



MEMORANDUM

TO: Deschutes County Planning Commissioners
FROM: Will Groves, Planning Manager
DATE: October 23, 2025
SUBJECT: Request to Review Hearings Officer Decisions /247-23-000302-DR & 247-25-000093-A

I. REQUEST

Randy Windlinx (Windlinx) has respectfully asked the Planning Commission to review 2024 and 2025 Hearing Officer decisions, File Numbers: 247-23-000302-DR and 247-25-000093-A.

The Planning Commission had expressed interest in reviewing 247-23-000302-DR and 247-25-000093-A, as a non-binding, informal review of the case and process. Because this quasi-judicial matter is final, it is vital that as part of this review the Planning Commission neither:

1. Re-adjudicate this matter, nor
2. Give the appearance of re-adjudicating this matter.

The Planning Commission's scheduled orientation to current planning, together with review of this case may reasonably lead to discussion and/or recommendations for potential procedural code changes for future quasi-judicial applications, to be considered as part of the Community Development Department's 2026-2027 work plan.

In support of this review, staff attaches the Hearing Officer's Decision, Land Use Board of Appeals (LUBA) Decision, and Hearing Officer's Decision on Remand. In addition, the case records are available in full on the pages below:

<https://www.deschutes.org/cd/page/planning-commission>

	Planning Commission
	247-23-000302-DR; ODOT Lava Butte Trail
	247-25-000093-A; ODOT Lava Butte Trail Remand

II. LEGAL ANALYSIS

The analysis below was provided as part of the September 11, 2005 Planning Commission packet and is reprinted here for convenience. The full packet for that meeting is available at:

<https://mccmeetings.blob.core.usgovcloudapi.net/deschutes-pubu/MEET-Packet-0860d5a8ced444e89a329beea27088eb.pdf>

Background

In 2003, the Oregon Department of Transportation (ODOT) applied for a declaratory ruling, 247-23-000302-DR, to determine multiple issues, including the zoning designation of one parcel of property (Parcel 1) is Rural Residential 10 (RR-10) or Forest Use 2 (F-2), whether a proposed multiuse path qualifies as a Class III road and street project, and whether such projects are allowed by right in the RR-10 and Open Space and Conservation (OS&C) zones. ODOT also made multiple alternative requests, including whether the proposed path is an outright permitted use in the F-2 zone, or a use permitted conditionally in that zone without the need for an exception to Statewide Planning Goal 4 pursuant to Oregon Administrative Rule 660-012-0065. ODOT and Windlinx offered competing arguments in the record, casting doubt and a dispute over the correct zoning of Parcel 1. Hearings Officer Tommy Brooks issued a decision in 2003, determining that the subject property is zoned RR-10. This decision was appealed by Mr. Windlinx to LUBA, LUBA No. 2024-010.

LUBA denied each of the assignments of error raised in that appeal, with one exception. LUBA remanded the matter to the County for further decision-making to address Mr. Windlinx's argument that the doctrine of collateral attack precludes the hearings officer from determining in a declaratory ruling that the zoning of the Trail Area is other than F-2 are inadequate. LUBA specifically noted that "[t]he doctrine of issue preclusion is related to, but distinct from, the collateral attack doctrine. We agree with petitioner that remand is required for the hearings officer to adopt adequate findings addressing petitioner's argument that the application is a collateral attack on the final and unappealed Weigh Station Decision."

ODOT initiated the LUBA Remand on February 12, 2025. As noted above, the scope of the remand was narrow. The County was required to adopt new findings to address Mr. Windlinx's argument that the application is a collateral attack on the Weigh Station Decision. After reviewing the submitted information, Tommy Brooks, Hearings Officer, issued a decision with additional findings on April 11, 2025, concluding the Declaratory Ruling decision does not amount to a collateral attack on the Weigh Station decision. Therefore, the Parcel 1 portion of the subject properties is zoned RR-10. The Board declined to hear Windlinx's appeal of that decision thus making it the final decision of the County.^[1] Their decision was not appealed to LUBA. It is therefore acknowledged and not subject to further legal challenges.

Planning Commission Authority

DCC 2.52.100(A)(2) states that the Planning Commission has, as one of its duties, "To review *at its discretion* land use decisions of the Hearings Officer *within its jurisdiction* under Deschutes County ordinances." (emphasis added). The Planning Commission does not have jurisdiction to review the subject Hearings Officer's decisions in this matter for two reasons.

^[1] Order 2025-016.

First, under DCC 2.52.010, “jurisdiction under Deschutes County ordinances” to *review* hearings officer’s decisions was changed (with unanimous concurrence from a previous Planning Commission) under Ord. 2000-003 and replaced with the Planning Commission’s ability to *recommend* that such decisions be reviewed by the Board.

Second, the Hearings Officer’s decisions for which Mr. Windlinx requests Planning Commission review are final under state law and local code; the appeal period(s) have run. DCC 22.28.010(C); DCC 22.20.040(1); and DCC 22.28.010(3). There is no action that the Planning Commission can take with respect to final land use decisions of the County. It is now too late for the Planning Commission even to recommend that the Board of County Commissioners review the Hearings Officer’s decisions.

While the Planning Commission is included in the definition of “Hearings Body” in DCC 22.24.020(1), there is nothing in County Code or state law that allows review by the Planning Commission (or more precisely, any “action” by the Planning Commission) with respect to a *final* land use decision, and certainly not a decision that has already been appealed beyond the County. This is further confirmed by Ord. 2000-003, which replaced the Planning Commission’s authority to review hearings officer’s decisions with authority only to recommend that such decisions be reviewed by the Board.

Finally, under DCC 22.32.015(2), the request for Planning Commission review of the Hearings Officer’s decision is not a timely appeal. “Unless a request for reconsideration has been filed, the notice of appeal and appeal fee must be received at the offices of the Deschutes County Community Development Department no later than 4:00 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 4:00 PM on the twelfth day following mailing of the decision as modified. Therefore, for the same reason, the scope of review provisions in DCC 22.32.027 are inapplicable because no timely appeal was filed to the Planning Commission.

Conclusion

Review of the Hearings Officer’s decisions is not within the Planning Commission’s jurisdiction because, under Ord. 2000-003, the Planning Commission is limited to recommending that the Board review a hearings officer’s decision. Under the circumstances here, the Planning Commission does not have that authority because the Hearings Officer’s decisions for which Mr. Windlinx requests review by the Commission are final. There is no means by which an attempt to invoke the Planning Commission’s jurisdiction could be based because the Hearings Officer’s decisions are now final. In short, there is no meaningful action the Planning Commission could take with respect to the Hearings Officer’s decisions at this late date and under the circumstances.

Attachments:

- Hearing Officer’s Decision
- Land Use Board of Appeals (LUBA) Decision
- Hearing Officer’s Decision on Remand