

September 3, 2012

David Wechner, Planning Director
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Reference: For “The Record” Testimony At the *Rogue Advocates v. Josephine County*, LUBA No. 2011-037 Probable Remand Hearing To Be Before The Josephine County Board of County Commissioners

Dear David:

We were active participants in the local land use proceedings leading up to the county’s decision to approve the Whitaker request for a zone change from Woodlot Resource to Rural Residential-5-acre minimum lots to accommodate the building of six homes. This county decision subsequently lead to Rogue Advocates appeal and the Oregon Land Use Board of Appeals (LUBA) remand (*Rogue Advocates v. Josephine County*, LUBA No. 2011-037).

We are asking the county, and you as the Planning Director, to consider our position that the Josephine County Rural Land Development Code (RLDC) 33.130(D), Remand Hearings (http://www.co.josephine.or.us/Files/complete_code_2005.pdf) illegally limits participation in land use remand hearings and that we have standing to participate in the potential remand proceedings for *Rogue Advocates v. Josephine County*. We further ask that you report your findings to the Josephine County Board of County Commissioners (BCC).

This is an old issue that had been formally submitted to the BCC as far back as November 30, 2010 (Exhibit 1) and later followed up in 2011 by Rogue Advocates on two separate 2009 remand proceedings that to this date have not been initiated by the county (Exhibits 2 and 3; *Sommer v. Josephine County*, 58 Or LUBA 505 (2009) and *Walker v. Josephine County*, 60 Or LUBA 186 (2009)). As far as we know the BCC has not acknowledged the three letters (Exhibits 1 - 3), let alone acted on them in any way (i.e., we believe it 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.).

Most recently, 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 4). We and Rogue Advocate believe it is quite clear 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). *Siporen v. City of Medford* (pages 18-16) 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."

We assume 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."

We are 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 our request may also fall by the wayside. We join 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. We further urge the county to amend RLDC 33.130(D) to be in compliance with ORS 197.763(7) and *Siporen v. City of Medford*.

As an information note, this letter copies the Oregon Citizen Involvement Advisory Committee and the Oregon Department of Land Conservation and Development. We will be providing our formal request to them in the near future to consider our citizen involvement request to the county.

Thank you for allowing us to share our concerns with you concerning this matter.

Sincerely,

/s/ Bob Heinrichs

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Exhibits:

- Exhibit 1. November 30, 2010 Letter From Rogue Advocates (Walker) to Josephine County Board of County Commissioners on Transportation Planning Rule and Party Standing At a Remand Hearing
- Exhibit 2. January 26, 2011 Letter From Rogue Advocates (MacLeod and Vaile) to Josephine County Board of County Commissioners on Appeal Fees and Party Standing At a Remand Hearing
- Exhibit 3. January 28, 2011 Letter From Rogue Advocates (MacLeod and Vaile) to Josephine County Board of County Commissioners on Transportation Planning Rule and Party Standing At a Remand Hearing
- Exhibit 4. August 15, 2012 Letter From Rogue Advocates (MacLeod and Vaile) to Josephine County Board of County Commissioners on Party Standing At a Remand Hearing

Email Copies:

Jimmy McLeod, Executive Director
Rogue Advocates

Sarah Vaile, Staff Attorney
Rogue Advocates

Jim Just, Executive Director
Goal One Coalition

Mike Walker, Member
Hugo Land Use Committee
Hugo Neighborhood Association & Historical Society

Steve Rich, Legal Counsel
Josephine County
c/o

James Black, Planner
Josephine County Planning Department

Josh LeBombard, Southern Oregon Regional Representative
Oregon Department of Land Conservation and Development

Oregon Citizen Involvement Advisory Committee
c/o Bob Rindy, Policy and Legislative Coordination
Department of Land Conservation and Development