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GOV-LAW CONNECTION

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REASONABLE ACCOMMODATIONS

Why they matter to you

LOCAL GOVERNMENTS of all types and sizes throughout the Northwest must make zoning decisions about group homes. Whether they concern a group of college students living together off campus, an assisted living facility for senior citizens, or an alcohol and drug treatment facility, these decisions often raise many political and legal questions.

Legal questions arise due to the myriad of local, state and federal laws that impact zoning decisions related to group homes. These laws are too numerous to explain here, and as such, we encourage you to contact our office if and when your local government is faced with a zoning decision regarding a group home. There is, however, one legal issue that we want to briefly highlight for you here – reasonable accommodations under the federal Fair Housing Act ("Act").

In general, the Fair Housing Act prohibits discrimination against individuals on the basis of race, color, religion, sex, national origin, familial status, and disability. Even though the Act does not preempt local zoning laws, it does prohibit local governments from making zoning decisions that exclude or otherwise discriminate against individuals protected by the law, including individuals with disabilities. As such, local governments must take the Act into consideration when making zoning decisions about group homes, particularly those group homes that serve persons with disabilities.

In the most basic terms, the Act prohibits local governments from enacting or enforcing local zoning laws that treat groups of unrelated persons with disabilities less favorably than similar groups of unrelated persons without disabilities. As explained by the United States Department of Justice, "Local government may generally restrict the ability of groups of unrelated persons to live together as long as the restrictions are

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Oregon's LCDC Amends Transportation Planning Rule

IN NOVEMBER of last year we reported on the BEH blog that changes were coming to Oregon's Trans- portation Planning Rule ("TPR"). At that time, a stakeholder committee (including BEH's own Chad Jacobs) had recommended various changes to the TPR. The Land Conservation and Development Commission ("LCDC") adopted some of those recommendations at its December 9, 2011 meeting. The changes became effective on January 1, 2012.

Generally, a Post-Acknowledgement Plan Amendment ("PAPA") will trigger TPR compliance if it "significantly affects" transportation facilities. The rule at OAR 660-012-0060(1) contains an elaborate definition of the term and usually requires a local government to mitigate any significant effects that PAPAs may produce.

One change to the rule permits the rezoning of certain properties regardless of the effect the rezoning may have on the transportation system. If a rezone is consistent with: (1) the jurisdiction's existing comprehensive plan; and (2) the jurisdiction's existing transportation system plan ("TSP"), the jurisdiction may conclude that the rezoning will not "significantly affect" an existing or planned transportation facility. See OAR 660-012-0060(9).

Another change to the rule permits local governments to proceed with certain amendments even if they will significantly affect a transportation facility. In so-called "multimodal" areas, a local government may disregard traffic congestion standards that

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MANAGING PARTNER'S MUSINGS

from Pam's desk…

Spring is around the corner; it is the season that finds many of our clients developing budgets and prioritizing multiple demands with limited public resources. Although with the cautions discussed in this issue of our newsletter we may add to your to-do-list, we hope we can serve to highlight some changing areas of law that may lessen impacts on your organization in 2012.

While our update on Oregon's Local Budget Law focuses on notable changes in requirements for budget committees, our article on employer I-9 requirements points out best practices for completion, retention and destruction of I-9s to avoid violation penalties. Another important update we have included is on the LCDC amendment to the Transportation Planning Rule. Further, you will find a brief summary regarding "reasonable accommodations" for

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imposed on all such groups . . . thus, in the case where a family is defined to include up to six unrelated people, an ordinance would not, on its face, violate the [Fair Housing Act] if a group home for seven people with disabilities was not allowed to locate in a single family zoned neighborhood, because a group of seven unrelated people without disabilities would also be disallowed."

Even if a zoning decision does not violate the Act on its face, a local government may still run afoul of the law if it does not provide a "reasonable accommodation" when requested to do so by a group home for individuals protected by the law. The Fair Housing Act requires local governments to grant reasonable accommodations on a case-by-case basis if the accommodation is reasonable and would assist individuals protected by the law to live in a group home of their choice. As further explained by the United States Department of Justice, "It may be a reasonable accommodation to waive a setback requirement so that a paved path of travel can be provided to residents who have mobility impairments . . . [but] a similar waiver might not be required for a different type of group home where residents do not have difficulty negotiating steps and do not need a setback in order to have an equal opportunity to use and enjoy a dwelling."

Whether a request for an accommodation is reasonable depends on the facts, and must be decided on a case-by-case basis. To determine what is reasonable, the Department of Justice advises asking two questions: (1) does the request impose an undue burden or expense on the local government; and (2) does the proposed use create a fundamental alteration in the zoning scheme? If the answer to either question is "yes," a local government generally need not provide the accommodation as it would not be deemed reasonable under the Act.

Typically, a request for an accommodation will arise during a conditional use process. Local governments should be prepared to handle such requests during conditional use proceedings. In fact, the United States Department of Justice recommends that local zoning processes specify procedures that persons should use when seeking reasonable accommodations under the Act. Such procedures should ensure that requests for reasonable accommodations are considered "promptly and efficiently, without imposing significant costs or delays." In addition, any such procedures should be publicized in the community.

We at BEH are available to assist you with drafting and adopting procedures to consider requests for reasonable accommodations under the Act as well as to answer any other legal questions you might have regarding zoning decisions related to group homes.

QUESTIONS ABOUT THIS ARTICLE? Please contact Chad Jacobs at 503.226.7191.

Transportation Planning Rule – continued from page 1

would otherwise apply to the proposed amendment. The rule at OAR 660-012-0060(10) describes what qualifies as a multimodal area for the purposes of the TPR. The area must allow for certain types of uses (including residential uses at no less than 12 units per acre), encourage alternative forms of transportation (e.g. cycling, walking and mass transit) and discourage other uses (including industrial uses, drive-throughs and automobile sales).

Another change to the rule may permit certain amendments for economic development purposes even if the amendments would increase traffic impacts. See OAR 660-012-0060(11). The success of such amendments will depend upon where the property is located (lands outside of the Willamette Valley have better odds) and whether other affected jurisdictions will agree that the economic benefits of the proposed PAPA outweigh the increased traffic impacts that will flow from it.

The amendments purport to make it easier for local governments to adopt PAPAs without the TPR thwarting such actions. The changes permitting rezones that conform to a jurisdiction's comprehensive plan and TSP are common sense steps in that direction. Whether the balance of the amendments will bring any additional smiles to the faces of those in local government when they see the acronym T-P-R remains to be seen.

QUESTIONS ABOUT THIS ARTICLE? Please contact David Doughman at 503.226.7191.

FORM 1-9: Employer Compliance

U.S. IMMIGRATION and Customs Enforcement ("ICE") has become increasingly active in investigating immigration violations and employment compliance in the past few years. The key to employer protection against steep fines and big headaches is in accurately completing and maintaining form I-9 (Employment Eligibility Verification Form) for all new employees. Although this sounds simple, the devil is in the details. Some critical considerations for I-9 acceptance and maintenance include:

- **Section 1 of form I-9 needs to be completed by the employee on the first day of employment.** The important thing to remember is that Section 1 of the form needs to be entirely completed, signed and dated by the employee. If the employee cannot complete the form without assistance, a preparer or a translator may assist the employee. In this instance, the preparer or translator must also complete the Preparer/Translator Certification block on form I-9. The employer is only responsible for reviewing and ensuring that Section 1 is accurately completed by the employee.
- **The employee must personally choose and present original documents to verify employment eligibility by the employer in Section 2 within three days.** ICE will view an employer's request for a particular document as a discriminatory practice because they are demonstrating different treatment based upon their perception of the employee's national origin or citizenship status. The employer must accept only unexpired, genuine documents from Lists A, B or C. Further, it is best not to "over-document"; follow the directions on form I-9, Section 2 in examining and notating acceptable documents for compliance. The employer should record only the required documents in Section 2: over-documenting may be perceived to be discriminatory.
- **If the employer chooses to make copies of the employee's employment verification documents, he must do so for all employees.** Failure to do so is considered a discriminatory practice by ICE.
- **It is a good practice to keep the I-9s and employment verification documents for all employees in a separate file, rather than in the employee's personnel file.** If ICE requests an audit, the employer will be required to produce all I-9s within three days.

- **Employers must retain I-9s for the period of employment.** If the employee is terminated, the I-9 may be destroyed three years after the date of hire or one year after the date of termination, whichever is later. Employment law experts recommend destruction of documents following these guidelines.

Employers failing to comply with proper I-9 procedures can receive stiff penalties. In an audit/worksite inspection, ICE will examine the employer's files for missing and/or incorrect information. Fines can range from about $100 for a paperwork violation up to over $15,000 for an undocumented worker. An employer self-audit is recommended as a critical best practice to avoid hassles and fines. More information about form I-9 can be found at *http://www.uscis.gov/files/form/m-274.pdf*.

QUESTIONS ABOUT THIS ARTICLE?
Please contact Paul Elsner at 503.226.7191.

Changes in Local Budget Law Coming Your Way in January

OH, YES, it is that time of year again! The days are getting longer, primroses are blooming, trees are budding, and local governments are tackling annual budget development. This year Oregon local governments' budget development will look a little different as a result of adopted House Bill (HB) 2425. HB 2425 made several changes to the Local Budget Law (also known as ORS 294.305 to 294.565). These changes took effect January 1, 2012 and affect, in part, budget development, supplemental budgetary changes, public notice provisions, and budget document requirements.

One of the notable changes is notice requirements for budget committee meetings. Local governments are still required to publish two notices prior to budget committee meetings, but now one of those notices can be published on a website as opposed to the former law that required both notices to be published in a newspaper. HB 2425 also standardized what must be included in the notice of the budget committee meeting under ORS 294.401.

Another noteworthy change is the addition of a new circumstance triggering a supplemental budget action (this occurs post budget adoption). A *reduction* in available resources that requires the governing body to reduce appropriations in the original budget, or

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group home zoning under the Fair Housing Act.

On another note, some exciting news from BEH: Nancy Werner, a five-year Associate at BEH, is soon to be a resident of Illinois. In March, she will relocate to the Chicago area with her family in support her husband's promotion and move to a Chicago employer. Although physically located in Illinois, Nancy will continue her employment with BEH and her provision of outstanding legal services for BEH clients via telecommuting. Our clients will not experience any disruption in the conduct of their legal work. We are very pleased for Nancy and her family and look forward to our continuing relationship with her in her new home base.

We hope these updates are valuable to you and your organization. As always, please do not hesitate to contact us with questions or concerns.

CITY OF FOREST GROVE ANNUAL TOWN HALL

PHOTO: FOREST GROVE NEWS-TIMES

BEH WAS PLEASED to participate in the City of Forest Grove's annual town hall meeting. The meeting, which was organized by the City's Committee for Citizen Involvement (CCI), took place on a Saturday morning in late January with a standing-room only crowd that exceeded 100 people.

The CCI coordinated this year's program to focus on City finances. Some of the discussion included responses to common questions such as why property tax bills increase each year even though the market value of homes is in decline; and why the City needs a local option levy to generate sufficient funds to provide a full-service city, including police and fire services. With educational as well as entertaining presentations by the police and fire chiefs, the crowd in attendance was able to see first-hand why adequate funding for city services is so important.

In addition to these topics, Susan Cole, the City's Assistant Director of Administrative Services, used an array of graphs and pie charts to explain in terms everyone could understand exactly how the City spends its property tax revenue. Using the property tax bill of Mayor Pete Truax as an example, Susan demonstrated how much money an average property owner in Forest Grove pays to receive the benefits of a full-service city. In all, the crowd generally agreed that the Mayor was getting a good bargain for his money.

Audience participation was a major focus of the meeting as well. Those in attendance were able to express their opinions on various issues using clickers that automatically tallied the results at the meeting. By using the clickers, the City was able to gain valuable insights into the thoughts of community members. For example, when asked about a potential future operating levy, 45 percent of attendees indicated they would pay "some additional" property taxes to maintain services and 25 percent indicated they would pay more to get more. The use of the clickers also provided for some moments of entertainment. One result of note included the fact that coffee was the favorite morning beverage of the audience members, followed by orange juice and then champagne!

Community members also had the opportunity to divide into smaller groups with representatives from the City to have questions answered that were not already addressed during the meeting. More information about this exciting event, including a video of the meeting can be found on the City's web site at *www.forest-grove-or.gov/ATM*.

HAVE A SUBMISSION? Please contact Pam Beery at 503.226.7191.

CLIENT CORNER

For more frequent information updates, please visit our Northwest Government Law Blog:
www.gov-law.com/blog

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previously approved supplemental budget, now triggers a supplemental budget; previously only an increase in resources triggered a supplemental budget. The appropriate supplemental budget process continues to be determined by whether a supplemental budget action will increase expenditures by less than or more than 10 percent.

Other changes to the Local Budget Law include new requirements for detailed categories of estimated budget requirements. For instance, ORS 294.352(5) now requires estimates for personnel services to show the total cost for each organizational unit or activity, and the total full-time equivalent (FTE) positions for each. Significant amendments were made to information required in the financial summary of the published budget document. Briefly, such amendments include additional detail about resources, additional information about expenditures and FTEs per program or organization unit, the addition of a narrative explaining budget changes from the previous year, and additional detail regarding taxes imposed by the local government.

HB 2425 amendments to the Local Budget Law are extensive and local governments are advised to become familiar with such amendments. If you have specific questions as you prepare for and trek through budget development, you may always contact your local government attorneys here at BEH.

QUESTIONS ABOUT THIS ARTICLE?
Please contact Courtney Lords at 503.226.7191.