

## A Party Or A Witness?

**PARTIES**<sup>1</sup> Josephine County has established a procedure that each participant in a land use proceeding is to establish their status as either a party or a witness. Person(s) speaking at the hearing shall identify themselves as:

1. a witness, or
2. a party, or
3. a county or other public official.



Persons appearing at a hearing either orally or in writing (including those representing an organization) shall state at the beginning of their testimony the facts which support their status as a party or a witness.

County procedure is that persons who were not entitled to notice [for decisions without a hearing ORS 215.416(11)(a) requires notice to be sent to adjacent property owners, and adversely affected and aggrieved persons], but who claim party status because they will be adversely affected or aggrieved by the decision, shall identify and document the facts showing how they will be adversely affected or aggrieved. Persons who fail to do so shall be witnesses.

At the close of their statement of facts on how they will be adversely affected or aggrieved, the presiding officer will promptly rule on whether that person will be treated as a party or not. After party and/or witness status has been determined, anyone challenging the ruling shall be heard immediately and the presiding officer (or the hearing body) may change its decision on party status.

## Parties Can Give Testimony, Surrebuttal and Summation

**ADVERSELY AFFECTED** ORS 197.830(3), (4) & (5) & ORS 215.416(11)(a)

**AGGRIEVED** ORS 215.416(11)(a) & ORS 215.422(1)(a) and (2)

**PARTY** Party status with local hearing bodies determines how interested persons give testimony and appeal locally. **This is different than party status to appeal to LUBA.**<sup>2</sup>

If you think you are a party because you are adversely affected or aggrieved it is important to establish this fact early in your testimony (e.g., in writing and/or orally) because these “parties” give testimony at hearings as opponents and opponent parties have the opportunity to give testimony with surrebuttal and summation rights.<sup>1</sup>

Locally being a recognized party is critical as witnesses can not present surrebuttal and summation, and they do not get as much time to give testimony. For example, presenting surrebuttal and summation can be critical in effectively sharing a message, especially if the original testimony is separated from the final hearing body by several months and one or more hearings.



**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.

## LUBA Opinions/Court Cases On Standing And Parties

- *Friends of Jacksonville v. City of Jacksonville*, \_\_\_ Or App \_\_\_ (A121344, August 20, 2003)
- *Doty v. Coos County*, \_\_\_ Or App \_\_\_ (A1118190, July 9, 2002)
- *Central Klamath County CAT v. Klamath County*, 41 Or LUBA 524 (2002)
- *Friends of Yamhill County v. Yamhill County*, 41 Or LUBA 247, 250 (2002)
- *Utsey v. Coos County*, 176 Or App 524, 32 P3d 933 (2001)
- *Troy v. City of Grants Pass*, 41 Or LUBA 112, 114 - 115 (2001)
- *Doob v. Josephine County*, LUBA No. 2000-108, (2001)
- *Friends of Linn County v. Linn County*, Or LUBA No. 2001 - 165/168, Order Dec. 5 (2001)
- *Friends of Douglas County v. Douglas County*, 39 Or LUBA 156 (2000); *Friends of Douglas County v. Douglas County*, Or LUBA No. 2000-086, November 27, 2000
- *League of Women Voters V. Coos Co.*, 76 Or App 705 (1985)
- *Jefferson Landfill Comm. v. Marrion Co.*, 297 Or 280, 686 P2d 310 (1984)
- *Lamb v. Lane County*, 70 Or App 364, 689 P2d 1049 (1984)
- *Jefferson Landfill Comm. v. Marion Co.* 65 Or App 323 (1983)
- *Overton v. Benton County*, 61 Or App 667, 658, P2d 574 (1983)
- *Benton County v. Friends of Benton County*, 294 Or 79, 90-91, 653 P2d 1249 (1982)
- *Marbet v. Portland Gen. Elect.*, 277 Or 447, 561 P2d 154 (1977)
- *Fasano v. Washington Co. Comm.*, 264 Or 574, 586, 507 P2d 23 (1973)

1. Section 31.100. Party. Josephine County. October 2000. *Josephine County Rural Land Development Code* (RLDC); Section 11.030, RLDC. Opponent; Sections 31.120.H., I., and K., RLDC. Grants Pass, OR.

2. Hugo Neighborhood Association & Historical Society. 2004. The Party Series.

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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*) located in Josephine County, Oregon. 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 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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Brochure 1 In The Party Series



“Parties at the hearing before the county governing body are entitled to an opportunity to be heard, to an opportunity to present and rebut evidence, to a tribunal which is impartial in the matter— i.e., having had no pre-hearing or ex parte contacts concerning the question at issue — and to a record made and adequate findings executed.”  
*Fasano v. Washington Co. Comm.*,  
264 Or 574, 586, 507 P2d 23 (1973)

**July 26, 2004**

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

**Member of the CACNA Coalition**