

LOCAL REMAND HEARINGS

For “The Record” Testimony At Local Remand Hearing Before The Josephine County Board of County Commissioners

August 15, 2012, Updated September 11, 2012

Hugo Land Use Committee
Hugo Neighborhood Association & Historical Society



The Josephine County Rural Land Development Code (RLDC) on Remand Hearings, RLDC 33.130(D) (http://www.co.josephine.or.us/Files/complete_code_2005.pdf), has illegally limited citizen involvement (CI) in local land use remand hearings since 2007.

This is a local county issue and an Oregon statewide CI issue since *Siporen v. City of Medford*, 55 Or LUBA 29 (2007). It had been formally submitted to the Josephine County Board of County Commissioners (BCC) by the Hugo Land Use Committee (HLUC), Rogue Advocates, and the Goal One Coalition on November 30, 2010 (Exhibit 2), and in 2011 by Rogue Advocates on two separate 2009 remand proceedings that had not been initiated by the county as of August 15, 2012 (Exhibits 3 and 4; *Sommer v. Josephine County*, 58 Or LUBA 505 (2009) and *Walker v. Josephine County*, 60 Or LUBA 186 (2009)). As far as the HLUC knows the BCC had not acknowledged the three request letters (Exhibits 2 - 4) as of August 15, 2012, nor acted on them in any way (i.e., the HLUC believes the county is not in compliance with Oregon Statewide Goal 1: Citizen Involvement, OAR 660-015-0000(1), Component 2, Communication, nor its own local Citizen Involvement Program (CIP)/Ordinance No. 93-13, Section A.1.b.).

On August 15, 2012 Rogue Advocates again challenged the legality of RLDC 33.130(D), which limits the parties at remand proceedings to those that had standing at LUBA (Exhibit 5). Rogue Advocates was quite clear that it believed from ORS 197.763(7) that when the record is reopened (including in remand hearings) to admit new evidence, arguments or testimony, any person may raise new issues which relate to the new evidence, arguments, testimony or criteria for decision-making which applies to the matter at issue. *Siporen v. City of Medford*, 55 Or LUBA 29 (2007) goes further in clarifying ORS 197.763(7). It identifies that a remand hearing is open for all interested participants to testify. A party who otherwise has standing to participate in a local government's land use public hearings under the government's land use legislation may not be denied standing to participate in public hearings following a remand from LUBA, simply because he or she failed to participate in the LUBA appeal.

Oregon Statewide Goal 1: Citizen Involvement, OAR 660-015-0000(1), requires that local governing body's CIPs shall incorporate certain components to be in compliance with the goal (<http://cms.oregon.gov/LCD/docs/goals/goal01.pdf>). Component 2 is a communication component.

“2. Communication -- To assure effective two-way communication with citizens. Mechanisms shall be established which provide for effective communication between citizens and elected and appointed officials.”

The HETC assumes that the county's CIP, Section A.1.b., under the CIP's purpose, is the standard for complying with Goal 1's No. 2 communication component. It identifies that the CIP is to ensure "*That citizen input in the land planning process is adequately considered by planning officials.*" (http://www.co.josephine.or.us/files/ordinance_93-13.pdf). Section A.1.b. under the CIP's purpose states the following.

A."1. The purpose of the Josephine County Citizen Involvement Program is to ensure the following:"

"b. That citizen input in the land planning process is adequately considered by planning officials."

The HETC is concerned that as the county had not previously responded per statewide Goal 1 - Citizen Involvement and its own CIP to this standing issue, and that Rogue Advocates' most recent request of August 15, 2012 may also be ignored, like the 2010 and 2011 requests.

On September 3, 2012 several local Murphy, Oregon neighbors made a formal request to David Wechner, Planning Director, Josephine County Planning Department, concerning "The Record" testimony at the *Rogue Advocates v. Josephine County*, LUBA No. 2011-037 probable remand hearing to be before the BCC (Exhibit 6). The neighbors asked the county and the Planning Director to consider their position that RLDC 33.130(D) illegally limits participation in land use remand hearings and that they have standing to participate in the potential remand proceedings for *Rogue Advocates v. Josephine County*. They further asked that the Planning Director's findings be reported to the BCC.

The Murphy neighbors were further concerned that the 2012 Rogue Advocates request may also fall by the wayside as the county had not previously responded per statewide Goal 1 - Citizen Involvement and its own CIP to the 2010 and the 2011 standing issue requests. The neighbors joined Rogue Advocates, the Goal One Coalition, and the Hugo Neighborhood Association & Historical Society, in requesting once again that the county clarify that all individuals interested in providing testimony at remand proceedings are invited to do so. They further urged the county to amend RLDC 33.130(D) to be in compliance with ORS 197.763(7) and *Siporen v. City of Medford*.

On September 10, 2012 the Concerned Ridgefield Neighborhood (CRN) requested assistance from Rogue Advocates (Exhibit 7). The CRN believed this issue as defined by *Siporen v. City of Medford*, and its clarification of ORS 197.763(7), could be valuable for the Oregon Citizen Involvement Advisory Committee (CIAC) and the Oregon Department of Land Conservation and Development (DLCD) to consider as they understood it was a statewide CI issue. The CRN requested Rogue Advocates to consider representing the CRN with the CIAC and the DLCD on this CI issue.

On September 11, 2012 Mike Walker sent a status report email/letter to the Concerned Ridgefield Neighborhood, Rogue Advocates, Goal One Coalition, and the Hugo Neighborhood Association & Historical Society (Exhibit 7). The status report identified that Walker had been identified as the advocate representing the Concerned Ridgefield Neighborhood, Rogue Advocates, Goal One

Coalition, and the Hugo Neighborhood Association & Historical Society before the CIAC and the DLCD for the Oregon statewide CI remand issue.

Later major communications on the Oregon statewide CI remand issue will be web published as future exhibits continuing as Exhibit 9, etc.

In conclusion, Josephine County should clarify that all individuals interested in providing testimony at remand proceedings are invited to do so. The county should also amend RLDC 33.130(D) to be in compliance with ORS 197.763(7) and *Siporen v. City of Medford*.

Exhibits

- Exhibit 1. August 15, 2012 Background To Oregon Statewide Citizen Involvement Local Remand Hearings Issue
- Exhibit 2. November 30, 2010 Letter From Hugo Land Use Committee, Rogue Advocates, and the Goal One Coalition, to Josephine County Board of County Commissioners on Transportation Planning Rule and Party Standing At a Remand Hearing
- Exhibit 3. January 26, 2011 Letter From Rogue Advocates to Josephine County Board of County Commissioners on Appeal Fees and Party Standing At a Remand Hearing
- Exhibit 4. January 28, 2011 Letter From Rogue Advocates to Josephine County Board of County Commissioners on Transportation Planning Rule and Party Standing At a Remand Hearing
- Exhibit 5. August 15, 2012 Letter From Rogue Advocates to Josephine County Board of County Commissioners on Party Standing At a Remand Hearing
- Exhibit 6. September 3, 2012 Letter From Local Murphy, Oregon Neighbors to Josephine County and its Planning Director on Party Standing At a Local Remand Hearing
- Exhibit 7. September 10, 2012 Letter From Concerned Ridgefield Neighborhood to Rogue Advocates Requesting Assistance on Party Standing At Remand Hearings
- Exhibit 8. September 11, 2012 Email/Letter From Mike Walker to the Concerned Ridgefield Neighborhood, Rogue Advocates, Goal One Coalition, and the Hugo Neighborhood Association & Historical Society on Advocacy Before the Oregon Citizen Involvement Advisory Committee and the Oregon Department of Land Conservation and Development
- Exhibit 9. Future Oregon Statewide Citizen Involvement Local Remand Hearings Issue Correspondence
- Exhibit 10. Etc.