

Hugo Neighborhood Association & Historical Society

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June 26, 2014 Letter/Email

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Subjects: For “The Record” Testimony For Sunny Valley Sand & Gravel Josephine County Comprehensive Plan (JCCP)/Zone Change (ZC) Land Use Application Before The Josephine County Board of County Commissioners (BCC)

Compliance with Oregon Administrative Rules (OAR) 661-010-0025 Record;
OAR 661-010-0026 Objections to the Record

Dear Commissioners:

The need for my previous letter/email testimony submitted to you June 15, 2014 prompted me to further consider the complexity of the quasi-judicial land use proceedings before you, and the more exact definition of the “record of the proceedings,” especially for testimony submitted during a hearing and testimony submitted outside a hearing date.

These comments are submitted “for the record” for the Sunny Valley Sand & Gravel LLC JCCP/ZC land use application. I am a party to this land use application and have standing because I am aggrieved (see my June 11, 2014 testimony).

A record of the proceedings problem is not knowing what testimony items (i.e., items as defined in OAR 661-010-0025(1)(b); OAR 661-010-0025(4)(a)(B); OAR 661-010-0025(4)(a)(D)) have been placed before the final decision maker (i.e., except for hearings, the county has no legislative and/or ordinance procedures for how documents must be submitted into the record “during the course” of land use proceedings).

Problems are created when the official land use record is organized around hearings rather than testimony items and other submitted records during the course of the proceedings.

Per LUBA's OARs, the record of the proceedings must be in compliance with the following standards and criteria.

1. Testimony items appearing in the record must have been placed before the final decision maker, and items placed before the final decision must appear in the record.
2. The minutes or transcripts of meetings or hearings must be complete and accurately reflect the proceedings.
3. The record must be in compliance with OAR 661-010-0025(4).
4. The record must be filed in a suitable folder properly titled with pages numbered consecutively and securely fastened on the left side.
5. The record must begin with a table of contents, listing each testimony "item" contained therein, and the page of the record where the item begins, and listing each large map, tape, item or document per LUBA Exhibit 2 at <http://www.oregon.gov/LUBA/docs/Exhibits%202013%20amendments.pdf>. For example, the *Sunny Valley Sand & Gravel Land Use Application* record is required to list all individual testimony submitted as part of the proceedings as an individual specific "item" regardless of whether it was submitted during a hearing or at a date outside of a hearing.

Stated in another way, all individual testimony is a testimony "item" per OAR 661-010-0025(4)(a)(B) and all separate attachments (e.g., attachments, appendices, enclosures, etc.) to the testimony item need to be listed in the table of contents of the record as exhibits to the item, including the page of the record where the item begins, including the attachments per LUBA Record Exhibit 2.

6. For very large records both the copy of the record that is transmitted to LUBA and the copies of the record that are served on the parties in an appeal must comply with OAR 661-010-0025(4)(a).
7. Records transmitted to LUBA, petitioners, and intervenors have to be certified copies of the record. Historically county counsel equated this requirement with its stamp - "certified to be a true copy of the original."
8. Records must be arranged in inverse chronological order, with the most recent item first. Testimony "items" must be arranged in inverse chronological order for the whole record not just within time periods around hearings.
9. A transmitted record which does not conform to the preceding requirements shall not be accepted by LUBA (OAR 661-010-0025(4)(c)).

In summary, in a appeal to LUBA a record not in compliance with its record standards will not be accepted (OAR 661-010-0025; OAR 661-010-0025(4)(c); OAR 661-010-0026), or it will be remanded when there are inadequate findings to allow review of the decision (OAR 661-010-0071(2)(a); OAR 661-010-0073(2)(a)).

Mike :)

/s/ Mike Walker

Mike Walker, As An Individual
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