

**Appendix II.B.2.1.3. Rogue Advocates' Interpretations  
of Applicable Jackson County Land Development Ordinance (LDO)  
Standards & Criteria**

**June 16, 2013**

The following are the code references that can be considered for citing for the 9:00 a.m. **Non-Conforming Use (NC) Use** hearing comments. Many folks could have comments relevant to this hearing. Folks may submit a different comment for each hearing if they are relevant to the **standards and criteria**. Comments should be in writing and reflect the neighbors' direct personal experience or observations. Oral testimony will be limited to 3-5 minutes so neighbors should just basically outline their written comments. Please find attached the **Jackson County Land Development Ordinance (LDO)** addressing Nonconformities. Comments should be signed, include your name and address, and be submitted to:

**Jackson County Hearings Officer  
10 South Oakdale, Room 100  
Medford, Oregon 97501**

**Re: ZON2012-01173NC  
Use of 530 West Valley View Road, Talent, Oregon as an Asphalt Processing Facility**

**Dear Jackson County Hearings Officer:**

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The following are Rogue Advocates' interpretations on the applicable standards and criteria applicable to ZON2012-01173NC that can be referenced for public comment for the Hearings Officer. They should not used verbatim.

LDO 11.1.2(A) addresses the **Nonconforming Use**, the use of 530 West Valley View Road, Talent as an asphalt processing facility. The County LDO classifies this use as an industrial activity and it is not allowed under the property's current Rural Residential zoning, unless it can be verified as a Nonconforming Use. Jackson County Planning Staff reviewed this criteria and found that "a batch plant was lawfully established" prior to the adoption of the LDO on September 1, 1973. If any one has testimony to dispute this finding this is the criteria to cite.

LDO 11.8.1(A) establishes the **Verification of Nonconforming Status process** to confirm the operation qualifies for NC status. In their review staff concludes there is "sufficient documentation establishing the approximate date the batch plant was established(1963/1964)." FYI the only evidence submitted relevant to this criteria is Mr. Casebeer's Exhibit Q letter. If any one has evidence to refute this letter or other recollections this is the criteria to cite.

LDO 11.8.1(B) addresses the criteria to determine if the use has been abandoned or discontinued. It sets a **10 year look back period** from the date of application, 9/26/2012. Rogue Advocates (RA) agrees with the applicant that the asphalt operation was active during the past 10 years. However, our attorney will contest this "**rebuttable presumption**" that just 10 years fails to tell the whole story, and case law allows RA and/or the County to look back 20 years. So, if you have any testimony to demonstrate the asphalt operation was not on site between 1992-2002, this is your opportunity to cite this criteria and present your testimony.

At the hearing RA will establish that the following criteria that was not reviewed by staff as relevant should have been considered. This is the criteria that most folks will cite. These expansions or alterations are relevant if they occurred during the past 20 years. If you cite this section, it may be best to first state you feel the operation has expanded and this criteria is relevant and should have been addressed by staff.

**Findings Must: Respond to specific issues relevant to compliance with applicable approval standards and criteria that were raised by citizens in the proceedings.**

**LUBA Opinions** LUBA has held on many occasions that when the public raises legitimate issues in a quasi-judicial land use proceeding concerning a relevant approval criterion, a local government's findings must address such issues. If it does not LUBA may remand back to the local government.

**Assignment of Error. The Application Is Inadequate Because It Fails to Address Legitimate Issues Concerning a Comprehensive Plan Amendment and a Zone Change Raised in a Quasi-judicial Land Use Proceeding Concerning Relevant Approval Criteria.**

Jackson County in its decision and findings is required to address legitimate issues raised in a quasi-judicial land use proceeding by petitioners concerning relevant approval criteria. *Knight v. City of Eugene*, 41, Or LUBA 279 (2002); *Boly v. City of Portland*, 40 Or LUBA 537 (2001); *Dayton Prairie Water Assoc. v. Yamhill County*, 38 Or LUBA 14 (2000); *Wood v. Crook County*, 36 Or LUBA 143 (1999).

ORS 197.835(11) provides, in relevant part:

“(b) Whenever the findings are defective because of failure to recite adequate facts or legal conclusions or failure to adequately identify the standards or their relation to the facts, but the parties identify relevant evidence in the record which clearly supports the decision or a part of the decision, the board shall affirm the decision or the part of the decision supported by the record and remand the remainder to the local government, with direction indicating appropriate remedial action.”

## **LDO 11.2.1(B) Nonconforming Uses Expansion or Enlargement**

LDO 11.2.1(B)(1)(a) This criteria addresses **new or replacement structures**. If you are describing new structures or modifications to structures this is the criteria to cite. FYI County Code Enforcement identified the office, the fabric covered commercial building and the asphalt plant itself as "new" when comparing 2001-2003 aerials to 2010 aerials.

LDO 11.2.1(B)(1)(b) This criteria addresses if the **altered use has resulted in more traffic, more employees, or enlarged structures**. If these are the subjects of your comments this criteria should be cited.

LDO 11.2.1(B)(1)(c) This criteria addresses if the physical amount of property used for the operation has increased over the past 20 years.

LDO 11.2.1(B)(2) This criteria states **limited expansion of a nonconforming use may be approved if it "will have no greater impacts on the surrounding neighborhood."** Many of your comments may address this section, and you may describe any "impact" that you feel is a result of the expansion of operations of the batch plant and associated uses such as rock crushing, recycled asphalt crushing(RAP), equipment, traffic, noise, smell, dust, frequency or hours of operation, etc.

Many thanks to all the folks who will take the time to submit comments to support the appeals by Rogue Advocates and the City of Talent.

**Not Legal Advice** These interpretations by Rogue Advocate are as much about providing information and provoking questions as it is about interpretations. They are not legal advice and do not take the place of a lawyer. If citizens use information contained in these interpretations, it is their personal responsibility to make sure that it is applicable to their situation. Rogue Advocates assumes no liability for the interpretations provided.