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# HARNEY COUNTY

## Planning Department

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## **NOTICE OF INTENT TO APPEAL (HCZO 9.030 & 9.040)**

(Form furnished by the Harney County Planning Department)

1.) **(15-Day Period)** After the findings are written and approved by the Planning Commission or the Planning Department, there is a 15-day period from the day the findings (*the findings also constitute a notice of decision*) are sent for which parties of interest may file an appeal with the Harney County Planning Department. (HCZO 9.030)

2.) **(Level of Appeal)** An appeal of a type II decision from the Planning Department is moved to a new hearing before the Planning Commission. Any appeal of a Planning Commission decision (type III) is taken to the Harney County Court (*See Attached "Section 9.030 Appeals" for further detail*).

Appeal order:

- Planning Department (Type II)
- Planning Commission (Type III)
- Harney County Court

**Filing Procedures:** An appeal to a land-use decision is filed similarly to an application for a land-use decision, as both are put through the same schedule of staff preparation, notification, and quasi-judicial hearing process. A proposed land-use development is accompanied by an official application and filing fee, while (in slight contrast) an appeal to a proposed land-use development may be filed using this form. And just like an application, a filing fee is required. The filing fee for an appeal in Harney County is \$250.00. *In the event more than one party files separate appeals on the same decision, the Planning Director shall require separate fees from each separate filing/appellant.*

# I. Contact Information

Name of **Appellant**(s): \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_  
Email Address: \_\_\_\_\_

Name of **Applicant**(s): \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_

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# II. Description of Appeal Notice

(Check One):

Appeal of a Planning Department Decision (Type II)

Appeal of Planning Commission Decision (Type III)

Harney County Planning Department File Number: \_\_\_\_\_

Date of the Decision/ Date on Findings document: \_\_\_/\_\_\_/\_\_\_

Demonstration of Standing (*Do you qualify as a party of standing?*): **Only type II and type III decisions may be appealed. An appeal may be filed only by a person/s who participated either orally or in writing, who filed a "Notice of Intent to Appeal" and is aggrieved or has interests adversely affected by the decision. (HCZO 9.030(4)(5))**

(Check One):

Participated in the Planning Commission Hearings

Submitted Written Comment

# III. Basis of Appeal and Submittal Requirements

## **HCZO Section 9.040. “Form of Petition, Application, and Appeals”**

State how the comprehensive plan, zoning ordinance, or other applicable federal, state or local law or rule, or evidence, was incorrectly interpreted or applied in the decision. What information in the record of decision (“Findings and Decision” document) was pertinent to the decision, but was not considered by the reviewing body. This may include the comprehensive plan, zoning ordinance, applicable state law, or other evidence.

Each ground or reason for appeal must be separately numbered and explained as “assignments of error.” The assignments of error for the appeal must have been raised before the review or hearing body with sufficient specificity to allow the review or hearing body an opportunity to respond to the issue.

**Director Review. Within two working days of the date that the appeal is received by the Planning Department, the Planning Director shall review the written appeal to determine if it was received within the 15-day appeal period and if it contains the contents required by section 9.040 above. If it was not received within the appeal period or does not contain the required contents, within this same two day period, the Planning Director shall reject the appeal and mail to the appellant the appellant’s notice of appeal contents and a disclosure in writing identifying the deficiencies of content. The appellant may correct the deficiencies and resubmit the appeal if still within the 15-day appeal period. Appeals which are not so rejected by the Planning Director shall be assumed to have been accepted.**

Attach additional items if necessary and label them as exhibits (e.g., Exhibit A, B, C, etc...).

A large, empty rectangular box with a thin black border, occupying the majority of the page below the text. It is intended for attaching additional items as exhibits.

**HCZO Section 9.030 & 9.040**

**Section 9.030. Appeals**

1. An action or decision of the Planning Director pursuant to this Ordinance, as further defined under chapter 2 of the comprehensive plan, may be appealed to the Planning Commission within 15 days after the Planning Director has rendered a decision. Written notice of an appeal shall be filed with the Planning Director. If an appeal is not filed within the 15-day period, the decision of the Planning Director shall be final. If the appeal is filed, the Planning Commission shall conduct a hearing de novo. A de Novo hearing is defined as a new hearing, which can take into account all previous testimony and any new testimony presented by the proponent and/or the opponent to an issue.
2. An appeal from a ruling of the Planning Commission regarding a requirement of the Ordinance may be made only to the County Court.
3. An action or ruling of the Planning Commission pursuant to this Ordinance may be appealed to the County Court within 15 days after the Planning Commission has rendered its decision. Written notice of an appeal shall be filed with the Planning Commission. If an appeal is not filed within the 15-day period, the decision of the Planning Commission shall be final. If the appeal is filed, the County Court shall receive a report and recommendation from the Planning Director within ten days of receipt of the notice of appeal. The Planning Director shall provide the record to the County Court for review. Upon review of the record the County Court may:
  - A. Decline to hear the matter and enter an order affirming the lower decision; or
  - B. Accept the appeal and:
    - a. Make a decision on the record without argument;
    - b. Make a decision on the record with argument
    - c. Conduct a hearing de novo; or
    - d. Conduct a hearing limited to specific issues.
4. If the County Court elects to apply the review procedure listed under 9.030 (3)(B), the record before the County Court shall include only the evidence and argument submitted on the record before the Planning Commission (including all testimony, all materials submitted at any previous stage of the review, staff reports, and minutes of the public hearing). New evidence may not be entered into the record.

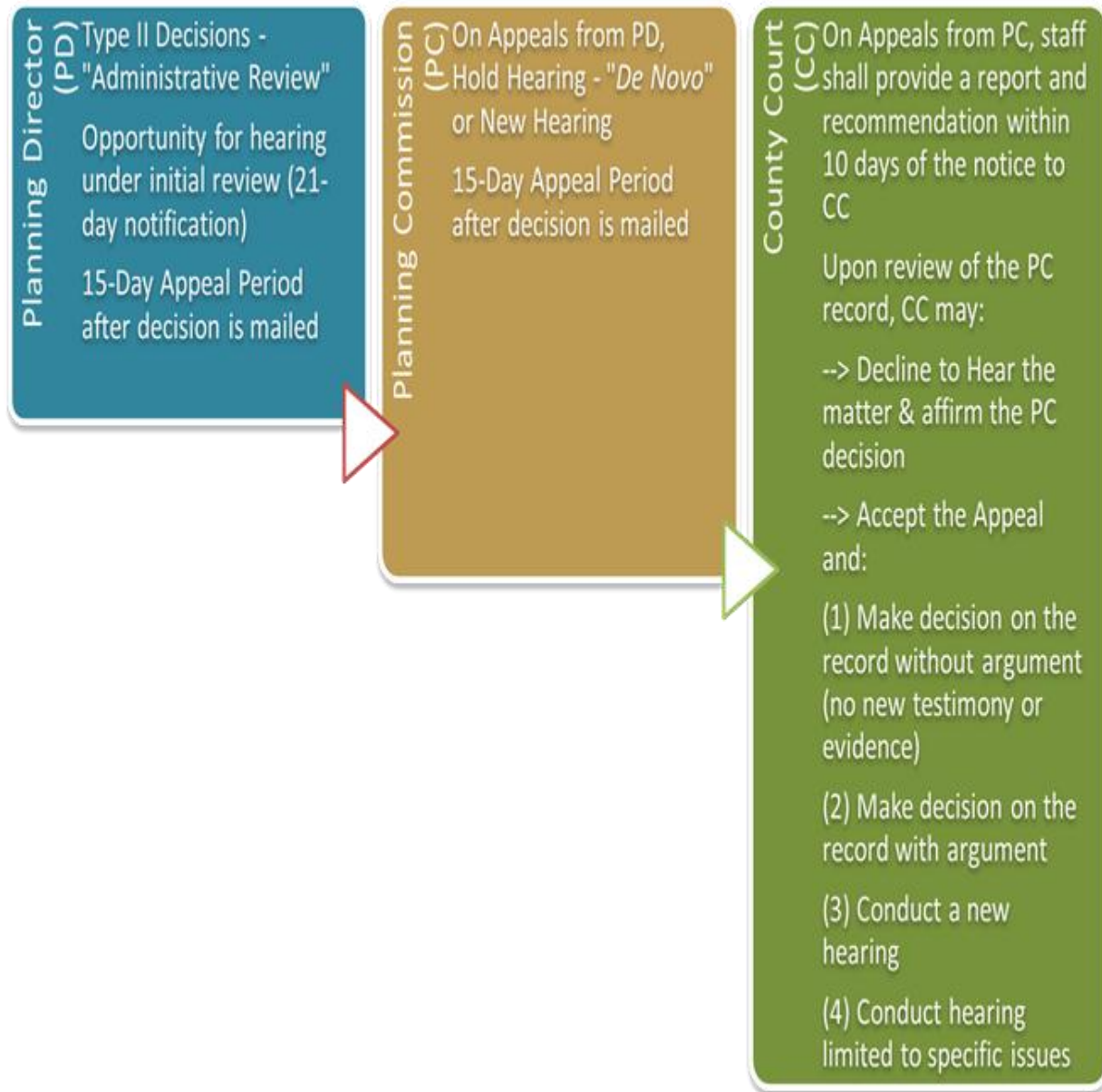
5. An action or ruling of the County Court pursuant to this Ordinance may be appealed to the Land Use Board of Appeals, by filing a "Notice of Intent to Appeal" within 21 days of the date of the final decision (ORS 197.625(1)).
6. An appeal may be filed only by a person/s who participated either orally or in writing, who filed a "Notice of Intent to Appeal" and is aggrieved or has interests adversely affected by the decision.

An appeal on a Quasi-Judicial decision may be filed if the person/s filed a "Notice of Intent to Appeal", appeared before the local government, special district, or state agency orally or in writing and was entitled to a notice and hearing prior to the decision being reviewed or is aggrieved or has interests adversely affected by the final decision (ORS 197.830).

7. A decision to not adopt a legislative amendment or a new land use regulation cannot be appealed (ORS 197.620).

LUBA Participation. The county shall not generally participate in appeals filed with the LUBA. The response to an appeal shall be left to the party whose interests are, or may be, affected by a modification, reversal, or remand upon appeal. Only in those cases that represent a significant issue to the entire county, or establish a precedent that may be detrimental to county interests, will the court and the county legal counsel consider participating in a response.

Harney County Land Use Appeal Process



(Modified 10/30/2012 through Ord. 2012-70.)

**Section 9.040. Form of Petition, Application, and Appeals**

Petitions, applications, and appeals provided for in this Ordinance shall be made on forms prescribed by the County. Applications shall be accompanied by plans, and specifications, drawn to scale, showing the actual shape and dimensions of the lot to be built upon; the sizes and locations on the lot of all existing and proposed structures; the intended use of each structure; the number of families, if any, to be accommodated there-on; the relationship of the property to the surrounding area; and such other information as is needed to determine conformance of this Ordinance.

Energy Facilities. For proposed facilities under Oregon Energy Facility Siting Council (EFSC) jurisdiction, an abbreviated summary of the EFSC application is required. For facilities not under EFSC jurisdiction, an application containing information on each subject called for in EFSC applications is required.

Appeals. All appeals of a Planning Commission decision shall:

1. Be submitted in writing to, and received, by the Planning Department within the 15- day appeal period as listed under HCZO 9.030;
2. Be accompanied by the necessary fee to help defray the costs of processing the appeal;
  - A. In the event more than one party files separate appeals on the same decision, the Planning Director shall require separate fees from each separate filing/appellant.
3. Be completed on the form provided by the Planning Department, or one substantially similar thereto, and shall contain the following information:
  - A. The name, address and telephone number of the person filing the appeal;
  - B. A reference to the Planning Department filing number for the application being considered with the appeal;
  - C. How the person filing the appeal qualifies as a party, as listed under HCZO 9.030;
  - D. How the comprehensive plan, zoning ordinance, or other applicable federal, state or local law or rule, or evidence, was incorrectly interpreted or applied in the decision;



- E. What information in the record of decision was pertinent to the decision, but was not considered by the reviewing body. This may include the comprehensive plan, zoning ordinance, applicable state law, or other evidence;
- F. Each ground or reason for appeal must be separately numbered and explained as “assignments of error”;
  - a. The assignments of error for the appeal must have been raised before the review or hearing body with sufficient specificity to allow the review or hearing body an opportunity to respond to the issue.

Director Review. Within two working days of the date that the appeal is received by the Planning Department, the Planning Director shall review the written appeal to determine if it was received within the 15-day appeal period and if it contains the contents required by section 9.040 above. If it was not received within the appeal period or does not contain the required contents, within this same two day period, the Planning Director shall reject the appeal and mail to the appellant the appellant's notice of appeal contents and a disclosure in writing identifying the deficiencies of content. The appellant may correct the deficiencies and resubmit the appeal if still within the 15-day appeal period. Appeals which are not so rejected by the Planning Director shall be assumed to have been accepted.

(Modified 10/30/2012 through Ord. 2012-70.)

**Section 9.050. Filing Fee**

The fee schedule for the Harney County Planning Department is prepared and approved by the Harney County Court in consultation with the Harney County Planning Commission.

(Modified 4/21/2010 through Ord. 2010-67 replacing the previous text entirely.)

## IV. Certification

I/We, the undersigned, swear under penalty of perjury that the above responses are made truthfully and to the best of my/our knowledge.

**X**

\_\_\_\_\_  
Signature of Appellant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name of Appellant (individual signing this from)

**X**

\_\_\_\_\_  
Signature of Appellant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name of Appellant (individual signing this form)

**X**

\_\_\_\_\_  
Signature of Appellant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name of Appellant (individual signing this form)