



February 2, 2015

**LONG RANGE PLANNING
ISSUE PAPER NO. 2**

Written Testimony by Email

Issues

The 2014 Work Program approved preparation of an Issue Paper to address consistent Washington County policy for email testimony on land use matters for the Department of Land Use & Transportation, and potentially to serve as a model for other departments. While unofficial policies on the matter are plentiful and diverse, Washington County DLUT currently has no formally adopted standards that specifically address acceptance of written testimony by email.

There are some operational challenges that will need to be addressed, however this paper recommends and provides support for acceptance of written testimony on land use matters via email, consistent with common practice among agencies and jurisdictions throughout the state. Many accommodate it for the increased public accessibility and inclusion it affords, allowing greater participation by people who might not otherwise be engaged. Staff believes this is the key benefit. Toward that end, improvement of both adopted standards and informal policy documentation are recommended in this Issue Paper.

Recommendations

After considering the information and implications in this issue paper:

- Allow acceptance of testimony via email, under existing adopted provisions for written testimony, subject to the same criteria. No change is needed to specifically reference “email” within existing *adopted* standards in order to allow its acceptance;
- Authorize preparation of an ordinance that amends relevant Community Development Code (CDC) Sections to clarify the requirements for email testimony and provide needed safeguards, as outlined in this Issue Paper.
- Direct staff to revise existing informal public information documents (print and web) that address written testimony to clarify requirements for email as written testimony.
- Regarding testimony requirements in general, direct staff to conduct more comprehensive research and prepare an Issue Paper, with recommendations to address issues including:
 - Inconsistencies within testimony requirements for land use matters overall, based on division, meeting type, hearing body, land use review type, oral versus written statement, and other variables;
 - The extent to which these can be made consistent; and

- Potential for a simple yet comprehensive at-a-glance “Testimony Guide” for public distribution, that covers testimony rules for the range of procedures affecting land use decisions.

Background

The 2014 Work Program included preparation of an Issue Paper to address consistent Washington County policy for email testimony on land use matters. The need for consistency and clarification is indicated partly by inquiries that staff who commonly receive comments or testimony from the public, and partly by related requests from the Oregon State University (OSU) Extension Service. As an outreach and education service to Citizens Participation Organizations (CPOs), the OSU Extension Service is frequently called upon to address testimony questions.

Resolution & Order 86-58 (circa 1986) outlines Washington County’s adopted processes for citizen participation in matters regarding land use decisions. Detail on formal requirements at the Board of Commissioners level is found in the Board’s more recent 2012 Rules of Procedure. Specific requirements regarding written testimony are dispersed throughout various sections of the CDC. These vary slightly by meeting, hearing body, and land use review type. None specifically addresses email as a form of written testimony.

The county’s public testimony requirements are based on Oregon Revised Statute 197 (Comprehensive Land Use Planning I) to the extent that it prescribes requirements. The ORS, however, leaves many procedural matters to the discretion of individual jurisdictions. Where the ORS addresses requirements for written testimony, it doesn’t prescribe delivery method except in the case of testimony on appeals at the judicial level. As such, land use testimony via email is not precluded, and a number of local and state offices across Oregon now accept it.

Analysis

Opportunities for Testimony

Washington County makes decisions that affect the use of land through various different review procedures, most of which include opportunities for the public to submit testimony. Generally, these opportunities include:

Land Use Activities Generally Processed by the Current Planning Section:

- Type II and III ministerial and quasi-judicial development reviews wherein existing adopted standards are applied to a land use proposal for a given property based on an application from its owner;

Land Use Activities Generally Processed by the Long Range Planning Section, Planning Commission and/or County of Commissioners

- Type III quasi-judicial plan amendments where policy affecting a given property may be amended in response to an application from its owner;
- Type IV legislative plan amendments/ordinances which may create or amend regulations potentially affecting many properties whose owners need not be party to an application; and

- Other legislative actions adopted by Resolution & Order, such as annexations.

To govern testimony – how and when people may submit input, ideas, and concerns for consideration as part of a land use decision – the county has adopted certain formal standards within documents indicated under “Background” information, earlier. These requirements stem from Oregon Revised Statute 197, but may be more prescriptive since the county is allowed some discretion.

Staff notes that acceptance of written testimony by email can be accomplished without changes to existing *adopted* Washington County standards. There is nothing within these or within state law that qualifies or disqualifies written matter as testimony based on delivery method, at least not for county level land use decisions. Email, like standard mail or hand-delivery, is a method of delivery. As such, the county could consider submission of written testimony by email to be held to the same existing standards as submission of written testimony through any other delivery mode. Some additional parameters, however, are recommended.

Practices Elsewhere

Beyond Washington County, many jurisdictions and governmental agencies clearly accept written testimony via email. Some examples include the State Ways and Means Committee, Portland Bureau of Planning and Sustainability, City of Eugene, Clackamas County Department of Transportation and Development, and the Marion, Linn, Deschutes, and Crook County Planning Departments.

Though their adopted standards don’t distinguish it from other forms of written testimony, these offices provide email specific references, guidance and/or disclaimers in other documents such as land use action notices, web pages, and printed guidelines. Some jurisdictions simply direct submission of testimony to a given email address, while others call for minimal details like name, address, and case file number for all written testimony, noting email as an acceptable delivery form. Other jurisdictions get even more specific.

For example, Marion County’s online Schedule of Public Hearings cautions, “We strongly advise you not to submit written testimony... with a time-sensitive nature via email. It is possible the County's anti-virus or spam software will block an email being sent to the Planning Division. Also, there can be technical issues that slow delivery of email. If you are unable to mail or hand-deliver a document and send it by email, make sure you receive confirmation that the email was received... It is important to note that any form of communication (mail, fax, email, etc.) for a land use hearing must be received in the Planning Division office by 4:00 p.m. the day prior to the hearing.”

Current Practices and Issues

Procedures for submission of traditional written testimony are relatively clear. However, currently various ad-hoc policies regarding email testimony are utilized from division to division and process to process. Informal guidance ranges from complete rejection of email testimony, to acceptance only when a signed scanned letter is attached, to acceptance with no provisos. As

such, a task was included in the 2014-2015 Work Program to create a cohesive email testimony policy.

For Current Planning, the acceptance of written testimony via email has been especially problematic. There are some significant implications to be considered, both in terms of time and resources, before moving forward to adequately accommodate electronic submittal of testimony.

Acceptance of electronic comments transfers the responsibility to reproduce those comments to the Planning staff. This may also increase the ease with which people may submit testimony, and therefore may result in a higher volume of correspondence. This has cost implications both in terms of staff time as well as reproduction costs. In the medium term, this may result in the need for incremental fee increases to offset these costs.

Emails have other issues that don't arise with traditional written testimony, and it would be prudent to address these differences. Some of these include:

- How to address links, document attachments, and items like You Tube videos that are easily included with emails;
- Potential SPAM filters or technical errors that delay or prevent email receipt;
- Procedures for saving and archiving;
- How to establish when someone intends their email as official testimony or not; and
- How to ensure author authenticity given removal of requirements for a signature on written testimony for Type II actions, and removal of associated informal guidance that calls for scanning of a signature when emailing written testimony.

Consistent policy is needed to address these and other potential situations and to clearly articulate how the county will treat these items. Staff suggests that standards and informal policies be aligned to the extent possible, subject to parameters discussed above, in a way that allows for acceptance of written testimony via email. Staff believes that modifications to such policies, as discussed in this Issue Paper, warrant consideration by the Board.

Staff believes that accommodating submission of testimony by email provides benefits that outweigh noted concerns. It adds a degree of accessibility, allowing more people a voice in county land use matters by simplifying participation for those who may historically have been overlooked or unintentionally excluded.

Formal Washington County Provisions for Testimony: Recommended Changes

While acceptance of written testimony by email can be accomplished without changes to adopted county standards, some changes to the Community Development Code are suggested to provide additional clarity.

CDC Section 106-17, below, provides a formal description of what constitutes testimony in county land use matters:

106-17 Appearance of Record

“One or more of the following: an oral statement made at the hearing sufficiently identifying the speaker; a written statement giving the name and address of the maker of the statement and introduced into the record prior to or at the public hearing (A person’s name and address on a petition introduced into the record constitutes an appearance of record); any signed comments submitted to the Planning Director for review during the comment period for Type II actions.”

Note that the above county standard requires a signature only on written testimony for Type II land use decisions, but not on written testimony for Type III or IV actions. Oregon Revised Statute 197 (Comprehensive Land Use Planning I) doesn’t apply this requirement.

Removal of the county’s signature requirement would simplify application of a consistent policy for submission of *written* testimony by email (and all written testimony) regardless of land use procedure type. Without the change, email testimony could still be accepted, but the sender would need to attach scanned or digitally photographed *signed* testimony for Type II cases only – a complication that appears unnecessary if we consider only existing law and standards.

A potential amendment to CDC Section 106-17, that would remove the signature requirement but still ensure that the sender is well identified, is shown below (strikeout = to be removed; underline = to be added):

106-17 Appearance of Record

“One or more of the following: an oral statement made at the hearing sufficiently identifying the speaker; a written statement giving the name and address of the maker of the statement and introduced into the record prior to or at the public hearing (A person’s name and address on a petition introduced into the record constitutes an appearance of record); any ~~written signed~~ comments giving the name and address of the author that are submitted to and actually received by the Planning Director for review during the comment period for Type II actions.”

Removal of the signature requirement as shown above would contribute to the greatest level of consistency in written testimony requirements, regardless of division, delivery method, or procedure type.

Informal Washington County Guidelines and Policies: Recommended Changes

Besides formally adopted provisions for testimony, a search of county web information turns up tools of various vintages aimed at distilling or clarifying the public testimony process, each with commonalities and unique nuances. Examples of these are: “*Rules of Procedure for the Washington County Land Use Hearings Officer*,” “*Testimony Protocols and Tips*,” “*How to Testify*,” “*Public Involvement Guidelines for Transportation Planning, Programs and Projects*,” and “*Land Use Ordinance Testimony*.” Most recently, however, the Department’s direction has been as follows:

Testimony by Mail or Hand Delivery:

Official testimony on casefiles and land use ordinances must be received in writing by the deadline specified in the public notice or through oral testimony at hearings (if applicable).

Written testimony must include your name (clearly printed or typed), signature, phone number and address. Communications received prior to filing/recording of an ordinance or prior to the county's acceptance of a land use casefile as complete are not considered official testimony.

Testimony by Email:

At this time, email is not considered part of the official record unless the email includes an attached PDF of a scanned, signed copy of your written testimony including the required contact information by the deadline specified in the public notice. Emails should be submitted to the planner assigned to the casefile or ordinance being commented on. Email submissions are at the submitter's own risk — the county does not accept responsibility for non-delivery of emails.

Public Input that is not Testimony:

Comments submitted orally or in writing outside the official review period for a given case, outside of adopted processes governing its formal record, or via phone conversations or social media posts are accepted and welcome but are not considered official testimony. According to Oregon records law, however, these may be subject to public viewing.

This Issue Paper recommends the following revisions to the above public information guidance, assuming acceptance of written testimony via email, for the greatest consistency across procedures and divisions. These will be further developed and included in public information documents provided by the department, as follows:

- Require a name and address, but remove any requirement for a signature on any testimony;
- Remove the requirement for a scanned, signed copy of testimony sent via email;
- Clarify that written testimony must be delivered to and received by the Washington County contact identified on the public notice, using the appropriate contact information as indicated under testimony requirements in the notice;
- Provide deadlines for receipt of comments (e.g., 4:00 p.m. on the day prior to the hearing to allow for printing and filing);
- Advise that lack of timely receipt of written testimony regardless of delivery mode, for any reason including technical difficulties, means that it may not be included in the record;
- Clarify that written testimony by mail, hand delivery, or email is not considered official testimony if received outside the official review period for a given case, or outside of adopted processes governing its formal record; and that each is public record subject to public viewing;
- Develop guidance on how the county will treat links, attachments, videos and the like; and
- Develop procedures for saving and archiving email testimony.

With changes to adopted standards and revision of existing guidelines as proposed, a more consistent and inclusive approach to public testimony can be provided. The intent is to afford greater convenience for the public to provide input into land use processes.

Future Work

In the course of research for preparation of this issue paper, staff began to track inconsistencies within testimony requirements for Washington County land use matters overall. Various nuances based on meeting, hearing body, land use review type, and oral versus written statements, are complicated by the fact that a single land use decision may require multiple hearings and/or review by more than one hearing body. Together, these circumstances complicate a clear understanding of testimony protocol for both internal and external clients.

Since testimony requirements are housed in various sections of different documents, both adopted and informal, more comprehensive research is recommended to ensure that all commonalities and variations are accounted for. Staff suggests that it may be beneficial to clarify when various testimony provisions apply, and assess the extent to which the range of requirements can be standardized. Ideally this could serve creation of a simple at-a-glance “Testimony Guide” for public distribution, to cover testimony rules for the range of procedures affecting land use decisions – and replace a number of competing and conflicting documents currently in circulation.

Within “Recommendations,” staff has suggested that the Board consider authorizing this research and preparation of a related Issue Paper.

Summary

This paper recommends some amendments to the CDC and departmental policy, intended to ensure clear rules and usefulness of written testimony overall, including the acceptance of written testimony by email. Staff believes that suggested changes remain compliant with state law, are consistent with practices throughout the state, and would simplify public participation in testimony opportunities – especially for those who might not otherwise be able to engage.

Based on discoveries during research for this Issue Paper, staff has added a recommendation that the Board authorize preparation of another Issue Paper, to take a look at the county’s testimony requirements overall. These vary based on meeting, hearing body, land use review type, oral versus written statements, and throughout different aspects of the same land use review. Some simplification and standardization may be in order.