

January 26, 2011

Sandi Cassanelli, Commissioner Chair
Dwight Ellis, Commissioner
Simon Hare, Commissioner
Josephine County
Room 154, Courthouse
Grants Pass, Oregon 97526

Re: LUBA's March 18, 2009 Final Opinion and Order No. 2006-150; August 13, 2009 Josephine County Order No. 2009-034; and April 29, 2009 Josephine County Order No. 2009-020

Dear Commissioners:

Rogue Advocates is a non-profit organization dedicated to the promotion of responsible land use planning to ensure a more livable and sustainable Rogue Valley region. Along with our members in Jackson and Josephine counties, we are particularly concerned about the protection and preservation of farmland, forestland and open space, and the citizen involvement, specifically the citizen involvement program as it is being implemented in Josephine County.

Participation in the remand hearing is open to all:

We understand it is the county's position that Josephine County Order No. 2009-034 and Order No. 2009-020 constitute the county's response to LUBA No. 2006-150 for the purpose of initiating an evidentiary remand hearing to consider whether the planning fees and appeal fees adopted by Order 2006-125 represent the average or actual costs of providing the permit services related to each fee. Per the orders, the remand hearing will be open to new evidence, testimony and arguments regarding average or actual costs with the parties limited to those that had standing at LUBA No. 2006-150.

As a party to the remand hearing, Rogue Advocates is particularly concerned that the county will prohibit individuals who did not participate in the LUBA appeal from participating in the post-LUBA remand hearing. Josephine County's code prohibits individuals who did not participate in a LUBA appeal from participating in the corresponding remand hearing. *See* RLDC 33.130(D). According to state law and case law, this section of the code is illegal.

ORS 197.763(7) is quite clear on this point:

The following procedures shall govern the conduct of quasi-judicial land use hearings conducted before a local governing body, planning commission hearings body or hearings officer on application for a

land use decision *and shall be incorporated into the comprehensive plan and land use regulations:*

When a local governing body, planning commission, hearings body or hearings officer reopens a record 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 apply to the matter at issue.* (emphasis added.)

Siporen v. City of Medford, 55 Or LUBA 29 (2007) goes further in clarifying ORS 197.763(7). *Siporen* identifies that a remand hearing is open for all interested participants to testify: “ . . . [A] party who otherwise has standing to participate in the city’s land use public hearings under the city’s land use legislations may not be denied standing to participate in those remand proceedings, simply because he or she failed to participate in the LUBA appeal.” . (pg. 22, lines 5-8.)

Rogue Advocates requests that the county clarify that the remand hearing is open to all interested participants, and we further urge the county to amend the code relating to remand hearings to be in compliance with *Siporen* and state law.

Other requirements for the remand hearing must be followed:

Our organization also is concerned with other procedural and substantive aspects of the not-yet-scheduled remand hearing. We remind the county that it is required to do the following on remand:

1. The county must show actual or average costs for land use applications and local appeals for the remand hearing;
2. The county must provide notice to all individuals who paid land use application fees and appeal fees of the remand hearing, whenever it is scheduled; and
3. The county must refund the illegal land use application fees and appeal fees collected.

We appreciate your listening to our above concerns and would appreciate a response on these matters.

Sincerely,

/s/ Jimmy MacLeod
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