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## Standards & Criteria

Findings Must:

- ✓ **Identify the relevant approval standards (i.e., standards and criteria).**
- ✓ Identify the facts which were believed and relied upon by the decision maker(s).
- ✓ Explain how those facts lead to the conclusion that the standards are, or are not, satisfied.
- ✓ Respond to specific issues relevant to compliance with applicable approval standards and criteria that were raised by citizens in the proceedings.
- ✓ State that the approval standards are met or that compliance is feasible and impose

conditions that will ensure compliance.

This brochure is one of several in the “findings” series<sup>1</sup>.



In land use proceedings the local government’s responsibility is to inform the public of the standards and criteria which it will use to make a decision. If the government does not, it commits procedural errors that may substantially prejudice a party’s rights.<sup>2</sup>

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1. Hugo Neighborhood Association & Historical Society. 2003. *Land Use Decisions: What Are Findings*. Brochure 1 In Findings Series. Grants Pass, OR.

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## Law & LUBA Opinions

The law requires the local government to list the substantive criteria from the ordinances and comprehensive plan in notices that apply to land use applications.<sup>3</sup> LUBA has ruled many times that the government’s obligation is to ensure that compliance with all applicable approval criteria is determined at a stage that provides opportunity for notice and hearing.<sup>4</sup>

**Standards**

Local government notices sometimes omit important criteria governing land use decisions. Be aware that additional code sections, plan provisions, or state statutes or rules applicable to the decision may have been overlooked.

Applicable state or local criteria govern whether an application may be approved (or denied), and, therefore, they must be a central focus of the participant’s testimony. For this reason, failure to list the applicable criteria may allow new issues to be raised in an appeal to LUBA - even if they were not raised during the local proceedings.<sup>5</sup> If the notice is not specific enough when it lists what criteria apply (e.g., it indicates the entire zoning ordinance as the applicable law), a party will be able to raise new issues for the first time at LUBA.<sup>6</sup>

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2. ORS 197.835(9)(a)(B).

3. ORS 197.763(2) and (3).

4. ORS 197.763 and ORS 215.416.

5. *DeBates v. Yamhill County*, 32 Or LUBA 276 (1997); *Cummings v. City of Tillamook*, 26 Or LUBA 139 (1993).

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## More Information

The notice provisions of ORS 197.763(3)(b) require only a listing of *local* provisions. That statute does not require that the notice include statutory or administrative rule provisions that may apply to the application. Therefore, a local government's failure to list such provisions does not relieve a party of the obligation to raise issues related to such provisions at the local level in order to raise them on appeal. *Van Dyke v. Yamhill County*, 35 Or LUBA 676, 684 (1999).

One has to be a bit careful. A person cannot raise a new issue at LUBA if the issue "could have been raised" before the local government. ORS 197.835(4)(a). LUBA has held that a party couldn't raise a new issue when she failed to factually challenge an issue and did in fact know of the existence of the provision relating to the issue. *Van Dyke v. Yamhill County*, 35 Or LUBA 676, 687 (1999). LUBA looks at *evidence in the record* to see if the party could or did have actual knowledge.

**More Information.** Would you like to learn more about citizen involvement in land use planning? Contact a member of the Land Use Committee of the *Hugo Neighborhood*.



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6. *ONRC v. City of Oregon City*, 29 Or LUBA 90, 97 (1995).

7. ORS 197.763 and ORS 197.835.

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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 promoting the social welfare of its neighbors.

### Land Use & History

The *Hugo Neighborhood's* land use mission is to promote the social welfare of the citizens of the area by working to promote Oregon Statewide Goal 1 — Citizen Involvement, and by preserving, protecting, and enhancing the livability and economic viability of its farms, forests, and rural neighbors. It will act, as requested, as a technical resource assisting neighbors to represent themselves.

On January 2003 we began the concept of volunteer membership dues. They are \$10.00 annually and will be used for paper, ink, envelopes, publications and mailings. Make checks to the *Hugo Neighborhood* and send them to a member of the Land Use Committee. Send us your e-mail address if you want to know what we are doing.

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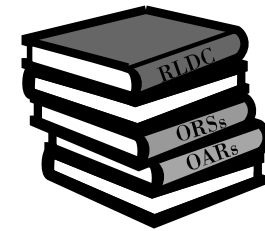
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## Standards & Criteria



Brochure 2 in Findings Series



*Critical Rules to Understand Are the Standards  
and Criteria*

**December 20, 2003**

**Land Use Committee  
Hugo Neighborhood Association &  
Historical Society**

**Member of the CACNA Coalition**