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## Mandamus Proceedings

A county decision for a final action on a permit must occur within 150 days. The 150-Day rules are covered by the Oregon Revised Statutes (ORS).

- **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

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



This brochure is one of 11 brochures in the Hugo Neighborhood's education brochure series on 150-Day Violations.<sup>1</sup>

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1. Hugo Land Use Committee. 2006. *150-Day ORS Standards*. Hugo, OR.
  2. *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).
  3. All statutory citations and quotations from footnote 2 refer to the pertinent provisions that were in effect at the time of the relevant events.

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## Circuit Court Attorney Fees Against Intervenors

It is clear from Appellant Court opinions that mandamus actions under ORS 215.428(7) are not procedures that the legislature established to provide alternatives to making the land use decisions that ORS 215.428(1) and other statutes require. It is a remedy that the legislature created to deal with circumstances where counties have failed to make the decisions that those statutes require them to make.<sup>2&3</sup> In sum, Appellant Court opinions find no basis in trial court's findings to support conclusions that an award of attorney fees are justified against citizens intervening for local governments' violation of the law under any of the provisions in ORS 20.075(1).

"We agree with intervenor that each of the trial court's grounds for awarding attorney fees against her is inconsistent with our earlier opinion or, for other reasons, is incapable of supporting an award under the criteria in ORS 20.075(1)."<sup>2&3</sup>

"At the conclusion of our opinion, we reiterated "that there can *be* no successful mandamus action under [ORS 215.428] unless *the county* has violated the statutory requirement."<sup>2&3</sup>

"... the county's failure to abide by the statutory requirement prevented intervenor from exercising her right to express opposition to relator's proposal through the established county hearing and decisionmaking procedures, as much as it necessitated that relator go to court to have its application acted on rather than obtaining the decision from the county that the county was required by law to make."<sup>2&3</sup>

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## Court of Appeals

- *State ex rel K. B. Recycling v. Clackamas Cty.*, 171 Or App 46 (2000)<sup>2</sup>
- *State ex rel Aspen Group v. Washington County*, 166 Or App 217, 996 P2d 1032 (2000)<sup>2</sup>
- *State ex rel Coastal Management v. Washington Cty.*, 159 Or App 533, 550, 979 P2d 300 (1999)<sup>2</sup>
- *State ex rel Aspen Group v. Washington County*, 150 Or App 371, 378, 381, 946 P2d 347 (1997), *rev den* 327 OR 82 (1998)
- *State ex rel Fraley, v. Deschutes Cty. Bd. Of Comm.*, 151 Or App 201 (1997)
- *Murphy Citizens Advisory Com. v. Josephine County*, 325 Or 101, 934 P2d 415 (1997)
- *State ex rel Currier. v. Clatsop County*, 149 Or App 285, 942 P2d 847(1997)
- *State ex rel Pend-Air v. City of Pendleton*, 145 Or App 236, 929 P2d 1044 (1996), *rev den* 325 OR 45 (1997)
- *Crist. v. City of Beaverton*, 143 Or App 79, 922 P2d 1253 (1996)
- *State ex rel Compass Corp. v. City of Lake Oswego*, 135 Or App 148, 898 P2d 198 (1995)
- *State ex rel Compass Corp. v. City of Lake Oswego*, 319 Or 537, 878 P2d 403 (1994)
- *Wallace. v. Board of County Commissioners*, 105 Or App 364, 804 P2d 1220 (1991)

**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. 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

## Appellant Court Opinions On Attorney Fees From 150-Day Mandamus Proceedings

Brochure 12F in Josephine County  
CI Issues & Problems Series



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Land Use Committee  
Hugo Neighborhood Association

Members of the CAC/NA Coalition