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# Josephine County Rural Land Development Code (RLDC)

## RLDC 31.090 - Challenge for Bias, Prejudice, or Conflict of Interest

- A. Any applicant or opponent of a proposal may challenge the qualification of any member to participate in such hearing and decision because of bias, prejudice or conflict of interest.
- B. The challenge shall be in writing and shall state the facts relied upon for the challenge.
- C. The challenge must be submitted, to the Planning Director not less than 48 hours preceding the time set for the public hearing, unless good cause is shown as to why the submission could not be made in a timely manner.
- D. The Director shall attempt to notify the challenged member before the hearing.
- E. The challenged member(s) shall have an opportunity at the hearing:
1. To agree with the challenge and withdraw from participation in the Hearing and decision; or
  2. To disagree with the challenge and respond orally and in writing.
- F. The challenge and any response shall be incorporated into the record of the hearing.

**Local decision makers are only expected to put whatever bias they may have to the side when deciding individual permit applications.**

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## Bias

**Court Opinions** LUBA explained in *Wal-Mart Stores, Inc.*<sup>1</sup> that local elected officials are not expected to be entirely free of bias.

“As we have explained on many occasions, local quasi-judicial decision makers, who frequently are also elected officials, are not expected to be entirely free of any bias. *Friends of Jacksonville v. City of Jacksonville*, 42 Or LUBA 137, 141-44, *aff’d* 183 Or App 581, 54 P3d 636 (2002); *Halverson-Mason Corp. v. City of Depoe Bay*, 39 Or LUBA 702, 710 (2001); *Oregon Entertainment Corp. v. City of Beaverton*, 38 Or LUBA 440, 445-47 (2000), *aff’d* 172 Or App 361, 19 P3d 918 (2001).”



“To contrary, local officials frequently are elected or appointed in part *because* they favor or oppose certain types of development. *1000 Friends of Oregon v. Wasco Co. Court*, 304 Or 76, 82-83, 742 P2d 39 (1987); *Eastgate Theatre v. Bd. of County Comm’rs*, 37 Or App 745, 750-52, 588 P2d 640 (1978). Local decision makers are only expected to (1) put whatever bias they may have to the side when deciding individual permit applications and (2) engage in the necessary fact finding and attempt to interpret and apply the law to the facts as they find them so that the ultimate decision is a reflection of their view of the facts and law rather than a product of any positive or negative bias the decision maker may bring to the process.”

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## More Information

**Court Opinions Continued** “A request for permission to seek and present extra-record evidence under OAR 661-010-0045, particularly one that includes a request to depose the city council, can significantly slow LUBA’s review and easily be burdensome for local government decision makers if such requests are routinely allowed without a substantial showing that there is real reason to suspect that granting the request will lead to extra-record evidence of decision maker bias.”

**Conclusion Statement** It is almost impossible to show bias without the smoking gun. Advice to neighbors is not to spent time and energy on trying to provide bias of a quasi-judicial decision maker without solid proof.



**Want More Information?** Contact a member of the Land Use Committee on how you can become involved in your community’s land use projects.

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1. *Wal-Mart Stores, Inc. v. City of Central Point*. \_\_\_ Or LUBA \_\_\_ (LUBA No. 2004-075, March 17, 2005).

**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.

Volunteer membership dues are \$10.00 annually and 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; they will get 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

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### Hugo Land Use Committee Hugo Neighborhood Association

Hal Anthony, Member  
3995 Russell Road  
Grants Pass, Oregon 97526  
541-476-4156

Wayne McKy, Member  
6497 Hugo Road  
Grants Pass, Oregon 97526  
541-476-4006

Holger Sommer, Member  
P.O. Box 367  
Merlin, Oregon 97532  
541-476-5744

Mike Walker, Member  
3388B Merlin Rd #195  
Grants Pass, Oregon 97526  
541-471-8271

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## Bias of Local Quasi-Judicial Decision Makers



**January 3, 2007**

**Land Use Committee  
Hugo Neighborhood Association**

**Members of the CAC/NA Coalition**