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## Complete Land Use Applications For Josephine County (JO CO)

**Complete Land Use Application** Important early rules to understand are the rules for a complete land use application and the burden of proof of the applicant.<sup>1</sup>

- . **ORS 215.416(1)(4)**
- . **ORS 197.522**

**RLDC 31.070.A - Burden & Nature Of Proof**  
“A. The burden of proof shall be on the applicant.”

An evaluation of conflicting evidence does not represent a shift in the burden of proof from the applicant to the opponents. *Washington Co. Farm Bureau v. Washington Co.*, 21 Or LUBA 51, 64 (1991). However, it is one thing to weigh conflicting evidence, and choose which evidence to believe. It is another to explicitly reject proffered evidence, apparently without weighing that evidence against the record, because the local government deems the proponent of that evidence to have failed a nonexistent burden of proof to produce a particular kind of evidence (*Matiaco v. Columbia County*, 42 Or LUBA 277, 288, *aff'd* 183 Or App 581, \_\_\_P3d \_\_\_2002).

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1. Hugo Land Use Committee. 2006. *Complete Land Use Applications*. Hugo, OR; Hugo Land Use Committee. 2006. *The Burden Of Proof*. Hugo, OR.

2.. Dr.-Ing Holger T. Sommer,MS, DIC, VD; Director, Goal One Coalition. December 2, 2005. *Local Land Use Decision Process*. Submitted to the Oregon LCDC. Medford, OR.

3. *Oien v. City of Beaverton*, 46 Or LUBA 109 (2003); Hugo Land Use Committee. 2003. *Conditions of Approval*. Hugo, OR; Hugo Land Use Committee. 2006. *Complete Land Use Applications*. Hugo, OR.

4. Hugo Land Use Committee. 2006. *Change In Land Use Proposal*. Hugo, OR; Hugo Land Use Committee. 2006. *Modifications To The Proposal & 150-day Rule*. Hugo, OR.

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## Opinion: Shifting The Burden Of Proof

**Opinion.** Most of the following opinion on “Shifting The Burden of Proof” was taken from a paper submitted to the Oregon Land Conservation and Development Commission (LCDC) by Hoger Sommer, Director, Goal One Coalition.<sup>2</sup> The Hugo Land Use Committee agreed with the assessment.

**Issue.** The issue is JO CO’s failure to adhere to its own rules and to Oregon law. JO CO is imposing excessive conditions to make incomplete and mediocre land use application compliant.

The law describes how JO CO can apply “reasonable” conditions of approval (ORS 197.522). Conditions are usually so excessive that they redesign the applicant’s proposal. Court law directs that the initial burden of proposing conditions to make development consistent with applicable criteria belongs to the applicant.<sup>3</sup>

A local government may properly grant permit approval based on either a finding that an applicable approval standard is satisfied, or a finding that it is feasible to satisfy an applicable approval standard and the imposition of conditions necessary to ensure that the standard will be satisfied.<sup>3</sup>

In JO CO conditions of approval are “recommended” by staff. Many time these conditions are so substantial that a completely new proposal is produced where it appears that issues discussed during pre-application conferences are just made compliant with band-aid conditions, making it difficult for the local hearing body to evaluate the application.<sup>3</sup> Many of the conditions of approval illegally move requirements from tentative plan review (the only time the public has input) to the final plan, beyond the review of the public.<sup>4</sup>

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## Requests

**More On Shifting The Burden Of Proof.** Although usually not explicitly stated the JO CO shifts the burden of proof during its decision process from the applicant to the neighbors. Even though it is stated during every public hearing that the burden of proof is on the applicant, shifting the burden of proof to the opposition through inferred responsibilities is the single most frequent error. Statements from the Hearing Body: How do you know that? This point is not important! When questions asked by the opponents are not passed in to the applicant so they are never answered, are indicative of sifting the burden of prove to the opposition.

### Requests.

1. LCDC should advise local governments about objectivity and influence local officials to enforce their rules and Oregon law.
2. The Department of Land Conservation and Development (DLCD) should provide training to local governments on the standards to conduct land use hearings.
3. Citizens should not accept the ignorance of local officials and should hold them responsible.

**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.

# 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*  
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## Shifting The Burden Of Proof



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**Land Use Committee  
Hugo Neighborhood Association**

**Members of the CAC/NA Coalition**