and special districts in the preparation, adoption and implementation of plans, programs and regulations in compliance with goals. Guidelines shall be advisory and shall not limit state agencies, cities, counties and special districts to a single approach.

(10)"Land use decision":

(a) Includes:

(A) A final decision or determination made by a local government or special district that concerns the adoption, amendment or application of:

(i) The goals;

(ii) A comprehensive plan provision;

(iii) A land use regulation; or

(iv) A new land use regulation;

(B) A final decision or determination of a state agency other than the commission with respect to which the agency is required to apply the goals; or

(C) A decision of a county planning commission made under ORS 433.763 (Application for outdoor mass gathering for which county decides land use permit is required);

(b) Does not include a decision of a local government:

(A) That is made under land use standards that do not require interpretation or the exercise of policy or legal judgment;

(B) That approves or denies a building permit issued under clear and objective land use standards;

(C) That is a limited land use decision;

(D) That determines final engineering design, construction, operation, maintenance, repair or preservation of a transportation facility that is otherwise authorized by and consistent with the comprehensive plan and land use regulations;

(E) That is an expedited land division as described in ORS 197.360 ("Expedited land division" defined);

(F) That approves, pursuant to ORS 480.450 (Notice of new installations) (7), the siting, installation, maintenance or removal of a liquefied petroleum gas container or receptacle regulated exclusively by the State Fire Marshal under ORS 480.410 (Definition) to 480.460 (Disposition of fees);

(G) That approves or denies approval of a final subdivision or partition plat or that determines whether a final subdivision or partition plat substantially conforms to the tentative subdivision or partition plan; or

(H) That a proposed state agency action subject to ORS 197.180 (State agency planning responsibilities) (1) is compatible with the acknowledged comprehensive plan and land use regulations implementing the plan, if:

(i) The local government has already made a land use decision authorizing a use or activity that encompasses the proposed state agency action;

(ii) The use or activity that would be authorized, funded or undertaken by the proposed state agency action is allowed without review under the acknowledged comprehensive plan and land use regulations implementing the plan; or

(iii) The use or activity that would be authorized, funded or undertaken by the proposed state agency action requires a future land use review under the acknowledged comprehensive plan and land use regulations implementing the plan;

(c) Does not include a decision by a school district to close a school;

(d) Does not include, except as provided in ORS 215.213 (Uses permitted in exclusive farm use zones in counties that adopted marginal lands system prior to 1993) (13)(c) or 215.283 (Uses permitted in exclusive farm use zones in nonmarginal lands counties) (6)(c), authorization of an outdoor mass gathering as defined in ORS 433.735 (Definitions for ORS 433.735 to 433.770), or other gathering of fewer than 3,000 persons that is not anticipated to continue for more than 120 hours in any three-month period; and

(e) Does not include:

(A) A writ of mandamus issued by a circuit court in accordance with ORS 215.429 (Mandamus proceeding when county fails to take final action on land use application within specified time) or 227.179 (Petition for writ of mandamus authorized when city fails to take final action on land use application within 120 days);

(B) Any local decision or action taken on an application subject to ORS 215.427 (Final action on permit or zone change application) or 227.178 (Final action on certain applications required within 120 days) after a petition for a writ of mandamus has been filed under ORS 215.429 (Mandamus proceeding when county fails to take final action on land use application within specified time) or 227.179 (Petition for writ of mandamus authorized when city fails to take final action on land use application within 120 days); or

(C) A state agency action subject to ORS 197.180 (State agency planning responsibilities) (1), if:

(i) The local government with land use jurisdiction over a use or activity that would be authorized, funded or undertaken by the state agency as a result of the state agency

action has already made a land use decision approving the use or activity; or

(ii) A use or activity that would be authorized, funded or undertaken by the state agency as a result of the state agency action is allowed without review under the acknowledged comprehensive plan and land use regulations implementing the plan.

(11) "Land use regulation" means any local government zoning ordinance, land division ordinance adopted under ORS 92.044 (Adoption of standards and procedures governing approval of plats and plans) or 92.046 (Adoption of regulations governing approval of partitioning of land) or similar general ordinance establishing standards for implementing a comprehensive plan.

(12) "Limited land use decision":

(a) Means a final decision or determination made by a local government pertaining to a site within an urban growth boundary that concerns:

(A) The approval or denial of a tentative subdivision or partition plan, as described in ORS 92.040 (Application for approval of subdivision or partition) (1).

(B) The approval or denial of an application based on discretionary standards designed to regulate the physical characteristics of a use permitted outright, including but not limited to site review and design review.

(b) Does not mean a final decision made by a local government pertaining to a site within an urban growth boundary that concerns approval or denial of a final subdivision or partition plat or that determines whether a final subdivision or partition plat substantially conforms to the tentative subdivision or partition plan.

(13) "Local government" means any city, county or metropolitan service district formed under ORS chapter 268 or an association of local governments performing land use planning functions under ORS 195.025 (Regional coordination of planning activities).

(14) "Metro" means a metropolitan service district organized under ORS chapter 268.

(15) "Metro planning goals and objectives" means the land use goals and objectives that a metropolitan service district may adopt under ORS 268.380 (Land-use planning goals and activities) (1)(a). The goals and objectives do not constitute a comprehensive plan.

(16) "Metro regional framework plan" means the regional framework plan required by the 1992 Metro Charter or its separate components. Neither the regional framework plan nor its individual components constitute a comprehensive plan.

(17) "New land use regulation" means a land use regulation other than an amendment to an acknowledged land use regulation adopted by a local government that already has a comprehensive plan and land regulations acknowledged under ORS 197.251 (Compliance acknowledgment).

(18) "Person" means any individual, partnership, corporation, association, governmental subdivision or agency or public or private organization of any kind. The Land Conservation

and Development Commission or its designee is considered a person for purposes of appeal under ORS chapters 195 and 197.

(19) "Special district" means any unit of local government, other than a city, county, metropolitan service district formed under ORS chapter 268 or an association of local governments performing land use planning functions under ORS 195.025 (Regional coordination of planning activities), authorized and regulated by statute and includes but is not limited to water control districts, domestic water associations and water cooperatives, irrigation districts, port districts, regional air quality control authorities, fire districts, school districts, hospital districts, mass transit districts and sanitary districts.

(20) "Urban unincorporated community" means an area designated in a county's acknowledged comprehensive plan as an urban unincorporated community after December 5, 1994.

(21) "Voluntary association of local governments" means a regional planning agency in this state officially designated by the Governor pursuant to the federal Office of Management and Budget Circular A-95 as a regional clearinghouse.

(22) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration that are sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. [1973 c.80 §3; 1977 c.664 §2; 1979 c.772 §7; 1981 c.748 §1; 1983 c.827 §1; 1989 c.761 §1; 1989 c.837 §23; 1991 c.817 §1; 1993 c.438 §1; 1993 c.550 §4; 1995 c.595 §22; 1995 c.812 §1; 1997 c.833 §20; 1999 c.533 §11; 1999 c.866 §1; 2001 c.955 §§2,3; 2005 c.22 §137; 2005 c.88 §3; 2005 c.239 §2; 2005 c.829 §8; 2007 c.354 §§4,5; 2007 c.459 §§1,2; 2009 c.606 §2; 2009 c.790 §1; 2011 c.567 §7; 2013 c.575 §11]

Location:.

Comprehensive Land Use Planning

ORS 197.307
Effect of need for certain housing in urban growth areas

- **approval standards for residential development**
- **placement standards for approval of manufactured dwellings**

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(1) The availability of affordable, decent, safe and sanitary housing opportunities for persons of lower, middle and fixed income, including housing for farmworkers, is a matter of statewide concern.

(2) Many persons of lower, middle and fixed income depend on government assisted housing as a source of affordable, decent, safe and sanitary housing.

(3) When a need has been shown for housing within an urban growth boundary at particular price ranges and rent levels, needed housing shall be permitted in one or more zoning districts or in zones described by some comprehensive plans as overlay zones with sufficient buildable land to satisfy that need.

(4) Except as provided in subsection (6) of this section, a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of housing, including needed housing. The standards, conditions and procedures:

(a) May include, but are not limited to, one or more provisions regulating the density or height of a development.

(b) May not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.

(5) The provisions of subsection (4) of this section do not apply to:

(a) An application or permit for residential development in an area identified in a formally adopted central city plan, or a regional center as defined by Metro, in a city with a population of 500,000 or more.

(b) An application or permit for residential development in historic areas designated for protection under a land use planning goal protecting historic areas.

(6) In addition to an approval process for needed housing based on clear and objective standards, conditions and procedures as provided in subsection (4) of this section, a local government may adopt and apply an alternative approval process for applications and permits for residential development based on approval criteria regulating, in whole or in part, appearance or aesthetics that are not clear and objective if:

(a) The applicant retains the option of proceeding under the approval process that meets the requirements of subsection (4) of this section;

(b) The approval criteria for the alternative approval process comply with applicable statewide land use planning goals and rules; and

(c) The approval criteria for the alternative approval process authorize a density at or above the density level authorized in the zone under the approval process provided in subsection (4) of this section.

(7) Subject to subsection (4) of this section, this section does not infringe on a local government's prerogative to:

(a) Set approval standards under which a particular housing type is permitted outright;

(b) Impose special conditions upon approval of a specific development proposal; or

(c) Establish approval procedures.

(8) In accordance with subsection (4) of this section and ORS 197.314 (Required siting of manufactured homes), a jurisdiction may adopt any or all of the following placement standards, or any less restrictive standard, for the approval of manufactured homes located outside mobile home parks:

(a) The manufactured home shall be multisectional and enclose a space of not less than 1,000 square feet.

(b) The manufactured home shall be placed on an excavated and back-filled foundation and enclosed at the perimeter such that the manufactured home is located not more than 12 inches above grade.

(c) The manufactured home shall have a pitched roof, except that no standard shall require a slope of greater than a nominal three feet in height for each 12 feet in width.

(d) The manufactured home shall have exterior siding and roofing which in color, material and appearance is similar to the exterior siding and roofing material commonly used on residential dwellings within the community or which is comparable to the predominant materials used on surrounding dwellings as determined by the local permit approval authority.

(e) The manufactured home shall be certified by the manufacturer to have an exterior thermal envelope meeting performance standards which reduce levels equivalent to the performance standards required of single-family dwellings constructed under the Low-Rise Residential Dwelling Code as defined in ORS 455.010 (Definitions for ORS chapter 455).

(f) The manufactured home shall have a garage or carport constructed of like materials. A jurisdiction may require an attached or detached garage in lieu of a carport where such is consistent with the predominant construction of immediately surrounding dwellings.

(g) In addition to the provisions in paragraphs (a) to (f) of this subsection, a city or county may subject a manufactured home and the lot upon which it is sited to any development standard, architectural requirement and minimum size requirement to which a conventional single-family residential dwelling on the same lot would be subject. [1981 c.884 §5; 1983 c.795 §3; 1989 c.380 §2; 1989 c.964 §6; 1993 c.184 §3; 1997 c.733 §2; 1999 c.357 §1; 2001 c.613 §2; 2011 c.354 §3; 2017 c.745 §5; 2019 c.401 §7]

Note: The amendments to 197.307 (Effect of need for certain housing in urban growth areas) by section 14, chapter 401, Oregon Laws 2019, become operative January 2, 2026. See section 18, chapter 401, Oregon Laws 2019, as amended by section 1c, chapter 422, Oregon Laws 2019. The text that is operative on and after January 2, 2026, is set forth for the user's convenience.

197.307 (Effect of need for certain housing in urban growth areas). (1) The availability of affordable, decent, safe and sanitary housing opportunities for persons of lower, middle and fixed income, including housing for farmworkers, is a matter of statewide concern.

(2) Many persons of lower, middle and fixed income depend on government assisted housing as a source of affordable, decent, safe and sanitary housing.

(3) When a need has been shown for housing within an urban growth boundary at particular price ranges and rent levels, needed housing shall be permitted in one or more zoning districts or in zones described by some comprehensive plans as overlay zones with sufficient buildable land to satisfy that need.

(4) Except as provided in subsection (6) of this section, a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of housing, including needed housing. The standards, conditions and procedures:

(a) May include, but are not limited to, one or more provisions regulating the density or height of a development.

(b) May not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.

(5) The provisions of subsection (4) of this section do not apply to:

(a) An application or permit for residential development in an area identified in a formally adopted central city plan, or a regional center as defined by Metro, in a city with a population of 500,000 or more.

(b) An application or permit for residential development in historic areas designated for protection under a land use planning goal protecting historic areas.

(6) In addition to an approval process for needed housing based on clear and objective standards, conditions and procedures as provided in subsection (4) of this section, a local government may adopt and apply an alternative approval process for applications and permits for residential development based on approval criteria regulating, in whole or in part, appearance or aesthetics that are not clear and objective if:

(a) The applicant retains the option of proceeding under the approval process that meets the requirements of subsection (4) of this section;

(b) The approval criteria for the alternative approval process comply with applicable statewide land use planning goals and rules; and

(c) The approval criteria for the alternative approval process authorize a density at or above the density level authorized in the zone under the approval process provided in subsection (4) of this section.

(7) Subject to subsection (4) of this section, this section does not infringe on a local government's prerogative to:

(a) Set approval standards under which a particular housing type is permitted outright;

(b) Impose special conditions upon approval of a specific development proposal; or

(c) Establish approval procedures.

(8) In accordance with subsection (4) of this section and ORS 197.314 (Required siting of manufactured homes), a jurisdiction may adopt any or all of the following placement standards, or any less restrictive standard, for the approval of manufactured homes located outside mobile home parks:

(a) The manufactured home shall be multisectional and enclose a space of not less than 1,000 square feet.

(b) The manufactured home shall be placed on an excavated and back-filled foundation and enclosed at the perimeter such that the manufactured home is located not more than 12 inches above grade.

(c) The manufactured home shall have a pitched roof, except that no standard shall require a slope of greater than a nominal three feet in height for each 12 feet in width.

(d) The manufactured home shall have exterior siding and roofing which in color, material and appearance is similar to the exterior siding and roofing material commonly used on residential dwellings within the community or which is comparable to the predominant materials used on surrounding dwellings as determined by the local permit approval authority.

(e) The manufactured home shall be certified by the manufacturer to have an exterior thermal envelope meeting performance standards which reduce levels equivalent to the performance standards required of single-family dwellings constructed under the state building code as defined in ORS 455.010 (Definitions for ORS chapter 455).

(f) The manufactured home shall have a garage or carport constructed of like materials. A jurisdiction may require an attached or detached garage in lieu of a carport where such is consistent with the predominant construction of immediately surrounding dwellings.

(g) In addition to the provisions in paragraphs (a) to (f) of this subsection, a city or county may subject a manufactured home and the lot upon which it is sited to any development standard, architectural requirement and minimum size requirement to which a conventional single-family residential dwelling on the same lot would be subject.

Location:.

Comprehensive Land Use Planning

ORS 197.831
Appellate review of clear and objective approval standards, conditions and procedures for needed housing

In a proceeding before the Land Use Board of Appeals or an appellate court that involves an ordinance required to contain clear and objective approval standards, conditions and procedures for needed housing, the local government imposing the provisions of the ordinance shall demonstrate that the approval standards, conditions and procedures are capable of being imposed only in a clear and objective manner. [1999 c.357 §5; 2011 c.354 §7]

Location: https://oregon.public.law/statutes/ors_30.262.

Original Source: § 30.262 — Certain nonprofit facilities and homes public bodies for purposes of ORS 30.260 to 30.300, https://www.oregonlegislature.gov/bills_laws/ors/ors030.html (last accessed Jun. 26, 2021).

Comprehensive Land Use Planning

ORS 197.850
Judicial review of board order

- **procedures**
- **scope of review**
- **attorney fees**
- **undertaking**

(1) Any party to a proceeding before the Land Use Board of Appeals under ORS 197.830 (Review procedures) to 197.845 (Stay of decision being reviewed) may seek judicial review of a final order issued in those proceedings.

(2) Notwithstanding the provisions of ORS 183.480 (Judicial review of agency orders) to 183.540 (Reduction of economic impact on small business), judicial review of orders issued under ORS 197.830 (Review procedures) to 197.845 (Stay of decision being reviewed) is solely as provided in this section.

(3) (a) Jurisdiction for judicial review of proceedings under ORS 197.830 (Review procedures) to 197.845 (Stay of decision being reviewed) is conferred upon the Court of Appeals. Proceedings for judicial review are instituted by filing a petition in the Court of Appeals. The petition must be filed within 21 days following the date the board delivered or mailed the order upon which the petition is based.

(b) Filing of the petition, as set forth in paragraph (a) of this subsection, and service of a petition on all persons identified in the petition as adverse parties of record in the board proceeding is jurisdictional and may not be waived or extended.

(4) The petition must state the nature of the order the petitioner desires reviewed. Copies of the petition must be served by first class, registered or certified mail on the board and all other parties of record in the board proceeding.

(5) Within seven days after service of the petition, the board shall transmit to the court the original or a certified copy of the entire record of the proceeding under review, but, by stipulation of all parties to the review proceeding, the record may be shortened. The court may tax a party that unreasonably refuses to stipulate to limit the record for the additional costs. The court may require or permit subsequent corrections or additions to the record when deemed desirable. Except as specifically provided in this subsection, the court may not

tax the cost of the record to the petitioner or any intervening party. However, the court may tax such costs and the cost of transcription of record to a party filing a frivolous petition for judicial review.

(6) Petitions and briefs must be filed within time periods and in a manner established by the Court of Appeals by rule.

(7) (a) The court shall hear oral argument within 49 days of the date of transmittal of the record.

(b) The court may hear oral argument more than 49 days from the date of transmittal of the record provided the court determines that the ends of justice served by holding oral argument on a later day outweigh the best interests of the public and the parties. The court may not hold oral argument more than 49 days from the date of transmittal of the record because of general congestion of the court calendar or lack of diligent preparation or attention to the case by any member of the court or any party.

(c) The court shall set forth in writing a determination to hear oral argument more than 49 days from the date the record is transmitted, together with the reasons for its determination, and shall provide a copy to the parties. The court shall schedule oral argument as soon as practicable thereafter.

(d) In making a determination under paragraph (b) of this subsection, the court shall consider:

(A) Whether the case is so unusual or complex, due to the number of parties or the existence of novel questions of law, that 49 days is an unreasonable amount of time for the parties to brief the case and for the court to prepare for oral argument; and

(B) Whether the failure to hold oral argument at a later date likely would result in a miscarriage of justice.

(8) Judicial review of an order issued under ORS 197.830 (Review procedures) to 197.845 (Stay of decision being reviewed) must be confined to the record. The court may not substitute its judgment for that of the board as to any issue of fact.

(9) The court may affirm, reverse or remand the order. The court shall reverse or remand the order only if it finds:

(a) The order to be unlawful in substance or procedure, but error in procedure is not cause for reversal or remand unless the court finds that substantial rights of the petitioner were prejudiced thereby;

(b) The order to be unconstitutional; or

(c) The order is not supported by substantial evidence in the whole record as to facts found by the board under ORS 197.835 (Scope of review) (2).

(10) The Court of Appeals shall issue a final order on the petition for judicial review with the greatest possible expediency.

(11) If the order of the board is remanded by the Court of Appeals or the Supreme Court, the board shall respond to the court's appellate judgment within 30 days.

(12) A party must file with the board an undertaking with one or more sureties insuring that the party will pay all costs, disbursements and attorney fees awarded against the party by the Court of Appeals if:

(a) The party appealed a decision of the board to the Court of Appeals; and

(b) In making the decision being appealed to the Court of Appeals, the board awarded attorney fees and expenses against that party under ORS 197.830 (Review procedures) (15)(b) or (c).

(13) Upon entry of its final order, the court shall award attorney fees and expenses to a party who:

(a) Prevails on a claim that an approval condition imposed by a local government on an application for a permit pursuant to ORS 215.416 (Permit application) or 227.175 (Application for permit or zone change) is unconstitutional under section 18, Article I, Oregon Constitution, or the Fifth Amendment to the United States Constitution; or

(b) Is entitled to attorney fees under ORS 197.830 (Review procedures) (15)(c).

(14) The undertaking required in subsection (12) of this section must be filed with the board and served on the opposing parties within 10 days after the date the petition was filed with the Court of Appeals. [1983 c.827 §35; 1989 c.515 §1; 1989 c.761 §26; 1995 c.595 §19; 1997 c.733 §1; 1999 c.575 §1; 1999 c.621 §10; 2009 c.25 §1; 2019 c.221 §2]

Location:.

City Planning and Zoning

ORS 227.173
Basis for decision on permit application or expedited land division

- **statement of reasons for approval or denial**

(1) Approval or denial of a discretionary permit application shall be based on standards and criteria, which shall be set forth in the development ordinance and which shall relate approval or denial of a discretionary permit application to the development ordinance and to the comprehensive plan for the area in which the development would occur and to the development ordinance and comprehensive plan for the city as a whole.

(2) When an ordinance establishing approval standards is required under ORS 197.307 (Effect of need for certain housing in urban growth areas) to provide only clear and objective standards, the standards must be clear and objective on the face of the ordinance.

(3) Approval or denial of a permit application or expedited land division shall be based upon and accompanied by a brief statement that explains the criteria and standards considered relevant to the decision, states the facts relied upon in rendering the decision and explains the justification for the decision based on the criteria, standards and facts set forth.

(4) Written notice of the approval or denial shall be given to all parties to the proceeding. [1977 c.654 §5; 1979 c.772 §10b; 1991 c.817 §16; 1995 c.595 §29; 1997 c.844 §6; 1999 c.357 §3]

Location: https://oregon.public.law/statutes/ors_110.333.

Original Source: § 110.333, https://www.oregonlegislature.gov/bills_laws/ors/ors110.html (last accessed Jun. 26, 2021).

City Planning and Zoning

ORS 227.175
Application for permit or zone change

- **fees**
- **consolidated procedure**
- **hearing**
- **approval criteria**
- **decision without hearing**

(1) When required or authorized by a city, an owner of land may apply in writing to the hearings officer, or such other person as the city council designates, for a permit or zone change, upon such forms and in such a manner as the city council prescribes. The governing body shall establish fees charged for processing permits at an amount no more than the actual or average cost of providing that service.

(2) The governing body of the city shall establish a consolidated procedure by which an applicant may apply at one time for all permits or zone changes needed for a development project. The consolidated procedure shall be subject to the time limitations set out in ORS 227.178 (Final action on certain applications required within 120 days). The consolidated procedure shall be available for use at the option of the applicant no later than the time of the first periodic review of the comprehensive plan and land use regulations.

(3) Except as provided in subsection (10) of this section, the hearings officer shall hold at least one public hearing on the application.

(4) (a) A city may not approve an application unless the proposed development of land would be in compliance with the comprehensive plan for the city and other applicable land use regulation or ordinance provisions. The approval may include such conditions as are authorized by ORS 227.215 (Regulation of development) or any city legislation.

(b) (A) A city may not deny an application for a housing development located within the urban growth boundary if the development complies with clear and objective standards, including clear and objective design standards contained in the city comprehensive plan or land use regulations.

(B) This paragraph does not apply to:

(i) Applications or permits for residential development in areas described in ORS 197.307 (Effect of need for certain housing in urban growth areas) (5); or

(ii) Applications or permits reviewed under an alternative approval process adopted under ORS 197.307 (Effect of need for certain housing in urban growth areas) (6).

(c) A city may not condition an application for a housing development on a reduction in density if:

(A) The density applied for is at or below the authorized density level under the local land use regulations; and

(B) At least 75 percent of the floor area applied for is reserved for housing.

(d) A city may not condition an application for a housing development on a reduction in height if:

(A) The height applied for is at or below the authorized height level under the local land use regulations;

(B) At least 75 percent of the floor area applied for is reserved for housing; and

(C) Reducing the height has the effect of reducing the authorized density level under local land use regulations.

(e) Notwithstanding paragraphs (c) and (d) of this subsection, a city may condition an application for a housing development on a reduction in density or height only if the reduction is necessary to resolve a health, safety or habitability issue or to comply with a protective measure adopted pursuant to a statewide land use planning goal. Notwithstanding ORS 197.350 (Burden of persuasion or proof in appeal to board or commission), the city must adopt findings supported by substantial evidence demonstrating the necessity of the reduction.

(f) As used in this subsection:

(A) "Authorized density level" means the maximum number of lots or dwelling units or the maximum floor area ratio that is permitted under local land use regulations.

(B) "Authorized height level" means the maximum height of a structure that is permitted under local land use regulations.

(C) "Habitability" means being in compliance with the applicable provisions of the state building code under ORS chapter 455 and the rules adopted thereunder.

(5) Hearings under this section may be held only after notice to the applicant and other interested persons and shall otherwise be conducted in conformance with the provisions of ORS 197.763 (Conduct of local quasi-judicial land use hearings).

(6) Notice of a public hearing on a zone use application shall be provided to the owner of an airport, defined by the Oregon Department of Aviation as a "public use airport" if:

(a) The name and address of the airport owner has been provided by the Oregon Department of Aviation to the city planning authority; and

(b) The property subject to the zone use hearing is:

(A) Within 5,000 feet of the side or end of a runway of an airport determined by the Oregon Department of Aviation to be a "visual airport"; or

(B) Within 10,000 feet of the side or end of the runway of an airport determined by the Oregon Department of Aviation to be an "instrument airport."

(7) Notwithstanding the provisions of subsection (6) of this section, notice of a zone use hearing need only be provided as set forth in subsection (6) of this section if the permit or zone change would only allow a structure less than 35 feet in height and the property is located outside of the runway "approach surface" as defined by the Oregon Department of Aviation.

(8) If an application would change the zone of property that includes all or part of a mobile home or manufactured dwelling park as defined in ORS 446.003 (Definitions for ORS 446.003 to 446.200 and 446.225 to 446.285 and ORS chapters 195, 196, 197, 215 and 227), the governing body shall give written notice by first class mail to each existing mailing address for tenants of the mobile home or manufactured dwelling park at least 20 days but not more than 40 days before the date of the first hearing on the application. The governing body may require an applicant for such a zone change to pay the costs of such notice.

(9) The failure of a tenant or an airport owner to receive a notice which was mailed shall not invalidate any zone change.

(10)(a)(A) The hearings officer or such other person as the governing body designates may approve or deny an application for a permit without a hearing if the hearings officer or other designated person gives notice of the decision and provides an opportunity for any person who is adversely affected or aggrieved, or who is entitled to notice under paragraph (c) of this subsection, to file an appeal.

(B) Written notice of the decision shall be mailed to those persons described in paragraph (c) of this subsection.

(C) Notice under this subsection shall comply with ORS 197.763 (Conduct of local quasi-judicial land use hearings) (3)(a), (c), (g) and (h) and shall describe the nature of the decision. In addition, the notice shall state that any person who is adversely affected or aggrieved or who is entitled to written notice under paragraph (c) of this subsection may appeal the decision by filing a written appeal in the manner and within the time period provided in the city's land use regulations. A city may not establish an appeal period that is less than 12 days from the date the written notice of decision required by this subsection was mailed. The notice shall state that the decision will not become final until the period for filing a local appeal has expired. The notice also shall state that a person who is mailed written notice of the decision cannot appeal the decision directly to the Land Use Board of Appeals under ORS 197.830 (Review procedures).

(D) An appeal from a hearings officer's decision made without hearing under this subsection shall be to the planning commission or governing body of the city. An appeal from such other person as the governing body designates shall be to a hearings officer, the planning commission or the governing body. In either case, the appeal shall be to a de novo hearing.

(E) The de novo hearing required by subparagraph (D) of this paragraph shall be the initial evidentiary hearing required under ORS 197.763 (Conduct of local quasi-judicial land use hearings) as the basis for an appeal to the Land Use Board of Appeals. At the de novo hearing:

(i) The applicant and other parties shall have the same opportunity to present testimony, arguments and evidence as they would have had in a hearing under subsection (3) of this section before the decision;

(ii) The presentation of testimony, arguments and evidence shall not be limited to issues raised in a notice of appeal; and

(iii) The decision maker shall consider all relevant testimony, arguments and evidence that are accepted at the hearing.

(b) If a local government provides only a notice of the opportunity to request a hearing, the local government may charge a fee for the initial hearing. The maximum fee for an initial hearing shall be the cost to the local government of preparing for and conducting the appeal, or $250, whichever is less. If an appellant prevails at the hearing or upon subsequent appeal, the fee for the initial hearing shall be refunded. The fee allowed in this paragraph shall not apply to appeals made by neighborhood or community organizations recognized by the governing body and whose boundaries include the site.

(c) (A) Notice of a decision under paragraph (a) of this subsection shall be provided to the applicant and to the owners of record of property on the most recent property tax assessment roll where such property is located:

(i) Within 100 feet of the property that is the subject of the notice when the subject property is wholly or in part within an urban growth boundary;

(ii) Within 250 feet of the property that is the subject of the notice when the subject property is outside an urban growth boundary and not within a farm or forest zone; or

(iii) Within 750 feet of the property that is the subject of the notice when the subject property is within a farm or forest zone.

(B) Notice shall also be provided to any neighborhood or community organization recognized by the governing body and whose boundaries include the site.

(C) At the discretion of the applicant, the local government also shall provide notice to the Department of Land Conservation and Development.

(11) A decision described in ORS 227.160 (Definitions for ORS 227.160 to 227.186) (2)(b) shall:

(a) Be entered in a registry available to the public setting forth:

(A) The street address or other easily understood geographic reference to the subject property;

(B) The date of the decision; and

(C) A description of the decision made.

(b) Be subject to the jurisdiction of the Land Use Board of Appeals in the same manner as a limited land use decision.

(c) Be subject to the appeal period described in ORS 197.830 (Review procedures) (5)(b).

(12) At the option of the applicant, the local government shall provide notice of the decision described in ORS 227.160 (Definitions for ORS 227.160 to 227.186) (2)(b) in the manner required by ORS 197.763 (Conduct of local quasi-judicial land use hearings) (2), in which case an appeal to the board shall be filed within 21 days of the decision. The notice shall include an explanation of appeal rights.

(13) Notwithstanding other requirements of this section, limited land use decisions shall be subject to the requirements set forth in ORS 197.195 (Limited land use decision) and 197.828 (Board review of limited land use decision). [1973 c.739 §§9,10; 1975 c.767 §8; 1983 c.827 §24; 1985 c.473 §15; 1987 c.106 §3; 1987 c.729 §18; 1989 c.648 §63; 1991 c.612 §21; 1991 c.817 §6; 1995 c.692 §2; 1997 c.844 §5; 1999 c.621 §2; 1999 c.935 §24; 2001 c.397 §2; 2017 c.745 §3; 2019 c.640 §18]

Location: https://oregon.public.law/statutes/ors_163.275.

Original Source: § 163.275 — Coercion, https://www.oregonlegislature.gov/bills_laws/ors/ors163.html (last accessed Jun. 26, 2021).

1.04.040 Grammatical interpretation.

The following grammatical rules shall apply in the ordinances of the city of Cannon Beach, unless it is apparent from the context that a different construction is intended.

A. Gender. Each gender includes the masculine, feminine and neuter genders.

B. Singular and Plural. The singular number includes the plural and the plural includes the singular.

C. Tenses. Words used in the present tense include the past and the future tenses and vice versa, unless manifestly inapplicable. (Ord. 89-24 § 4)

17.04.315 Lot.

"Lot" means a plot, parcel, or tract of land. (Ord. 86-16 § 1(52); Ord. 86-10 § 1(52))

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17.04.320 Lot abutting the oceanshore.

"Lot abutting the oceanshore" means a lot which abuts the Oregon Coordinate Line or a lot where there is no buildable lot between it and the Oregon Coordinate Line. (Ord. 86-16 § 1(53); Ord. 86-10 § 1(53))

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17.10.040 Standards.

In an RL zone, the following standards shall apply except as they may be modified through the design review process pursuant to Chapter 17.44:

A. Lot Size. Lot area shall be at least ten thousand square feet. Lots of less than ten thousand square feet may be buildable pursuant to Section 17.82.020; provided, that such lots were not part of an aggregate of contiguous lots with an area or dimension of ten thousand square feet or greater held in a single ownership at the time of enactment of Ordinance 79-4A. Where there are lots held in a single contiguous ownership and one of the lots or combination of lots meets the minimum lot size but the other lot or combination of lots does not meet the minimum lot size, there shall be only one buildable lot. Example: three contiguous lots in a single ownership, each lot with an area of five thousand square feet, constitute one buildable lot. The minimum lot size for all uses, including single-family dwellings, shall be adjusted for average slope using the standards in Section 16.04.310(A).

The planning commission may authorize the placement of a governmental or municipal structure necessary for public service on a lot of less than ten thousand square feet if it is found that a larger lot is not required and that the smaller lot size will not have a detrimental effect on adjacent areas or uses.

B. Lot Dimensions.

1. Lot Width. Lot width shall be at least seventy-five feet.

2. Lot Depth. Lot depth shall be at least ninety feet.

3. Front Yard. A front yard shall be at least fifteen feet.

4. Side Yard. A side yard shall be at least five feet, except on a corner or through lot the minimum side yard from the street shall be fifteen feet.

5. Rear Yard. A rear yard shall be at least fifteen feet, except on a corner or through lot it shall be a minimum of five feet, except where a rear lot line abuts a street, it shall be a minimum of fifteen feet.

6. Yard Abutting the Ocean Shore. For all lots abutting the ocean shore, any yard abutting the ocean shore shall conform to the requirements of Section 17.42.050(A)(6), Oceanfront setback.

C. Lot Coverage. The lot coverage for a permitted or conditional use shall not exceed fifty percent.

D. Floor Area Ratio. The floor area ratio for a permitted or conditional use on a lot of six thousand square feet or more shall not exceed 0.5. The maximum gross floor area for a permitted or conditional use on a lot of more than five thousand square feet, but less than six thousand square feet, shall not exceed three thousand square feet. The floor area ratio for a permitted or conditional use on a lot with an area of five thousand square feet or less shall not exceed 0.6.

E. Building Height. Maximum height of a vertical structure is twenty-four feet, measured as the vertical distance from the average elevation of existing grade to the highest point of a roof surface of a flat roof, to the top of a mansard roof or to the mean height level between the eaves and the ridge for a pitched roof. The ridge height of a pitched roof shall not exceed twenty-eight feet. Pitched roofs are considered those with a 5-12 pitch or greater.

F. Signs. As allowed by Chapter 17.56.

G. Parking. As required by Section 17.78.020.

H. Design Review. All uses except single-family dwellings and their accessory structures are subject to the provisions of Chapter 17.44.

I. Geologic or Soils Engineering Study. As required by Chapter 17.50.

J. Claims for Compensation Under ORS 197.352. The standards of Section 17.08.040(A) through (K) (Standards), shall apply except as specifically modified pursuant to a development agreement created as part of the city's final action modifying, removing or not applying the city's land use regulation(s) on a demand for compensation under ORS 197.352.

K. Site Plan. Except for interior renovation of existing structures and exterior renovations such as siding replacement where there will be no ground disturbance, no new construction shall be approved unless a site plan meeting the requirements of Section 17.90.190 has been submitted and approved. (Ord. 19-3 § 1; Ord. 17-3 § 1; Ord. 08-1 §§ 16—18; Ord. 06-3 § 4; Ord. 94-08 § 4; Ord. 93-3 § 2; Ord. 92-11 §§ 12—14; Ord. 90-3 § 3; Ord. 90-11A § 1 (Appx. A § 4); Ord. 89-3 § 1; Ord. 79-4 § 1 (3.020)(3))

17.42.050 General standards.

A. The uses and activities permitted in all areas contained in the OM zone are subject to the following:

1. Flood Hazard Overlay Zone, Chapter 17.38;

2. Geologic hazard areas requirements, Chapter 17.50;

3. Maintenance of beach access in conformance with Section 17.90.030;

4. All construction proposed west of the Oregon Coordinate Line shall obtain permits as required by the Oregon Parks and Recreation Department;

5. All construction proposed west of the line of vegetation shall obtain permits as required under the Oregon Removal-Fill Law;

6. Oceanfront Setback. For all lots abutting the oceanshore, the ocean yard shall be determined by the oceanfront setback line.

a. The location of the oceanfront setback line for a given lot depends on the location of buildings on lots abutting the oceanshore in the vicinity of the proposed building site and upon the location and orientation of the Oregon Coordinate Line.

b. For the purpose of determining the oceanfront setback line, the term “building” refers to the residential or commercial structures on a lot. The term “building” does not include accessory structures.

c. The oceanfront setback line for a parcel is determined as follows:

i. Determine the affected buildings; the affected buildings are those located one hundred feet north and one hundred feet south of the parcel’s side lot lines.

ii. Determine the setback from the Oregon Coordinate Line for each building identified in subsection (A)(6)(c)(i) of this section.

iii. Calculate the average of the setbacks of each of the buildings identified in subsection (A)(6)(c)(ii) of this section.

d. If there are no buildings identified by subsection (A)(6)(c)(i) of this section, then the oceanfront setback line shall be determined by buildings that are located two hundred feet north and two hundred feet south of the parcel’s side lot lines.

e. Where a building identified by either subsection (A)(6)(c)(i) of this section or subsection (A)(6)(d) of this section extends beyond one hundred feet of the lot in question, only that portion of the building within one hundred feet of the lot in question is used to calculate the oceanfront setback.

f. The setback from the Oregon Coordinate Line is measured from the most oceanward point of a building which is thirty inches or higher above the grade at the point being measured. Projections into yards, which conform to Section 17.90.070, shall not be incorporated into the required measurements.

g. The oceanfront setback line shall be parallel with the Oregon Coordinate Line and measurements from buildings shall be perpendicular to the Oregon Coordinate Line.

h. The minimum ocean yard setback shall be fifteen feet.

i. Notwithstanding the above provisions, the building official may require a greater oceanfront setback where information in a geologic site investigation report indicates a greater setback is required to protect the building from erosion hazard.

j. As part of the approval of a subdivision, the city may approve the oceanfront setback for the lots contained in the subdivision. At the time of building construction, the oceanfront setback for such a lot shall be the setback established by the approved subdivision and not the oceanfront setback as it would be determined by subsections (A)(6)(a) through (i) of this section. Before granting a building permit, the building official shall receive assurance satisfactory to such official that the location of the oceanfront setback for said lot has been specified at the required location on the plat or has been incorporated into the deed restriction against the lot.

B. The uses and activities permitted in beach and dune areas contained in the OM zone are subject to the following additional standards:

1. For uses and activities located in beach and dune areas, other than older stabilized dunes, findings shall address the following:

a. The adverse effects the proposed development might have on the site and adjacent areas;

b. Temporary and permanent stabilization proposed and the planned maintenance of new and existing vegetation;

c. Methods for protecting the surrounding area from any adverse effects of the development; and

d. Hazards to life, public and private property, and the natural environment which may be caused by the proposed use.

2. For uses and activities located on beaches, active dunes, on other foredunes which are conditionally stable and that are subject to ocean undercutting or wave overtopping, and on interdune areas that are subject to ocean flooding, findings shall address the following:

a. The standards of subsection (B)(1) of this section;

b. The development is adequately protected from any geologic hazards, wind erosion, undercutting, ocean flooding and storm waves; or is of minimal value; and

c. The development is designed to minimize adverse environmental effects.

3. Determination of Building Line. For residential or commercial buildings proposed for lots that may consist of the beach, an active dune, or other foredunes which are conditionally stable and that are subject to wave overtopping or ocean undercutting, or interdune areas that are subject to ocean flooding the geologic site investigation required by Chapter 17.50 shall include a determination of where these features are located on the lot. The map titled “Active and conditionally stable dunes, Cannon Beach, May 1993” shall be used as the basis for locating the active dune area. The “The Flood Insurance Study for Clatsop County, Oregon and Incorporated Areas”, dated June 20, 2018” and the “Active and conditionally stable dunes, Cannon Beach, May 1993” shall be used as the basis for locating the conditionally stable foredunes that are subject to wave overtopping and interdune areas subject to ocean flooding. Conditionally stable foredunes subject to ocean undercutting shall be determined as part of the site investigation report.

4. Conformance with the dune construction standards of Chapter 17.52. (Ord. 20-03 § 2)

CERTIFICATE OF COMPLIANCE WITH ORAP 5.05

I certify that this brief complies with the word-count limitation in ORAP 5.05, and that the word count of this brief is 4,681 words.

I further certify that the size of the type in this brief is not smaller than 14 point for both the text of the brief and footnotes as required by ORAP 5.05.

STAFFORD LAND COMPANY

By: */s/ Bryan W. Cavaness*

Bryan W. Cavaness, OSB #880295
8840 SW Holly Lane
Wilsonville, OR 97070
Telephone: (503) 332-6699
Email: bryan@staffordlandcompany.com
Attorney for Amicus Stafford Land Company

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on September 2, 2021, I filed the original of this ***Brief of Amicus Curiae Stafford Land Company*** with the State Appellate Court Administrator by the appellate courts' eFiling System.

I further certify that service of a copy of this ***Brief of Amicus Curiae Stafford Land Company*** will be accomplished on the following participants in this case, who is are registered users of the appellate courts' eFiling system, by the appellate courts' eFiling system at the participants' email addresses as recorded this date in the appellate eFiling system:

William L. Rasmussen, OSB #064782
Miller Nash, LLP
111 SW 5th Avenue, Suite 3400
Portland, OR 97204
william.rasmussen@millernash.com

Sean T. Malone, OSB #084060
Attorney at Law
259 E. 5th Avenue, Suite 200-C
Eugene, OR 97401
seanmalone8@hotmail.com

W. Michael Gillette, OSB #660458
Schwabe Williamson & Wyatt, PC
1211 SW Fifth Avenue, Suite 1900
Portland, OR 97204
wmgillette@schwabe.com

William K. Kabeiseman, OSB #944920
Bateman Seidel
1000 SW Broadway, Suite 1910
Portland, OR 97205
billkab@batemanseidel.com

Wendie L. Kellington, OSB #832589
Kellington Law Group, PC
P.O. Box 159
Lake Oswego, OR 97034
wk@klgpc.com

Dated this 2nd day of September, 2021.

STAFFORD LAND COMPANY

By: */s/ Bryan W. Cavaness*

Bryan W. Cavaness, OSB #880295
8840 SW Holly Lane
Wilsonville, OR 97070
Telephone: (503) 332-6699
Email: bryan@staffordlandcompany.com
Attorney for Amicus Stafford Land Company