



# CITY OF BEND NOTICE OF APPEAL APPLICATION

- \$250.00 – Appeal of Administrative Review and Decision
- \$1,500. + Costs – Appeal of Hearings Officer or Planning Commission Decision

(50% will be refunded if City Council refuses to hear the appeal or if appellant does not appeal to the Land Use Board of Appeals)

Appellant name AWBG Alexander Court LLC Phone \_\_\_\_\_  
 Address 1750 SW Harbor Way, Suite 310 Portland, OR 97201  
City State Zip Code

Appellant signature   
 Tia M. Lewis

Agent name Schwabe, Williamson & Wyatt Phone 749-4044  
 Address 549 SW Mill View Way Suite 100 Bend, OR 97702  
City State Zip Code

Agent signature

### PLANNING USE ONLY

Fee Paid Received by NSW Date 6/25/07 File No. 06-660

Hearing Date \_\_\_\_\_ Hearings Body:  HO  PC  CC

## APPEAL APPLICATIONS WILL NOT BE ACCEPTED WITHOUT COMPLIANCE TO THE FOLLOWING:

### 4.1.115 Filing appeals.

- A. To file an appeal, an appellant must file a completed notice of appeal on a form prescribed by the Planning Division and pay 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 services 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 shall not be received by facsimile machine.

City of Bend RECEIVED  
 6/25/07 BY NSW

- C. If the City Council is the Hearings Body and the council declines review, 75% of the appeal fee will be refunded when City Council does not hear the appeal and when the appellant does not appeal the issue to the Land Use Board of Appeals.
- 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.

#### 4.1.1120 Notice of Appeal.

##### A. The Notice of Appeal shall contain:

1. A description of the decision which is being appealed, including the date of decision.
2. A statement describing the interest the person who is appealing has in the decision. Only persons who have proper standing as provided by the law, and who have participated in the decision being appealed (if provision for such participation was provided in the previous proceeding) may appeal the decision. The statement of interest must demonstrate the person's standing and participation.
3. A description of the issues sought to be raised by the appeal; and a statement that the issues were raised during the proceeding that produced the decision being appealed. This description must include the specific criteria relied upon as the basis for the appeal, and an explanation of why the decision has not complied with the standards or requirements of the criteria. The issues raised by the appeal must be stated with sufficient specificity to afford the reviewing authority an opportunity to resolve each issue raised.
4. In the case of an appeal to the City Council, the Notice of Appeal shall include the following additional information to assist the Council in deciding whether to grant discretionary review of the decision being appealed:
  - a. How the appeal presents issues that have significant public policy or community wide implications for the City, as opposed to more limited issues which primarily involve the directly affected property or persons involved in the land use decision being appealed.
  - b. Why it is necessary or desirable for the City Council to review these issues; and why the issues cannot be adequately and fairly reviewed by the Land Use Board of Appeals.

##### B. If the appeal asks for City Council discretionary review of the decision being appealed, and the person appealing wants to present additional evidence (beyond that already in the record made as part of the decision being appealed), then the Notice of Appeal shall also contain:

1. A statement summarizing the new evidence and the criteria to which it will relate.
2. An explanation why the proposed new evidence was not submitted as part of the record made in the decision being appealed. Evidence that is substantially similar to evidence already in the record of the decision being appealed will not be allowed. Evidence that could have been submitted in the record of the decision being appealed will not be allowed unless there is a compelling reason that justifies its presentation as part of the appeal.

**AN APPEAL TO THE CITY COUNCIL  
OF THE CITY OF BEND**

APPELLANT: AWBG Alexander Court LLC  
1750 S. W. Harbor Way, Ste 310  
Portland, OR 97201

APPELLANT'S ATTORNEY: Tia M. Lewis  
Schwabe, Williamson & Wyatt  
549 SW Mill View Way, Suite 101  
Bend, Oregon 97702

FILE NUMBER: 06-660

APPLICATION: A lot line adjustment within the Mountain Gate Subdivision.

**NOTICE OF APPEAL**

**Decision Appealed**

The decision being appealed is a land use decision entitled "Decision of City of Bend Hearings Officer" that was issued and signed by City of Bend Hearings Officer Karen Green on June 12, 2007 and mailed June 12, 2007. The decision denies the applicant's request to approve a lot line adjustment.

**Standing**

This appeal is filed by the applicant who prepared and filed the lot line adjustment application. The applicant participated in the land use hearings conducted in this matter through its engineers, lawyer and representatives who gave testimony and presented evidence in support of the application.

**Reasons for Council Review**

The appeal presents issues of significant public policy or community-wide implications for the City. The City has twice made public policy decisions interpreting the lot line adjustment language to allow the exact sort of property line adjustment the Hearings Officer denied in this case. The Hearings Officer denial includes several substantial deviations from how City code provisions have been interpreted in the past. Specifically, the Hearings Officer narrows the area of review for a lot line adjustment to include a relocation of a common property boundary, where a property line that is not being adjusted between two properties is not actually modified. This narrow interpretation has never been used by the City to evaluate the impacts from a lot line adjustment and likely sets an impossible standard. Second, the Hearings Officer's conclusion that the single lot partition provisions located in Section 4.3.600(C) of the Development Code as a remedy is a new interpretation and application of City code and policy. The Applicant did not

seek a single lot partition and the Hearings Officer erred when she issued findings on this standard. Third, the Hearings Officer's determination that both a lot will be created and eliminated is inconsistent with previous interpretations.

It is necessary for the City Council to review this decision. The Council, alone, has the legal authority to make policy for the City concerning where lot line adjustments should be allowed as a tool to remedy existing lot configuration issues. The Council is also the proper body to interpret the City's land use ordinances and set policy as to how those ordinances should be interpreted and whether Hearings Officer decisions within the City should be consistent.

This matter cannot be adequately and fairly reviewed by LUBA. LUBA lacks the ability to determine where Lot line adjustments are appropriate within the City and set policy to ensure they are used appropriately.

It is necessary for the Council to review the Hearings Officer's decision in order to provide a single interpretation of the meaning of City's code provisions which can be utilized by City hearings officers in reviewing land use applications. The present narrow interpretation of the Lot Line Adjustment language is not uniformly applied in all City Lot Line Adjustment decisions. In fact, this narrow interpretation sets the standard so strictly that it is unlikely any future lot line adjustments could be approved. A LUBA review would likely result in a remand of the case to the City Council for decision based on legal and factual errors that exist in the decision, rather than a complete resolution of the case. It would not establish a City interpretation of ordinance provisions that is consistent with the Council's vision. It also makes more sense for the Council to hear and decide the matter and correct the errors now than to wait until LUBA has remanded the case to the Council.

### **Issues on Appeal**

The issues that the applicant seeks to raise on appeal are listed below:

1. The Hearings Officer erred in finding that the subject property consists of Lots A, B, C, D, E, Lot 35 and Alexander Court. The Applicant revised its lot line adjustment request during the application process to include only Lot E and Alexander Court.
2. The Hearings Officer erred in interpreting the term "lot" in the City's development code to exclude properties including tracts, common areas, and private streets. This interpretation is contrary to previous decisions where the City approved adjustments between units of land including tracts, common areas, parcels, and lots.
3. The Hearings Officer erred in concluding that the proposed lot line adjustment is an adjustment between more than two lots. The Hearings officer found that due to the fact that a common property boundary between two properties becomes longer, this is an adjustment and/or relocation of that boundary. This is contrary to previous interpretations and decisions made by the City in many past decisions. This interpretation would effectively eliminate nearly all, including the simplest lot line adjustments, from being allowed.

4. The Hearings Officer erred in finding that the proposed lot line adjustment both creates and eliminates a lot. The Hearings Officer offers no real analysis or interpretation of how this conclusion is made, however, it is relied upon for the basis of the decision.
5. The Hearings Officer erred in concluding that the proposed adjustment would reconfigure and/or relocate the lots lines of Lots A, B, C and D. The proposal would adjust the common boundary between Alexander Court and Lot E. The lot lines from Lots A, B, C and D remain unchanged by the proposal and the Hearings Officer's conclusion to the contrary is in error.
6. The Hearings Officer erred and exceeded the scope of her authority in concluding that the applicant's proposal does not qualify for a single lot partition under Section 4.3.600(C) of the City's Development Code as allowed by ORS 92.177. Again this conclusion is made by the Hearings Officer without any analysis of why the proposal would not qualify for this remedy and without an application for a single lot partition.
7. The Hearings Officer erred in concluding the Alexander Court cul-de-sac area must first be segregated off from the larger street tract system in order to perform the lot line adjustment. Further, the Hearings Officer erred in finding that the only way to perform this segregation is through a replat of the subdivision.

The above appeal issues and other issues are fully developed and supported by the discussion herein and were raised during the proceeding that produced the decision being appealed.

### **Scope of Appeal Hearing**

The applicant wishes to present additional evidence at the appeal hearing. The additional evidence will consist of testimony and evidence that will address issues first raised by Hearings Officer Green in her decision. The applicant also wishes to have the ability to provide information that the Council determines would be helpful to it in conducting its review of this application and that responds to questions and comments made by the Council or other participants during the appeal process. The new evidence will relate to the criteria identified in the list of appeal issues, including the previous policy decisions that the lot line adjustment process is appropriate for this proposal to reconfigure the subject property and is in conformance with the City's lot line adjustment criteria found in the Bend Development Code Section 4.3.

The new evidence was not presented at the prior hearing because the hearing officer came to different conclusions than what were presented in the City's recommendation without fully discussing the interpretations of code and evidence during the City review process. The applicant could not have reasonably anticipated the need for this evidence because the City has issued decisions in the past that a lot line adjustment is appropriate to utilize as a tool to remedy the configuration of the subject properties. Evidence needed to respond to issues that will be raised on appeal could not have been provided below because the need for this evidence did not arise until the hearings officer's decision was issued.

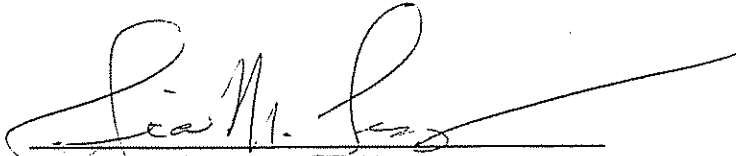
### **Request for Copy of Audio Tapes**

The applicant requests that the City provide its attorney with copies of the audio recordings made of the hearing conducted in this case so that they may be transcribed for filing with the City Council five days prior to the date set for its hearing of this matter on appeal.

### **120-Day Rule**

If the Council agrees to hear this matter on appeal, the applicant is willing to provide the City with reasonable extensions of time of the 120-day clock set by ORS 227.178, as needed and requested by the Council, to allow it sufficient time to consider this matter without concern that the applicant will file a writ of mandamus to obtain reversal of the hearings officer's decision of denial.

Respectfully submitted this 25<sup>th</sup> day of June, 2007.

A handwritten signature in black ink, appearing to read "Tia M. Lewis", written over a horizontal line.

Tia M. Lewis, OSB #93343  
Attorney for AWBG Alexander Court LLC