

MEMORANDUM

TO: Polk County Planning Commission
Committee for Citizen Involvement
Interested Parties

FROM: Jerry Sorte, Planning Supervisor

DATE: March 22, 2011

SUBJECT: Legislative Amendment 10-02; Updates to PCZO Chapter 111: Administration and Procedures.

ISSUE:

The purpose of this public hearing is for the Planning Commission to receive public testimony and consider changes to Polk County Zoning Ordinance (PCZO) Chapter 111. The proposed updates are intended to update specific administrative processes and to add language that was adopted when Chapter 111 was updated in 2009, but mistakenly omitted during a subsequent update to that chapter.

The Planning Commission will conduct a public hearing on March 29, 2011 at 7:00 P.M. After holding a public hearing, the Planning Commission will make a recommendation to the Polk County Board of Commissioners on what amendments should be made to the PCZO. The Board of Commissioners will hold a public hearing on April 27, 2011 and make a final local decision.

RECOMMENDATION:

Staff recommends that the Planning Commission conduct a public hearing and make a recommendation to the Board of Commissioners to adopt the amendments to PCZO Chapter 111 included as Attachment A.

STAFF REPORT:

I. BACKGROUND

On March 2, 2011, the Board of Commissioners initiated this legislative amendment in order to consider proposed updates to PCZO Chapter 111; Administration and Procedures. The proposed amendments are included as Attachment A. Proposed additions are double underlined, and proposed deletions are depicted in strikethrough. Those amendments are summarized as follows:

- Official Zoning Map Format Update

These updates would modernize the language in the PCZO and authorize the Official Zoning Map to be maintained in an electronic format. As written currently, the Official Zoning Map is a physical map located in the Clerk's Office. In practice, the Planning Division administers the planning program by using the zoning layer in the Polk County geographic information system (GIS). The official paper zoning map was converted into an electronic format in the mid 1990s. The electronic zoning layer is more convenient to use, because it allows staff to create custom zoning maps for citizens and to overlay aerial photographs and other planning layers in the mapping program. An electronic map is also easier to update than a paper map. Clarifying that the Official Zoning Map is

maintained in Polk County's GIS would make it clear that there is not another, physical map that may also need to be consulted to determine the zoning of a property.

Within these updates, staff has recommended removing PCZO Section 111.080; Certification. This section requires the Board and Clerk to certify the official zoning map with a written certification. That type of certification is specific to a paper map, not a GIS layer. The Board would adopt the GIS zoning layer as the official map by ordinance. The Board would also continue to approve or disapprove of all changes to the Official Zoning Map by ordinance, so there would remain a "paper trail" of written consent to all changes to the Official Zoning Map.

These updates also include combining the relevant sections of PCZO Sections 111.100 into 111.090 and 111.140 into 111.110. These changes would facilitate a more logical flow and reduce redundancy within the Chapter.

- Appeal and Remand Procedures Update

These amendments would allow the Board of Commissioners additional options when considering appeals of land use decisions and requests for reconsideration of a land use action on remand from the Land Use Board of Appeals. Currently all appeals of Planning Director's or Hearings Officer's decisions are scheduled for a public hearing before the Board of Commissioners. The proposed amendments would provide the Board the option to refer appeals of Planning Director's decisions to the Hearings Officer for consideration. Alternatively, the Board could choose to hear the appeal, as is currently the process. With respect to appeals of a Hearings Officer decision, where the Hearing's Officer conducts a first evidentiary hearing, the Board could either affirm the Hearings Officer's decision, without holding a hearing, or schedule a Board hearing for additional consideration of the matter.

These updates would modify sections of the PCZO that are referenced by PCZO 111.290; Call of the Board of Commissioners, and 111.300; Action by Board of Commissioners. Consequently, staff recommends updates to those sections that clarify the process that applies to each.

These proposed updates to the appeal process would not change the hearing process for plan amendments, zone changes or legislative amendments. Those proceedings would still require the Board of Commissioners to hold a public hearing before making the final local decision.

- TSP Update Language

Polk County undertook an update process to the Polk County Transportation Systems Plan (TSP) in 2009. That project, identified as Legislative Amendment (LA) 09-02 resulted in the adoption of Ordinance No. 09-08. Ordinance No. 09-08 contained updates to PCZO Chapter 111. These included language that clarifies what ODOT staff position should receive notice of specific land use applications; notification procedures for proposed projects in proximity to public use airports; notification procedures for proposed projects within 500 feet of a state highway; clarification that a staff contact should be provided on notices of public hearings; and clarification that road function, classification, capacity and existing and projected traffic volumes shall be considered as criteria for zone change applications. Ordinance No. 09-08 and Attachment B-1, which is the version of Chapter 111 adopted under that ordinance, are included as Attachment B to this memo.

During a subsequent update to PCZO Chapter 111, LA 09-03, the Board adopted additional, unrelated updates to Chapter 111. Ordinance No. 10-04 implemented LA 09-03, but inadvertently failed to depict the updates adopted by Ordinance No. 09-08. This legislative amendment would clarify that the amendments approved in Ordinance No. 09-08 are included into Chapter 111.

- Appeal Period Update

This update would extend the appeal period from 10 to 12 days after the Planning Director or Hearings Officer makes a land use decision that is not a decision on appeal. The 10 day appeal period has been outdated for years, and staff has directly applied ORS 215.416(11)(C). ORS 215.416(11)(C) requires that the County allow at least 12 days for appeals of such decisions.

- Notice Posting and Publication Update

PCZO 111.360 only requires that notice of a public hearing under a Type B procedure be posted on the subject property. These updates would require applicants to post a sign noticing any public hearing held under the provisions of PCZO Chapter 111, except legislative text amendments. This would require posting of notices for hearings that consider Type A applications referred by the Planning Director to the Hearings Officer and posting of a hearing if a decision of the Planning Director or Hearings Officer is appealed or called by the Board of Commissioners under PCZO 111.290. Similarly, PCZO 111.370 only requires that notice of hearings associated with legislative amendments, zone changes, and Comprehensive Plan amendments be published in the local newspaper. The proposed updates would require notice of all hearings be published. Staff believes that these updates would better inform the public of their opportunities to be involved in the land use planning process.

Notice of these Proceedings

Notice of this legislative amendment (DLCD Form 1) and two copies of the record were mailed to DLCD on October 28, 2010. Planning Division staff provided notification of the March 29, 2011 Planning Commission public hearing for file LA 10-02 to the Dallas *Itemizer-Observer* Newspaper for publication on March 9, 2011. On March 2, 2011, Planning Staff provided notice of the Planning Commission and Board of Commissioner's public hearings to interested parties. Notification of this legislative proceeding has been fulfilled pursuant to PCZO Section 111.370. Pursuant to PCZO 115.040, the Planning Commission will conduct a public hearing and submit a recommendation to the Board of Commissioners.

The initial mailed and published notice indicated that the Board of Commissioner's hearing would be held April 20, 2011. That hearing has been rescheduled to April 27, 2011.

II. COMMENTS RECEIVED

No comments were received as of the writing of this staff report.

III. CRITERIA FOR LEGISLATIVE AMENDMENTS

A legislative amendment to the text of the Polk County Zoning Ordinance (PCZO) may be approved provided that the request is based on substantive information providing a factual basis to support the change. In amending the PCZO, Polk County shall demonstrate compliance with PCZO 115.060. Staff's analysis and findings are provided below:

- (A) Compliance with Oregon Revised Statutes, and the statewide planning goals and related administrative rules. If an exception to one or more of the goals is necessary, Polk County shall adopt findings which address the exception criteria in Oregon Administrative Rules, Chapter 660, Division 4; [PCZO 115.060(A)]**
 - 1. Pursuant to ORS chapters 195, 196 and 197, each city and county in this state shall:**
 - a. Prepare, adopt, amend and revise comprehensive plans in compliance with goals approved by the commission;**
 - b. Enact land use regulations to implement their comprehensive plans;**
 - c. If its comprehensive plan and land use regulations have not been acknowledged by the commission, make land use decisions and limited land use decisions in compliance with the goals;**
 - d. If its comprehensive plan and land use regulations have been acknowledged by the commission, make land use decisions and limited land use decisions in compliance with the acknowledged plan and land use regulations; and**

- e. **Make land use decisions and limited land use decisions subject to an unacknowledged amendment to a comprehensive plan or land use regulation in compliance with those land use goals applicable to the amendment. [ORS 197.175(2)]**
- 2. **Planning and zoning hearings officers; duties and powers; authority of governing body or planning commission to conduct hearings.**
 - a. **A county governing body may authorize appointment of one or more planning and zoning hearings officers, to serve at the pleasure of the appointing authority. The hearings officer shall conduct hearings on applications for such classes of permits and contested cases as the county governing body designates.**
 - b. **In the absence of a hearings officer a planning commission or the governing body may serve as hearings officer with all the powers and duties of a hearings officer. [ORS 215.406]**
- 3. **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 county. 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. [ORS 215.416(9)(D)]**
- 4. **The de novo hearing required by subparagraph (D) of this paragraph shall be the initial evidentiary hearing required under ORS 197.763 as the basis for an appeal to the Land Use Board of Appeals. At the de novo hearing:**
 - a. **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;**
 - b. **The presentation of testimony, arguments and evidence shall not be limited to issues raised in a notice of appeal; and**
 - c. **The decision maker shall consider all relevant testimony, arguments and evidence that are accepted at the hearing. [ORS 215.416(9)(D)]**
- 5. **Notice under this subsection shall comply with ORS 197.763 (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 county's land use regulations. A county 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. [ORS 215.416(11)(C)]**
- 6. **197.763 Conduct of local quasi-judicial land use hearings; notice requirements; hearing procedures.**

The failure of the property owner to receive notice as provided in this section shall not invalidate such proceedings if the local government can demonstrate by affidavit that such notice was given. The notice provisions of this section shall not restrict the giving of notice by other means, including posting, newspaper publication, radio and television. [ORS 197.763(8)]

Findings:

Official Zoning Map. ORS 197.175(2) requires that Polk County implement its acknowledged comprehensive plan. As described above, the county shall “enact land use regulations to implement their comprehensive plan.” The Official Zoning map is one such document that implements the Polk County Comprehensive Plan (PCCP). These amendments would simply change the format of that Official Zoning Map. The statewide planning goals, ORS, and OAR do not specifically state what format a county’s official zoning map must take, and this update would not change the zoning of any property in Polk County. For that reason, adopting an electronic Official Zoning Map would be consistent with this criterion.

Appeal Process. ORS 215.406 allows the Board of Commissioners to authorize a hearings officer to conduct hearings on applications and contested cases. ORS 215.416(9)(D) states: “..An appeal from such other person as the governing body designates shall be to a hearings officer, the planning commission or the governing body...” Applying these sections, “such other person as the governing body designates” is the Planning Director, and ORS allows the Board to authorize the Hearings Officer to hear an appeal of the Planning Director’s decision. As required by ORS, that hearing would be the first evidentiary hearing and would be held *de novo*.

While the majority of current planning land use decisions are made by the Planning Director, the PCZO requires that some land use decisions be made by the Hearing’s Officer at a public hearing. Current planning land use decisions include all land use decisions except plan amendments, zone changes, and legislative amendments. Initial decisions are made by the Hearings Officer for applications that include full variances and the review of wildlife management plans that are submitted in conjunction with a conditional use permit. The Planning Director may also refer a current planning application for decision to the Hearings Officer. Currently, appeals of those Hearings Officer decisions are placed before the Board, who makes a decision after holding a second public hearing. ORS does not require counties to hold two public hearings at the local level for current planning land use decisions. For that reason, the proposed amendment to Chapter 111, to allow the Board the option to affirm the Hearings Officer’s decision without holding a second public hearing, would be consistent with ORS.

TSP Update. These proposed updates to Chapter 111 were determined to be consistent with the ORS, statewide planning goals, and OAR pursuant to the findings adopted in Ordinance No. 09-08.

Appeal Period. This update would extend the appeal period from 10 to 12 days after the Planning Director or Hearings Officer makes a land use decision that is not on an appeal. The 10 day appeal period has been out of compliance with state statutory requirements for years, and staff has directly applied ORS 215.416(11)(C). ORS 215.416(11)(C) requires that the County allow at least 12 days for appeals of such decisions. The proposed amendment to Chapter 111 would allow a 12 day appeal period, and would be consistent with ORS.

Notice Posting and Publication. ORS 215.060 and 215.223 requires that notice of a public hearing(s) for amendments to the Comprehensive Plan or Zoning Ordinance be posted on a sign on the property and published in the local newspaper. ORS 197.763(8) does not require posting and publication of notice for quasi-judicial land use hearings.

As discussed above, the proposed amendments would comply with the applicable provisions of ORS, the statewide planning goals, and OAR. An exception to the Oregon Statewide Planning Goals is not required to approve these amendments. Staff concludes that the proposed text amendments to the PCZO Chapter 111 would comply with this criterion.

(B) Conformance with the Comprehensive Plan (PCCP) goals, policies and intent, and any plan map amendment criteria in the plan; [PCZO 115.060(B)]

- 1. The zoning ordinance for Polk County, adopted in December 1975, is the most important implementation tool currently utilized by the County. In theory, the zoning ordinance is a legislative expression of the Comprehensive Plan and must satisfy certain standards set out by state statute. It should be stated at this point,**

that while planning and zoning are clearly interrelated, they are distinctly different. Zoning is a regulatory device which can further the proper development of land uses. As such, it may be viewed as one of the tools of planning in that it involves day-to-day attention to those details of land use control necessary to achievement of the major goals of land use planning. Planning provides the body of ideas within which zoning operates and the use of zoning ordinances is one of the devices through which planning goals are achieved. The objectives and goals of planning are phrased in the language of advice and recommendation. In this respect, planning functions as a guide to zoning. The effectiveness of good planning and zoning may be measured in the degree to which the long range goals of the Plan are realized. Zoning should be used to help promote the goals of the Comprehensive Plan. [PCCP, Section 7, Zoning]

- 2. GOAL 1. To provide for a wide range of opportunities for citizens to be involved in all public phases of the planning process in Polk County. For the purposes of the Polk County Citizen Involvement Program, the term “citizen” shall mean property owners, land use applicants and the general public. [PCCP, Section 2, Citizen Involvement Element, Goal 1]**

Findings: The PCCP contains broad goals and policies that are implemented by the specific provisions in the PCZO and the Polk County Subdivision and Partition Ordinance (PCSO). The proposed amendments to PCZO Chapter 111 would be consistent with the PCCP as described below.

Official Zoning Map. Section 7 of the PCCP acknowledges the importance of zoning as a technique to implement the goals and policies of the PCCP. The Official Zoning Map is a central component to Polk County’s zoning because it geographically depicts the zones that apply to all properties in Polk County’s planning jurisdiction. Placing the Official Zoning Map in an electronic format would enhance the zoning program, because it would make it clear that the electronic, GIS zoning layer that is used by Staff on a daily basis to assist the public is the official map. The public would not need to consult another, physical map to be certain of the zoning affecting a specific property. An electronic map is easier to update and use to create custom, printed maps. While there will still be circumstances where interpretation of zoning boundaries will be necessary, such as where a zoning line follows the center of creek that has since moved, staff anticipates that these instances will be no more frequent than when operating from a paper map.

As proposed, it would be the responsibility of the Planning Director, in conjunction with the Information Services Department, to ensure that the electronic zoning map is archived whenever a change to the map is made, and to ensure that any changes to the Official Zoning Map reflect the adopting ordinance. Redundancy would be incorporated into the system at the time the Map is updated, because all changes to the map are depicted in the ordinance that adopts the changes. If there are any questions in the future concerning whether the Map was updated properly, the “paper trail” would lead back to the adopting ordinance, which could be consulted in such an instance. These changes would enhance Polk County’s zoning program, and therefore, be consistent with the PCCP.

Appeal Process. Goal 1 of the Citizen Involvement Element of the PCCP, states that the planning program will “provide for a wide range of opportunities for citizens to be involved in all public phases of the planning process in Polk County.” A public phase of the planning process includes the opportunity for citizens to air their concerns or support regarding a planning project at a public hearing. Under the proposed updates, the Board would be able to determine which hearing body is best suited to hear a particular appeal and to weigh citizen input. The Board may choose to refer highly technical appeals to the Hearings Officer for consideration, and may decide to hear appeals that require the balancing of conflicting interests themselves. If the proposed updates are implemented, citizens would retain their ability to file an appeal and testify at a public hearing, and

the Board would gain the ability to choose the best venue for the public's concerns to be heard. These proposals would be consistent with the PCCP.

TSP Update. These proposed updates to Chapter 111 were determined to be consistent with the PCCP pursuant to the findings adopted in Ordinance No. 09-08.

Appeal Period. This update would extend the appeal period from 10 to 12 days after the Planning Director or Hearings Officer makes a land use decision that is not an appeal. This amendment would bring the PCZO into compliance with ORS. Extending the appeal period from 10 to 12 days, as required by law, would allow citizens additional time to consider and file an appeal. This update would be consistent with the Citizen Involvement Element of the PCCP.

Notice Posting and Publication. These updates would require posting and publication of notice for all hearings associated with a land use application. This notice would be consistent with the Citizen Involvement Element of the PCCP by allowing citizens additional information about how they can be involved in the land use planning process.

Based on the above findings, the proposed amendments to the Polk County Zoning Ordinance would comply with the PCCP.

(C) That the proposed change is in the public interest and will be of general public benefit; and [PCZO 115.060(C)]

Findings: The purpose of this legislative amendment is to update the Polk County Zoning Ordinance (PCZO) in order to update and modernize certain administrative processes. These updates consist of modifications to the standards concerning the Official Zoning Map, appeal and remand procedures, a re-adoption of administrative process updates adopted during the 2009 TSP update, updating the land use decision appeal period to reflect changes to state law, and updates to the requirements for posting and publishing notices for public hearings.

The proposed updates would allow the Official Zoning Map to be stored as an electronic layer in the Polk County GIS. This amendment would minimize the amount of staff time needed to update the map, and would clarify to citizens that the GIS zoning layer at the Planning counter is the official map.

Updating the appeal process would be in the public interest and of general public benefit, because it would allow the Board discretion to determine the appropriate hearings body for appeals. The Board may determine that an appeal based on a highly technical issue would be better heard by a Hearings Officer. The Board would retain the ability to hear any appeal to a land use decision. This flexibility would allow the Board to determine the most appropriate process for a given appeal.

When the TSP was updated in 2009, it included updates to various administrative processes in PCZO Chapter 111. Ordinance No. 09-08 adopted findings as to why those updates are in the public interest and of general public benefit. Those updates from Ordinance No. 09-08 were mistakenly omitted during a subsequent update to PCZO Chapter 111. Adding those updates back into Chapter 111 would be in the public benefit because it would implement the changes enacted in 2009.

ORS 215.416(11)(C) requires that counties allow a 12 day appeal period for "initial" (non appeal) land use decisions on current planning applications. The appeal period in the PCZO is currently 10 days. Amending the PCZO to be consistent with ORS would be in the public interest and general public benefit because it would clarify this requirement of state law in the PCZO.

The proposed updates would require that notice for all public hearings on land use applications be posted on the subject property and published in the local newspaper. Currently, these types of notification are only required for text amendments to the zoning ordinance, zone changes, and comprehensive plan amendments. The proposed additional posting requirement would have a nominal financial impact on the county. With respect to posting, staff prepares a sign board, which is provided to the applicant to post on the property. Publishing notice in the local *Itemizer-Observer Newspaper* costs approximately \$180. Most public hearings on current planning applications are

appeal hearings. So, at least some of the cost of posting will be covered by the appeal fee collected from the appellant. Staff believes that the benefit associated with these notices outweighs the costs. If the County is going to hold a public hearing, which is costly in and of itself, the marginal benefit of the proposed notices would outweigh the marginal costs. Additional notice stands to increase public participation.

Based on the above findings, Staff concludes that the proposed changes to the PCZO are in the public interest and of general public benefit.

(D) Compliance with the provisions of any applicable intergovernmental agreement pertaining to urban growth boundaries and urbanizable land. [PCZO 115.060(D)]

Findings: Polk County has adopted intergovernmental agreements (IGAs) with each of the cities that have urban growth boundaries (UGB) that extend outside of city limits and into Polk County's planning jurisdiction. These cities are Salem, Dallas, Monmouth, Independence, and Willamina. Those cities were notified of the March 29, 2011 Planning Commission public hearing on March 2, 2011. The Falls City UGB is entirely located within city limits; therefore, Polk County does not have an IGA regarding UGB land use management with Falls City.

The proposed amendments to the PCZO would affect certain administrative procedures for land use applications submitted countywide, including within UGBs. The IGAs that Polk County has with the cities include restrictions on development within UGBs, and most IGAs require that the County provide the City with advanced notification of any land use application. These aspects would not be affected by the proposed updates, and staff believes that the proposed amendments would be consistent with all adopted intergovernmental agreements pertinent to land in UGBs. The proposed amendments would not modify any of the requirements of those agreements.

Consequently, Staff finds that the proposed amendments comply with this criterion.

IV. CONCLUSION

Based on the findings above, Staff concludes that the proposed amendments to the Polk County Zoning Ordinance would comply with all of the applicable review and decision criteria for a legislative amendment.

PLANNING COMMISSION ACTION:

After opening the public hearing and receiving testimony, the Planning Commission's options include the following:

- (1) Move to recommend that the Board of Commissioners approve Legislative Amendment 10-02, which consists of:
 - (a) Adopting the PCZO amendments presented in Attachment A; or
 - (b) *As further amended by the Planning Commission (state revisions).*
- (2) Continue the public hearing:
 - (a) To a time certain, or
 - (b) Indefinitely, or
- (3) Close the public hearing and take no action on the proposed amendments.

ATTACHMENTS:

- A --- Proposed Amendments to PCZO Chapter 111
- B --- Ordinance No. 09-08 with Attachment B-1

Additions are double underlined. Deletions are in ~~strikethrough~~.

CHAPTER 111

ADMINISTRATION AND PROCEDURES

111.010.	Administration of the Ordinance
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111.040.	Interpretation of Ordinance
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111.275.	Zone Change Criteria
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111.290.	Call of Board of Commissioners
111.300.	Action by Board of Commissioners

111.310.	Effective Date
111.320.	Holding Public Hearings
111.330.	Appearances of Interested Person, Remonstrances
111.340.	Notice of Public Hearing; Content
111.350.	Mailing of Notice; Notification Area; Failure to Receive Notice
111.360.	Posting Notice
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111.380.	Conduct of Hearing; Continuance; Extension; Reopening Record

111.010. ADMINISTRATION OF THE ORDINANCE. This ordinance shall be jointly administered by the County Building Official and the Director of Planning.

The Building Official or other designated officer, prior to issuing any permit pertaining to the use of land or structures, or the erection or alteration of any structure, shall ascertain that the proposed use or construction shall in all ways conform to the requirements set forth in this ordinance.

The Planning Director shall handle all matters pertaining to zone changes, variances, and conditional uses, and other administrative matters as prescribed by this ordinance; and such other matters as directed by the Board of Commissioners.

111.020. MINIMUM REQUIREMENTS. In interpreting and applying this ordinance, the provisions herein shall be held to be the minimum requirements adopted for the promotion of the public health, safety, comfort, convenience, and general welfare.

111.030. EFFECT ON OTHER ORDINANCES, AGREEMENTS BETWEEN PARTIES. It is not intended by this ordinance to repeal, abrogate, annul or in any way to impair or interfere with any existing provision of law or ordinance, previously adopted, relating to the use of buildings or premises, or relating to the erection, construction, establishment, alteration, or enlargement of any buildings or improvements; nor is it intended by this ordinance to interfere with or abrogate or annul any easement, covenant, or other agreement between parties; provided, however, that where this ordinance imposes a greater restriction upon the erection, construction, establishment, alteration, or enlargement of buildings, structure, or improvements, or the use of any such structures or premises in said several zones or districts, or any of them, than is imposed or required by such existing provisions of this ordinance, the greater restriction shall control, except that such precedence of this ordinance shall not apply to valid and unexpired permits and/or uses previously granted under the terms and provisions of any ordinance.

111.040. INTERPRETATION OF ORDINANCE.

- (A) When, in the administration of this ordinance, there is doubt regarding the intent of the ordinance, the Director shall request an interpretation of the provision by the Board of Commissioners, who may issue an interpretation of the question if they have determined that such interpretation is within their power and is not a legislative act. Any interpretation of the ordinance shall be based on the following:
 - (1) The purpose and intent of the ordinance as applied to the particular section and question; and,
 - (2) The opinion of the County Counsel when requested by the Board of Commissioners.
- (B) The Board of Commissioners may decide that the interpretation of the question is not within their power without an ordinance amendment or that there is insufficient basis upon which to make an interpretation and may request the Director to study the problem, and where necessary, propose an amendment to the ordinance. [Amended by Ordinance 88-21]

111.050. SIMILAR USES. The Director may permit in any zone any use not described or listed in this ordinance for any other zone if, in the opinion of the Director, the requested use is of the same general type and is similar to the uses permitted in the zone. Such review and permission shall be made in the same manner as other interpretations of this ordinance, as described in Section 111.040.

111.060. FEES. Fees shall be required by the Director to be paid at the time of filing of each petition or application for a farm or forest dwelling, lot-of-record determination, land use

determination, conditional use, planned development, variance, land partition, property line adjustment, similar use decision, comprehensive plan amendment, or zone change. The fees required by this section shall be set by resolution adopted by the Board of County Commissioners. [Amended by Ordinance 267]

111.070 ZONING DESIGNATIONS: ~~OFFICIAL MAP~~

<u>FULL NAME</u>	<u>DESIGNATION</u>
Suburban Residential Zone	SR Zone
Acreage Residential 5 Acre Zone	AR-5 Zone
<u>Acreage Residential 10 Acre Zone</u>	<u>AR-10 Zone</u>
<u>Agriculture and Forestry 10 Acre Zone</u>	<u>AF-10 Zone</u>
Limited Multi-Family Residential Zone	RL Zone
Multi-Family Residential Zone	RM Zone
High Rise Apartment Residential Zone	RH Zone
Exclusive Farm Use Zone	EFU Zone
Farm/Forest Zone	F/F Zone
Farm Forest Overlay Zone	FFO Zone
Public Amusement and Recreation Zone	PA Zone
Public and Private Cemeteries Zone	PC Zone
Public and Private Education Facilities Zone	PE Zone
Public and Private Hospital Zone	PH Zone
Public Park Zone	PP Zone
Public Service Zone	PS Zone
Commercial Office Zone	CO Zone
Commercial Retail Zone	CR Zone
Commercial General Zone	CG Zone
Industrial Commercial Zone	IC Zone
Industrial Park Zone	IP Zone
Light Industrial Zone	IL Zone
Heavy Industrial Zone	IH Zone
Rural Industrial Zone	R-IND Zone
Mineral Extraction Zone	ME Zone
Timber Conservation Zone	TC Zone
Rural Commercial Zone	R-COM Zone
Unincorporated Community Commercial Office Zone	UC-CO Zone
Unincorporated Community Commercial Retail Zone	UC-CR Zone
Unincorporated Community Commercial General Zone	UC-CG Zone
Unincorporated Community Industrial-Commercial Zone	UC-IC Zone
Unincorporated Community Industrial Park Zone	UC-IP Zone
Unincorporated Community Light Industrial Zone	UC-IL Zone
Unincorporated Community Heavy Industrial Zone	UC-IH Zone
Eola Unincorporated Community Commercial	Eola UC-C Zone
Eola Unincorporated Community Industrial Commercial	Eola UC-IC Zone
Eola Unincorporated Community Industrial	Eola UC-I Zone

Rickreall Unincorporated Community Commercial
 Rickreall Unincorporated Community Industrial Commercial
 Rickreall Unincorporated Community Industrial
~~Grand Ronde Commercial~~Northwest Polk Community
Commercial
 Commercial Highway / Tourist
 Grand Ronde Light Industrial
 Grand Ronde Heavy Industrial
 Grand Ronde Public Assembly Zone
 Grand Ronde Public Works / Safety
 Limited Use Overlay Zone

Rickreall UC-C Zone
 Rickreall UC-IC Zone
 Rickreall UC-I Zone
~~GR / C Zone~~NPC-C
Zone
 CH / T Zone
 GR / LI Zone
 GR / HI Zone
 GR / PA Zone
 GR / PW Zone
 LU Zone

~~111.080. CERTIFICATION.~~ ~~The Board of Commissioners and the County Clerk shall certify that "this is the official zoning map referred to in Section 113.060 of the Polk County Zoning Ordinance". [Amended by Ordinance 88-19]~~

~~111.090. - ARRANGEMENT OF OFFICIAL ZONING MAP.~~ ~~The official map may consist of several sheets or pages, which pages shall be listed on a cover page together with the date and number of each page. The certification of the official zoning map shall appear on the cover page.~~

- (A) The Official Zoning Map adopted with an effective date of April 2011, exists as an electronic map layer within the Polk County geographic information system (GIS) at a scale of 1:24,000. The Official Zoning Map shall be maintained by the Planning Director. [Amended by Ordinance 11-]
- (B) The Official Zoning Map shall depict the zoning designations for all properties located in Polk County, and shall be consistent with the Polk County Comprehensive Plan Map. The Official Zoning Map shall be the final authority as to the zoning status of land and water areas, buildings and other structures. The Official Zoning Map shall be available for review through the Polk County GIS at the Community Development Department during office business hours. [Amended by Ordinance 11-]
- (C) A copy of the Official Zoning Map shall be archived onto permanent media to ensure the electronic information is protected. [Amended by Ordinance 11-]

~~111.100. LOCATION.~~ ~~Regardless of the existence of purported copies of the official zoning map which may from time to time be made or published, there shall be only one official zoning map which shall be located in the County Clerk's office, and which official zoning map shall be the final authority as to the zoning status of land and water areas, buildings and other structures. An administrative counterpart of the official zoning map shall be maintained in the Planning Division office.~~

111.110. AMENDING OFFICIAL ZONING MAP. A zone change is a reclassification of any area on the Official Zoning Map from one zoning designation to another, after the proposed change has been reviewed and a recommendation made by the Hearings Officer or the Planning Commission. Such change shall be an ordinance enacted by the Board of Commissioners after proceedings have been accomplished in accordance with the provisions of this chapter. Annexation of territory to a city shall result in automatic amendment of the Official Zoning Map as of the effective date of annexation. When the Official Zoning Map is amended by ordinance or annexation to a city, the Planning Director shall cause the changes to be made to the Official Zoning Map. A new copy of the Official Zoning Map shall be recorded onto permanent media whenever the Map is amended. When an ordinance has been enacted amending the official

zoning map, the Director shall so change and annotate the official map and the cover sheet to show the ordinance or resolution number and date of the change. The Director shall certify that the map has been changed as set forth in the amending ordinance and shall indicate the date the map was changed. ~~[Amended by Ordinance 11-]~~

111.120. REPLACEMENT OF OFFICIAL ZONING MAP. In the event the ~~Official Zoning Map~~ becomes damaged, destroyed, lost, or difficult to interpret ~~because of the nature and number of changes and additions~~, or when it is necessary or desirable for some other reason, the Board of Commissioners, upon recommendation of the Planning Commission, may adopt all or part of a new Official Zoning Map ~~w zoning map~~ by resolution. ~~Such, and such map shall supersede the prior Official Zoning Map. The superseded map shall be filed for reference purposes for at least one (1) year. The new Official Zoning Map may correct drafting editing or other errors or omissions in the prior Official Zoning Map, but no such correction shall have the effect of amending the ordinance or any subsequent amendment thereof. The replacement map or each page in the case of individual sheets or pages shall be certified by the Board of Commissioners and County Clerk that "this official zoning map supersedes and replaces the official zoning map (date of map being replaced) as part of the Polk County Zoning Ordinance."~~ ~~[Amended by Ordinance 11-]~~

111.130. RULES FOR INTERPRETATION OF ZONE BOUNDARIES. Where uncertainty exists as to the boundaries of zones as shown on the Official Zoning Map, the following rules shall apply:

- (A) Boundaries indicated as approximately following the center lines of streets, highways, or alleys shall be construed to follow such center lines;
- (B) Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines;
- (C) Boundaries indicated as approximately following county boundaries shall be construed as following county boundaries;
- (D) Boundaries indicated as following railroad lines shall be construed to be midway between the main tracks.
- (E) Boundaries indicated as approximately following the center lines of streams, rivers, canals, lakes, or other bodies of water shall be construed to follow such center lines;
- (F) Boundaries indicated as parallel to our extensions of features indicated in subsections (A) through (E) above shall be so construed. Distances not specifically indicated on the official zoning map shall be determined by the scale of the map;
- (G) Where physical or cultural features existing on the ground are at variance with those shown on the ~~Official Zoning Map~~, or in other circumstances not covered by subsections (A) through (F) above, the director shall interpret the zone boundaries, and if need be, may refer the matter to the Board of Commissioners for their interpretation. ~~[Amended by Ordinance 88-19]~~

~~**111.140. ZONING MAP AMENDMENTS.** A map zone change is a reclassification of any area from one zone or district to another, after the proposed change has been reviewed and a recommendation made by the Hearings Officer or the Planning Commission. Such change shall be an ordinance enacted by the Board of Commissioners after proceedings have been accomplished in accordance with the provisions of this chapter. ~~[Amended by Ordinance 88-21]~~~~

111.150. INITIATION OF A ZONE CHANGE BY POLK COUNTY.

- (A) A zone change may be initiated by Polk County only when the change proposed is in the public interest.

- (B) Proceedings to reclassify premises as to zone initiated by Polk County shall be by resolution, and the resolution shall be referred to the Planning Commission, if legislative, and the Hearings Officer, if quasi-judicial. The Director shall hereupon fix a date for hearing before the hearing body and give notice of such hearing as provided in Sections 111.340 through 111.370.
- (C) After the hearing, the Planning Commission or Hearings Officer shall make a recommendation to the Board of Commissioners. [Amended by Ordinance 88-21]

111.160. INITIATION OF ZONE CHANGE. Property owners, or persons purchasing property under contract, if they state in writing that they are purchasing the property under contract, may file a zone change petition. The petition shall be in writing on forms provided by the Planning Director and shall be filed with the Planning Director not less than 45 days prior to the date of the hearing. The petition shall contain the following information:

- (A) The present zone;
- (B) The proposed zone;
- (C) The street address, or where none exists, the location of the property;
- (D) The legal description of the property sought to be reclassified;
- (E) The names, addresses and zip codes of the owner(s) of the property sought to be reclassified; and
- (F) The signatures of the owners of at least 50 percent of the area of the property sought to be reclassified and the extent or percentage of interest or portion of the property as may be owned by the person signing the petition.

111.170. ZONE CHANGE SIGNATURES: HOW COUNTED. Pursuant to Section 111.160 (F), the following rules shall apply:

- (A) **Tenants in Common.** When but one tenant in common, or several but less than all, signs a zone change petition or waiver it shall be counted only for such interest or portion of the common property as the person or persons signing may own.
- (B) **Tenants by the Entirety; Joint Tenancy.** Where property is owned by a husband and wife as tenants by the entirety and only one of them signs, he or she shall be deemed the owner of 1/2 of the property and shall be counted accordingly. Where property is owned by two (2) or more persons under an estate having the attributes of a joint tenancy or right of survivorship each tenant shall be deemed the owner of so much of the property as he would receive if the joint property were divided equally between such tenants.
- (C) **Purchasers Under Contract.** Any person purchasing property under a contract of sale may sign a petition, waiver, or other instrument required by this ordinance, as owner, provided that he states he is purchasing the property under contract.
- (D) **Government Property.** Notwithstanding the fact that the consent of the federal, state, county, or local government, or the agents thereof, is not necessary to any zone change petition or other petition required by this ordinance, any such governmental unit or agency may, however, remonstrate and object to any proposed change, and such objection, remonstrance, or other instrument shall be signed by the administrative head of such governmental unit having authority over the property.
- (E) **Corporations.** Where property is owned by a private corporation, a petition, waiver, or other instrument convening such property under this ordinance shall be signed by an authorized officer of the corporation.

- (F) **Prima Facie Proof of Ownership.** When any person signs as the owner of property or as an officer of a public or private corporation owning the property, or as an attorney in fact or agent of any such owner, or when any person states that he is buying the property under contract, the Hearings Officer and the governing body may accept such statements to be true, unless the contrary be approved, and except where otherwise in this ordinance more definite and complete proof is required, the Hearings Officer or governing body may demand proof that the signer is such owner, officer, attorney in fact, or agent. [Amended by Ordinance 88-21]

111.180. FILING AND CHECKING PETITION. After the complete zone change petition has been filed with the Planning Director, the staff shall check the petition and determine if the petition is complete under the provisions of Section 111.170, and if the petition is sufficient, the Planning Director shall then fix the time of the hearing on such petition before the Planning Commission or Hearings Officer and cause notice of hearing to be given as provided in Sections 111.340 through 111.370. [Amended by Ordinance 88-21]

111.190. ZONE CHANGE HEARING BEFORE THE HEARINGS OFFICER. The Hearings Officer shall hold a public hearing as prescribed in Chapter 111 on the complete petition for zone change. After concluding this hearing, the Hearings Officer shall prepare a report setting forth a summary of facts and conditions involved in the reclassification and submit the same, together with a recommendation to the Board of Commissioners. [Amended by Ordinance 88-21]

111.200. ZONE CHANGE HEARING BEFORE THE BOARD OF COMMISSIONERS. The Board of Commissioners shall hold a public hearing on the proposed zone change as provided in Chapter 111. Final decision by the Board of Commissioners shall not be effective until 21 days after mailing of the decision. Filing of an appeal to the Land Use Board of Appeals stays all proceedings by all parties in connection with the matter appealed until the appeal has been resolved. [Amended by Ordinance 88-21]

111.210. FINAL ACTION BY THE BOARD OF COMMISSIONERS. Any zone change or reclassification of property shall be by ordinance which shall be passed by the Board of Commissioners. Any denial of a proposed zone change shall be by order. A final decision by the Board of Commissioners shall not be effective until 21 days after mailing of the decision. Filing of an appeal to the Land Use Board of Appeals stays all proceedings by all parties in connection with the matter appealed until the appeal has been resolved. Whenever any premises are reclassified as to zone, or a new zone established, or boundary lines of a zone changed, the official zoning map shall be changed as provided in Section 111.140. [Amended by Ordinance 88-21]

111.220. FILING A LAND USE APPLICATION.

- (A) Application for any land use permit or determination under this ordinance shall be submitted to the Community Development Department on forms provided by the County Planning Director. The application shall be accompanied by the appropriate fee(s) as adopted by the Board of Commissioners. An application may be filed by:
- (1) The owner of the subject property;
 - (2) A purchaser thereof under a duly executed written contract, when the purchaser states on the application he or she is the contract purchaser and the seller consents in writing to the application;
 - (3) A lessee in possession of the subject property, when the owner consents in writing to the application; or
 - (4) The agent for any of the foregoing persons when duly authorized in writing by the owner of the property.

- (B) Concurrent requests do not require multiple fees; however, the higher of multiple application fees shall be charged
- (C) If an application for a permit, limited land use decision or zone change is incomplete, the Planning Director shall notify the applicant in writing of exactly what information is missing within 30 days of receipt of the application and allow the applicant to submit the missing information. The application shall be deemed complete upon receipt by the Planning Director of:
 - (1) All of the missing information;
 - (2) Some of the missing information and written notice from the applicant that no other information will be provided; or
 - (3) Written notice from the applicant that none of the missing information will be provided. [Amended by Ordinance 10-04]

Note: This provision does not preclude the applicant from submitting additional information at a later date.

- (D) On the 181st day after first being submitted, the application is void if the applicant has been notified of the missing information as required under subsection (C) of this section and has not submitted:
 - (1) All of the missing information;
 - (2) Some of the missing information and written notice that no other information will be provided; or
 - (3) Written notice that none of the missing information will be provided. [Amended by Ordinance 10-04]

111.230. NOTICE OF APPLICATION.

- (A) Notice of an application which requires a public hearing shall be made as prescribed in Sections 111.340 through 111.370 of the Polk County Zoning Ordinance.
- (B) Notification shall be made at least 20 days before the date on which the application is to be heard. Those notified have an opportunity to comment in writing to the Planning Director concerning the application. [Amended by Ordinance 90-19]

111.235 SPECIAL TRANSPORTATION NOTIFICATION

- (A) Polk County will provide ODOT notification to ensure that ODOT is involved as early as possible in the assessment of any redevelopment or new development proposal within the Rickreall community with a trip generation potential that significantly exceeds the trip generation assumptions for the Rickreall community adopted into the Polk County TSP as part of the Rickreall Junction Facility Plan. The ODOT contact for any such development shall be the ODOT ~~Area 3~~Region 2 Planner. [Amended by Ordinance 11-]
- (B) Polk County will provide ODOT notification to ensure that ODOT is involved as early as possible in the assessment of any redevelopment or new development proposal within the Fort Hill Interchange Management Area Overlay Zone with a trip generation potential that significantly exceeds the trip generation assumptions used for the Fort Hill IAMP. The ODOT contact for any such development shall be the ODOT ~~Area 3~~Region 2 Planner. [Amended by Ordinances 07-06 and 11-]

111.240. ADMINISTRATIVE REVIEW. Administrative review shall be conducted by the Planning Director as follows:

- (A) Type A Procedure. This procedure shall apply to applications for land partitions; farm dwellings in the Exclusive Farm Use (EFU) and Farm Forest (F/F) zones; property line adjustments (except for those exclusions noted in Chapter 91 of the Polk County Code; forest dwellings in the Timber Conservation (TC) and Farm Forest (F/F) zones; lot-of-record determinations as specified by this ordinance; placement of manufactured homes in the Suburban Residential (SR) zone; use of a manufactured home for temporary hardship in all zones; administrative variances; land use determinations; and all other listed uses as specified. Under this procedure, the Planning Director shall render a final decision or, alternatively, may refer the matter to the Hearings Officer as provided under Section 111.260. Decisions under this procedure may be appealed ~~to the Board of Commissioners~~ as provided under Section 111.280.
- (B) Type B Procedure. This procedure shall apply to all applications not specified under Section 111.240 (A), unless an initial hearing is required by a specific provision of the Polk County Zoning Ordinance. Notice of the proposed action shall be made pursuant to Section 111.350. Those notified, including the applicant, shall be given 10 days from the date of the notification to either submit a written request for public hearing before the Hearings Officer, or bring to the attention of the Planning Director objections to approval or any adverse consequences or incompatibilities that may result from approval. A request for a hearing shall be in writing and shall state the basis for requesting the hearing and shall be accompanied by payment of a fee, specified in the County's fee resolution, to defray the cost of the hearing. The amount of the fee shall not exceed the limits established by ORS 215.416(11). No fee is required if the hearing is requested by the Board, Commission, Department of Land Conservation and Development, or the Director. [Amended by Ordinances 92-38, 97-9, and 09-02]

111.245. NOTICE OF TYPE A PROCEDURE.

- (A) Notice of applications under Section 111.240 (A) shall be sent for review and comment to all groups that are registered with the Planning Division to receive electronic notification of land use applications within the geographical area that includes the site of the land use request and any affected jurisdiction, state, or local agency as determined by the Planning Director. [Amended by Ordinances 97-9 and 09-02]
- (B) Notice shall be mailed to the Oregon Department of Transportation for any land use change or development requiring County review and approval which requires direct access to a state highway or which is located within 500 feet of a state highway ~~or public use airport.~~ Notice shall be mailed to the owner of an airport, defined by the Oregon Department of Aviation as a "public use airport," and to the Oregon Department of Aviation for any land use change or development requiring County review and approval within 5,000 feet of a visual flight rules public use airport or is within 10,000 feet of an instrument flight rules public use airport. [Amended by Ordinances 98-5 and 11-]

111.250. ACTION BY PLANNING DIRECTOR OR HEARINGS OFFICER.

- (A) Applications submitted under section 111.240 may be granted only if they meet criteria established in the Polk County Zoning Ordinance and/or Comprehensive Plan. Decisions shall be made by the Polk County Planning Director or Hearings Officer only after reviewing materials submitted with the application and other applicable evidence and hearing testimony from Planning Division staff, the applicant(s) and other interested parties.
- (B) If the application was complete when first submitted or the applicant submits additional information as described in Section 111.220 (C), within 180 days of the

date the application was first submitted, approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted. [Amended by Ordinance 10-04]

- (C) Polk County shall take final action on an application for a permit, limited land use decision, or zone change, for land within an urban growth boundary and applications for mineral aggregate extraction, including resolution of all appeals under Section 111.280, within 120 days after the application is deemed complete pursuant to Section 111.220 (C). Polk County shall take final action on all other applications for a permit, limited land use decision, or zone change, including resolution of all appeals under Section 111.280, within 150 days after the application is deemed complete pursuant to Section 111.220 (C). [Amended by Ordinance 10-04]
- (D) The 120 or 150-day period set in subsection (C) of this section may be extended for a specified period of time at the written request of the applicant. The total of all extensions may not exceed 215 days. [Amended by Ordinance 10-04]
- (E) The 120 or 150-day period set in subsection (C) of this section does not apply to an amendment to the Polk County Comprehensive Plan or the provisions of the Zoning Ordinance. [Amended by Ordinance 10-04]

111.260. REFERRAL BY PLANNING DIRECTOR.

- (A) The Polk County Planning Director may decline to act on an application under section 111.240 and refer it to the Polk County Hearings Officer. Referral shall be made within 30 days after the date on which the application is received, and shall be heard at the first regular meeting of the Hearings Officer scheduled after the referral.
- (B) Action of the Hearings Officer on a referral is final and may be appealed to the Polk County Board of Commissioners in accordance with section 111.280.
- (C) The Director shall notify the applicant in writing of a referral to the Hearings Officer. Notice shall be sent within seven days after the date of referral.

111.270. NOTICE OF ACTION BY PLANNING DIRECTOR OR HEARINGS OFFICER.

The Polk County Planning Director shall send notice of any action taken on an application under Section 111.240 to all groups that are registered with the Planning Division to receive electronic notification of land use applications within the geographical area that includes the site of the land use action, all property owners of record within the notification area as specified in Section 111.350, and any person who is adversely affected or aggrieved by the decision. Notification shall be mailed within ten days after action is taken on the application. However, failure to receive notice does not affect the validity of the action. [Amended by Ordinance 97-9 and 09-02]

111.275. ZONE CHANGE CRITERIA. Pursuant to Section 111.160, a zone change may be approved, provided that the request satisfies all applicable requirements of this ordinance, and provided that with written findings, the applicant(s) clearly demonstrate compliance with the following criteria:

- (A) The proposed zone is appropriate for the comprehensive plan land use designation on the property and is consistent with the purpose and policies for the applicable comprehensive plan land use classification;
- (B) The proposal conforms with the purpose statement of the proposed zone;
- (C) The uses allowed in the proposed designation will not significantly adversely affect allowed uses on adjacent lands;
- (D) Adequate public facilities, services, and transportation networks are in place, or are planned to be provided concurrently with the development of the property;

- (E) The proposed change is appropriate taking into consideration the following:
 - (1) Surrounding land uses,
 - (2) The density and pattern of development in the area,
 - (3) Any changes which may have occurred in the vicinity to support the proposed amendment;
- (F) The proposal complies with any applicable intergovernmental agreement pertaining to urban growth boundaries and urbanizable land; and
- (G) The proposal complies with Oregon Revised Statutes, all applicable statewide planning goals and associated administrative rules. If an exception to one or more of the goals is necessary, the exception criteria in Oregon Administrative Rules, Chapter 660, Division 4 shall apply. [Amended by Ordinance 98-3]
- (H) The road function, classification, capacity and existing and projected traffic volumes have been considered. To allow comprehensive plan map and zone map amendments that may generate trips up to the planned capacity of the transportation system, Polk County will consider road function, classification, road capacity and existing and projected traffic volumes, as criteria for comprehensive plan map and zone map amendments. [Amended by Ordinance 11-]

111.280. APPEAL AND REMAND CONSIDERATION PROCEDURES TO BOARD OF COMMISSIONERS.

- (A) An appeal may be ~~taken filed to the Polk County Board of Commissioners~~ by any person whose interests are affected adversely or who is aggrieved by action on an application under Section 111.240. An appeal must be filed with the Community Development Department within 12 days after the mailing of notice to the applicant. [Amended by Ordinances 09-02, and 10-04, and 11-]
- (B) On receiving an appeal or request by the applicant for reconsideration of a land use application on remand from the Land Use Board of Appeals, the Community Development Department shall ~~certify and deliver to the Board a copy of the original application and copies of all other papers~~ all other documents constituting the entire record of the action under appeal or remand. [Amended by Ordinance 11-]
- (C) Upon receipt of an appeal ~~by filed with the Community Development Department of a decision by the Planning Director~~ or request by the applicant for reconsideration of a land use application on remand from the Land Use Board of Appeals, the Board of Commissioners shall review the matter and thereafter set the matter for a public hearing and cause notice of the time and place of the hearing to be given as provided under Section 111.340. The public hearing, as determined by the Board of Commissioners, will be conducted by either the Hearings Officer or the Board. The decision resulting from this public hearing shall constitute the final county decision. Decisions of the Hearings Officer shall thereafter be ratified by the Board of Commissioners as part of the Board's Consent agenda. [Amended by Ordinance 11-]
- (D) Upon receipt of an appeal filed with the Community Development Department of a decision by the Hearings Officer after a first evidentiary hearing, the Board of Commissioners shall review the matter and thereafter either ratify the Hearings Officer's decision or set the matter for a public hearing and cause notice of the time and place of the hearing to be given as provided under Section 111.340. The public hearing will be conducted by the Board of Commissioners. The Board's affirmation of the Hearings Officer's decision or the Board's decision after holding a public hearing shall constitute the final county decision. [Amended by Ordinance 11-]

- (E) The Planning Director shall send notice of ~~the~~ a public hearing under subsections (C) or (D) of this section to all groups that are registered with the Planning Division to receive electronic notification of land use applications within the geographical area that includes the site of the land use action, all property owners of record within the notification area as specified in Section 111.350, and any person who is adversely affected or aggrieved by the decision. A hearing may be continued from time to time if the Board or Hearings Officer considers it advisable. [Amended by Ordinances 09-02 and 11-]
- ~~(F)~~ The appeal or request for reconsideration on remand shall be accompanied by payment of a fee, specified in the County's fee resolution, to defray the cost of the hearing. [Amended by Ordinances 09-02 and 11-]
- ~~(G)~~ Filing of an appeal stays all proceedings by all parties in connection with the matter appealed until the Board of Commissioners or Hearings Officer has made a decision on the appeal. [Amended by Ordinances 89-1 and 97-9, and 11-]

111.290. CALL OF BOARD OF COMMISSIONERS.

- (A) Two or more members of the Polk County Board of Commissioners may call up an action, which is not an appeal decision, by the Polk County Planning Director or the Hearings Officer or the Planning Director. However, the call must be made at the first meeting after notice of the decision is presented. [Amended by Ordinance 11-]
- ~~(B)~~ The provisions of Section 111.280 (B) and (C) apply with respect to a matter called up under this section. [formerly 122.070]
- ~~(B)~~ On receiving a call of the Board of Commissioners, the Community Development Department shall deliver to the Board the application and all other documents constituting the entire record of the action under appeal or remand. [Amended by Ordinance 11-]
- ~~(C)~~ The Board of Commissioners shall set the matter for a public hearing and cause notice of the time and place of the hearing to be given as provided under Section 111.340. The public hearing, as determined by the Board of Commissioners, will be conducted by either the Hearings Officer or the Board. The decision resulting from this public hearing shall constitute the final county decision. Decisions of the Hearings Officer shall thereafter be ratified by the Board of Commissioners as part of the Board's Consent agenda. [Amended by Ordinance 11-]
- ~~(D)~~ The Planning Director shall send notice of a public hearing under subsection (C) of this section to all groups that are registered with the Planning Division to receive electronic notification of land use applications within the geographical area that includes the site of the land use action, all property owners of record within the notification area as specified in Section 111.350, and all others who received notice of the Planning Director's or Hearings Officer's decision that has been called. A hearing may be continued from time to time if the Board or Hearings Officer considers it advisable. [Amended by Ordinance 11-]
- ~~(E)~~ A call by the Board of Commissioners stays all proceedings by all parties in connection with the matter until the Board of Commissioners or Hearings Officer has made a decision on the call. [Amended by Ordinance 11-]

111.300. ACTION BY BOARD OF COMMISSIONERS.

- (A) Pursuant to Sections ~~111.280 and~~ 111.290, the Polk County Board of Commissioners may ~~shall~~ review any action, which is not an appeal decision, of the Polk County Polk County Planning Director or the Hearings Officer or the Polk County Planning Director. ~~The Board may remand the matter for further investigation and consideration, in which case the Planning Director or Hearings Officer or Planning~~

~~Director~~ shall conduct such further investigation as is necessary and report findings and conclusions in writing to the Board. [Amended by Ordinance 11-]

- (B) Pursuant to Section 111.290, after conducting a public hearing to consider an action, which is not an appeal decision, and appeal, and finding that the facts therein stated do not warrant further hearing, the Board may summarily affirm the action. [Amended by Ordinance 11-] and deny the appeal.
- (C) Pursuant to Section 111.290, after conducting a public hearing to consider an action on an appeal or non-appeal decision, and appeal, the Board may affirm or reverse wholly or partly, or modify, any action ~~appealed~~, and may impose such additional conditions as it finds warranted by the facts. The Board's decision shall constitute the final local decision. [Amended by Ordinance 11-]

111.310. EFFECTIVE DATE. Land use actions granted under section 111.240 become effective on the ~~40th~~ 12th day after mailing of the notice of the decision or after the regular meeting of the Polk County Board of Commissioners following such mailing, whichever is later. However, if the matter has been called up by the Board under Section 111.290, or the matter has been appealed under Section 111.280, the land use action does not become effective until the Board or Hearings Officer has taken final action. A final county decision by the Board of Commissioners or Hearings Officer shall not be effective until 21 days after mailing of the decision. An appeal of a land use action by the Board of Commissioners or the Hearings Officer to the Land Use Board of Appeals stays all proceedings by all parties in connection with the matter until the appeal has been resolved. [Amended by Ordinances 97-9 and 11-]

111.320. HOLDING PUBLIC HEARINGS. Any hearing shall be public and may be continued or postponed from time to time. At any such hearing all persons shall be given an opportunity to be heard.

111.330. APPEARANCES OF INTERESTED PERSONS, REMONSTRANCES. Any person or persons desiring to be heard for or against the subject of the hearing may file with the governing body, Hearings Officer or the Planning Commission, whichever holds the hearing, a statement in writing, or may appear and respond orally at the hearing, either in person or by authorized representative. Written remonstrances or objections to the proposed zone change, variance, conditional use or other subject of hearing, may be filed with the hearings body.

[Amended by Ordinance 88-21]

111.340. NOTICE OF PUBLIC HEARING; CONTENT. Upon the fixing of the time of public hearing on all matters before the appropriate hearing body, the Director shall give notice as set forth in this chapter. The notice shall:

- (A) Explain the nature of the application and the proposed use or uses which could be authorized;
- (B) List the applicable criteria from the ordinance and the plan that apply to the application at issue;
- (C) Set forth the street address or other easily understood geographical reference to the subject property.
- (D) State the date, time and location of the hearing.
- (E) State that failure of an issue to be raised in a hearing, in person or in writing, or failure to provide sufficient specificity to afford the hearings body an opportunity to respond to the issue, precludes appeal to the Land Use Board of Appeals on that issue;

- (F) State that a copy of the application, all documents and evidence relied upon by the applicant, and applicable criteria, are available for inspection at no cost and will be provided at reasonable cost;
- (G) State that a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing, and will be provided at a reasonable cost; and include a general explanation of the requirements for submission of testimony and the procedure for conduct of hearings. [Amended by Ordinances 89-17 and 88-21]
- (H) Include the name of a local government representative to contact and the phone number where additional information may be obtained. [Amended by Ordinance 11-]

111.350. MAILING OF NOTICE; NOTIFICATION AREA; FAILURE TO RECEIVE NOTICE.

- (A) Notices of public hearing to be held by the hearing body, notice of an application to be processed as a Type B procedure pursuant to Section 111.240 (B), or notice of any action taken on an application by the Planning Director or Hearings Officer shall be mailed to the applicant and to owners of record on the most recent property tax assessment roll where such property is located:
 - (1) Within 100 feet of the property which is the subject of the notice, where the subject property is wholly or partly within an urban growth boundary;
 - (2) Within 250 feet of the property which is the subject of the notice, where the subject property is outside an urban growth boundary and not within a farm or forest zone; or
 - (3) Within 750 feet of the property which is the subject of the notice, where the subject property is within a farm or forest zone.
- (B) Notices of public hearing to be held by the hearing body shall be mailed 20 days prior to the date of the hearing.
- (C) Failure to receive notice by mail as provided in this section shall not affect the validity of the proceedings if the County can demonstrate by affidavit that such notice was given.
- (D) Notice of an application to be processed as a Type B procedure pursuant under Section 111.240 (B) and public hearing notices shall be mailed to all groups that are registered with the Planning Division to receive electronic notification of land use applications within the geographical area that includes the site of the land use action. [Amended by Ordinances 89-17, 97-9 and 09-02]
- (E) Notice of a public hearing shall be mailed to the owners of public-use airports if the property subject to the land use permit or zone change is located:
 - (1) Within 5,000 feet of a visual airport.
 - (2) Within 10,000 feet of an instrument airport. [Amended by Ordinance 98-5]
- (F) Notice shall be mailed to the Oregon Department of Transportation for any land use change or development requiring County review and approval which requires access to a state highway or which is located within 500 feet of a state highway. [Amended by Ordinance 11-]

111.360. POSTING NOTICE.

- (A) Notice of all public hearings related to an application to be processed as a Type B procedure pursuant to Section 111.240 (B) required by the provisions of this ordinance, except for legislative text amendments, shall be given by posting a sign

on the subject property within 10 feet of whatever boundary line of such land abuts the most traveled public road or street, and if no public road abuts thereon, then facing in such a manner as may be most readily seen by the public. ~~[Amended by Ordinance 11-]~~

- (B) It shall be the responsibility of the applicant to provide the sign frame and place such notice at least 20 days prior to the public hearing. A placard with printed information on the proposed change shall be provided by the Planning Director for the sign structure, and shall be obtained for mounting by the applicant or his representative prior to posting.
- (C) The posted sign shall be removed by the applicant or the applicant's representative within five days after final action on the application. [Amended by Ordinance 89-17]

111.370. PUBLISHING NOTICES. Notice of all public hearings ~~to be held~~ required by the provisions of this ordinance on amendments to the text of the ordinance, on zone changes and Comprehensive Plan amendments, shall be given by publishing such notice in a newspaper of general circulation in the county at least once not less than 20 days prior to said hearing. [Amended by Ordinances 219- and 88-21, and 11-]

111.380. CONDUCT OF HEARING; CONTINUANCE; EXTENSION; REOPENING RECORD.

- (A) At the beginning of a hearing under the Comprehensive Plan or land use regulations of Polk County, a statement shall be made to those in attendance that:
 - (1) Lists the applicable substantive criteria;
 - (2) States that testimony and evidence must be directed toward the criteria described in paragraph (1) of this subsection, or other criteria in the Plan or implementing ordinances which the person believes to apply to the decision; and
 - (3) States that failure to raise an issue with sufficient specificity to afford the hearings body an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals.
- (B) If additional documents or evidence in support of an application is submitted at a public hearing, any party shall be entitled to a continuance of the hearing. Such a continuance is not subject to the limitations of ORS 215.428.
- (C) Unless there is a continuance, if a participant so requests before the conclusion of the initial evidentiary hearing, the record shall remain open for at least seven days after the hearing. Such an extension shall not be subject to the limitations of ORS 215.428.
- (D) When the Board of Commissioners, Planning Commission or Hearings Officer reopens a record to admit new evidence or testimony, any person may raise new issues which relate to the new evidence, testimony or criteria for decision-making which apply to the matter at issue. [Amended by Ordinance 89-17]

1
2
3
4
5 **BEFORE THE BOARD OF COMMISSIONERS FOR**
6 **POLK COUNTY, OREGON**

7
8 In the matter of Legislative Amendment)
9 LA 09-02 Update of the Polk County)
10 Transportation Systems Plan including)
11 Amending the Transportation Element)
12 of the Polk County Comprehensive Plan,)
13 Polk County Zoning Ordinance Chapter)
14 111 – Administration and Procedures and)
15 Chapter 112 - Development Standards)

RECORDED IN POLK COUNTY
Valerie Unger, County Clerk
Commissioners' Journal

CJ 2009-354
12/08/2009 10:35:25 AM

16 **ORDINANCE NO. 09-08**

17
18
19 **WHEREAS**, the 1998 Polk County Transportation Systems Plan requires updating for
20 the next 20 year planning horizon; and

21
22 **WHEREAS**, on July 21, 2009, Polk County initiated the proposed legislative
23 amendment (Legislative Amendment 09-02) to update the Transportation Systems Plan; and

24
25 **WHEREAS**, on July 17, 2009 a duly noticed open house was held providing
26 opportunity for comments from the public; and

27
28 **WHEREAS**, on September 15, 2009 the Polk County Planning Commission
29 conducted a duly noticed public hearing and received an unlimited amount of written and oral
30 testimony and continued the public hearing until September 29, 2009; and

31
32 **WHEREAS**, on September 29, 2009 the Polk County Planning Commission
33 deliberated on the proposed amendment and voted unanimously to recommend approval of
34 Legislative Amendment 09-02 to the Polk County Board of Commissioners; and

35
36 **WHEREAS**, on September 30, 2009 the Board of Commissioners conducted a duly
37 noticed public hearing and received a recommendation in support of Legislative Amendment
38 09-02 from the Polk County Planning Division staff and received written and oral testimony
39 and continued the public hearing until October 7, 2009; and

40
41 **WHEREAS**, on October 7, 2009 the Board of Commissioners requested additional
42 time to review the record, and the record was held open until October 20, 2009; and

43
44 **WHEREAS**, on October 21, 2009 the Board of Commissioners conducted a duly
45 noticed public hearing and received an unlimited amount of written and oral testimony; and

46
47 **WHEREAS**, on October 21, 2009 having fully considered all testimony in the record,
48 the Polk County Board of Commissioners openly deliberated on Legislative Amendment 09-
49 02 and voted unanimously to approve the updated Transportation Systems Plan; now therefore,

1
2
3 **THE POLK COUNTY BOARD OF COMMISSIONERS ORDAINS AS FOLLOWS:**

4
5 Sec. 1 Adopt findings in support of Polk County Planning File, LA 09-020, contained
6 in the staff report, and the final updates found in the Polk County Transportation Systems Plan,
7 dated December 2, 2009.

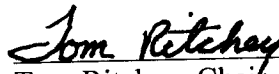
8
9 Sec. 2 The existing Transportation Element (Element M) of the Polk County
10 Comprehensive Plan be deleted in its entirety and replaced with the Polk County
11 Transportation Systems Plan, dated December 2, 2009, see Exhibit "A".

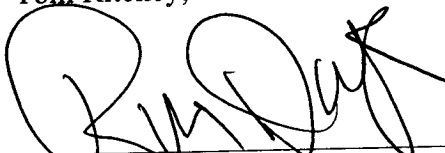
12
13 Sec. 3 Polk County adopts amendments to Polk County Zoning Ordinance Chapter
14 111 - Administration and Procedures and Chapter 112 - Development Standards of the Polk
15 County Zoning Ordinance be added, see Exhibit "B1" AND "B2".

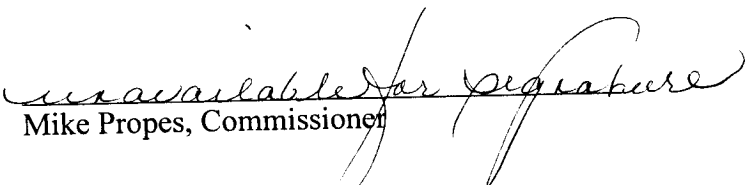
16
17 Sec. 4 That Polk County determines that an emergency related to the economic
18 welfare of the citizens of Polk County is declared and this ordinance is effective immediately
19 upon passage.

20
21 Dated this 2nd day of December 2009 at Dallas, Oregon.

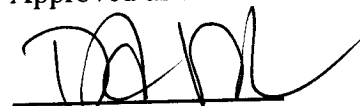
22 **POLK COUNTY BOARD OF COMMISSIONERS**

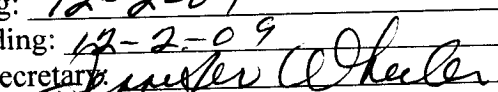
23
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26 
27 Tom Ritchey, Chair

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30
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32 
33 Ron Dodge, Commissioner

34
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37 
38 Mike Propes, Commissioner

39
40
41 Approved as to Form:

42 
43
44 David Doyle
45 County Counsel

46
47
48 First Reading: 12-2-09
49 Second Reading: 12-2-09
50 Recording Secretary: 

CHAPTER 111
ADMINISTRATION AND PROCEDURES

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111.370.	Publishing Notices
111.380.	Conduct of Hearing; Continuance; Extension; Reopening Record

111.010 ADMINISTRATION OF THE ORDINANCE. This ordinance shall be jointly administered by the County Building Official and the Director of Planning.

The Building Official or other designated officer, prior to issuing any permit pertaining to the use of land or structures, or the erection or alteration of any structure, shall ascertain that the proposed use or construction shall in all ways conform to the requirements set forth in this ordinance.

The Planning Director shall handle all matters pertaining to zone changes, variances, and conditional uses, and other administrative matters as prescribed by this ordinance; and such other matters as directed by the Board of Commissioners.

111.020 MINIMUM REQUIREMENTS. In interpreting and applying this ordinance, the provisions herein shall be held to be the minimum requirements adopted for the promotion of the public health, safety, comfort, convenience, and general welfare.

111.030 EFFECT ON OTHER ORDINANCES, AGREEMENTS BETWEEN PARTIES. It is not intended by this ordinance to repeal, abrogate, annul or in any way to impair or interfere with any existing provision of law or ordinance, previously adopted, relating to the use of buildings or premises, or relating to the erection, construction, establishment, alteration, or enlargement of any buildings or improvements; nor is it intended by this ordinance to interfere with or abrogate or annul any easement, covenant, or other agreement between parties; provided, however, that where this ordinance imposes a greater restriction upon the erection, construction, establishment, alteration, or enlargement of buildings, structure, or improvements, or the use of any such structures or premises in said several zones or districts, or any of them, than is imposed or required by such existing provisions of this ordinance, the greater restriction shall control, except that such precedence of this ordinance shall not apply to valid and unexpired permits and/or uses previously granted under the terms and provisions of any ordinance.

111.040 INTERPRETATION OF ORDINANCE.

- (A) When, in the administration of this ordinance, there is doubt regarding the intent of the ordinance, the Director shall request an interpretation of the provision by the Board of Commissioners, who may issue an interpretation of the question if they have determined that such interpretation is within their power and is not a legislative act. Any interpretation of the ordinance shall be based on the following:
 - (1) The purpose and intent of the ordinance as applied to the particular section and question; and,
 - (2) The opinion of the County Counsel when requested by the Board of Commissioners.
- (B) The Board of Commissioners may decide that the interpretation of the question is not within their power without an ordinance amendment or that there is insufficient basis upon which to make an interpretation and may request the Director to study the problem, and where necessary, propose an amendment to the ordinance. [Amended by Ordinance #88-21, dated November 30, 1988.]

111.050 SIMILAR USES. The Director may permit in any zone any use not described or listed in this ordinance for any other zone if, in the opinion of the Director, the requested use is of the same general type and is similar to the uses permitted in the zone. Such review and permission shall be made in the same manner as other interpretations of this ordinance, as described in Section 111.040.

111.060 FEES. Fees shall be required by the Director to be paid at the time of filing of each petition or application for a farm or forest dwelling, lot-of-record determination, land use determination, conditional use, planned development, variance, land partition, lot line

adjustment, similar use decision, comprehensive plan amendment, or zone change. The fees required by this section shall be set by resolution adopted by the Board of County Commissioners. [Amended by Ordinance #267, dated September 3, 1980.]

111.070 ZONES: OFFICIAL MAP

FULL NAME

Suburban Residential Zone
 Acreage Residential 5 Acre Zone
 Limited Multi-Family Residential Zone
 Multi-Family Residential Zone
 High Rise Apartment Residential Zone
 Exclusive Farm Use Zone
 Farm/Forest Zone
 Farm Forest Overlay Zone
 Public Amusement and Recreation Zone
 Public and Private Cemeteries Zone
 Public and Private Education Facilities Zone
 Public and Private Hospital Zone
 Public Park Zone
 Public Service Zone
 Commercial Office Zone
 Commercial Retail Zone
 Commercial General Zone
 Industrial Commercial Zone
 Industrial Park Zone
 Light Industrial Zone
 Heavy Industrial Zone
 Rural Industrial Zone
 Mineral Extraction Zone
 Timber Conservation Zone
 Rural Commercial Zone
 Unincorporated Community Commercial Office Zone
 Unincorporated Community Commercial Retail Zone
 Unincorporated Community Commercial General Zone
 Unincorporated Community Industrial-Commercial Zone
 Unincorporated Community Industrial Park Zone
 Unincorporated Community Light Industrial Zone
 Unincorporated Community Heavy Industrial Zone
 Eola Unincorporated Community Commercial
 Eola Unincorporated Community Industrial Commercial
 Eola Unincorporated Community Industrial
 Rickreall Unincorporated Community Commercial
 Rickreall Unincorporated Community Industrial Commercial
 Rickreall Unincorporated Community Industrial
 Grand Ronde Commercial

DESIGNATION

SR Zone
 AR-5 Zone
 RL Zone
 RM Zone
 RH Zone
 EFU Zone
 F/F Zone
 FFO Zone
 PA Zone
 PC Zone
 PE Zone
 PH Zone
 PP Zone
 PS Zone
 CO Zone
 CR Zone
 CG Zone
 IC Zone
 IP Zone
 IL Zone
 IH Zone
 R-IND Zone
 ME Zone
 TC Zone
 R-COM Zone
 UC-CO Zone
 UC-CR Zone
 UC-CG Zone
 UC-IC Zone
 UC-IP Zone
 UC-IL Zone
 UC-IH Zone
 Eola UC-C Zone
 Eola UC-IC Zone
 Eola UC-I Zone
 Rickreall UC-C Zone
 Rickreall UC-IC Zone
 Rickreall UC-I Zone
 GR / C Zone

Commercial Highway / Tourist
Grand Ronde Light Industrial
Grand Ronde Heavy Industrial
Grand Ronde Public Assembly Zone
Grand Ronde Public Works / Safety
Limited Use Overlay Zone

CH / T Zone
GR / LI Zone
GR / HI Zone
GR / PA Zone
GR / PW Zone
LU Zone

111.080 CERTIFICATION. The Board of Commissioners and the County Clerk shall certify that "this is the official zoning map referred to in Section 113.060 of the Polk County Zoning Ordinance". [Amended by Ordinance #88-19, dated 1989.]

111.090 ARRANGEMENT OF MAP. The official map may consist of several sheets or pages, which pages shall be listed on a cover page together with the date and number of each page. The certification of the official zoning map shall appear on the cover page.

111.100 LOCATION. Regardless of the existence of purported copies of the official zoning map which may from time to time be made or published, there shall be only one official zoning map which shall be located in the County Clerk's office, and which official zoning map shall be the final authority as to the zoning status of land and water areas, buildings and other structures. An administrative counterpart of the official zoning map shall be maintained in the Planning Division office.

111.110 AMENDING OFFICIAL ZONING MAP. When an ordinance has been enacted amending the official zoning map, the Director shall so change and annotate the official map and the cover sheet to show the ordinance or resolution number and date of the change. The Director shall certify that the map has been changed as set forth in the amending ordinance and shall indicate the date the map was changed.

111.120 REPLACEMENT OF OFFICIAL ZONING MAP. In the event the official zoning map becomes damaged, destroyed, lost or difficult to interpret because of the nature and number of changes and additions, or when it is necessary or desirable for some other reason, the Board of Commissioners, upon recommendation of the Planning Commission, may adopt all or part of a new zoning map by resolution, and such map shall supersede the prior official zoning map. The superseded map shall be filed for reference purposes for at least one (1) year. The new official map may correct drafting or other errors or omission in the prior official zoning map, but no such correction shall have the effect of amending the ordinance or any subsequent amendment thereof. The replacement map or each page in the case of individual sheets or pages shall be certified by the Board of Commissioners and County Clerk that "this official zoning map supersedes and replaces the official zoning map (date of map being replaced) as part of the Polk County Zoning Ordinance."

111.130 RULES FOR INTERPRETATION OF ZONE BOUNDARIES. Where uncertainty exists as to the boundaries of zones as shown on the official zoning map, the following rules shall apply:

- (A) Boundaries indicated as approximately following the center lines of streets, highways, or alleys shall be construed to follow such center lines;
- (B) Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines;
- (C) Boundaries indicated as approximately following county boundaries shall be construed as following county boundaries;
- (D) Boundaries indicated as following railroad lines shall be construed to be midway between the main tracks.

8/41

- (E) Boundaries indicated as approximately following the center lines of streams, rivers, canals, lakes, or other bodies of water shall be construed to follow such center lines;
- (F) Boundaries indicated as parallel to our extensions of features indicated in subsections (A) through (E) above shall be so construed. Distances not specifically indicated on the official zoning map shall be determined by the scale of the map;
- (G) Where physical or cultural features existing on the ground are at variance with those shown on the official zoning map, or in other circumstances not covered by subsections (A) through (F) above, the director shall interpret the zone boundaries, and if need be, may refer the matter to the Board of Commissioners for their interpretation. [Amended by Ordinance #88-19, dated September 29, 1988.]

111.140 ZONING MAP AMENDMENTS. A map zone change is a reclassification of any area from one zone or district to another, after the proposed change has been reviewed and a recommendation made by the Hearings Officer or the Planning Commission. Such change shall be an ordinance enacted by the Board of Commissioners after proceedings have been accomplished in accordance with the provisions of this chapter. [Amended by Ordinance #88-21, dated November 30, 1988.]

111.150 INITIATION OF A ZONE CHANGE BY POLK COUNTY.

- (A) A zone change may be initiated by Polk County only when the change proposed is in the public interest.
- (B) Proceedings to reclassify premises as to zone initiated by Polk County shall be by resolution, and the resolution shall be referred to the Planning Commission, if legislative, and the Hearings Officer, if quasi-judicial. The Director shall hereupon fix a date for hearing before the hearing body and give notice of such hearing as provided in Sections 111.340 through 111.370.
- (C) After the hearing, the Planning Commission or Hearings Officer shall make a recommendation to the Board of Commissioners. [Amended by Ordinance #88-21, dated November 30, 1988. Sections 123.030 and 123.040 repealed by Ordinance #88-21, dated November 30, 1988.]

111.160 INITIATION OF ZONE CHANGE. Property owners, or persons purchasing property under contract, if they state in writing that they are purchasing the property under contract, may file a zone change petition. The petition shall be in writing on forms provided by the Planning Director and shall be filed with the Planning Director not less than 45 days prior to the date of the hearing. The petition shall contain the following information:

- (A) The present zone;
- (B) The proposed zone;
- (C) The street address, or where none exists, the location of the property;
- (D) The legal description of the property sought to be reclassified;
- (E) The names, addresses and zip codes of the owner(s) of the property sought to be reclassified; and
- (F) The signatures of the owners of at least 50 percent of the area of the property sought to be reclassified and the extent or percentage of interest or portion of the property as may be owned by the person signing the petition.

111.170 ZONE CHANGE SIGNATURES: HOW COUNTED. Pursuant to Section 111.160 (F), the following rules shall apply:

- (A) **Tenants in Common.** When but one tenant in common, or several but less than all, signs a zone change petition or waiver it shall be counted only for such interest or portion of the common property as the person or persons signing may own.
- (B) **Tenants by the Entirety; Joint Tenancy.** Where property is owned by a husband and wife as tenants by the entirety and only one of them signs, he or she shall be deemed the owner of 1/2 of the property and shall be counted accordingly. Where property is owned by two (2) or more persons under an estate having the attributes of a joint tenancy or right of survivorship each tenant shall be deemed the owner of so much of the property as he would receive if the joint property were divided equally between such tenants.
- (C) **Purchasers Under Contract.** Any person purchasing property under a contract of sale may sign a petition, waiver, or other instrument required by this ordinance, as owner, provided that he states he is purchasing the property under contract.
- (D) **Government Property.** Notwithstanding the fact that the consent of the federal, state, county, or local government, or the agents thereof, is not necessary to any zone change petition or other petition required by this ordinance, any such governmental unit or agency may, however, remonstrate and object to any proposed change, and such objection, remonstrance, or other instrument shall be signed by the administrative head of such governmental unit having authority over the property.
- (E) **Corporations.** Where property is owned by a private corporation, a petition, waiver, or other instrument conveying such property under this ordinance shall be signed by an authorized officer of the corporation.
- (F) **Prima Facie Proof of Ownership.** When any person signs as the owner of property or as an officer of a public or private corporation owning the property, or as an attorney in fact or agent of any such owner, or when any person states that he is buying the property under contract, the Hearings Officer and the governing body may accept such statements to be true, unless the contrary be approved, and except where otherwise in this ordinance more definite and complete proof is required, the Hearings Officer or governing body may demand proof that the signer is such owner, officer, attorney in fact, or agent. [Amended by Ordinance #88-21, dated November 30, 1988.]

111.180 FILING AND CHECKING PETITION. After the complete zone change petition has been filed with the Planning Director, the staff shall check the petition and determine if the petition is complete under the provisions of Section 111.170, and if the petition is sufficient, the Planning Director shall then fix the time of the hearing on such petition before the Planning Commission or Hearings Officer and cause notice of hearing to be given as provided in Sections 111.340 through 111.370. [Amended by Ordinance #88-21, dated November 30, 1988.]

111.190 ZONE CHANGE HEARING BEFORE THE HEARINGS OFFICER. The Hearings Officer shall hold a public hearing as prescribed in Chapter 111 on the complete petition for zone change. After concluding this hearing, the Hearings Officer shall prepare a report setting forth a summary of facts and conditions involved in the reclassification and submit the same, together with a recommendation to the Board of Commissioners. [Amended by Ordinance #88-21, dated November 30, 1988.]

111.200 ZONE CHANGE HEARING BEFORE THE BOARD OF COMMISSIONERS. The Board of Commissioners shall hold a public hearing on the proposed zone change as provided in Chapter 111. Final decision by the Board of Commissioners shall not be effective until 21 days after mailing of the decision. Filing of an appeal to the Land Use Board of Appeals stays all proceedings by all parties in connection with the matter appealed until the appeal has been resolved. [Amended by Ordinance #88-21, dated November 30, 1988.]

111.210 FINAL ACTION BY THE BOARD OF COMMISSIONERS. Any zone change or reclassification of property shall be by ordinance which shall be passed by the Board of Commissioners. Any denial of a proposed zone change shall be by order. A final decision by the Board of Commissioners shall not be effective until 21 days after mailing of the decision. Filing of an appeal to the Land Use Board of Appeals stays all proceedings by all parties in connection with the matter appealed until the appeal has been resolved. Whenever any premises are reclassified as to zone, or a new zone established, or boundary lines of a zone changed, the official zoning map shall be changed as provided in Section 111.140. [Amended by Ordinance #88-21, dated November 30, 1988. Sections 123.073, 123.076, 123.077, 123.079, 123.082, 123.085 and 123.088 repealed by Ordinance #88-21, dated November 30, 1988.]

111.220 FILING A LAND USE APPLICATION.

- (A) Application for any land use permit or determination under this ordinance shall be submitted to the Community Development Department on forms provided by the County Planning Director. The application shall be accompanied by the appropriate fee(s) as adopted by the Board of Commissioners. An application may be filed by:
 - (1) The owner of the subject property;
 - (2) A purchaser thereof under a duly executed written contract, when the purchaser states on the application he or she is the contract purchaser and the seller consents in writing to the application;
 - (3) A lessee in possession of the subject property, when the owner consents in writing to the application; or
 - (4) The agent for any of the foregoing persons when duly authorized in writing by the owner of the property.
- (B) Concurrent requests do not require multiple fees; however, the higher of multiple application fees shall be charged
- (C) If an application for a land use permit, partition request within an acknowledged urban growth boundary, or zone change is incomplete, the Planning Director shall notify the applicant of exactly what information is missing within 30 days of receipt of the application and allow the applicant to submit the missing information. The application shall be deemed complete upon receipt by the Planning Director of the missing information. If the applicant refuses to submit the missing information, the application shall be deemed complete on the 31st day after the Planning Division first received the application. This provision does not preclude the applicant from submitting additional information at a later date.

111.230 NOTICE OF APPLICATION.

- (A) Notice of an application which requires a public hearing shall be made as prescribed in Sections 111.340 through 111.370 of the Polk County Zoning Ordinance.
- (B) Notification shall be made at least 20 days before the date on which the application is to be heard. Those notified have an opportunity to comment in writing to the Planning Director concerning the application. [Amended by Ordinance 90-19, dated January 2, 1991.]

111.235 SPECIAL TRANSPORTATION NOTIFICATION

- (A) Polk County will provide ODOT notification to ensure that ODOT is involved as early as possible in the assessment of any redevelopment or new development proposal within the Rickreall community with a trip generation potential that significantly exceeds the trip generation assumptions for the Rickreall community

adopted into the Polk County TSP as part of the Rickreall Junction Facility Plan. The ODOT contact for any such development shall be the ODOT Region 2 Planner.

- (B) Polk County will provide ODOT notification to ensure that ODOT is involved as early as possible in the assessment of any redevelopment or new development proposal within the Fort Hill Interchange Management Area Overlay Zone with a trip generation potential that significantly exceeds the trip generation assumptions used for the Fort Hill IAMP. The ODOT contact for any such development shall be the ODOT Region 2 Planner.

111.240 ADMINISTRATIVE REVIEW. Administrative review shall be conducted by the Planning Director as follows:

- (A) Type A Procedure. This procedure shall apply to applications for land partitions; farm dwellings in the Exclusive Farm Use (EFU) and Farm Forest (F/F) zones; lot line adjustments (except for those exclusions noted in Chapter 91 of the Polk County Code; forest dwellings in the Timber Conservation (TC) and Farm Forest (F/F) zones; lot-of-record determinations as specified by this ordinance; placement of manufactured homes in the Suburban Residential (SR) zone; use of a manufactured home for temporary hardship in all zones; administrative variances; land use determinations; and all other listed uses as specified. Under this procedure, the Planning Director shall render a final decision or, alternatively, may refer the matter to the Hearings Officer as provided under Section 111.260. Decisions under this procedure may be appealed to the Board of Commissioners.
- (B) Type B Procedure. This procedure shall apply to all applications not specified under Section 111.240 (A), unless an initial hearing is required by a specific provision of the Polk County Zoning Ordinance. Notice of the proposed action shall be made pursuant to Section 111.350. Those notified, including the applicant, shall be given 10 days from the date of the notification to either submit a written request for public hearing before the Hearings Officer, or bring to the attention of the Planning Director objections to approval or any adverse consequences or incompatibilities that may result from approval. A request for a hearing shall be in writing and shall state the basis for requesting the hearing and shall be accompanied by payment of a fee, specified in the County's fee resolution, to defray the cost of the hearing. The amount of the fee shall not exceed the limits established by ORS 215.416(11). No fee is required if the hearing is requested by the Board, Commission, Department of Land Conservation and Development, or the Director. [Amended by Ordinance #92-38, dated September 9, 1992.] [Amended by Ordinance #97-9, dated December 17, 1997.] [Amended by Ordinance #09-02, dated May 6, 2009.]

111.245 NOTICE OF TYPE A PROCEDURE.

- (A) Notice of applications under Section 111.240 (A) shall be sent for review and comment to all groups that are registered with the Planning Division to receive electronic notification of land use applications within the geographical area that includes the site of the land use request and any affected jurisdiction, state, or local agency as determined by the Planning Director. [Adopted by Ordinance #97-9, dated December 17, 1997.] [Amended by Ordinance #09-02, dated May 6, 2009.]
- (B) Notice shall be mailed to the Oregon Department of Transportation for any land use change or development requiring County review and approval which requires direct access to a state highway or which is located within 500 feet of a state highway. Notice shall be mailed to the owner of an airport, defined by the Oregon Department of Aviation as a "public use airport," and to the Oregon Department of Aviation for

any land use change or development requiring County review and approval within 5,000 feet of a visual flight rules public use airport or is within 10,000 feet of an instrument flight rules public use airport.

111.250 ACTION BY PLANNING DIRECTOR OR HEARINGS OFFICER.

- (A) Applications submitted under section 111.240 may be granted only if they meet criteria established in the Polk County Zoning Ordinance and/or Comprehensive Plan. Decisions shall be made by the Polk County Planning Director or Hearings Officer only after reviewing materials submitted with the application and other applicable evidence and hearing testimony from Planning Division staff, the applicant(s) and other interested parties.
- (B) If the application was complete when first submitted or the applicant submits the requested additional information within 180 days of the date the application was first submitted, approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted.
- (C) Polk County shall take final action on an application for a permit, limited land use decision, or zone change, including resolution of all appeals as provided by Section 111.280, within 120 days after the application is deemed complete, pursuant to Section 111.220 (C).
- (D) The 120-day period set in subsection (C) of this section may be extended for a reasonable period of time at the request of the applicant.
- (E) The 120-day period set in subsection (C) of this section does not apply to an amendment to the Polk County Comprehensive Plan or the provisions of the Zoning Ordinance.

111.260 REFERRAL BY PLANNING DIRECTOR.

- (A) The Polk County Planning Director may decline to act on an application under section 111.240 and refer it to the Polk County Hearings Officer. Referral shall be made within 30 days after the date on which the application is received, and shall be heard at the first regular meeting of the Hearings Officer scheduled after the referral.
- (B) Action of the Hearings Officer on a referral is final and may be appealed to the Polk County Board of Commissioners in accordance with section 111.280.
- (C) The Director shall notify the applicant in writing of a referral to the Hearings Officer. Notice shall be sent within seven days after the date of referral.

111.270 NOTICE OF ACTION BY PLANNING DIRECTOR OR HEARINGS OFFICER.

The Polk County Planning Director shall send notice of any action taken on an application under Section 111.240 to all groups that are registered with the Planning Division to receive electronic notification of land use applications within the geographical area that includes the site of the land use action, all property owners of record within the notification area as specified in Section 111.350, and any person who is adversely affected or aggrieved by the decision. Notification shall be mailed within ten days after action is taken on the application. However, failure to receive notice does not affect the validity of the action. [Amended by Ordinance No. 97-9, dated December 17, 1997.] [Amended by Ordinance #09-02, dated May 6, 2009.]

111.275 ZONE CHANGE CRITERIA. Pursuant to Section 111.160, a zone change may be approved, provided that the request satisfies all applicable requirements of this ordinance, and provided that with written findings, the applicant(s) clearly demonstrate compliance with the following criteria:

- (A) The proposed zone is appropriate for the comprehensive plan land use designation on the property and is consistent with the purpose and policies for the applicable comprehensive plan land use classification;
- (B) The proposal conforms with the purpose statement of the proposed zone;
- (C) The uses allowed in the proposed designation will not significantly adversely affect allowed uses on adjacent lands;
- (D) Adequate public facilities, services, and transportation networks are in place, or are planned to be provided concurrently with the development of the property;
- (E) The proposed change is appropriate taking into consideration the following:
 - (1) Surrounding land uses,
 - (2) The density and pattern of development in the area,
 - (3) Any changes which may have occurred in the vicinity to support the proposed amendment;
- (F) The proposal complies with any applicable intergovernmental agreement pertaining to urban growth boundaries and urbanizable land; and
- (G) The proposal complies with Oregon Revised Statutes, all applicable statewide planning goals and associated administrative rules. If an exception to one or more of the goals is necessary, the exception criteria in Oregon Administrative Rules, Chapter 660, Division 4 shall apply. [Adopted by Ordinance No. 98-3, dated March 25, 1998.]
- (H) The road function, classification, capacity and existing and projected traffic volumes have been considered.

To allow comprehensive plan map and zone map amendments that may generate trips up to the planned capacity of the transportation system, Polk County will consider road function, classification, road capacity and existing and projected traffic volumes, as criteria for comprehensive plan map and zone map amendments.

111.280 APPEAL TO BOARD OF COMMISSIONERS.

- (A) An appeal may be taken to the Polk County Board of Commissioners by any person whose interests are affected adversely or who is aggrieved by action on an application under Section 111.240. An appeal must be filed with the Community Development Department within 10 days after the mailing of notice to the applicant. [Amended by Ordinance #09-02, dated May 6, 2009.]
- (B) On receiving an appeal the Community Development Department shall certify and deliver to the Board a copy of the original application and copies of all other papers constituting the record of the action under appeal.
- (C) Upon receipt of an appeal by the Community Development Department, the Board of Commissioners shall set the matter for a public hearing and cause notice of the time and place of the hearing to be given as provided under Section 111.340. The Planning Director shall send notice of the public hearing to all groups that are registered with the Planning Division to receive electronic notification of land use applications within the geographical area that includes the site of the land use action, all property owners of record within the notification area as specified in Section 111.350, and any person who is adversely affected or aggrieved by the decision. A hearing may be continued from time to time if the Board considers it advisable. [Amended by Ordinance #09-02, dated May 6, 2009.]
- (D) The appeal shall be accompanied by payment of a fee, specified in the County's fee resolution, to defray the cost of the hearing. [Amended by Ordinance #09-02, dated May 6, 2009.]

- (E) Filing of an appeal stays all proceedings by all parties in connection with the matter appealed until the Board of Commissioners has made a decision on the appeal.
[Amended by Ordinance #89-1, dated February 22, 1989.] [Amended by Ordinance #97-9, dated December 17, 1997.]

111.290 CALL OF BOARD OF COMMISSIONERS.

- (A) Two or more members of Polk County Board of Commissioners may call up an action by the Polk County Hearings Officer or the Planning Director. However, the call must be made at the first meeting after notice of the decision is presented.
- (B) The provisions of Section 111.280 (B) and (C) apply with respect to a matter called up under this section. [formerly 122.070]

111.300 ACTION BY BOARD OF COMMISSIONERS.

- (A) Pursuant to Sections 111.280 and 111.290, the Polk County Board of Commissioners shall review any action of the Polk County Hearings Officer or the Polk County Planning Director. The Board may remand the matter for further investigation and consideration, in which case the Hearings Officer or Planning Director shall conduct such further investigation as is necessary and report findings and conclusions in writing to the Board.
- (B) Pursuant to Section 111.290, after conducting a public hearing to consider an action and appeal, and finding that the facts therein stated do not warrant further hearing, the Board may summarily affirm the action and deny the appeal.
- (C) Pursuant to Section 111.290, after conducting a public hearing to consider an action and appeal, the Board may affirm or reverse wholly or partly, or modify, any action appealed, and may impose such additional conditions as it finds warranted by the facts.

111.310 EFFECTIVE DATE. Land use actions granted under section 111.240 become effective on the 10th day after mailing of the notice of the decision or after the regular meeting of the Polk County Board of Commissioners following such mailing, whichever is later. However, if the matter has been called up by the Board under Section 111.290, or the matter has been appealed under Section 111.280, the land use action does not become effective until the Board has taken final action. A final decision by the Board of Commissioners shall not be effective until 21 days after mailing of the decision. An appeal of a land use action by the Board of Commissioners to the Land Use Board of Appeals stays all proceedings by all parties in connection with the matter until the appeal has been resolved. [Amended by Ordinance #97-9, dated December 17, 1997.]

111.320 HOLDING PUBLIC HEARINGS. Any hearing shall be public and may be continued or postponed from time to time. At any such hearing all persons shall be given an opportunity to be heard.

111.330 APPEARANCES OF INTERESTED PERSONS, REMONSTRANCES. Any person or persons desiring to be heard for or against the subject of the hearing may file with the governing body, Hearings Officer or the Planning Commission, whichever holds the hearing, a statement in writing, or may appear and respond orally at the hearing, either in person or by authorized representative. Written remonstrances or objections to the proposed zone change, variance, conditional use or other subject of hearing, may be filed with the hearings body.

[Amended by Ordinance #88-21, dated November 30, 1988.]

111.340 NOTICE OF PUBLIC HEARING; CONTENT. Upon the fixing of the time of public hearing on all matters before the appropriate hearing body, the Director shall give notice as set forth in this chapter. The notice shall:

- (A) Explain the nature of the application and the proposed use or uses which could be authorized;
- (B) List the applicable criteria from the ordinance and the plan that apply to the application at issue;
- (C) Set forth the street address or other easily understood geographical reference to the subject property.
- (D) State the date, time and location of the hearing.
- (E) State that failure of an issue to be raised in a hearing, in person or in writing, or failure to provide sufficient specificity to afford the hearings body an opportunity to respond to the issue, precludes appeal to the Land Use Board of Appeals on that issue;
- (F) State that a copy of the application, all documents and evidence relied upon by the applicant, and applicable criteria, are available for inspection at no cost and will be provided at reasonable cost;
- (G) State that a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing, and will be provided at a reasonable cost; and include a general explanation of the requirements for submission of testimony and the procedure for conduct of hearings. [Amended by Ordinance 89-17, dated December 6, 1989.] [Amended by Ordinance 88-21, dated November 30, 1988.]
- (H) Include the name of a local government representative to contact and the phone number where additional information may be obtained.

111.350 MAILING OF NOTICE; NOTIFICATION AREA; FAILURE TO RECEIVE NOTICE.

- (A) Notices of public hearing to be held by the hearing body, notice of an application to be processed as a Type B procedure pursuant to Section 111.240 (B), or notice of any action taken on an application by the Planning Director or Hearings Officer shall be mailed to the applicant and to owners of record on the most recent property tax assessment roll where such property is located:
 - (1) Within 100 feet of the property which is the subject of the notice, where the subject property is wholly or partly within an urban growth boundary;
 - (2) Within 250 feet of the property which is the subject of the notice, where the subject property is outside an urban growth boundary and not within a farm or forest zone; or
 - (3) Within 750 feet of the property which is the subject of the notice, where the subject property is within a farm or forest zone.
- (B) Notices of public hearing to be held by the hearing body shall be mailed 20 days prior to the date of the hearing.
- (C) Failure to receive notice by mail as provided in this section shall not affect the validity of the proceedings if the County can demonstrate by affidavit that such notice was given.
- (D) Notice of an application to be processed as a Type B procedure pursuant under Section 111.240 (B) and public hearing notices shall be mailed to all groups that are registered with the Planning Division to receive electronic notification of land use

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applications within the geographical area that includes the site of the land use action.
[Amended by Ordinance #89-17, dated December 6, 1989.] [Amended by Ordinance #97-9, dated December 17, 1997.]
[Amended by Ordinance #09-02, dated May 6, 2009.]

- (E) Notice of a public hearing shall be mailed to the owners of public-use airports if the property subject to the land use permit or zone change is located:
 - (1) Within 5,000 feet of a visual airport.
 - (2) Within 10,000 feet of an instrument airport. [Adopted by Ordinance #98-5, dated July 8, 1998.]
- (F) Notice shall be mailed to the Oregon Department of Transportation for any land use change or development requiring County review and approval which requires access to a state highway or which is located within 500 feet of a state highway.

111.360 POSTING NOTICE.

- (A) Notice of public hearing related to an application to be processed as a Type B procedure pursuant to Section 111.240 (B), shall be given by posting a sign on the subject property within 10 feet of whatever boundary line of such land abuts the most traveled public road or street, and if no public road abuts thereon, then facing in such a manner as may be most readily seen by the public.
- (B) It shall be the responsibility of the applicant to provide the sign frame and place such notice at least 20 days prior to the public hearing. A placard with printed information on the proposed change shall be provided by the Planning Director for the sign structure, and shall be obtained for mounting by the applicant or his representative prior to posting.
- (C) The posted sign shall be removed by the applicant or the applicant's representative within five days after final action on the application. [Amended by Ordinance #89-17, dated December 6, 1989.]

111.370 PUBLISHING NOTICES. Notice of public hearings to be held on amendments to the text of the ordinance, on zone changes and Comprehensive Plan amendments, shall be given by publishing such notice in a newspaper of general circulation in the county at least once not less than 20 days prior to said hearing. [Amended by Ordinance #88-21, dated November 30, 1988, and Ordinance #219, dated September 22, 1978.]

111.380 CONDUCT OF HEARING; CONTINUANCE; EXTENSION; REOPENING RECORD.

- (A) At the beginning of a hearing under the Comprehensive Plan or land use regulations of Polk County, a statement shall be made to those in attendance that:
 - (1) Lists the applicable substantive criteria;
 - (2) States that testimony and evidence must be directed toward the criteria described in paragraph (1) of this subsection, or other criteria in the Plan or implementing ordinances which the person believes to apply to the decision; and
 - (3) States that failure to raise an issue with sufficient specificity to afford the hearings body an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals.
- (B) If additional documents or evidence in support of an application is submitted at a public hearing, any party shall be entitled to a continuance of the hearing. Such a continuance is not subject to the limitations of ORS 215.428.

- (C) Unless there is a continuance, if a participant so requests before the conclusion of the initial evidentiary hearing, the record shall remain open for at least seven days after the hearing. Such an extension shall not be subject to the limitations of ORS 215.428.
- (D) When the Board of Commissioners, Planning Commission or Hearings Officer reopens a record to admit new evidence or testimony, any person may raise new issues which relate to the new evidence, testimony or criteria for decision-making which apply to the matter at issue. [Adopted by Ordinance #89-17, dated December 6, 1989.]