

---

---

## JO CO Pattern & Practice Of Neglect For 50-Day Rule

An important county land use planning rule to understand by the applicant and the public is that the law requires a final action on a permit within 150-days.

- **ORS 215.427** - Final Action On County Permit Within 150 Days
- **ORS 215.429** Mandamus Proceeding When County Fails to Take Final Action Within 150 Days
- **ORS 20.075(1)** Factors to Be Considered by Court in Awarding Attorney Fees
- **ORS 197.335** Order for compliance with goals; review of order; withholding grant funds; injunctions.
- **OAR 660-045-0040** Citizen Initiated Enforcement Order



Systematic and continuing violations by Josephine County (JO CO) of ORS 215.427 are resulting in deleterious effects on citizens and land use applicants. This pattern and practice has an appearance ranging from neglect because of the absence of overt adverse impacts to JO CO for ignoring the 150-day law, to potential intentional efforts by JO CO to subvert its own land use laws.

---

1. *State ex rel Aspen Group v. Washington County*, 166 Or App 217, 996 P2d 1032 (2000); *State ex rel Aspen Group v. Washington County*, 150 Or App 371, 378, 381, 946 P2d 347 (1997), *rev den* 327 OR 82 (1998).

2. Hugo Land Use Committee. 2006. *JO CO 150-Day Violations - Pattern And Practice*. Hugo, OR; Hugo Land Use Committee.

2006. *Mandamus Proceedings For 150-Day Violations*. Hugo, OR.

3. Hugo Land Use Committee. 2006. *150-Day ORS Standards*. Hugo, OR.

---

---

## The Issue<sup>1</sup>

The issue is the effect on citizen participation in a county violation of the 150-day rule (ORS 215.427), and a mandamus process (ORS 215.429) that may follow from the failure, to move the land use process out of the jurisdiction of the JO CO Board of Commissioners (BCC) to the circuit court.

A county's violation of ORS 215.427 is in no way altered or obviated, especially in cases where the principal basis for the decision to award attorney fees under ORS 20.075(1) is that the broader public benefit is to require the county to act according to law and to act with some dispatch.<sup>1</sup>

The county can't say we're supposed to act in 150 days but that's okay, the law doesn't apply to us; we can act whenever we get around to it and be safe from attorney fees. In other words, counties' violation of the statutory 150-day requirement--and not anything related to a non-defense of a writ of mandamus actions--is the reason why attorney fees should be awarded against the defendant counties and not intervenors. The fact remains that counties are parties to these actions as they failed to perform their duty of taking final action on the land use applications within the time prescribed by law.<sup>1</sup>

---

---

## More Information

Where the county's nonfeasance was the principal reason necessitating the action, the consideration described in ORS 20.075(1)(a) is a significant factor that weighs against an award of attorney fees from intervenors. If intervenors' conduct contributed to the need for the litigation at all, they were not the sole or main contributors to that need, and the counties' contributing conduct was--in the statute's word--illegal.<sup>1</sup>

Many counties, including JO CO, have an unspoken premise that a violation of the 150-day requirement should not warrant an award of attorney fees in itself no matter that they do not defend against writs of mandamus. The effect of such violations, and the resort to the mandamus process are many.<sup>2</sup>

This brochure is one of 11 brochures in the Hugo Neighborhood's education series on 150-Day Violations.<sup>3</sup>

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



---

**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. Send us your e-mail address if you want to know what we are doing.

*Hugo Neighborhood Association*  
Web Page: <http://jeffnet.org/~hugo/>

Edited by Wayne McKy, Holger Sommer, & Mike Walker

### Hugo Land Use Committee

Wayne McKy, Member  
Land Use Committee  
*Hugo Neighborhood*  
6497 Hugo Road  
Grants Pass, Oregon 97526

Mike Walker, Member  
Land Use Committee  
*Hugo Neighborhood*  
3388B Merlin Rd #195  
Grants Pass, Oregon 97526

Hal Anthony, Member  
Land Use Committee  
*Hugo Neighborhood*  
3995 Russell Road  
Grants Pass, Oregon 97526

## JO CO Pattern & Practice Of Neglect For 150-Day Rule

Brochure 12B in Josephine County  
CI Issues & Problems Series



December 5, 2006

Land Use Committee  
Hugo Neighborhood Association

Members of the CAC/NA Coalition