

FOR THE RECORD or NOT

EXECUTIVE SUMMARY

This issue paper is about the most effective timing for neighbors to submit local written land use testimony for a land use application involving a request for a local comprehensive plan change from agricultural or forest land to a non-resource category, including the most efficient and effective use of the limited time, labor, and dollars of the neighbor(s) submitting the testimony. It is considered preliminary and will be updated as a more in-depth analysis occurs.

The assumptions of the paper are limited to a comprehensive plan change proposal from agricultural or forest lands to a non-resource land allocation requiring the following local actions.

1. Internal Pre-Application Review Request by Applicant (RLDC 21), including submission of fee for “Comprehensive Plan and/or Zone Change Pre-Application Review”.
2. Land Use Application by Applicant (RLDC 22; RLDC 24; RLDC 25; RLDC 46), including submission of fee for “Comprehensive Plan and/or Zone Change”.
3. Determination That Land Use Application Is Complete (RLDC 22; RLDC 46).
4. Oregon Department of Land Conservation and Development (DLCD) “Notice of Proposed Amendment” (ORS 197.610) by County.
5. Notice from local government of a scheduled hearing before the Josephine County Rural Planning Commission (RPC) (RLDC 32).
6. One or more public hearings before the RPC (RLDC 31).
7. Oral and written recommendations from the RPC (RLDC 24).
8. One or more hearings before the final decision makers - the Josephine County Board of County Commissioners (BCC) and an oral decision (RLDC 31).
9. Written decision and findings of fact signed by BCC at public hearing (RLDC 25; RLDC 31.130).
10. Oregon DLCD “Notice of Adopted Amendment or New Regulation” (ORS 197.615) by County.
11. Appeal of local government action under ORS 197.830 to ORS 197.845.

The paper deals with the following topics.

1. The Authors.
2. The Meaning of the Record
3. The Relationship of the Record and Findings.
4. The History of Local Land Use Proceedings
5. Testimony Alternatives
6. Strategy Considerations for Testimony Alternatives
7. Disclaimer

There are pros and cons for neighbors to submit written testimony prior to the first local hearing before the RPC, at the first local hearing before the RPC, at the local hearing before the BCC, and at the public comment period prior to the BCC signing a written decision. The normal strategy of the Hugo Land Use Committee (HLUC) is to make every effort to submit comprehensive testimony early, so the hearing bodies (i.e., RPC and BCC) have time to adequately consider issues of concern. This baseline strategy appears to be the best for the neighbors and the county. However, the final strategy for members of the HLUC to submit relevant written testimony will be made on a case-by-case basis depending on an individual assessment of the pros and cons of the submittal strategy.

This issue is about the most efficient and effective timing of submitting local land use testimony and the most efficient and effective way of helping neighbors to represent themselves during a land use proceeding. This includes the most efficient and effective use of the limited time and dollars of the neighbor(s) developing and submitting the testimony. It is not a simple process, or decision, and there are pros and cons to implementing any particular testimony submission alternative.

The Hugo Land Use Committee, *Hugo Neighborhood*, the Goal One Coalition, and the Rogue Advocates are nonprofit organizations whose missions include providing assistance and support to citizens of the Rogue Valley in matters affecting their communities. They provide this analysis on the pros and cons of the timing for submitting testimony at the request of, and on behalf of, their membership residing in the Rogue Valley.

There is a wealth of information describing the procedures for submitting written testimony “for the record” of land use proceedings. These procedures include statutes, regulations, local ordinances, and court opinions. The local procedures are weak in describing how to submit testimony into land use proceedings, especially during the course of the proceedings outside of public hearings.

There are “findings” case law that relevant land use testimony cannot be rejected, meaning that the final decision maker must respond to specific issues relevant to compliance with applicable approval standards and criteria that were raised by citizens in the proceedings (i.e., LUBA has held on many occasions that when the public raises legitimate issues in a quasi-judicial land use proceeding concerning a relevant approval criterion, a local government’s findings must address such issues). It is a more difficult question when findings are not required of the RPC when it makes a recommended decision to the final decision maker.

Josephine County’s history is mixed as it pertains to a citizen’s written testimony being “placed before” a hearing body in a land use proceeding. In many cases, especially for complex proposals involving demanding testimony, the testifier(s) will likely lose some procedural issue to their disadvantage (e.g., limited time to prepare testimony, standing and/or party status not accepted, written testimony not in record, written testimony in the record but not considered in detail, testimony rejected, missed deadlines, excessive costs, etc.).

The range of opportunities to submit relevant written testimony is broad and not limited to testimony presented at public land use hearings. There are many reasons for submitting written testimony, however, the main reason is that relevant written testimony be placed before the final decision maker during the course of the land use proceedings.

There is a distinction between the content of the record during the course of the proceedings before the final decision maker (OAR 661-010-0025), and when the record is open for public comment (ORS 197.763(1)). An issue which may be the basis for an appeal to the Oregon Land Use Board of Appeals (LUBA) must be raised no later than the close of the record at or following the final evidentiary hearing on the proposal before the local government. Keeping in mind the differences, the range of opportunities to submit relevant written testimony is broad and does not have to be limited to testimony at public land use hearings. The "*For The Record, or Not?*" paper addresses some of the pros and cons of a range of different alternatives for submitting relevant written testimony "For The Record".

Each member of the HLUC will have to consider various applicable factors, and on a case-by-case basis make their own independent decisions on the best timing of testimony submissions and the facilitation of neighbors' testimony.

This issue paper 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.