
Notice

ORS 215.416(11)(a)(A) “*The hearings officer or such other person as the governing body designates may approve or deny an application for a permit without a hearing if the hearings officer or other designated person gives notice of the decision and provides an opportunity for any person who is adversely affected or aggrieved, or who is entitled to notice under paragraph (c) of this subsection, to file an appeal.*”

The county is required to give mailed notice of a land use decision without a hearing to all three categories of persons described in statute.



1. Adversely Affected,
2. Aggrieved, and
3. Adjacent property owners within certain distances of proposed land use request.

ORS 215.422(1)(a) “*A party aggrieved by the action of a hearings officer or other decision-making authority may appeal the action to the planning commission or county governing body, or both, however the governing body prescribes. The appellate authority on its own motion may review the action. The procedure and type of hearing for such an appeal or review shall be prescribed by the governing body, but shall not require the notice of appeal to be filed within less than seven days after the date the governing body mails or delivers the decision to the parties.*”

“(2) *A party aggrieved by the final determination may have the determination reviewed in the manner provided in ORS 197.830 to 197.845.*”

“Actual” Notice

The Oregon Court of Appeals has ruled adversely affected or aggrieved persons not receiving notice of final land use decisions without a hearing have a right to appeal to LUBA per ORS 215.416(11)(a) within 21 days of actual notice of the decision without satisfying the requirements of ORS 197.830(2).¹

Wilber Residents v. Douglas County, 151 Or App 523, 950 P2d 368 (1997) “. . . ORS 197.830(3) provides that a person *adversely affected* by a local land use decision may appeal it to LUBA if the decision was made without a hearing or without a prehearing notice that adequately communicates the nature of the proposal on which the final decision was made. As we suggested in *Tarjoto*, 137 Or App at 308-09, the relationship between ORS 197.830(3) and ORS 215.416(11)(a) is complementary, in that the former “safeguards the ability to appeal a decision to LUBA if it is made without a required hearing or ability to participate in the hearing,” while the latter is aimed in part at assuring the availability of those procedures at the local level. That context supports the interpretation that giving notice to adversely affected person whom ORS 215.416(11)(a) expressly makes eligible for it when the county does not conduct a hearing, and who are expressly made eligible by ORS 197.830(3) to appeal to LUBA from county decision that are made without a hearing, is a requirement and not an option. The context of ORS 215.416(11)(a) also leads to the same conclusion with respect to aggrieved persons. Under ORS 215.422(1)(a) and (2), respectively, an aggrieved party may appeal “the action of a hearings officer” to the county planning commission or governing body, and may appeal the county’s final decision to LUBA.

More Information

The clear purpose of the notice and appeal provision in ORS 215.416(11)(a) is to safeguard opportunities to pursue and participate in hearing and appeal procedures in cases where a county elects to make an initial decision without a hearing.

County government is required to give notice of final decisions and provide an opportunity for appeal to any person who entitled to notice, or adversely affected or aggrieved, ORS 215.416(11)(a), as the record discloses even if outside the formal geographic notice area for those entitled to notice, ORS 215.416(11)(c).¹

More Information. Would you like to learn more about citizen involvement in land use planning?² Contact a member of the Land Use Committee of the *Hugo Neighborhood*.



1. *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).
2. Hugo Neighborhood Association & Historical Society. 2004. *The Party Series: A Party, Or A Witness?; Aggrieved; Adversely Affected; Actual Notice Of Decision; and Geographic Proximity*. Grants Pass, 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*) 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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“Actual” Notice of Decision



Brochure 4 In The Party Series



“If the local government fails to provide the notice of decision required by ORS 215.416(11) * * *, it cannot rely on that failure to prevent it from providing the opportunity for a de novo local appeal required by statute. Therefore, in such a situation, the time for filing a local appeal does not begin to run until a local appellant is provided the notice of decision to which he or she is entitled.” *Tarjoto v. Lane County*, 137 Or App at 305 (1995)

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

Member of the CACNA Coalition