
Failure To Give Notice Of Hearing¹

If a local government (1) makes a land use decision without providing a hearing or (2) makes a land use decision that differs from the proposal described in the notice to such a degree that the notice of the proposed action did not reasonably describe the local government's final actions, then a person adversely affected by the decision may appeal the decision to LUBA within 21 days of "actual" notice when notice is required or within 21 days of learning about it. ORS 197.830(3).² The purpose of ORS 197.830(3) is to protect the statutory rights of an individual to receive adequate notice of a public hearing in order to be able to fully participate. *Kevedy, Inc. v. City of Portland*, 28 Or LUBA 227, 232 (1994).

The statute has been interpreted to apply in several circumstances.

1. The local government was required to hold a hearing but did not do so;
2. A hearing was held but one or more persons were not given notice; and
3. **Notice was given and hearing was held but the decision significantly differed from the proposal described in the notice.** *Bowlin v. Union County*, 24 Or LUBA 362, 375 (1992); *Bowlin v. Grant County*, ___ Or LUBA ___ (LUBA No 98-105, Sept 30, 1998) (expanding the holding in *Leonard v. Union County*, 24 Or LUBA 362 (1992) to allow appeal of administrative decision under ORS 197.803(3)).

Change In Proposal¹

When an administrative decision with notice is made as allowed by ORS 215.416(11) and ORS 227.175(10), then ORS 197.830(3) does not apply. ORS 197.830(3); *Tarjoto v. Lane County*, 29 Or LUBA 408, 413, *aff'd*, 137 Or App 305 (1995); *Caraheer v. City of Klamath Falls*, 30 Or LUBA 204, 210 (1995).



Changes in the proposal are governed by ORS 197.830(3) and ORS 197.835(4)(b). **The question is, "At what point is new notice required?"** LUBA has stated that a reasonable person recognizes that a proposal may be changed either by the applicant or by the local government after notice of public hearing is given. Furthermore, a reasonable person recognizes that his or her interests may be affected and that it is necessary to participate in the hearings process to protect that interest, and it is clear that not every change in the proposal described in the notice necessarily implicates ORS 197.830(3).³ *Kevedy, Inc. v. City of Portland*, *supra*, *Bigley v. City of Portland*, ___ Or LUBA ___ (LUBA No 99-080, Jan 21, 2000).

More Information

The Hugo Land Use Committee maintains that governing bodies are required to give notice of a permit decision without a hearing to four categories of persons described in ORS 197.830(3), ORS 215.416(11)(a), ORS 215.416(11)(c), and ORS 215.422(1) & (2).⁴

1. Owners of Property Adjacent to Property Subject to Application
2. Adversely Affected Persons
3. Aggrieved Persons
4. Recognized Neighborhood or Community Organizations

More Information. Contact a member of the Land Use Committee of the *Hugo Neighborhood*.



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1. Oregon State Bar. 2000 Supplement. *Land Use (Oregon Continuing Legal Education 1994 & Supp 2000)*. *Administrative Law Aspects Of Local Proceedings* by Beery, Pamela J., et. al. 2000. Library of Congress Catalog Card No. 94-065735. United States of America. The case citations were checked for overrulings and reversals through March 2000; the ORS citation were checked through 1999.
 2. Hugo Land Use Committee. 2004. *Actual Notice Of Decision*. Hugo, OR.
 3. Hugo Land Use Committee. 2006. *Modifications To The Proposal & 150-Day Rule*. Hugo, OR.
 4. *Wilber Residents v. Douglas County*, 33 Or LUBA 412, *aff'd* 151 Or App 523, 950 P2d 368 (1997); *Wilber Residents v. Douglas County*, 34 Or LUBA 634 (1998); and *Tarjoto v. Lane County*, 137 Or App 305, 308-09 (1995).

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

Web Page: <http://jeffnet.org/~hugo/>

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Brochure 6D in Josephine County
CI Issues & Problems Series



The purpose of ORS 197.830(3) is to protect the statutory rights of an individual to receive adequate notice of a public hearing in order to be able to fully participate.

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**Land Use Committee
Hugo Neighborhood Association**

Members of the CAC/NA Coalition