
Mandamus Proceedings

An issue is the chilling 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 local circuit court, and the award of attorney fees (ORS 20.075(1)) against intervenors (i.e., citizens).¹

“Although [relator] chose to seek attorney fees only from intervenor, the fact remains that the county was a party to this action. It was also the party whose conduct--more than any other's--gave rise to the litigation. It failed to perform its duty of taking final action on the application within the time prescribed by law. Insofar as the county's nonfeasance was the principal reason necessitating the action, the fact that [relator] has chosen not to claim attorney fees from the county does not make the consideration described in **ORS 20.075(1)(a)** any the less a factor that weighs against an award of attorney fees from *intervenor*. If her conduct contributed to the need for the litigation at all, she was not the sole or main contributor to that need, and the county's contributing conduct was--in the statute's word--'illegal.'”²

“We also find no basis for shifting that responsibility from the county to intervenor in the trial court's observation that the county chose not to defend the action because it had “already worked its will” through and was “satisfied” with the planning staff's approval conditions. Whatever the trial court understood the meaning and significance of the county's “will” and its “satisfaction” to be, the county had not performed its statutory duty by completing only the initial, planning staff, stage of the application review process, rather than following the public hearing and other review procedures that were prerequisites to its taking “final action” within the meaning and requirement of **ORS 215.428(1)**. Stated another way, the county had no authority to be satisfied with or to work its will through the completion of only part of--let alone only the first part of--the process that **ORS 215.428(1)** and other state and local provisions required it to pursue to the point of finality.”²

“Indeed, the only thing that *can give rise* to a mandamus action under **ORS 215.428(7)** is a county's conduct in violating the 120-day rule.”²

Oregon Constitutional Bill Of Rights, Section 1, Issues

Other important concerns are the constitutional issues surrounding the mandamus proceedings process as it applies to local circuit court.³

ARTICLE I BILL OF RIGHTS, Section 1. Natural rights inherent in people. We declare that all men, when they form a social compact are equal in right: that all power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety, and happiness; and they have at all times a right to alter, reform, or abolish the government in such manner as they may think proper.

This issue is about the scope of protecting the right of the PUBLIC and the right of the INDIVIDUAL who is the smallest building block of the PUBLIC. This issue addresses the question how the legislature brought rights to the PUBLIC (participation in land use) manifests itself in the right of the INDIVIDUAL. If the PUBLIC is the sum of all individuals, who in a court of law speaks for the PUBLIC? How and by whom is the right of the PUBLIC defended?³

Because only INDIVIDUALS have voices, one member of the PUBLIC, an individual, can only speak for the PUBLIC. The problem for that individual who claims to speak for the public is, that his opponents are also members of the public, resulting in a difficult decision for a Court of law. A Court, which faces such a situation, not only must weigh the rights of individuals against each other whether those rights have been violated, but also must assess which of the arguing parties represents the PUBLIC that derives representation from statutes implemented by the legislative body.³

More Information

The Intervenor- Appellant in this case is gravely prejudiced by such action because:

- 1) the decision making body in a land use action (the local Government) becomes the Respondent., and
- 2) the burden of proof is now put upon the Respondent, who should have had no stake in this action, because he was to be the objective decision maker of this land use action.³



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

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



-
1. Hugo Land Use Committee. 2006. *150-Day ORS Standards*. Hugo, OR.
 2. *State ex rel K. B. Recycling v. Clackamas Cty.*, 171 Or App 46 (2000); *State ex rel Aspen Group v. Washington County*, 166 Or App 217, 996 P2d 1032 (2000).
 3. *WTW DEVELOPMENT, LLC v Josephine County*. Oregon Supreme Court. (Josephine County Circuit Court (No. 04 CV 075); CA A129758, November 2006).

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

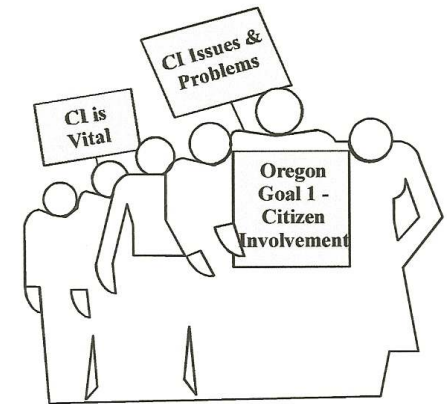
Wayne McKy, Member
Land Use Committee
Hugo Neighborhood
6497 Hugo Road
Grants Pass, Oregon 97526

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

Constitutional Issues Around Mandamus Proceedings

Brochure 12J in Josephine County
CI Issues & Problems Series



December 5, 2006

**Land Use Committee
Hugo Neighborhood Association**

Members of the CAC/NA Coalition