

ORDINANCE NO. 1137

**AN ORDINANCE ESTABLISHING PLANNING PROCEDURES,
AMENDING ORDINANCE 1057.**

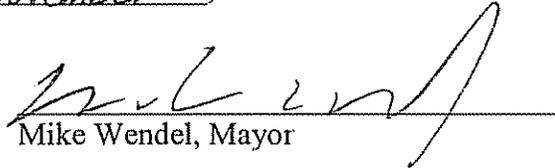
THE PEOPLE OF THE CITY OF PRINEVILLE ORDAIN AS FOLLOWS:

Section 1: Sections 12.010 through 12.130 of Prineville Ordinance 1057 (Prineville Code Sections 153.250 through 153.260) are hereby amended to read as set out on Exhibit A attached to this Ordinance and by this reference made a part hereof.

Section 2: In the event any clause, phrase, or part of this Ordinance is found to be invalid by a court of competent jurisdiction, the remaining portions of this Ordinance shall remain in full force and effect.

Approved by the City Council on the 28th day of November, 2006.

Signed by the Mayor on the 28th day of November, 2006.


Mike Wendel, Mayor

ATTEST:


Robb Corbett, City Manager/Recorder

EXHIBIT ‘A’

Prineville Code of Ordinances

DEVELOPMENT PROCEDURES

153.250 DEVELOPMENT PROCEDURES

Chapter 153.250	INTRODUCTION AND DEFINITIONS
Chapter 153.251	GENERAL PROVISIONS
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Chapter 153.255	LAND USE ACTION HEARINGS
Chapter 153.256	LAND USE ACTION DECISIONS
Chapter 153.257	RECONSIDERATION
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Chapter 153.260	DECLARATORY RULING

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153.250 INTRODUCTION AND DEFINITIONS

153.250.010. Introduction and application.

- A. Section 153.250 is enacted to provide a uniform procedure for the grant or denial and processing of applications, approvals and determinations by the Planning Department of the City of Prineville, under the applicable Comprehensive plan, land use regulations and other ordinances which by their terms incorporate by reference the procedures in this title.
- B. The provisions of Section 153.250 do not apply to the issuance, suspension, or revocation of any on-site sewage disposal, building, electrical or plumbing permits except as they relate to Planning Department consideration of permitted uses.

153.250.020. Definitions.

The following definitions apply to Section 153.250.

"Argument" means assertions and analysis by a party regarding the satisfaction or violation of legal standards. "Argument" does not include assertion of facts not already in the record. "De novo review" means a hearing by the review body as if the action had not previously been heard and as if no decision had been rendered, except that all testimony, evidence and other material from the record of the previous consideration will be considered a part of the record on review.

"Development action" means the review of any permit, authorization or determination that the City of Prineville Planning Department is requested to issue, give or make that either:

- A. Involves the application of a City zoning ordinance and is not a land use action as defined below;
or
- B. Involves the application of standards in other portion of the Land Usage Ordinance (Section 150 - 152). For illustrative purposes, the term "development action" includes review of any lot line adjustment, permit extension, sign permit, setback determination, and lot coverage determination.

"Evidence" means facts, documents, data or other information offered to demonstrate compliance or noncompliance with the standards believed to be relevant to the decision.

"Land use action" includes any consideration for approval of a quasi-judicial plan amendment or zone change, any consideration for approval of a land use permit, and any consideration of a request for a declaratory ruling (including resolution of any procedural questions raised in any of these actions). For illustrative purposes, the term "land use action" includes review of conditional use permit, variance, partition, subdivision, site plan review and other applications which require the exercise of discretion or policy judgment in applying and/or interpreting applicable criteria.

"Land use permit" includes any approval of a proposed development of land under the standards in the City zoning ordinances involving the exercise of significant discretion in applying those standards. By way of illustration, "land use permit" includes review of conditional use permits, partition, master plan, site plan, site plan change of use, modification of approval subdivision, and subdivision variance and variance.

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"Legislative changes" generally involve broad public policy decisions that apply to other than an individual property owner. These include, without limitation, amendments to the text of the comprehensive plans, zoning ordinances, or changes in zoning maps not directed at a small number of property owners.

"Modification of application" means the applicant's submittal of new information after an application has been deemed complete and prior to the close of the record on a pending application that would modify a development proposal by changing one or more of the following previously described components: proposed uses, operating characteristics, intensity, scale, site lay out (including but not limited to changes in setbacks, access points, building design, size or orientation, parking, traffic or pedestrian circulation plans), or landscaping in a manner that requires the application of new criteria to the proposal or that would require the findings of fact to be changed. It does not mean an applicant's submission of new evidence that merely clarifies or supports the pending application.

"Quasi-judicial" zone change or plan amendment generally refers to a plan amendment or zone change affecting a single or limited group of property owners and that involves the application of existing policy to a specific factual setting. (The distinction between legislative and quasi-judicial changes must ultimately be made on a case-by-case basis with reference to case law on the subject)

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153.251 GENERAL PROVISIONS

153.251.005. Preapplication conference.

153.251.010. Application requirements.

153.251.020. Acceptance of application.

153.251.030. Incomplete applications.

153.251.040. Withdrawal of application.

153.251.050. Time computation.

153.251.060 Submission of documents.

153.251.005. Pre-application conference.

A pre-application conference is encouraged for complex applications or for applicants who are unfamiliar with the land use process. The purpose of the conference shall be to acquaint the applicant with the substantive and procedural requirements of the applicable land use ordinances, to provide for an exchange of information regarding applicable requirements of the comprehensive plan, zoning ordinance or land division ordinance and to identify issues likely to arise in processing an application. The applicable zoning ordinance may require that a pre-application conference be held for particular types of applications.

153.251.010. Application requirements.

A. Property Owner. For the purposes of this section, the term "property owner" shall mean the owner of record or the contract purchaser and does not include a person or organization that holds a security interest.

B. Applications for development or land use actions shall:

1. Be submitted by the property owner or a person who has written authorization from the property owner as defined herein to make the application;
2. Be completed on a form prescribed by the City;
3. Include supporting information required by the zoning ordinance and that information necessary to demonstrate compliance with applicable criteria (burden of proof); and
4. Be accompanied by the appropriate filing fee, unless such fees are waived by the City Council.

153.251.020. Acceptance of application.

A. Development action and land use action applications shall not be accepted until the Planning Director has determined that (1) the requirements of 153.251.010 have been met and (2) the application is complete or the application is deemed to be complete under state law.

B. An application is complete when in the judgment of the Planning Director all applicable criteria have been addressed in the application.

C. Acceptance of an application as complete shall not preclude a determination at a later date that additional criteria need to be addressed or a later determination that additional information is needed to adequately address applicable criteria.

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153.251.030. Incomplete applications.

- A. If an application is incomplete, the Planning Director shall, within 30 days of receipt of the application, notify the applicant in writing of what information is missing. The applicant may amend his application or submit a new application supplying the missing information.
- B. The applicant shall have 30 days from the date of notice from the Planning Director to supply the missing information.
- C. If an applicant does not submit the missing information within the 30-day period specified in 153.251.030(B), the application will be processed in accordance with 153.254.040.

153.251.040. Withdrawal of application.

An applicant may withdraw an application in writing at any time prior to the time a land use action decision becomes final. If the landowner is not the applicant, no consent to withdraw the application is needed from the landowner.

Refunds for withdrawn applications shall be determined from the following schedule;

- A. Refund request after file is made prior to acceptance of an application as complete and/or prior to the mailing of transmittals or public notice. 75%
- B. Refund after public notice or transmittals have been sent. 50%
- C. No refund shall be allowed after the preparation of a Decision or Staff Report.

153.251.050. Time computation.

Except when otherwise provided, the time within which an act is required to be done shall be computed by excluding the first day and including the last day, unless the last day is a Saturday, Sunday, legal holiday or any day on which the City is not open for business pursuant to a county ordinance, in which case it shall also be excluded.

153.251.060. Submission of documents.

A document is "submitted" when it is received. Submittal shall be made either at a noticed hearing or at the offices of the Planning Division, unless specified otherwise by the Hearings Body or notice.

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153.252 LEGISLATIVE PROCEDURES

153.252.010. Hearing required.

153.252.020. Notice.

153.252.030. Initiation of legislative changes.

153.252.040. Hearings Body.

153.252.050. Final decision.

153.252.010. Hearing required.

No legislative change shall be adopted without review by the Planning Commission and a public hearing before the City Council. Public hearings before the Planning Commission shall be set at the discretion of the Planning Director, unless otherwise required by state law.

153.252.020. Notice.

A. Published Notice.

1. Notice of a legislative change shall be published in a newspaper of general circulation in the city at least 10 days prior to each public hearing.
2. The notice shall state the time and place of the hearing and contain a statement describing the general subject matter of the ordinance under consideration.

B. Posted Notice. Notice shall be posted at the discretion of the Planning Director and where necessary to comply with ORS 203.045.

C. Individual Notice. Individual notice to property owners, as defined in 153.251.010(A), shall be provided at the discretion of the Planning Director, except as required by ORS 215.503.

153.252.030. Initiation of legislative changes.

A legislative change may be initiated by application of individuals upon payment of required fees as well as By the City Council or the Planning Commission.

153.252.040. Hearings Body.

A. The following shall serve as hearings or review body for legislative changes in this order:

1. The Planning Commission.
2. City Council.

B. Any legislative change initiated by the City Council may be reviewed by the Planning Commission prior to action being taken by the City Council, at the City Council's discretion.

153.252.050. Final decision.

All legislative changes shall be adopted by ordinance.

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153.253 DEVELOPMENT ACTION PROCEDURES

153.253.010. Review of development action applications.

153.253.020. Decision.

152.253.010. Review of development action applications.

- A. A development action application may be handled administratively by the Planning Director without public notice or hearing.
- B. The Planning Director has the discretion to determine that for the purposes of the land usage ordinance whether a development action application should be treated as if it were a land use action application.

152.253.020. Decision.

- A. Development action applications acted upon without notice or hearing shall be approved or denied by the Planning Director or designee within 30 days of the application's acceptance by the Planning Director.
- B. Notice of a decision shall be provided to the applicant or the applicant's representative.
- C. The decision may be appealed under 153.258.

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153.254 REVIEW OF LAND USE ACTION APPLICATIONS

- 153.254.010. Effect of determinations made outside of established processes.
- 153.254.020. Action on land use action applications.
- 153.254.030. Administrative land use decisions with prior notice.
- 153.254.040. Administrative decision without prior notice.
- 153.254.050. Final action in land use actions.
- 153.254.060. Supplementation of application within first 30 days of submittal.
- 153.254.070. Modification of application.

153.254.010. Effect of determinations made outside of established processes.

Any informal interpretation or determination, or any statement describing the uses to which a property may be put, made outside the declaratory ruling process (City of Prineville Land Development Ordinance, Section 153.260) or outside the process for approval or denial of a land use permit (153.254 – 153.256) shall be deemed to be a supposition only. Such informal interpretations, determinations, or statements shall not be deemed to constitute final City action effecting a change in the status of a person's property or conferring any rights, including any reliance rights, on any person.

153.254.020. Action on land use action applications.

- A. Except for comprehensive plan amendments and zone changes and other instances where a hearing is required by state law or by other ordinance provisions, the Planning Director may decide upon a land use action application administratively either with prior notice, as prescribed under 153.254.030 or without prior notice, as prescribed under 153.254.040 or he/she may refer the application to the Planning Commission for hearing. The Planning Director shall take such action within 30 days of the date the application is accepted or deemed accepted as complete. This time limit may be waived in writing at the option of the applicant.
- B. The Planning Director's choice between or among administrative or hearing procedures to apply to a particular application or determination shall not be an appealable decision.
- C. Zone change and plan amendment applications shall be referred to a hearing before the Planning Commission.

153.254.030. Administrative land use decisions with prior notice.

- A. Notice of the application shall be sent within 10 days of submittal of the application to persons entitled to notice under 153.255.030. Such notice shall include all the information specified under 153.255.040(A) except for the information specified in 153.255.040(A)(7) and (10).
- B. Any person may comment in writing on the application within 10 days from the date notice was mailed or a longer period as specified in the notice.
- C. The Planning Director's decision to approve, deny or send to a hearing shall be made within 30 days after an application is accepted as complete. This time limit may be waived by the written consent of the applicant.
- D. Notice of the Planning Director's decision and the appeal period shall be sent to all persons entitled to notice under 153.255.030 and to all persons who commented. The notice shall contain the applicable information required under 153.255.040.

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- E. The applicant, all persons entitled to notice under 153.255.030 and all other persons commenting as provided in 153.254.020 constitute parties to the administrative decision. Any party can appeal the decision in accordance with 153.258 (Appeals).

153.254.040. Administrative decision without prior notice.

The procedures for administrative decisions without prior notice shall be the same as those set forth in 153.254.030, except that no prior notice shall be given.

153.254.050. Final action in land use actions.

- A. Except as otherwise provided, the City shall take final action, including consideration of appeals to the City Council, in land use actions within 120 days after the application is deemed complete.
- B. If the applicant refuses or fails to submit missing information within the 30 days specified in 153.251.030, the application shall be deemed complete, for purposes of processing the application, on the 31st day after the application was first submitted, and final action of City Council, if required, shall be taken within one hundred fifty-one (151) days after the application was first received unless otherwise provided.
- C. The periods set forth in 153.254.050 during which a final decision on an application must be made may be extended for a reasonable period of time at the written request of the applicant.

153.254.060. Supplementation of application within first 30 days of submittal.

An applicant shall not submit any evidence to supplement its application during the 30 days following submittal of its application, except to respond to a request for additional information made under 153.251.030. Any evidence submitted by an applicant in violation of 153.254.060 will not be considered in determining whether the application is complete and will be returned to the applicant.

153.254.070. Modification of application.

- A. An applicant may modify an application at any time during the approval process up until the issuance of an administrative decision, or the close of the record for an application reviewed under a hearings process, subject to the provisions of 153.254.060 and this section.
- B. The Planning Director or Planning Commission shall not consider any evidence submitted by or on behalf of an applicant that would constitute modification of an application (as that term is defined in 153.250) unless the applicant submits an application for a modification, pays all required modification fees and agrees in writing to restart the 120-day time clock as of the date the modification is submitted. The 120-day time clock for an application, as modified, may be restarted as many times as there are modifications.
- C. The Planning Director or Planning Commission may require that the application be re-noticed and additional hearings be held.
- D. Up until the day a hearing is opened for receipt of oral testimony, the Planning Director shall have sole authority to determine whether an applicant's submittal constitutes a modification. After such time, the Planning Commission shall make such determinations. The Planning Director or Planning Commission determination on whether a submittal constitutes a modification shall be appealable only to LUBA and shall be appealable only after a final decision is entered by the City on an application.

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153.255 LAND USE ACTION HEARINGS

- 153.255.010. Filing of staff report for hearing.
- 153.255.020. Hearings Body.
- 153.255.030. Notice of hearing or administrative action.
- 153.255.040. Contents of notice.
- 153.255.050. Burden of proof.
- 153.255.060. Standing.
- 153.255.070. Disclosure of ex parte contacts.
- 153.255.080. Disclosure of personal knowledge.
- 153.255.090. Challenge for bias, prejudgment of personal interest.
- 153.255.100. Hearings procedure.
- 153.255.110. Setting the hearing.
- 153.255.120. Close of the record.
- 153.255.130. Continuances or record extensions.
- 153.255.140. Reopening the record.

153.255.010. Filing of staff report for hearing.

- A. At the time an application that in the judgment of the Planning Director requires a hearing is deemed complete, a hearing date shall be set.
- B. A staff report shall be completed seven days prior to hearing. If the report is not completed by such time, the hearing shall be held as scheduled, but any party may at the hearing or in writing prior to the hearing request a continuance of the hearing to a date that is at least seven days after the date the initial staff report is complete.
- C. A copy of the staff report shall be mailed to the applicant, shall be made available to such other persons who request a copy and shall be filed with the Planning Commission.
- D. Oral or written modifications and additions to the staff report shall be allowed prior to or at the hearing.

153.255.020. Hearings Body.

- A. The following shall serve as the hearings body:
 - 1. Planning Commission.
 - 2. City Council
- B. The Hearing's Body order shall be as set forth in 153.255.020(A), except that the Council may call up an administrative decision for review without the necessity of an application going before the Planning Commission.

153.255.030. Notice of hearing or administrative action.

- A. Individual Mailed Notice
 - 1. Except as otherwise provided for herein, notice of a land use application shall be mailed at least 20 days prior to the hearing for those matters set for hearing, or within 10 days after receipt of an application for those matters to be processed administratively with notice. Written notice shall be sent by mail to the following persons:

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- a. The applicant.
 - b. Owners of record of property as shown on the most recent property tax assessment roll of property located within 100 feet of the property that is the subject of the notice where any part of the subject property is within an urban growth boundary;
 - c. The owner of a public use airport if the airport is located within 10,000 feet of the subject property.
 - d. The tenants of a mobile home park when the application is for the rezoning of any part or all of a mobile home park.
 - e. The Planning Commission.
 - f. Any neighborhood or community organization formally recognized by the City Council, whose boundaries include the site.
2. The failure of a property owner to receive mailed notice shall not invalidate any land use approval if the Planning Division can show by affidavit that such notice was given.

B. **Published Notice.** In addition to notice by mail and posting, notice of an initial hearing shall be published in a newspaper of general circulation in the County at least 10 days prior to the hearing.

153.255.040. Contents of notice.

- A. All mailed notices of a land use action hearing shall:
1. Describe the nature of the applicant's request and the nature of the proposed uses that could be authorized.
 2. List the criteria from the zoning ordinance and the plan applicable to the application at issue.
 3. Set forth the street address or easily understood geographical reference to the subject property.
 4. State the date, time and location of any hearing or date by which written comments must be received.
 5. State that any person may comment in writing and include a general explanation of the requirements for submission of testimony and the procedures for conduct of testimony.
 6. If a hearing is to be held, state that any interested person may appear.
 7. State that failure to raise an issue in person at a hearing or in writing precludes appeal by that person to the Land Use Board of Appeals (LUBA), and that failure to provide statements or evidence sufficient to afford the decision-maker an opportunity to respond to the issue precludes appeal to LUBA based on that issue.

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8. State the name of a city representative to contact and the telephone number where additional information may be obtained.
 9. State that a copy of the application, all documents and evidence submitted by or on behalf of the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost.
 10. 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 reasonable cost.
- B. All mailed and published notices for hearings shall contain a statement that recipients may request a copy of the staff report.
 - C. All mailed and published notices concerning applications necessitating an exception to one of the statewide land use planning goals shall state that a goal exception is proposed and shall summarize the issues in an understandable manner.

153.255.050 Burden of proof.

Throughout all local land use proceedings, the burden of proof rests on the applicant.

153.255.060. Standing.

- A. Any interested person may appear and be heard in a land use action hearing, except that in appeals heard on the record, a person must have participated in a previous hearing on the subject application.
- B. Any person appearing on the record at a hearing (including appeals) or presenting written evidence in conjunction with an administrative action or hearing shall have standing and shall be a party. A person whose participation consists only of signing a petition shall not be considered a party.

153.255.70 Disclosure of ex parte contacts.

Prior to making a decision, the Hearings Body or any member thereof shall not communicate directly or indirectly with any party or his representative in connection with any issue involved in a pending hearing except upon notice and opportunity for all parties to participate. Should such communication - whether written or oral - occur, the Hearings Body member shall:

- A. Publicly announce for the record the substance of such communication; and
- B. Announce the parties' right to rebut the substance of the ex parte communication during the hearing. Communication between City staff and the Hearings Body shall not be considered to be an ex parte contact.

153.255.080. Disclosure of personal knowledge.

- A. If the Hearings Body or any member thereof uses personal knowledge acquired outside of the hearing process in rendering a decision, the Hearings Body or member thereof shall state the substance of that knowledge on the record and allow all parties the opportunity to rebut such statement on the record.
- B. For the purposes of this section, a site visit by the Hearings Body shall be deemed to fall within this rule. After the site visit has concluded, the Hearings Body must disclose its observations and conclusions gained from the site visit in order to allow for rebuttal by the parties.

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153.255.90. Challenge for bias, prejudice or personal interest.

Prior to or at the commencement of a hearing, any party may challenge the qualification of the Hearings Body, or a member thereof, for bias, prejudice or personal interest. The challenge shall be made on the record and be documented with specific reasons supported by facts. Should qualifications be challenged, the Hearings Body or the member shall disqualify itself, withdraw or make a statement on the record of its capacity to hear

153.255.100. Hearings procedure.

A hearing shall be conducted as follows:

- A. The Hearings Body shall explain the purpose of the hearing and announce the order of proceedings, including reasonable time limits on presentations by parties.
- B. A statement by the Hearings Body regarding pre-hearing contacts, bias, prejudice or personal interest shall be made.
- C. Any facts received, noticed or recognized outside of the hearing shall be stated for the record.
- D. Challenges to the Hearings Body's qualifications to hear the matter shall be stated and challenges entertained.
- E. The Hearings Body shall list applicable substantive criteria, explain that testimony and evidence must be directed toward that criteria or other criteria in the comprehensive plan or land use regulations that the person believes to apply to the decision, and that failure to address an issue with sufficient specificity to afford the decision-maker and the parties an opportunity to respond precludes appeal to LUBA based on that issue.
- F. Order of presentation:
 1. Open the hearing.
 2. Staff report.
 3. Proponents' presentation.
 4. Opponents' presentation.
 5. Proponents' rebuttal.
 6. Opponents' rebuttal may be allowed at the Hearings Body's discretion.
 7. Staff comment.
 8. Questions from or to the chair may be entertained at any time at the Hearings Body's discretion.
 9. Close the hearing.
- G. The record shall be available for public review at the hearing.

153.255.110 Setting the hearing.

- A. After an application is deemed accepted a hearing date shall be set. A hearing date may be changed by the City staff, or the Hearings Body up until the time notice of the hearing is mailed. Once the notice of hearing is mailed any changes in the hearing date shall be processed as a continuance in accordance with 153.255.130.
- B. If an applicant requests that a hearing date be changed, such request shall be granted only if the applicant agrees that the extended time period for the hearing shall not count against the 120-day time limit set forth in 153.254.050 (or 150 time limit as set forth in 153.254.050(B)).

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153.255.120 Close of the record.

- A. Except as set forth herein, the record shall be closed to further testimony or submission of further argument or evidence at the end of the presentations before the Hearings Body.
- B. If the hearing is continued or the record is held open under 153.255.130, further evidence or testimony shall be taken only in accordance with the provisions of 153.255.130.
- C. Otherwise, further testimony or evidence will be allowed only if the record is reopened under 153.255.140.
- D. An applicant shall be allowed, unless waived, to submit final written arguments in support of its application after the record has closed within such time limits as the Hearings Body shall set. The Hearings Body shall allow applicant at least seven days to submit its argument, which time shall be counted against the 120-day clock (or 150 time limit as set forth in 153.254.050(B)).

153.255.130. Continuances or record extensions.

A. Grounds.

1. Prior to the date set for an initial hearing, an applicant shall receive a continuance upon any request if accompanied by a corresponding suspension of the 120 day clock. If a continuance request is made after the published or mailed notice has been provided by the City, the Hearings Body shall take evidence at the scheduled hearing date from any party wishing to testify at that time after notifying those present of the continuance.
2. Any party is entitled to a continuance of the initial evidentiary hearing or to have the record left open in such a proceeding in the following instances:
 - a. Where additional documents or evidence are submitted by any party; or
 - b. Upon a party's request made prior to the close of the hearing for time to present additional evidence or testimony.

For the purposes of 153.255.130(2)(a), "additional documents or evidence" shall mean documents or evidence containing new facts or analysis that are submitted after notice of the hearing.

3. The grant of a continuance or record extension in any other circumstance shall be at the discretion of the Hearings Body.

B. Continuances.

1. If the Hearings Body grants a continuance, the hearing shall be continued to a date, time and place certain at least seven days from the date of the initial hearing.
2. An opportunity shall be provided at the continued hearing for persons to rebut new evidence and testimony received at the continued hearing.
3. If new written evidence is submitted at the continued hearing, any person may request prior to the conclusion of the continued hearing that the record be left open for at least seven days to allow submittal of additional written evidence or testimony. Such additional

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written evidence or testimony shall be limited to evidence or testimony that rebuts the new written evidence or testimony.

C. Leaving record open.

If at the conclusion of the hearing the Hearings Body leaves the record open for additional written evidence or testimony, the record shall be left open for at least 14 additional days, allowing at least the first seven days for submittal of new written evidence or testimony and at least seven additional days for response to the evidence received while the record was held open. Written evidence or testimony submitted during the period the record is held open shall be limited to evidence or testimony that rebuts previously submitted evidence or testimony.

D. A continuance or record extension granted under 153.255.130 shall be subject to the 120-day time limit unless the continuance or extension is requested or otherwise agreed to by the applicant. When the record is left open or a continuance is granted after a request by an applicant, the time period during which the 120-day clock is suspended shall include the time period made available to the applicant and any time period given to parties to respond to the applicant's submittal.

153.255.140. Reopening the record.

A. The Hearings Body may at its discretion reopen the record, either upon request or on its own initiative. The Hearings Body shall not reopen the record at the request of an applicant unless the applicant has agreed in writing to a suspension of the 120-day time limit.

B. Procedures.

1. Except as otherwise provided for in this section, the manner of testimony (whether oral or written) and time limits for testimony to be offered upon reopening of the record shall be at the discretion at the Hearings Body.
2. The Hearings Body shall give written notice (cost to be bourn by the applicant) to the parties that the record is being reopened, stating the reason for reopening the record and how parties can respond. The parties shall be allowed to raise new issues that relate to the new evidence, testimony or criteria for decision-making that apply to the matter at issue.

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153.256 LAND USE ACTION DECISIONS

- 153.256.010. **Decision.**
- 153.256.020. **Notice of decision.**
- 153.256.030. **Decision on plan amendments and zone changes.**
- 153.256.040. **Reapplication limited.**
- 153.256.050. **Review by Council.**
- 153.256.060. **Correction of clerical errors.**

153.256.010. **Decision.**

- A. Approval or denial of a land use action shall be based upon and accompanied by a brief statement that explains the criteria and standards considered relevant to the decision, states the facts relied upon in rendering the decision and explains the justification for the decision based upon the criteria standards and facts set forth.
- B. Any portion of an application not addressed in a Hearings Body's decision shall be deemed to have been denied.
- C. A decision on a land use action is not final until the Planning Director or Hearings Body issues a written decision, the decision has been mailed and the appeal period to the next higher Hearings Body within the City has run.
- D. No building permit shall issue until a decision is final. Appeal of a final decision to LUBA does not affect the finality of a decision for purposes of issuing building permits.

153.256.020. **Notice of decision.**

A Hearings Body's decision shall be in writing and mailed to all parties; however, one person may be designated by the Hearings Body to be the recipient of the decision for a group, organization, group of petitioners or similar collection of individual participants.

153.256.030. **Decision on plan amendments and zone changes.**

- A. Except as set forth herein, the Planning Commission when acting as the Hearings Body shall have authority to make decisions on all quasi-judicial zone changes and plan amendments. Prior to becoming effective, all quasi-judicial plan amendments and zone changes shall be adopted by the City Council.
- B. In considering all quasi-judicial zone changes and those quasi-judicial plan amendments on which the Planning Commission has authority to make a decision, the City Council shall, in the absence of an appeal or review initiated by the Council, adopt the Planning Commission decision. No argument or further testimony will be taken by the Council.

153.256.040. **Reapplication limited.**

- A. If a specific application is denied on its merits, reapplication for substantially the same proposal may be made at any time after the date of the final decision denying the initial application.
- B. Notwithstanding 153.256.040(A), a final decision bars any reapplication for a nonconforming use verification or for a determination on whether an approval has been initiated.

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153.256.050. Review by Council.

- A. Review of an administrative action or a Planning Commission decision may be initiated by the City Council. The Council shall consider calling up for review any administrative decision that a majority of the Planning Commission recommends be reviewed.
- B. Review by the Council shall be initiated by Council order within 12 days of the date of the mailing of the final written decision of the Planning Director or Planning Commission.
- C. Review shall be conducted in the same manner provided for in appeals, except that an appeal fee and transcript shall not be required. Any Council order calling up for review a decision shall specify whether the Council will review the decision called up on the record or de novo and whether it intends to limit the issues on review to certain specified issues.

153.256.060. Correction of clerical errors.

Upon its own motion or the motion of a party, the Council may, subject to any applicable public notice and hearing requirements, enact an ordinance correcting clerical or typographical errors in plan amendment or zone change ordinances and any maps appended thereto implementing decisions of the Planning Commission. Such changes shall be entered only if the Council is able to make a finding that the decision of the Planning Commission, including appendices, is not accurately reflected in the implementing ordinances.

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153.257. RECONSIDERATION

153.257.010. Reconsideration.

153.257.020. Procedure.

153.257.030. Limitation on reconsideration.

153.257.010. Reconsideration.

- A. An applicant may request that the Planning Commission decision be reconsidered as set forth herein. A request for reconsideration shall be accompanied by a fee established by the City and by applicant's written consent that the 120-day time clock will not run during the period of the reconsideration.
- B. Grounds for reconsideration are limited to the following instances where an alleged error substantially affects the rights of the applicant:
 - 1. Correction of an error in a condition established by the Planning Commission where the condition is not supported by the record or is not supported by law;
 - 2. Correction of errors that are technical or clerical in nature.

153.257.020. Procedure.

- A. A request for reconsideration shall be filed with the Planning Director within 10 days of the date the decision was mailed. The request shall identify the alleged error in the Planning Commission decision and shall specify how the applicant would be adversely affected if the alleged error were to remain uncorrected.
- B. Upon receipt of a request for reconsideration, the Planning Director shall forward the request for reconsideration to the Planning Commission and notify the other parties to the proceeding of the request and allow for a 10-day comment period on the request. At the end of the comment period, the Planning Commission shall determine whether the request for reconsideration has merit.
- C. The Planning Commission shall modify the decision upon a determination that the request has merit and the alleged error substantially affects the applicant. Notice of the modification shall be sent to all parties to the proceeding. If the Planning Commission determines that no modification is warranted, a determination shall issue a decision to that effect.
- D. Filing a request for a reconsideration shall not be a precondition for appealing a decision.
- E. Filing a request for reconsideration stays the deadline for any party to file an appeal of the Planning Commission decision. The appeal period for all parties to the proceeding shall commence upon mailing of a modification or upon mailing a determination that a modification is not warranted. If an opponent files an appeal and an applicant has requested reconsideration, the opponent's appeal shall be stayed pending disposition of the request for modification. If the decision is not modified, the appeal will be processed in accordance with the procedures set forth in 153.258. If the decision is modified, the appellant must within 12 days of the mailing of the modified decision file in writing a statement requesting that its appeal be activated.

153.257.30 Limitation on reconsideration.

No decision shall be reconsidered more than once by the Planning Commission

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153.258 APPEALS

- 153.258.010. Who may appeal.
- 153.258.020. Filing appeals.
- 153.258.030. Notice of appeal.
- 153.258.040. Transcript requirement.
- 153.258.050. Consolidation of multiple appeals.
- 153.258.060. Scope of review.
- 153.258.070. Hearing on appeal.
- 153.258.080. Declining review.
- 153.258.090. Development action appeals.
- 153.258.100. Withdrawal of an appeal.

153.258.010. Who may appeal.

A. The following may file an appeal:

1. A party;
2. In the case of an appeal of an administrative decision without prior notice, a person entitled to notice, a person adversely affected or aggrieved by the administrative decision, or any other person who has filed comments on the application with the Planning Division; and
3. A person entitled to notice and to whom no notice was mailed.

B. A person to whom notice is mailed is deemed notified even if notice is not received.

153.258.020. Filing appeals.

- A. To file an appeal, an appellant must file a completed notice of appeal on a form prescribed by the Planning Department and an appeal fee.
- B. Unless a request for reconsideration has been filed, the notice of appeal and appeal fee must be received at the offices of the City of Prineville Planning Department no later than 5:00 PM on the twelfth day following mailing of the decision. If a decision has been modified on reconsideration, an appeal must be filed no later than 5:00 PM on the twelfth day following mailing of the decision as modified. Notices of Appeals may not be received by facsimile machine.
- C. If the City Council is the Hearings Body and the City declines review, a portion of the appeal fee may be refunded. The amount of any refund will depend upon the actual costs incurred by the City in reviewing the appeal.
- D. The appeal fee shall be paid by cash or check or money order, except that local, state or federal governmental agencies may supply a purchase order at the time of filing.

153.258.030 Notice of appeal.

The Notice of Appeal shall include:

- A. A statement raising any issue relied upon for appeal with sufficient specificity to afford the Hearings Body an adequate opportunity to respond to and resolve each issue in dispute.

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- B. If the City Council is the Hearings Body, a request for review by the Council stating the reasons why the Council should review the lower Hearings Body's decision.
- C. If the City Council is the Hearings Body and de novo review is desired, a request for de novo review by the Council stating the reasons why the Council should provide de novo review as provided in 153.258.070.

153.258.040. Transcript requirement.

- A. Except as otherwise provided in 153.258.040, appellants shall provide a complete written transcript of any hearing appealed from, from recorded magnetic tapes, or other media provided by the Planning Department.
- B. Appellants shall submit the transcript to the Planning Department no later than the close of the 5th day prior to the date set for a de novo appeal hearing, in on-the-record appeals, the date for receipt of written arguments. Unless excused under this section, an appellant's failure to provide a transcript shall cause the Council to decline to consider the appellant's appeal further and shall, upon notice mailed to the parties, cause the lower Hearings body's decision to become final.
- C. An appellant shall be excused from providing a complete transcript if appellant was prevented from complying by: (1) the inability of the Planning Department to supply appellant with a magnetic tape or tapes or, other media of the prior proceeding; or (2) defects on the magnetic tape or tapes, or other media of the prior proceeding that make it not reasonably possible for applicant to supply a transcript. Appellants shall bear the cost of the transcript and comply to the maximum extent reasonably and practicably possible.

153.258.050. Consolidation of multiple appeals.

If more than one party files a notice of appeal on a land use action decision, the appeals shall be consolidated and noticed and heard as one proceeding.

153.258.060. Scope of review.

- A. Before Planning Commission. The review on appeal before the Planning Commission shall be de novo.
- B. Before the Council.
 - 1. Review before the City Council, if accepted, shall be on the record except as otherwise provided for in this section.
 - 2. The Council may grant an appellant's request for a de novo review at its discretion after consideration of the following factors:
 - a. Whether hearing the application de novo could cause the 120-day time limit to be exceeded; and
 - b. If the magnetic tape or other media of the hearing below, or a portion thereof, is unavailable due to a malfunctioning of the recording device during that hearing, whether review on the record would be hampered by the absence of a transcript of all or a portion of the hearing below; or

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- c. Whether the substantial rights of the parties would be significantly prejudiced without de novo review and it does not appear that the request is necessitated by failure of the appellant to present evidence that was available at the time of the previous review; or
- d. Whether in its sole judgment a de novo hearing is necessary to fully and properly evaluate a significant policy issue relevant to the proposed land use action.

For the purposes of this section, if an applicant is an appellant, factor 153.258.060(B)(2)(a) shall not weigh against the appellant's request if the applicant has submitted with its notice of appeal written consent on a form approved by the City to restart the 120-day time clock as of the date of the acceptance of applicant's appeal.

3. Notwithstanding 152.258.060(B)(2), the Council may decide on its own to hear a timely filed appeal de novo.
4. The Council may, at its discretion, determine that it will limit the issues on appeal to those listed in an appellant's notice of appeal.

153.258.070. Hearing on appeal.

- A. The appellant and all other parties to the decision below shall be mailed notice of the hearing on appeal at least 10 days prior to any de novo hearing or deadline for submission of written arguments.
- B. Except as otherwise provided in 153.258, the appeal shall be heard as provided in 153.255. The applicant shall proceed first in all de novo appeals.
- C. The order of Hearings Body shall be as provided in 153.255.020.
- D. The record of the proceeding from which appeal is taken shall be a part of the record on appeal.
- E. The record for a review on the record shall consist of the following:
 1. A written transcript of any prior hearing;
 2. All written and graphic materials that were part of the record below;
 3. The Hearings Body decision appealed from;
 4. Written arguments, based upon the record developed below, submitted by any party to the decision;
 5. Written comments submitted by the Planning Commission or individual planning commissioners, based upon the record developed below; and
 6. A staff report and staff comment based on the record. No oral evidence, argument or comment other than staff comment based on the record shall be taken. The Council shall not consider any new factual information.

153.258.080. Declining Review

Except as set forth in 153.256.030, when there is an appeal of a land use action and the City Council is the Hearings Body:

- A. The Council may on a case-by-case basis, at a public meeting, determine that the decision of the lower Hearings Body of an individual land use action or a class of land use action decisions, shall be the final decision of the City.
- B. If the City Council decides that the lower Hearings Body decision shall be the final decision of the City, then the Council shall not hear the appeal and the party appealing may continue the appeal as

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provided by law. In such a case, the City shall provide written notice of its decision to all parties. The decision on the land use application becomes final upon mailing of the Council's decision to decline review.

- C. The decision of the City Council not to hear a land use action appeal is entirely discretionary.
- D. In determining whether to hear an appeal, the City Council may consider only:
 - 1. The record developed before the lower Hearings Body;
 - 2. The notice of appeal; and
 - 3. Recommendations of staff.

153.258.090. Development Action appeals

Notice of the hearing date set for appeal shall be sent only to the applicant. Only the applicant, his or her representatives, and his or her witnesses shall be entitled to participate. Continuances shall be at the discretion of the Hearings Body, and the record shall close at the end of the hearing.

153.258.100. Withdrawal of an appeal.

An appeal may be withdrawn in writing by an appellant at any time prior to the rendering of a final decision. Subject to the existence of other appeals on the same application, in such event the appeal proceedings shall terminate as of the date the withdrawal is received.

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153.259 LIMITATIONS ON APPROVALS

- 153.259.010. Expiration of approval.
- 153.259.020. Initiation of use.
- 153.259.030. Modification of approval.
- 153.259.040. Transfer of permit.
- 153.259.050. Revocation of approvals.

153.259.010. Expiration of approval.

A. Scope.

1. Except as otherwise provided herein, this section shall apply to and describe the duration of all approvals of land use permits provided for under the City of Prineville Land Development Ordinance and the various zoning ordinances administered by City of Prineville.
2. 153.259.010 does not apply to:
 - a. Those determinations made by declaratory ruling or expiration determinations, that involve a determination of the legal status of a property, land use or land use permit rather than whether a particular application for a specific land use meets the applicable standards of the zoning ordinance. Such determinations, whether favorable or not to the applicant or landowner, shall be final, unless appealed, and shall not be subject to any time limits.
 - b. Quasi-judicial map changes.

B. Duration of Approvals.

1. Except as otherwise provided under this section or under applicable zoning ordinance provisions, a land use permit is void one year after the date the discretionary decision becomes final if the use approved in the permit is not initiated within that time period.
2. Except as otherwise provided under applicable ordinance provisions, preliminary approval of plats or master plans shall be void after one year from the date of preliminary approval, unless the final plat has been submitted to the Planning Department for final approval within that time period, or an extension is sought under 153.259.010(C), or the preliminary plat or master plan approval has been initiated as defined herein.
3. In cases of a land use approval authorized under applicable approval criteria to be completed in phases, each phase must be initiated within one year of completion of the prior phase, if no timetable is specified.

C. Extensions.

1. The Planning Director may grant one extension of up to one year for a land use approval or a phase of a land use approval, regardless of whether the applicable criteria have changed, if:
 - a. An applicant makes a written request for an extension of the development approval period;

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- b. The request, along with the appropriate fee, is submitted to the City prior to the expiration of the approval period;
 - c. The applicant states reasons that prevented the applicant from beginning or continuing development or meeting conditions of approval within the approval period; and
 - d. The City determines that the applicant was unable to begin or continue development or meet conditions of approval during the approval period for reasons for which the applicant was not responsible, including, but not limited to, delay by a state or federal agency in issuing a required permit.
2. One additional one-year extension, may be granted under the above criteria by the Planning Director or his/her designees where applicable criteria for the decision have not changed.

153.259.020. Initiation of use.

- A. For the purposes of this section, development action undertaken under a land use approval described in 153.259.010, has been "initiated" if it is determined that:
 1. The proposed use has lawfully occurred;
 2. Substantial construction toward completion of the land use approval has taken place; or
 3. Where construction is not required by the approval, the conditions of a permit or approval have been substantially exercised and any failure to fully comply with the conditions is not the fault of the applicant.
- B. For the purposes of this section, "substantial construction" has occurred when the holder of a land use approval has physically altered the land or structure or changed the use thereof and such alteration or change is directed toward the completion and is sufficient in terms of time, labor or money spent to demonstrate a good faith effort to complete the development.
- C. Procedures.
 1. A determination of whether a land use has been initiated shall be processed as a declaratory ruling.
 2. Approval of an extension granted under 153.259.010(c) is an administrative decision, is not a land use decision described in ORS 197.015 and is not subject to appeal as a land use decision and shall be processed under 153.250 as a development action, except to the extent it is necessary to determine whether the use has been initiated.
- D. Effect of Appeals. The time period set forth in 153.259.010(B) shall be tolled upon filing of an appeal to LUBA until all appeals are resolved.

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153.259.030. Modification of approval.

- A. An applicant may apply to modify an approval after a land use action approval has become final.
- B. Unless otherwise specified in a particular zoning ordinance provision, the grounds for filing a modification shall be that a change of circumstances since the issuance of the approval makes it desirable to make changes to the proposal, as approved. A modification shall not be filed as a substitute for an appeal or to apply for a substantially new proposal or one that would have significant additional impacts on surrounding properties.
- C. An application to modify an approval shall be directed to one or more discrete aspects of the approval, the modification of which would not amount to approval of a substantially new proposal or one that would have significant additional impacts on surrounding properties. Any proposed modification, as defined in this section, shall be reviewed only under the criteria applicable to that particular aspect of the proposal. Proposals that would modify an approval in a scope greater than allowable as a modification shall be treated as an application for a new proposal.
- D. An application for a modification shall be handled as a land use action.

153.259.040. Transfer of permit.

- A. A land use action permit shall be deemed to run with the land and be transferable to applicant's successors in interest.
- B. The Planning Department may require that an applicant record a notice of land use permit and conditions of approval agreement in the Crook County Records. Such an agreement shall set forth a description of the property, describe the permit that has been issued and set forth the conditions of approval.
- C. The terms of the approval agreement may be enforced against the applicant and any successor in interest.

153.259.050. Revocation of approvals.

- A. Approvals shall be subject to revocation according to standards set forth in the applicable zoning ordinances.
- B. Revocations shall be processed as a declaratory ruling under City of Prineville Land Development Ordinance. 153.259.010 notwithstanding, a public hearing shall be held in all revocation proceedings.

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153.260 DECLARATORY RULING

- 153.260.010. Availability of declaratory ruling.
- 153.260.020. Persons who may apply.
- 153.260.030. Procedures.
- 153.260.040. Effect of declaratory ruling.
- 153.260.050. Interpretation.

153.260.010. Availability of declaratory ruling.

- A. Subject to the other provisions of this section, there shall be available for the City's comprehensive plans, zoning ordinances and City of Prineville Land Development Ordinance process for:
 - 1. Interpreting a provision of a comprehensive plan or ordinance (and other documents incorporated by reference) in which there is doubt or a dispute as to its meaning or application;
 - 2. Interpreting a provision or limitation in a land use permit issued by the City or quasi-judicial plan amendment or zone change in which there is doubt or a dispute as to its meaning or application;
 - 3. Determining whether an approval has been initiated or considering the revocation of a previously issued land use permit, quasi-judicial plan amendment or zone change;
 - 4. Determining the validity and scope of a nonconforming use; and
 - 5. Determination of other similar status situations under a comprehensive plan, zoning ordinance or land division ordinance that do not constitute the approval or denial of an application for a permit

Such a determination or interpretation shall be known as a "declaratory ruling" and shall be processed in accordance with this section. In all cases, as part of making a determination or interpretation the Planning Director shall have the authority to declare the rights and obligations of persons affected by the ruling.
- B. A declaratory ruling shall be available only in instances involving a fact-specific controversy and to resolve and determine the particular rights and obligations of particular parties to the controversy. Declaratory proceedings shall not be used to grant an advisory opinion. Declaratory proceedings shall not be used as a substitute for seeking an amendment of general applicability to a legislative enactment.
- C. Declaratory rulings shall not be used as a substitute for an appeal of a decision in a land use action or for a modification of an approval. In the case of a ruling on a land use action a declaratory ruling shall not be available until six months after a decision in the land use action is final.
- D. The Planning Director may refuse to accept an application for a declaratory ruling if:
 - 1. The Planning Director determines that the question presented can be decided in conjunction with approving or denying a pending land use action application or if in the Planning Director judgment the requested determination should be made as part of a decision on an application for a quasi-judicial plan amendment or zone change or a land use permit not yet filed; or

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2. The Planning Director determines that there is an enforcement case pending in district or circuit court in which the same issue necessarily will be decided as to the applicant and the applicant failed to file the request for a declaratory ruling within two weeks after being cited or served with a complaint.

The Planning Director determination to not accept or deny an application under this section shall be the City's final decision.

153.260.020. Persons who may apply.

- A. 153.251.010(B) notwithstanding, the following persons may initiate a declaratory ruling under 153.260:

1. The owner of a property requesting a declaratory ruling relating to the use of the owner's property;
2. In cases where the request is to interpret a previously issued quasi-judicial plan amendment, zone change or land use permit, the holder of the permit; or
3. In all cases arising under 153.260.010, the Planning Director.

No other person shall be entitled to initiate a declaratory ruling.

- B. A request for a declaratory ruling shall be initiated by filing an application with the planning department and, except for applications initiated by the Planning Director, shall be accompanied by such fees as have been set by the Planning Department. Each application for a declaratory ruling shall include the precise question on which a ruling is sought. The application shall set forth whatever facts are relevant and necessary for making the determination and such other information as may be required by the Planning Department.

153.260.030. Procedures.

Except as set forth in this section or in applicable provisions of a zoning ordinance, the procedures for making declaratory rulings shall be the same as set forth in 153.250 for land use actions. Where the Planning Department is the applicant, the Planning Department shall bear the same burden that applicants generally bear in pursuing a land use action. Declaratory Rulings shall be issued by the Planning Commission.

153.260.040. Effect of declaratory ruling.

- A. A declaratory ruling shall not be appealable and bind the parties thereto as to the determination made.
- B. 153.256.040 notwithstanding, and except as specifically allowed therein, parties to a declaratory ruling shall not be entitled to reapply for a declaratory ruling on the same question.

153.260.050 Interpretation.

Interpretations made under 153.260 shall not have the effect of amending the interpreted language. Interpretation shall be made only of language that is ambiguous either on its face or in its application. Any interpretation of a provision of the comprehensive plan or other land use ordinance shall consider applicable provisions of the comprehensive plan and the purpose and intent of the ordinance as applied to the particular section in question.