

1 Development Commission (LCDC) did not have jurisdiction to review an ordinance adopting
2 a system development charge for compliance with statewide planning goals, notwithstanding
3 that such charges have impacts on land use. According to the court, the legislature did not
4 intend LCDC to have the authority to review an ordinance that is primarily a fiscal measure
5 designed to raise and allocate public revenue.

6 In several cases, LUBA has applied the reasoning in *Housing Council* to determine
7 that certain types of decisions that might otherwise qualify as “land use decisions” subject to
8 LUBA’s jurisdiction are nonetheless excluded from the Board’s jurisdiction, because they
9 are essentially “fiscal” decisions. *Lewis v. City of Bend*, 45 Or LUBA 122, 124 (2003)
10 (creation of local improvement district is not a land use decision); *Jesinghaus v. City of*
11 *Grants Pass*, 42 Or LUBA 477, 483 (2002) (creation of reimbursement district is not a land
12 use decision); *Baker v. City of Woodburn*, 37 Or LUBA 563, 568-69, *aff’d* 167 Or App 259,
13 4 P3d 775 (2000) (same); *The Petrie Company v. City of Tigard*, 28 Or LUBA 535, 540
14 (1995) (decision repealing a sewer reimbursement district is not a land use decision).

15 However, LUBA has consistently declined to apply the fiscal exception to decisions
16 that involve local land use appeal fees or land use application fees. *Landwatch Lane County*
17 *v. Lane County*, ___ Or LUBA ___ (LUBA No. 2006-039, June 26, 2006) (county failed to
18 establish that appeal fee increases are consistent with ORS 215.422(1)(c)); *Doty v. City of*
19 *Bandon*, 49 Or LUBA 411, 417 (2005) (resolution increasing application fees is not subject
20 to fiscal exception); *Friends of Linn County v. City of Lebanon*, 45 Or LUBA 408, 414-16
21 (2003), *aff’d* 193 Or App 151, 88 P3d 322 (2004) (city established that appeal fee increases
22 are consistent with ORS 227.180(1)(c)); *Friends of Yamhill County v. Yamhill County*, 43 Or
23 LUBA 270, 275 (2002) (decision imposing \$700 appeal fee violated ORS 215.416(11)(b));
24 *Ramsey v. City of Portland*, 29 Or LUBA 139, 142 (1995) (city’s application of the appeal
25 fee section of its zoning ordinance to dismiss a local appeal that was filed without the appeal
26 fee that the zoning ordinance required was a land use decision).

1 As we explained in *Friends of Linn County*,
2 “* * * Local appeal fees implicate core land use concerns regarding access to
3 and citizen participation in land use reviews. The legislature has adopted
4 several statutes regulating local governments’ discretion to impose appeal fees
5 and related transcript costs, codified in city and county zoning and planning
6 chapters. ORS 215.416(11)(b), 215.422(1)(c), 227.175(10)(b), 227.180(1)(c).
7 In short, appeal fees are different from other types of fiscal matters. *See*
8 *Housing Council*, 48 Or App at 538 (noting a possible exception to its
9 holding, where the challenged decision involves financing of the citizen
10 involvement program required by Statewide Planning Goal 1 (Citizen
11 Involvement)).” 45 Or LUBA at 415-16.

12 Here, the challenged decision is similar to the orders, ordinances or resolutions that
13 we reviewed in *Landwatch Lane County, Doty, Friends of Linn County*, and *Friends of*
14 *Yamhill County*. As in the present case, the local governments in those cases presumably
15 chose to increase land use appeal and application fees at least in part due to fiscal or
16 budgetary considerations. We understand the county to argue, however, that the challenged
17 decision is different from the decisions in the above cited cases, because here the county is
18 seeking to mitigate a potential general revenue shortfall, caused by the potential loss of
19 future federal payments to the county, by shifting more of the costs of the planning program
20 from the county’s general fund to the recipients of planning services.

21 In our view, the specific motivation of the county for amending its schedule of appeal
22 and application fees is not determinative of our jurisdiction. In many cases it will be difficult
23 to determine the precise motivation for amending the schedule of land use appeal and
24 application fees. Often the amendment will be driven by a combination of motivations,
25 usually including fiscal and budgetary considerations. *See Doty*, 49 Or LUBA at 418
26 (describing some of the policy considerations that may motivate decisions to increase land
27 use application fees). We see no principled way to distinguish the present circumstances
28 from those found in the above-cited cases. The county does not argue that those cases were
29 wrongly decided, or offer any other basis to conclude that the Board lacks jurisdiction over
30 Order No. 2006-125. Accordingly, the county’s motion to dismiss is denied.

1 **STANDING**

2 The county also argues that several petitioners do not have standing to appeal Order
3 No. 2006-125, because the notice of intent to appeal states only that such petitioners are
4 “aggrieved” by the order and does not state that those petitioners appeared or participated in
5 the proceedings before the county board of commissioners. See ORS 197.830(2) (a person
6 may appeal to LUBA who files a notice of intent to appeal and appeared before the local
7 government orally or in writing).

8 The record has not yet been filed in this case. Petitioners respond that “[t]he record
9 will show that the Petitioners participated in public hearings and through written comments
10 opposing the proposed planning fee increases * * *.” Petitioners’ Response to Motion to
11 Dismiss 4. We agree with petitioners that until the record is filed it is impossible to resolve
12 the parties’ dispute over whether all of the petitioners satisfied the ORS 197.830(2)
13 appearance requirement. Therefore, the county’s motion to dismiss some of the named
14 petitioners is denied. The county may renew that motion after the record is filed.

15 **RECORD**

16 The record is due within 21 days of the date of this order.

17 Dated this 19th day of October, 2006.

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Tod A. Bassham
Board Chair