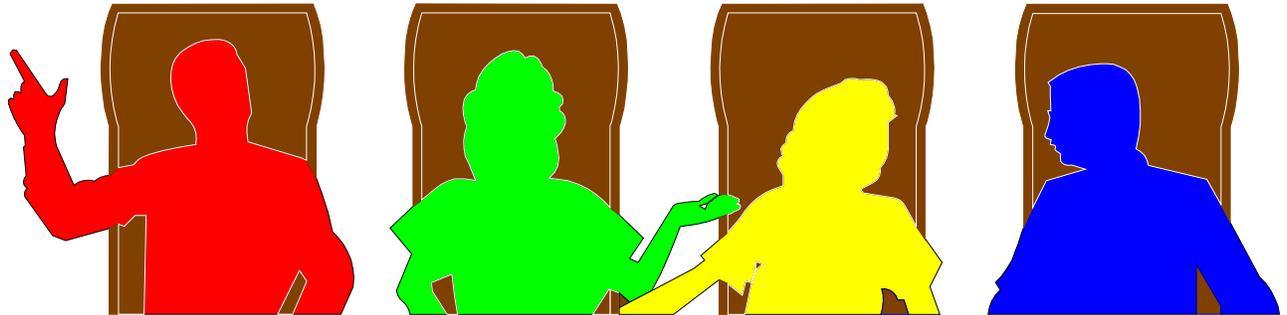


Josephine County



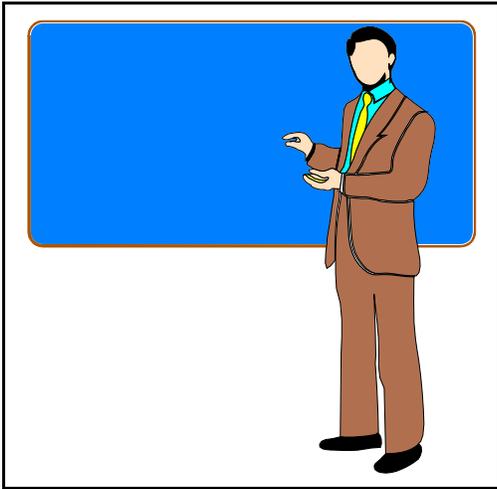
Land Use Hearing Handbook



February 2007

ABOUT YOUR HEARING

PRESENTATION REQUIRED: Your application requires a public hearing before a hearings body (Hearings Officer, Planning Commission or Board of Commissioners). This means you will be required to appear at the hearing and make a presentation in support of your request. Planning staff will prepare a report for the hearing to summarize the facts and issues. Planning's role in the hearing is to be a resource for all participants.



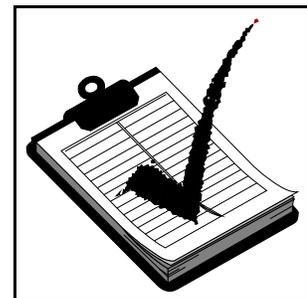
The procedures for the hearing are controlled by certain rules, called the "Land Use Hearing Rules." The rules are contained in Chapter 3 of the *Rural Land Development Code (RLDC)* and are attached to the back of this publication. You

should read the rules that apply to your application very carefully as they answer many questions about how the hearing will be conducted.

The Land Use Hearing Rules place the burden of proof on the applicant. This means you have the responsibility of convincing the hearings body that your request meets the standards and criteria for approval. You will receive a copy of the applicable standards and criteria from the planner who conducts the pre-application review of your application. If you do not have this information or have questions, contact the Planning Office. **The single most important thing for a successful hearing is to know, understand, and address the criteria.**

Standards and criteria can include some or all of the following:

1. Specifically required Goals and Policies of the Josephine County Comprehensive Plan.
2. State laws or regulations that specifically apply to your request.
3. Relevant portions of the Josephine County's Rural Land Development Code.



4. Relevant statewide planning goals when the request is for an amendment to the county's comprehensive plan text or map, or the text of a land use ordinance.

You should carefully prepare your presentation before the hearing so that it will fit the time allowed. Some people write out their presentations. Others use a detailed outline. How you present your evidence and arguments is up to you. Just be sure to cover all of the standards and criteria that apply to your application!

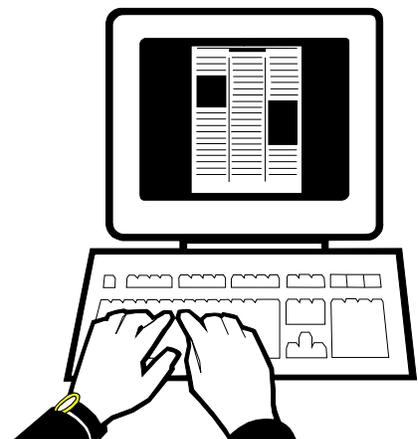
NEIGHBORHOOD REVIEW: At the same time you receive notice of your hearing date, another notice is mailed to the Citizen's Advisory Committee (CAC) for your area. CAC's are neighborhood organizations created to encourage local participation in land use applications. Not all neighborhoods have active CAC's. You need to check to see if there is one in your area.



The CAC will consider your request and make a recommendation to the hearings body. The decision of the CAC is introduced into the record at your hearing, but it is not binding on the hearings body. We recommend that you contact the CAC, if one exists, before they make a report.

Areas that do not have CACs may nonetheless have active neighborhood groups or individuals who have strong interests in land development and other community issues. Staff can provide you with contact information for these people. Again, we recommend that you connect with them in advance to see how their issues or concerns might be identified and addressed in the pre-application stage.

STAFF REPORT: Once the application is complete, a planner will be assigned to write the staff report for the hearing. From this time on the report writer will be responsible for your file, answering questions about it, and in most cases, making the presentation at the hearing. The staff report is published 7 days before the hearing. The purpose of the staff report is



to inform the participants and hearings body about the facts, criteria and planning issues involved in the request.

There are several important points to keep in mind about the staff report:



(1) While the staff report may include evidence, it is not intended to prove your case. You must be ready to carry the burden of proof with your own evidence.

(2) A complete and accurate staff report is to your advantage. It helps to prevent unwanted continuances or other delays. Therefore, applicants are strongly encouraged to submit all evidence at least 20 days prior to the hearing date.

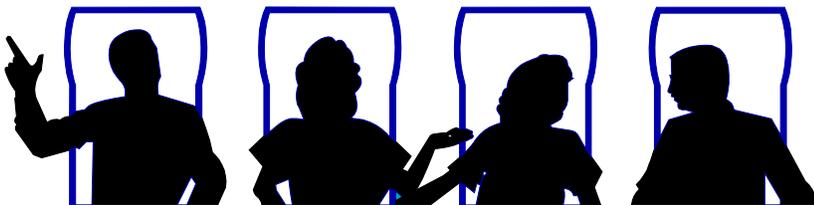
(3) If you want the hearings body to have any materials that are not in the staff report, then you must make additional copies for the hearings body. The number of copies is 11 for planning commission hearings (1 for each of the 10 commissioners and 1 for the record); the number for board hearings is 4 (1 for each of the three commissioners and 1 for the record); and, the number for the hearings officer is 2 (1 for the hearings officer and 1 for the record). It is also very important that these documents have a single, consistent style for page numbering. This allows them to be referenced effectively during the hearings. The best approach is to give these materials to the planning office at least 20 days before the hearing. Staff will then deliver them to the planning commissioners or the county board for review before the hearing.

(4) Issues may be raised at the hearing that are not covered in the staff report. While the staff report is intended to be as complete as possible, testimony or other evidence at the hearing often raises new issues. Staff may be asked to comment on these new issues, but ultimately it is your responsibility to see that the new issues or criteria are addressed with the required evidence.

(5) Information in the staff report can be considered evidence by the hearings body because it automatically becomes a part of the hearing record. However, other materials contained in the planning office file or in other public records cannot be used as evidence unless the items are offered to the chair of the hearings body and the chair accepts them into the record for consideration.

What all of this means is that you must understand and prepare your own case apart from the staff report! Ultimately, it is your responsibility to make sure the evidence supporting your request is in the record. In controversial or complicated cases, applicants often use the services of a land use consultant to prepare and present their cases. A list of land use consultants can be obtained at the planning office.

THE HEARING: It is your responsibility to appear at all meetings when your request is considered. You may have some one else represent you. But if you are not present at the hearing, a special notarized form called a "power of attorney" must be submitted unless you are represented by an attorney. A Power of Attorney form is available at the planning office.

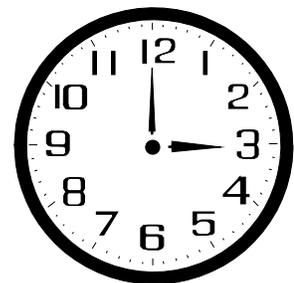


The public hearing will follow the format below unless the hearings officer or chair changes it:

1. Introduction: The hearings officer or the chair will make introductory comments regarding procedures. An opportunity will be given to make objections regarding jurisdiction or claims about conflict of interest or bias.

2. Planning Director's Staff Report. This report will include a statement of the criteria that apply to the request and a discussion of issues. The planner will also answer questions from the hearings body. When the report is complete, questions from participants and other persons in the audience can be directed to the chair, who may then direct them to staff for a response.

3. Applicant's case. You are allowed to present your case, but are limited to 10 minutes unless the chair or hearings officer specifically grants more time. You may then produce witnesses. Each witness is allowed 5 minutes. *The time limits make it very important to carefully plan your presentation!*



4. Audience testimony in favor. Anyone in the audience not a part of your case is allowed to speak for 5 minutes each.

5. Opponent's case. Each opponent is allowed to speak for 5 minutes, or such additional time as may be specifically allowed by the chair person. If the

opponents have a representative, the representative will be allowed 10 minutes to present the opening case for the opponents.

6. Applicant's Rebuttal: You are allowed to testify only about new matters raised by the opposition. Your time may be limited at the discretion of the chair.

7. Opponent's Rebuttal: Opponents may be allowed rebuttal to the applicant's rebuttal (called *surrebuttal*). Surrebuttal is limited to new evidence or arguments raised in the applicant's rebuttal. Opponent's time may be limited at the discretion of the chair.

8. Summation: Each side is allowed 5 minutes to sum up their arguments.

9. Close the Hearing: The hearing is then closed and no further testimony or evidence can be submitted unless the hearings body specifically reopens the meeting. The hearings body may then enter into deliberations or continue the hearing for deliberations at a later date.

In some cases, the hearings body makes a recommendation to the Board of County Commissioners. When this happens, the application will automatically be reviewed by the Board. No findings or appeals are required. The second hearing before the Board will be a fully open, new hearing. New issues can be raised and new evidence can be considered.

When the hearings body makes a final decision, the decision is put into writing. This written decision is called "findings." The responsibility for preparing the findings belong to the applicant if the applicant prevails. Appeals under the *RLDC* must be made within a certain number of days. Appeals involving final decisions are considered by the Board "on the record." This means participation in the hearing will be confined to the applicant and the specific people who appealed. No new evidence can be introduced (unless special permission is granted) and the hearing will strictly be limited to arguments only. The procedures for appeals are covered in the Land Use Hearing Rules and the rules found there must be strictly followed.

Appeals involving decisions by the Board of County Commissioners must be filed with the Oregon Land Use Board of Appeals (LUBA). The rules for appeals to LUBA are controlled entirely by state law. Appeal forms are available at the LUBA, 550 Capitol Street NE, Suite 235, Salem OR 97301-2552 or on the internet at

<http://luba.state.or.us/>.



DE NOVO APPEAL HEARINGS. When the planning director makes a land use decision without a public hearing, the law provides an opportunity to appeal this decision directly to the Board of County Commissioners for a “de novo” hearing. The term *de novo* means “of new” or “from the beginning.” *De novo* procedures require completely new notifications to the neighborhood and the CAC, followed by a hearing that is fully open to the public. Anyone can participate in this hearing, even if they did not participate when the planning director made the original decision being appealed. The important point to be made is the applicant continues to have the burden of proving compliance with all applicable standards and criteria, even if the planning director previously approved the request. The appeal hearing will follow the procedures described in the sections above.

A WORD ABOUT CONTINUANCES. The Land Use Hearing Rules permit any participant in the hearing to ask for additional time to submit more evidence. The hearings body must then either continue the hearing or hold the record open. In either case the time period for submitting additional evidence must be at least 7 days. *[Note: a continuance means the hearings body will reconvene at a future time and place to take more written and oral testimony or evidence; holding the record open means only written evidence or testimony may be submitted during the time the record is “open”, usually to the planning office for forwarding to the hearings body].*

FINAL COMMENT: The Planning Office serves the whole community. Our goal in the process is to make the system work for all of the participants: the applicants, concerned citizens, hearings bodies, opponents, neighborhood organizations and other involved agencies or private land use organizations. If you have questions about your hearing, please call the planning office at (541) 474-5421.



THE JOSEPHINE COUNTY PLANNING OFFICE

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