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## Evidentiary Requirements

**Evidentiary Requirements.** Evidentiary requirements of Oregon quasi-judicial land use proceedings at the initial evidentiary hearing before local hearing bodies has four requirements.<sup>1</sup>

- . Burden of Proof.
- . Relevant Evidence.
- . Substantial Evidence.
- . Resolving Conflicting Evidence.



**Burden of Proof.** An applicant for a quasi-judicial approval has the burden of proving that the applicable approval standards are met. *Fasano v. Washington Co. Comm.*, 264 Or 574 P2d 23 (1973). This principle applies whether the approval standard is in a local government plan or code or in a statewide planning goal. *Knapp v. City of Jacksonville*, 20 Or LUBA 189, 200 (1990). A decision-maker's expressed belief early in the local proceedings that an applicant has sustained the burden of proof creates no right in the applicant to expect a vote in accordance with that expression. The applicant has the burden to make certain the record is adequate to support an affirmative decision. *Toth v. Curry County*, 22 Or LUBA 488, 493 (1991).

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## Burden Of Proof, Relevant Evidence & Substantial Evidence

**Relevant Evidence.** Relevant evidence is evidence that shows whether an approval criterion is satisfied or not. Relevant evidence may consist of the staff report, special studies, oral or written testimony, expert opinions, photographs, graphics, drawings, or anything that show whether an approval criterion is, or is not satisfied.

**Substantial Evidence.** The decision must be supported by substantial evidence. ORS 197.835(9)(a)(C). Substantial evidence is evidence that a reasonable person would rely on in reaching a decision. *Bottum v. Union County*, 26 Or LUBA 407, 412 (1994); *Canfield v. Yamhill County*, 31 Or LUBA 25, 35, *rev'd on other grounds*, 142 Or App 12 (1996); *Brown v. City of Portland*, 33 Or LUBA 700, 706 (1997).

Although LUBA need not always address the substantial-evidence standard in detail in its written opinions, the appellate court will. *Younger v. City of Portland*, 305 Or 346, 360, 752 P2d 262 (1988).

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1. Oregon State Bar. 2000 Supplement. *Land Use (Oregon Continuing Legal Education 1994 & Supp 2000)*. *Administrative Law Aspects Of Local Proceedings* by Beery, Pamela J., *et. al.* 2000. Library of Congress Catalog Card No. 94-065735. United States of America.

The case citations were checked for overrulings and reversals through March 2000; the ORS citation were checked through 1999.

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## Resolving Conflicting Evidence

**Resolving Conflict Evidence.** The choice between conflicts evidence belongs to the local government and will not be disturbed by LUBA if the evidence relied on is substantial evidence. *Wissusik v. Yamhill County*, 20, Or LUBA 246, 260 (1990); *Simmons v. Marion County*, 22 Or LUBA 759, 768 (1992). The test is whether the evidence selected is substantial evidence, ORS 197.835(9)(a)(C). *Mazeski v. Wasco County*, 28 Or LUBA 178, 184 (1994), *aff'd*, 133 Or App 258 (1995), or if a reasonable person could reach the decision that was made in view of all the evidence in the record, *Mazeski v. Wasco County, supra*.

**More Information.** Would you like to learn more? Contact a member of the Land Use Committee of the *Hugo Neighborhood*.



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**Disclaimer.** This brochure is as much about providing information and provoking questions as it is about opinions concerning the adequacy of findings of fact and land use decisions. It does not provide recommendations to citizens and it is not legal advice. It does not take the place of a lawyer. If citizens use information contained in this paper, it is their personal responsibility to make sure that the facts and general information contained in it are applicable to their situation.

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# Hugo Neighborhood Association & Historical Society's Mission

This information brochure is one of a series of documents published by the Hugo Neighborhood Association & Historical Society (*Hugo Neighborhood*). It is designed to be shared with neighbors for the purpose of helping protect our rural quality of life by promoting an informed citizenry in decision-making. The *Hugo Neighborhood* is an informal nonprofit charitable and educational organization with a land use and history mission of promoting the social welfare of its neighbors.

## Land Use & History

The *Hugo Neighborhood's* land use mission is to promote Oregon Statewide Goal 1 — Citizen Involvement, and to preserve, protect, and enhance the livability and economic viability of its farms, forests, and rural neighbors. It will act, if requested, as a technical resource assisting neighbors to represent themselves.

Its history mission is to educate, collect, preserve, interpret, and research its local history and to encourage public interest in the history of the Hugo area.

Volunteer membership dues are \$10.00 annually per family and normally used for paper, ink, envelopes, publications and mailings. Make checks to the *Hugo Neighborhood* and send them to our Treasurer.

*Hugo Neighborhood Association*

Web Page: <http://jeffnet.org/~hugo/>

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## Evidentiary Requirements

Brochure 11B in Josephine County  
CI Issues & Problems Series



**November 14, 2006**

**Land Use Committee  
Hugo Neighborhood Association**

**Members of the CAC/NA Coalition**

Brochure 11B in Common CI Issues & Problems in Josephine County:  
2006 Series - HNA&HS 2006  
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Applications\Hugo\_Neighborhood\_Association\Community\_Issues\Citizen\_Involvement\CI Issues &  
Problems In JO County\BROCHURE\_11B\_Evidentiary Requirements\_111406.wpd