
Choice Between Conflicting Evidence

Oregon State Bar.¹ The choice between conflicting evidence belongs to the local government and will not be disturbed by LUBA if the evidence relied on is substantial evidence. *Wissusik v. Yamhill County*, 20, Or LUBA 246, 260 (1990); *Simmons v. Marion County*, 22 Or LUBA 759, 768 (1992). The test is whether the evidence selected is substantial evidence, ORS 197.835(9)(a)(C). *Mazeski v. Wasco County*, 28 Or LUBA 178, 184 (1994), *aff'd*, 133 Or App 258 (1995), or if a **reasonable person** could reach the decision that was made in view of all the evidence in the record, *Mazeski v. Wasco County, supra*.

The test is whether a reasonable person could reach the decision that was made in view of all the evidence in the record.

Wilhoft v. City of Goldbeach, 38 Or LUBA 375, 391 (2000). “Determining the date a petitioner “should have known” of the decision that is appealed under ORS 197.830(3)(b) (1997) is not complicated where a petitioner has no reason to suspect that the decision was made until the petitioner is given a copy of the decision. However, where there are circumstances that would lead a **reasonable person** to realize that an appealable land use decision may have been rendered, it is necessary to consider whether a **reasonable person** would have made appropriate inquiries and thereby discovered the actual decision or confirmed the existence of the decision. We emphasize that the obligation to make reasonable inquires under ORS 197.830(3)(b) (1997) is an objective one, and it turns on what a **reasonable person** would do rather than what the petitioner actually did.

Reasonable Person

Neelund v. Josephine County ___LUBA___ (LUBA No 2006-080, Oct 10, 2006). “. . . March 21, 2006 notice petitioners had sufficient information to put a **reasonable person** on at least “inquiry notice” . . .” “In our view, whether the petitioners knew or should have known of the specific location of the dwelling north of the canal is less critical, if it is relevant at all. For purposes of inquiry notice under ORS 197.830(3)(b), it is whether petitioners knew or should have known of the “decision,” i.e., that the county had approved development, in this case a dwelling and accessory structure, on the subject property. It is not necessary that petitioners know the particular detail of the proposed development that appears to offend them.⁷”

[Footnote 7] “. . . That obligation is triggered by receipt of information sufficient to inform a **reasonable person** that the local government has made a decision approving development on the property.”



Requirement For Findings. ORS 215.416(8) & (9) require that a **reasonable person** be able to determine from the local government’s decision what it considered to be the relevant criteria and standards.²

Josephine County Rural Land Development Code (RLDC) 31.110 - Rules Of Evidence.

RLDC) 31.110.A. “A. All evidence offered and not properly objected to may be received unless otherwise excluded by the hearing body. Evidence received at the hearing shall be of the same quality as the evidence used by reasonable persons in the conduct of their everyday affairs.”

More Information

Court Opinions.

- . *Neelund v. Josephine County* ___LUBA___ (LUBA No 2006-080, Oct 10, 2006).
- . *Wilhoft v. City of Goldbeach*, 38 Or LUBA 375, 391 (2000).
- . *Bigley v. City of Portland* (LUBA No. 99-089; CA A109238), April 20, 2000.
- . *Rivera v. City of Bandon*, 38 Or LUBA 736 (2000).
- . *DLCD v. Douglas County*, 38, Or LUBA 542 (2000).
- . *River City Disposal v. City of Portland*, 35 Or LUBA 360 (1998).
- . *Rouse v. Tillamook County*, 34 Or LUBA 530 (1998).
- . *Mazeski v. Wasco County*, 28 Or LUBA 178, 184 (1994), *aff'd*, 133 Or App 258 (1995).
- . *Bottum v. Union County*, 26 Or LUBA 407 (1994).
- . *Adler v. City of Portland*, 25 Or LUBA 546 (1993).
- . *McInnis v. City of Portland*, 25 Or LUBA 376 (1993).
- . *Reeves v. Washington County*, 24 Or LUBA 483 (1993).
- . *Reynolds v. Clackamas County*, 24, Or LUBA 14 (1992).

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



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.

2. Hugo Land Use Committee. 2003. *Land Use Decisions: What Are Findings?* Hugo, OR.

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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Hugo Land Use Committee

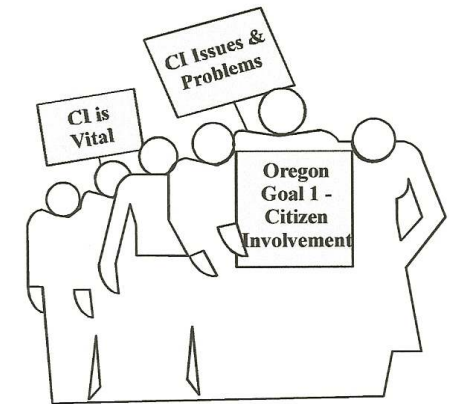
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Reasonable Person

Brochure 6F in Josephine County
CI Issues & Problems Series



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**Land Use Committee
Hugo Neighborhood Association**

Members of the CAC/NA Coalition