

RESOLUTION NO. 794

A RESOLUTION ADOPTING THE
"PROPOSED AMENDMENTS TO THE CITY OF STAYTON RULES OF
PROCEDURE FOR PUBLIC HEARINGS ON LAND USE ISSUES"

WHEREAS, Oregon Revised Statutes 197.763 requires the City to hold public hearings on Land Use applications;

WHEREAS, the Stayton City Council finds that it is in the best interests of the city to adopt rules governing conduct of these public hearings to provide opportunity for applicants and interested parties to participate in the proceedings;

WHEREAS, the Stayton City Council and the Stayton Planning Commission adopted such Rules in 1994;

WHEREAS, the Stayton Planning Commission has recommended changes to these Rules, following a public hearing held on November 20, 2006; and,

WHEREAS, following a public hearing, the Stayton City Council finds that the recommended changes will improve the land use public hearing process.

NOW, THEREFORE, BE IT RESOLVED that:

THE AMENDMENTS TO THE "CITY OF STAYTON RULES OF PROCEDURE FOR PUBLIC HEARINGS ON LAND USE ISSUES," FEBRUARY 20, 2007, AS SET FORTH IN EXHIBIT A, ARE HEREBY ADOPTED.

THIS RESOLUTION SHALL BECOME EFFECTIVE UPON ADOPTION BY THE STAYTON CITY COUNCIL.

ADOPTED BY THE STAYTON CITY COUNCIL, THIS 20TH DAY OF FEBRUARY, 2007.

CITY OF STAYTON

Signed: February 21, 2007 by:


VIRGINIA L. HONEYWELL, MAYOR

Signed: February 23, 2007 ATTEST:


CHRIS CHILDS, CITY ADMINISTRATOR

APPROVED AS TO FORM:


DAVID A. RHOTEN, CITY ATTORNEY

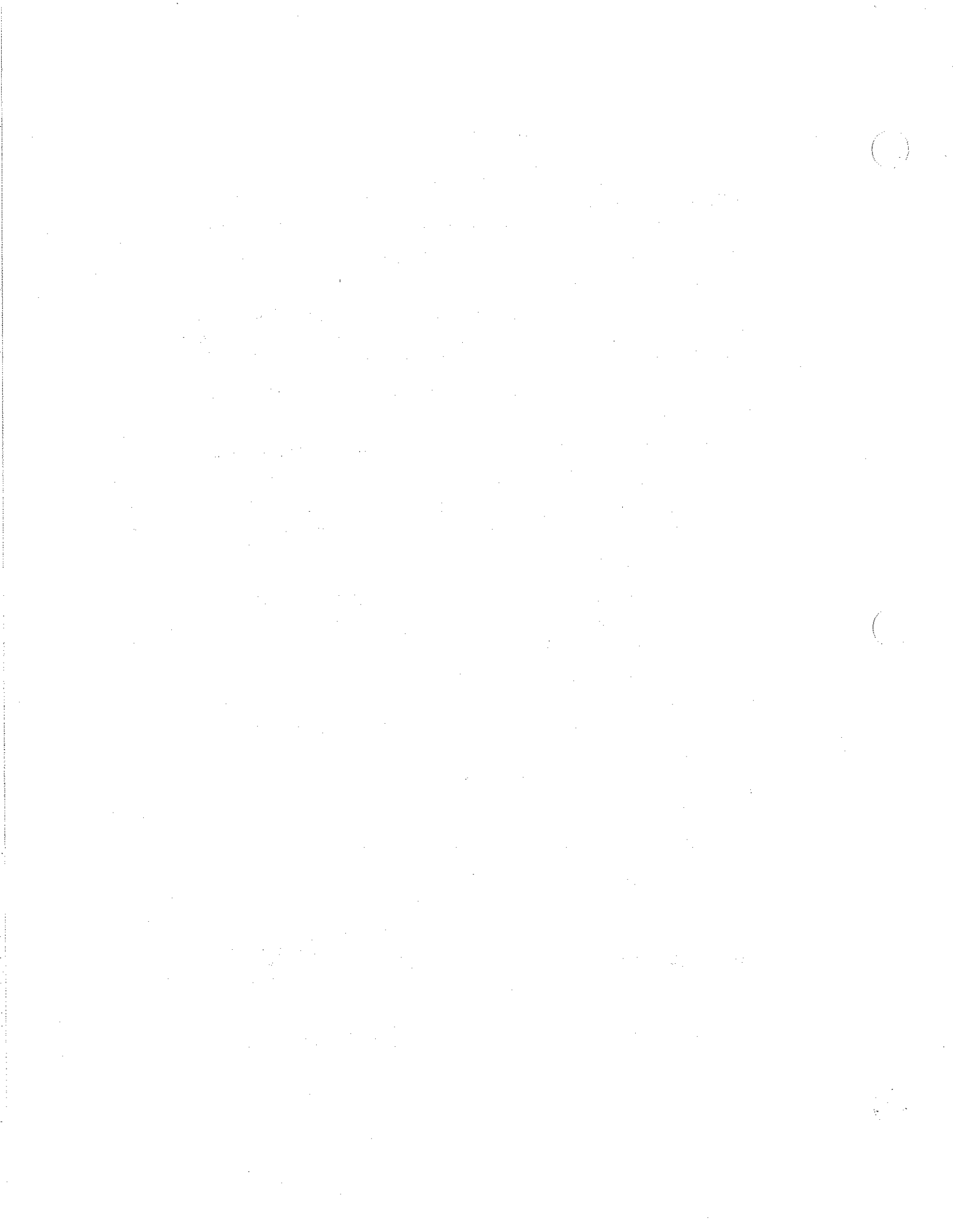
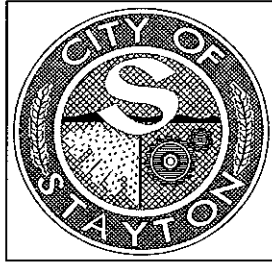


Exhibit A



CITY OF STAYTON RULES OF PROCEDURE FOR PUBLIC HEARINGS ON LAND USE ISSUES

Additions are underlined; Deletions are ~~crossed-out~~.

SECTION 1: SHORT TITLE

These rules shall be known as the *Land Use Hearings Rules of Procedure*.

SECTION 2: SCOPE OF RULES

These rules of procedure shall govern the conduct of all land use hearings conducted by the City of Stayton including, but not limited to, variances, conditional use permits, planned unit developments, site plan reviews, major and minor partitions, subdivisions, appeals of decisions under the zoning and division code, amendments to the Stayton Municipal Code regarding zoning, land divisions and the Stayton Comprehensive Plan, and any annexation to the City of Stayton.

SECTION 3: PRESIDING OFFICER

1. The mayor or planning commission chair shall be the presiding officer at all hearings before their respective bodies. In the absence of the presiding officer, or with his/her consent, the council or commission may designate one of its members to act as presiding officer at their respective hearings.
2. The presiding officer shall have authority to:
 - a. Regulate the course and decorum of the hearing;
 - b. Dispose of procedural requests or similar matters;
 - c. Rule on relevancy of evidence and testimony;
 - d. Impose reasonable limitations on the number of witnesses heard and set reasonable time limits for oral presentation.

SECTION 4: WITHDRAWAL OR DISMISSAL OF THE APPLICATION

1. Any applicant may withdraw a land use application at any time before a decision is made. The withdrawal shall be either in writing or orally during a public hearing. Upon withdrawal of an application, a new application and payment of new filing fees is required before a hearing date is scheduled.
2. If an applicant fails to appear at a public hearing, the presiding officer shall open the hearing, indicate for the record that the applicant is not present, and the planning commission or council may then continue the hearing to the next regularly scheduled ~~planning commission meeting~~ at a date and time certain. Further continuances at the request of the applicant shall be granted only upon the written consent of the applicant to a waiver of the statutory 120-day time limit for final land use decisions.

If the applicant fails to appear at two consecutive meetings, the presiding officer shall ask the commission or the council to dismiss the application for cause. The commission or council shall then vote on whether or not the application should be dismissed or the hearing continued.

SECTION 5: RULES GOVERNING TESTIMONY

1. **Identification of Persons Testifying:** Any person appearing before the city shall state and spell his or her name, give his or her address, and representative capacity, if any, for the record. Written testimony must include the signature, name, address, and representative capacity of the individual giving testimony.

2. **Representation of Applicants:** An applicant shall appear either in person or through a representative, authorized in writing by the applicant prior to testimony, at the hearing. Corporations, including governmental bodies, must appear through an attorney (ORS 9.320).
3. **Time Limitations:** Applicants shall limit presentations on an application to a maximum of 15 minutes and shall limit the summary of the application and rebuttal to 10 minutes. All other persons shall limit testimony to 5 minutes per person. The presiding officer may modify the time limits listed.
4. **Repetitive or Irrelevant Testimony:** The presiding officer may limit testimony when it is cumulative, repetitive, irrelevant, or immaterial to the issue being considered.
5. **Opportunity to be Heard:** Any person wishing to provide testimony concerning a particular land use issue shall be afforded the opportunity to be heard.

SECTION 6: BURDEN OF PROOF

1. **Burden of Proof:** The applicant has the burden of proof for any land use action before the City of Stayton. According to law, the applicant must present to the decision-maker facts, evidence, analysis, and justification for each and every decisional criteria in order to carry that burden of proof. The burden of proof lies with the applicant to prove why the proposal complies with the Stayton Comprehensive Plan and the city's land-use ordinances development code. There is no assumption that the applicant is entitled to an approval from the City of Stayton and the burden of proof does not lie with the City of Stayton staff, or appointed or elected officials.
2. **Burden of Going Forward with Evidence:** The applicant's burden of proof is met by placing a ~~prima facie~~ substantial evidence before the decision makers. Thereafter ~~the burden of placing a new and/or contradictory issue or position; or additional or contradictory evidence may be placed~~ before the decision maker ~~lies with~~ by the proponent of that position. The decision maker must then decide between the submissions and which positions of the various parties ~~which~~ is more persuasive and credible.

SECTION 7: ORDER OF PROCEDURE

1. **Commencement of Hearing:** The presiding officer shall open the record, announce the nature and purpose of the hearing, and summarize the rules for the conduct of the hearing.
2. **Declaration of Interests:** The presiding officer shall inquire whether any member of the council or planning commission has any conflicts of interest concerning the issue before the city. All councilors and planning commissioners are required to declare conflicts of interest, bias, and *ex parte* contacts, and to state on the record their decision regarding their ability to vote on the application.

All declarations shall be made publicly at the commencement of the first public hearing following the date when the councilor or planning commissioner first learned of or had an interest which must be declared.

The declaration shall contain a detailed statement of the content of any interest or contact, including who was involved, the time of discovery or happening, and the result, if any, of the interest. The members shall declare whether or not ~~the he/she~~ can make an impartial decision on the issue before the city.

Immediately following all declarations, the presiding officer at the hearing shall allow an opportunity for any interested party to rebut the substance of the declaration.

3. **Preliminary Matters:** Immediately following the declaration of interest section of the hearing, the presiding officer shall determine if there are other preliminary matters that need to be addressed prior to taking testimony and evidence on the case. Preliminary matters may include quality and/or quantity of the notice of public hearing; jurisdictional questions; or legal objections to procedure.
4. **Opening Statement:** Following the determination of all preliminary matters, the presiding officer shall read into the record an opening statement that includes the following:
 - a. A list of the applicable substantive approval criteria.
 - b. That testimony and evidence submitted at the hearing must be directed toward the approval criteria listed in the notice of public hearing and as read in item 5.a hereof above, or to other criteria which the person believes to apply to the decision.
 - c. A disclaimer that failure to raise an issue with sufficient specificity to afford the decision maker and the parties an opportunity to respond to the issue precludes appeal to LUBA on that issue.

3. **Reopening a Record:** The decision maker, in its sole and exclusive discretion, may at any time prior to ~~final~~ a decision on an application, upon majority vote, elect to reopen a record that has previously been closed. Once a record is reopened, a notice of this fact shall be sent in the same manner as the initial notice. Any person may raise any new issues relevant to the approval criteria for the case during the new open record period.

SECTION 9. DECISION ON THE ISSUE

1. **Council or Commission Deliberations:** Following the close of the hearing the council or planning commission shall discuss the application and relevant testimony, applying the criteria for approval. During deliberations, council or planning commission members may ask questions of city staff, the applicant and any person who testified at the hearing, as long the questions are only for the purpose of clarifying information that is already part of the record and do not result in the introduction of new information that was not presented before the close of the hearing.
2. **Decision and Vote:** Once there is no further discussion from council or commission members, a motion shall be offered by a council or commission member making findings of fact, conclusions, and to approve, approve with conditions, or deny the application. If more time is necessary for the council or commission to complete its deliberations, a motion may be offered to continue the deliberations until a date and time certain.
3. **Written Decision:** The planning commission or council decisions shall be based solely upon testimony and evidence contained in the record.
24. **Content:** A written copy of the decision shall be adopted by the planning commission or council. The written decision shall include:
 - a. A statement of the nature of the application
 - b. A statement of the criteria relevant to the decision
 - c. A description of the proceedings including a list of participants and any procedural rulings
 - d. Findings of fact and conclusions of law
 - e. ~~Order~~ An order specifying disposition of the case
 - f. A statement of appeal rights
 - g. A statement of the effective date, if ~~where~~ an application has been approved.
35. **Conditions:** The planning commission or council may include in the decision any conditions which are authorized by statute or by ordinance.
46. **Notice of Decision:** A copy of the decisions of the planning commission or council shall be sent to the applicant or the representative of the applicant, to the appellant or representative thereof, and to any other person making a written request for a copy of the decision before the close of the hearing.

SECTION 10. RECONSIDERATION

Reconsideration of a prior land use decision shall occur only when so ordered upon appeal ~~by a court of competent jurisdiction; the Land Use Board of Appeals;~~ or upon formal reconsideration by the council or planning commission. Formal reconsideration must occur at the next regularly scheduled council or planning commission meeting following the decision that is sought to be reconsidered. The motion to reconsider must be made by a councilor or commissioner who voted previously on the prevailing side of the decision (with the majority), and the motion must pass by a two-thirds majority vote of councilors or commissioners then present. The effect of reconsideration is to terminate the prior decision, and place the entire matter before the council or planning commission for entry of a new decision. No decision may be reconsidered where the application has previously become final and the applicant has relied upon issuance of a permit to the extent where the applicant has acquired a vested right to the permit regardless of any subsequent action by the city. For purposes of reconsideration, the decision is the actual vote of the council or planning commission on the application itself, and not the subsequent formal adoption of a findings document or order.

SECTION 11. AMENDMENT AND SUSPENSION OF THE RULES

Any rule of procedure not required by law may be amended, superseded, or repealed at any hearing by a majority of the council or commission members present and voting.

- d. Notice that any person may request either a continuance of the hearing, or that the record be left open for submission of additional evidence.
5. **Staff Report**~~Introduction~~: A representative of the city shall present a brief introduction staff report summarizing the nature of the application, citing applicable standards and criteria, ~~and making a recommendation with or without conditions as to whether the application should be granted or denied.~~
6. **Applicant or Appellant**: The person(s) filing the application or the appeal shall present evidence in support of the application or appeal. In cases where the appellant is other than the applicant, the burden of proof remains with the applicant to show that the land use application is entitled to approval. In such cases where the appellant is not the applicant, the appellant shall testify first, followed by the applicant.
7. **Staff Report**: A representative of the city shall present a brief staff report summarizing the application's compliance with the appropriate standards of the development code and making a recommendation as to whether the application should be approved, approved with conditions, or denied.
8. **Questions from the Council or Commission**: After recognition by the presiding officer, any member of the council or commission may direct questions to the applicant or staff.
9. **Proponents**: Any person in favor of the application.
10. **Opponents**: Any person opposed to the application.
11. **Governmental Agencies**: A representative of any governmental agency or department may present testimony or other evidence concerning the application at issue.
12. **General Testimony**: Any person who wishes to present information neither for nor against the application and who has not previously testified on the issue shall be given an opportunity to be heard.
13. **Questions from the Public**: Any member of the public who wishes to ask questions about the issue may direct questions to the presiding officer who may respond to the inquiry or call upon the applicant, staff, or any other party to respond.
14. **Questions from the Council or Commission**: After recognition by the presiding officer, any member of the council or commission may direct questions to the applicant, staff, or any other party.
15. **Applicant Summary**: The applicant will be allowed to summarize briefly the proposal and shall be given the opportunity to present rebuttal testimony or evidence.
16. **Staff Summary**: The city staff representative shall restate the staff recommendation, including any conditions of approval, and shall summarize the actions required by the city, highlighting any changes that may be appropriate in light of the testimony presented at the hearing.
17. **Closing of the Hearing**: Generally, the record will be closed at the conclusion of the hearing unless the presiding officer has declared that the record will be held open to receive additional evidence, or to continue the hearing to a date and time certain.

SECTION 8. CONTINUANCE OF THE HEARING

1. **Continuance of Hearing**: A hearing may be continued if so desired by a majority vote of the council or planning commission. ~~A continuance is mandatory only if~~ if the council or planning commission finds that additional documents or evidence were submitted in support of the application either at the hearing or within seven days before the hearing, they may continue the hearing to allow city staff adequate time to analyze the new documents or evidence. The date, time, and place upon which the case will be continued shall be announced by the presiding officer. No new notice of the continued hearing shall be required.
2. **Leaving the Record Open**: The written record of any proceeding may be left open if so desired by a majority vote of the council or planning commission. ~~If so voted, the record must be left open for a minimum of seven days if no continuance has been granted and if so requested by any interested party.~~ The right to request the record be left open applies only to the initial evidentiary hearing on an application, and not to any subsequent hearings.

Because the burden of proof is always on the applicant, when the record is held open, it shall be held open for a designated period for submissions of opponents, followed by a designated period for rebuttal submissions by the applicant only.