



MEMORANDUM

TO: Deschutes County Board of Commissioners

FROM: Peter Gutowsky, CDD Director
Sherri Pinner, Sr. Management Analyst

DATE: February 24, 2023

SUBJECT: Hearings Officer & Appeals Actual Cost of Service Analysis and Funding Alternatives

Staff seeks direction from the Board of County Commissioners (Board) to prepare funding options for hearing officer services and appeals in preparation for an in-depth discussion with the Board, Budget Officer and Budget Committee members in May.

I. SUMMARY

The purpose of this memorandum is to evaluate Community Development Department's (CDD) current practice of collecting a hearings officer and administrative deposit in the amount of \$5,500 on land use applications that require a Hearings Officer proceeding. It is worth noting, beginning in FY 2022, CDD ceased collecting hearings officer deposits on land use applications meeting Deschutes County Code (DCC) and State land use laws. In the event of an appeal of these applications, the County Budget Committee allocated up to \$40K of general funds for hearings officer service charges.

II. HISTORIC AND CURRENT PRACTICE

Prior to FY 2007-08, CDD charged a fee for hearings officer services. During FY 2007-08 fee setting process, the hearings officer services fee was eliminated and replaced with collecting a hearings officer services deposit. Deposit amounts varied over time. Beginning in FY 2017-18 in addition to collecting a \$5,000 hearings officer deposit a separate \$500 administrative deposit was added for staff actual cost of service (ACS), not to exceed the deposit amount. Beginning in FY 2020-21 the hearings officer services deposit and administrative deposit were combined into one deposit for a total of \$5,500. Once the file was closed, ACS for both the hearing and staff services were charged against the deposit with the remainder being refunded or overages being invoiced to the applicant. Applicants are made aware of CDD's current practice that they will be responsible for the ACS of the hearings officer proceeding prior to the land use application being deemed complete.¹

¹ DCC 22.08.010(D).

Occasionally, hearings officer decisions are appealed to the Board. Appellants are charged a deposit. For FY 2023, it is \$2,998 plus 20% of the original application for ACS, with the remainder being refunded or overages being invoiced to the appellant if the Board agrees to hear an appeal. The appeal fee is refunded if the Board declines review, minus expenses accrued in preparing the Board’s consideration of the appeal and issuing an order.

III. CONCERNS WITH CURRENT PRACTICE

Several local attorneys have expressed concern with CDD’s current practice of applicants being responsible for the actual cost of hearing officer services. Previously, a land use advocacy organization complained about the fees for appealing hearings officer decisions to the Board.

IV. HISTORICAL NUMBER OF CASES AND ASSOCIATED COSTS

	FY 2019 *	FY 2020 *	FY 2021 **	FY 2022
Services Charged Against Deposit				
Number of Cases	19	11	12	14
HO Deposit Charges	\$60,213	\$48,688	\$41,501	\$55,607
Number of Board Appeals	4	7	4	11
Board Appeal Staff ACS	\$14,031	\$12,585	\$18,309	\$5,732
Total Hours ¹	328	312.25	236.50	134.50
Average Cost	\$3,228	\$3,404	\$3,738	\$2,453
Services Charged Against General Fund				
Number of Cases	N/A	N/A	N/A	10
General Fund Charges ²	N/A	N/A	N/A	\$20,661
Average Cost	N/A	N/A	N/A	\$2,066
Summary				
Total Cost	\$74,244	\$61,273	\$59,810	\$82,000
Total Cases	23	18	16	35

* FY 19 & FY 20 – Separate HO Deposit of \$5,000 and Admin Deposit of \$500

** Hearings officer hourly rate increase from \$175 per hour to \$200 per hour

FY 21 & FY 22 – Combined HO and Admin Deposit of \$5,500

1 Staff hours include manager review, planner(s) and administrative assistant(s).

2 Hearings officer services only.

V. OPTIONS

Options for funding hearings officer services include:

- Option (1): Status quo; applicants responsible for the actual cost of hearings services.
- Option (2): Funded entirely through increased annual general fund contribution.
- Option (3): Funded through fee increases on land use application types.

Options for funding hearings officer appeals to the Board include:

- Option (1): Status quo; appellants responsible for the actual cost of hearings services.
- Option (2): Funded entirely through increased annual general fund contribution.
- Option (3): Funded through fee increases on land use application types.

VI. COST CONSIDERATIONS

The following considerations were taken into account when estimating FY 2024 fee increases related to CDD’s current planning expenditures.

- Cost-of-Living Adjustment
- Health care contributions
- Public Employment Retirement System (PERS) contributions
- Paid Leave Oregon contributions
- Internal Service Fees

FY 24 Estimated Fee Increases	CDD Current Planning Expenditures	Hearings Officer Services	Board Appeal(s) of Hearings Officer Decisions	Total Estimated Fee Increase
Option 1 - Status Quo	5% - 7%	N/A	N/A	5% - 7%
Option 2 - General Fund	5% - 7%	N/A	N/A	5% - 7%
Option 3 - Land Use Application Fee Increases	5% - 7%	5% - 6%	1% - 2%	11% - 15%

VII. BOARD DIRECTION

Staff seeks direction from the Board to prepare funding options for hearing officer services and appeals in preparation for an in-depth discussion with the Board, Budget Officer and Budget Committee members in May.