

c' Matt S.  
5-1-97

1                                   **BEFORE THE BOARD OF COMMISSIONERS**

2                                   **FOR LINCOLN COUNTY, OREGON**

3                                   ORDINANCE # 368

4  
5  
6 **Relating to land use proceedings; amending LCC 1.1250 and 1.1255; and declaring an**  
7 **emergency.**  
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9                   The Lincoln County Board of Commissioners ordains as follows:

10                   **SECTION 1.**

11                   LCC 1.1250 is amended to read:

12                   1.1250 Notice of Public Hearings

13                   (1) Legislative Hearings:

14                   Notice of hearings for legislative amendments shall consist of a statement specifying the  
15 date, time, place and general subject of the hearing published in a newspaper of general circulation  
16 in the county at least 10 days prior to the hearing. In addition, notice shall be provided in  
17 accordance with ORS 215.503 and 215.513, unless such notice is not required under ORS  
18 215.508.

19                   (2) Quasi-Judicial Hearings:

20                   Notice of quasi-judicial hearings for the consideration of applications and appeals provided  
21 for in this chapter shall:

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing ordinance to be omitted. New sections are in **boldfaced** type.

- 1 (a) Be provided in writing to the applicant and to the owners of record of property on the  
2 most recent tax assessment roll of Lincoln County:
- 3 (A) Within 500 feet of the boundaries of the subject property in A-C and T-C zones.  
4 (B) Within 250 feet of the subject property in all other zones.
- 5 (b) Be provided to any neighborhood or community organization recognized by the Board  
6 of Commissioners and whose boundaries include the subject property;
- 7 (c) Explain the nature of the decision and the use or uses which could be authorized;  
8 (d) List the applicable criteria from this chapter that apply to the subject application;  
9 (e) Set forth the street address or other easily understood information identifying the  
10 location of the subject property;
- 11 (f) State the date, time and location of the hearing;
- 12 (g) State that a copy of the application, all documents and evidence *[relied upon]*  
13 **submitted by or on behalf of** the applicant, and applicable criteria are available for inspection at  
14 the division office at no cost and can be provided at a reasonable cost;
- 15 (h) State that a copy of the division's staff report is available for inspection at no cost and  
16 can be provided at a reasonable cost seven days prior to the hearing;
- 17 (i) Provide the name and telephone number of the division staff person to contact for  
18 additional information;
- 19 (j) Include a general explanation of the requirements for submission of testimony and the  
20 conduct of hearings; *[and]*

1 (k) State that failure to raise an issue in the hearing, either in person or in writing, or  
2 failure to provide *[sufficient specificity]* **statements or evidence sufficient** to afford the hearings  
3 body an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals  
4 on that issue~~/.~~; and

5 **(L) Be mailed at least 20 days prior to the hearing.**

6 (3) The failure of a property owner to receive notice as provided for in this section shall  
7 not invalidate the subject hearing proceeding provided that the division can demonstrate by  
8 affidavit that such notice was given. [1995 o.255 §5]

9 **SECTION 2.**

10 LCC 1.1255 is amended to read:

11 1.1255 Conduct of Quasi-Judicial Public Hearings

12 Any quasi-judicial public hearing required by or provided for in this chapter shall be  
13 conducted in accordance with the following requirements:

14 (1) Staff Report:

15 At least seven days prior to the hearing, the division shall provide to the hearings body and  
16 make available to the public for inspection or purchase a report detailing the nature of the request  
17 and the applicable criteria of this chapter.

18 (2) Application Materials:

19 All application materials, documents or other evidence *[relied upon]* **submitted by or on**  
20 **behalf of** the applicant for any land use approval shall be provided to the division and made  
21 available to the public *[at least 20 days prior to the hearing. If any documents or evidence in*

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1 *support of the application are provided for consideration by the hearings body after 20 days*  
2 *prior to the hearing, any party shall be entitled to a continuance of the hearing].*

3 (3) Pre-Hearing Statement:

4 At the commencement of the hearing, a statement shall be made by the hearings body or  
5 staff to those in attendance that:

6 (a) Lists that applicable substantive criteria;

7 (b) States that testimony and evidence must be directed toward the criteria described in  
8 paragraph (a) of this subsection or other criteria in this chapter the party believes to apply to the  
9 subject request; and

10 (c) States that failure to raise an issue *[with sufficient specificity]* **accompanied by**  
11 **statements or evidence sufficient** to afford the hearings body and the parties an opportunity to  
12 respond to the issue precludes appeal to the Land Use Board of Appeals on that issue.

13 (4) Presentation of Testimony:

14 Unless otherwise provided for by the hearings body, the order of presentation of testimony  
15 shall be as follows:

16 (a) Staff report.

17 (b) Presentation by the applicant or, in the case of an appeal of a prior decision, the  
18 appellant.

19 (c) Additional testimony by other parties in support of the application or appeal.

20 (d) Testimony by opponents or, in the case of an appeal, the respondent.

1 (e) Applicant's or, in the case of an appeal, appellant's, rebuttal arguments.

2 (5) Continuances:

3 The hearings body may continue any hearing as deemed necessary to receive additional  
4 arguments or testimony or for further consideration of any evidence or testimony. A continuance  
5 may be provided for by the hearing body on its own motion or may be requested by a party. **Any**  
6 **continuance or extension of the record requested by an applicant shall result in a**  
7 **corresponding extension of the time limitations of ORS 215.248. If the hearings body**  
8 **grants a continuance, the hearing shall be continued to a date, time, and place certain at**  
9 **least seven days from the date of the initial evidentiary hearing. An opportunity shall be**  
10 **provided at the continued hearing for persons to present and rebut new evidence and**  
11 **testimony. If new written evidence is presented at the continued hearing, any person may**  
12 **request, prior to the conclusion of the continued hearing, that the record be left open for at**  
13 **least seven days to submit additional written evidence or testimony for the purpose of**  
14 **responding to the new written evidence. No additional notice need be given of the**  
15 **continued hearing.** *[If the basis for a request for a continuance by a party is that new evidence*  
16 *or documents in support of the application have been submitted after 20 days prior to the*  
17 *hearing and, in the judgment of the hearings body, such evidence or documents have been*  
18 *submitted, the request for a continuance shall be granted. Such a continuance shall not be*  
19 *subject to the limitations of ORS 215.248. The granting of a request for a continuance on any*  
20 *other basis shall be at the discretion of the hearings body. No additional notice need be given of*  
21 *the continued hearing if the hearing is continued to a date and time certain.]*

Page 5 -- ORDINANCE # 368

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1           (6) Holding Open the Hearing Record:

2           **Prior to the conclusion of the initial evidentiary hearing, any participant may**  
3 **request an opportunity to present additional evidence or testimony regarding the**  
4 **application. The hearings body shall grant such a request by continuing the hearing**  
5 **pursuant to subsection (5) of this section or leaving the record open for additional**  
6 **written evidence or testimony. If the record is left open for additional written evidence**  
7 **or testimony, the record shall be left open for at least seven days. Any participant may**  
8 **file a written request with the division for an opportunity to respond to new evidence**  
9 **or testimony submitted during the period the record was left open. If such a request is**  
10 **filed, the hearings body shall reopen the record pursuant to subsection (7) of this**  
11 **section.** *[Unless there is a continuance, if a participant so requests before the conclusion of the*  
12 *hearing, the record of the hearing shall remain open for at least seven days after the conclusion*  
13 *of the hearing. Such an extension shall not be subject to the limitations of ORS 215.248.]*

14           (7) Reopening the Hearing Record:

15           The hearings body may, on its own motion, or upon request of a party, reopen the record  
16 of any hearing previously concluded. When a hearing record is reopened to admit new evidence  
17 or testimony, any person may raise new issues which relate to the new evidence, testimony, or  
18 criteria for decision making which apply to the subject application or appeal.

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1           **(8) Time Limitations of ORS 215.428:**

2           Any continuance or extension of the record shall be subject to the time  
3 limitations of ORS 215.428 unless the continuance or extension is requested or agreed  
4 to by the applicant.

5           **(9) Final Arguments:**

6           Unless waived by the applicant, the hearings body shall allow the applicant at  
7 least seven days after the record is closed to all other parties to submit final written  
8 arguments in support of the application. The applicant's final submittal shall be  
9 considered part of the record, but shall not include any new evidence.

10           **(10) Definitions:**

11           For purposes of this section:

12           **(a) "Argument"** means assertions and analysis regarding the satisfaction or  
13 violation of legal standards or policy believed relevant by the proponent to a decision.

14           "Argument" does not include facts.

15           **(b) "Evidence"** means facts, documents, data or other information offered to  
16 demonstrate compliance or noncompliance with the standards believed by the  
17 proponent to be relevant to a decision by the hearings body.

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19        ////

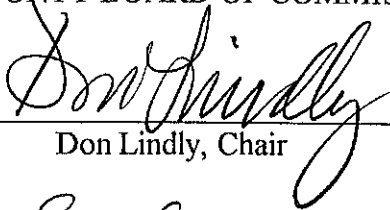
20        ////

1            **SECTION 3.**

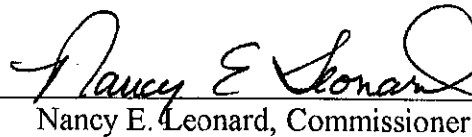
2            This Ordinance being necessary for the immediate preservation of the public peace, health  
3            and safety, an emergency is declared to exist and this Ordinance shall take effect upon its passage.

DATED this 30<sup>th</sup> day of April, 1997.

LINCOLN COUNTY BOARD OF COMMISSIONERS

  
\_\_\_\_\_  
Don Lindly, Chair

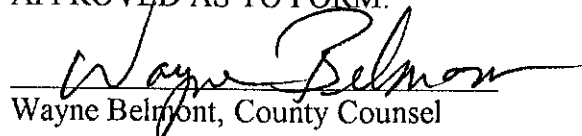
  
\_\_\_\_\_  
Jean Cowan, Commissioner

  
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Nancy E. Leonard, Commissioner

ATTESTED TO:

  
\_\_\_\_\_  
Susan Kays, Recorder

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Wayne Belmont, County Counsel

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