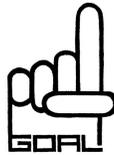


# **Institutional Land Use Memory**



**Rogue Advocates  
Hugo Neighborhood Association & Historical Society  
Goal One Coalition**

**2014**

**INSTITUTIONAL LAND USE MEMORY**  
**(Unedited Preliminary Draft)**

Outline

June 20, 2014

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Appendix A. Citizen Petitioner Steve Doob At LUBA

# **INSTITUTIONAL LAND USE MEMORY**

(Unedited Preliminary Draft)

## **I. PURPOSE**

This project and paper are considered a work in progress. This is only the beginning in the identify of a preliminary program and some facts. It is anticipated that the project will be finished sometime in the future through a grant, internship, etc.

### **A. Institutional Memory**

In this case our institutional land use memory is a collective set of facts, concepts, experiences and know-how held by a group of people as expressed in their local testimony and appeals to the Oregon Land Use Board of Appeals (LUBA). As it transcends the individual, it requires the ongoing transmission of these memories between members of this group. Elements of institutional memory may be found in corporations, professional groups, government bodies, religious groups, academic collaborations, associations and groups, and by extension in entire cultures.

Institutional memory may be encouraged to preserve an ideology or way of work in such a group. Caution is advised that institutional memory does not get ingrained to the point that it becomes hard to challenge if something is found to contradict that which was previously thought to have been correct. Institutional memory may have influence on organizational identity, choice of individuals, and actions of the individuals interacting with the institution.

### **B. Development**

Institutional memory can occur when organizations interact with both internal and external environments and systems. Both the type and level of institutional interaction lead to institutionalization and memory formation.

### **C. Institutional Knowledge**

Institutional knowledge is gained by organizations translating historical data and experiences into useful knowledge and wisdom. Memory depends upon the preservation of data and also the analytical skills necessary for its effective use within the organization.

For example, religion is one of the significant institutional forces acting on the collective memory attributed to humanity. Alternatively, the evolution of ideas in Marxist theory, is that the mechanism whereby knowledge and wisdom are passed down through the generations is subject to economic determinism. In all instances, social systems, cultures, and organizations have an interest in controlling and using institutional memories.

Organizational structure determines the training requirements and expectations of behavior associated with various roles. This is part of the implicit institutional knowledge. Progress to

higher echelons requires assimilation of this, and when outsiders enter at a high level, effectiveness tends to deteriorate if this morale is unjustly ignored.

#### **D. Historical Land Use Assignments Of Error**

A companion to *Effective Land Use Testimony* is a program identified as *Institutional Land Use Memory*. The main purpose of the institutional memory program was for the three sponsors not to lose their historical experiences in appealing local land use issues to LUBA, as well as maintaining the ability to share this knowledge with interested publics. The initial concept was to web publish the petitions for review (PFRs) to LUBA along with LUBA's final opinions and orders (e.g., dismissed, affirmed, remanded, reversed, etc.).

Oregon Land Use Board Of Appeals  
Petition For Reviews  
Court Opinions  
Dismissed  
Affirmed  
Remanded  
Reversed

This communication is the beginning of the dialogue on "Institutional Land Use Memory." The core idea of web publishing PFRs and the associated LUBA opinions remains with additional contextual components to be developed.

#### **II. SPONSORS**

- Hugo Neighborhood Association & Historical Society
- Rogue Advocates
- Goal One Coalition

The *Institutional Land Use Memory* program is a companion to *Effective Land Use Testimony* program. What is effective land use testimony training? Mostly it is about involvement and responsible leadership in neighborhood communities. First and foremost, the effective land use testimony training program promotes neighbors representing themselves in land use. There are four legs to the platform of effective land use testimony.

1. Citizen Involvement by Neighbors
2. Education of Individuals & Community
3. Local Leadership for All Interests & Issues of Community
4. Strong Responsible Representation

Effective Land Use Testimony Program  
<http://www.hugoneighborhood.org/training.htm>

## **Hugo Neighborhood Association & Historical Society**

The Hugo Neighborhood is an informal nonprofit charitable and educational organization of unpaid volunteers with a land use and history mission promoting the social well-being of its neighbors by working to champion Oregon Statewide Goal 1 — Citizen Involvement, and by preserving, protecting, and enhancing the livability and economic viability of its farms, forests, and rural neighbors. The mission of the Hugo Neighborhood follows.

- |                 |  |
|-----------------|--|
| <u>Land Use</u> | <ul style="list-style-type: none"><li>• <i>Promote Citizen Involvement (Oregon Statewide Goal 1)</i></li><li>• <i>Promote Education</i></li><li>• <i>Protect Our Farms and Forests (Oregon Statewide Goals 3 &amp; 4)</i></li><li>• <i>Protect Our Community's Rural Quality of Life</i></li></ul>                       |
| <u>History</u>  | <ul style="list-style-type: none"><li>• <i>Preserve Our Local History (preserving, documenting, promoting &amp; interpreting)</i></li><li>• <i>Promote Education</i></li><li>• <i>Promote Analysis of Local Cultural Resources (Oregon Statewide Goal 5 &amp; Josephine County Comprehensive Plan, Goal 7)</i></li></ul> |

One of the ways the *Hugo Neighborhood* aims to best promote the social welfare of its Hugo neighbors is by collecting, preserving, interpreting, and researching its rich local history, and encouraging neighbor's interest in the history of the Hugo area, in their geographic place, in their community. We know the quality of rural life in Hugo is enhanced through citizen knowledge of its history and the sense of community that a historical perspective facilitates.

We believe culture, as one basis for a healthy community, can be an alternative to destructive behavior and a healing force, and that children educated in their history and culture will contribute to the creative workforce of our evolving technological world. In the end, Hugoites will be able to tell the story of cultural growth and cultural impact. Children will see its impact on their learning. Families will see the effect of culture through their local participation and use of resources. Community development will see its impact economically and through greater social involvement and especially pride.

Like history, land use involvement by neighbors facilitates community. One of the Hugo Neighborhood's passions is to have meaningful public involvement and, therefore, an "informed public" and "informed decision-makers" when it comes to land use decisions in the Hugo community and in Josephine County. In a nut-shell the NHA thinks an effective citizen involvement program would facilitate planning decisions which better reflect the desires of the community. We believe an effective program will also decrease later conflicts. It started implementing its values when in September 20, 2000 it filed a citizen-initiated enforcement order petition on citizen involvement (OAR Chapter 660, Division 045) with Josephine County Board of County Commissioners (Attachment 1).

The Hugo Neighborhood would start informal training for neighbors on how to represent themselves around 2005. This happened on an informal basis in neighbors' homes. This training setting is still the focus - neighbors learning by sharing in their homes.

Land Use - Citizen Involvement  
<http://www.hugoneighborhood.org/citizen.htm>

Citizen Involvement Issues  
[http://www.hugoneighborhood.org/Citizen\\_Involvement\\_Series.htm](http://www.hugoneighborhood.org/Citizen_Involvement_Series.htm)

## **Rogue Advocates**

Rogue Advocates champions the sustainability and livability of communities in the Rogue Valley. The *Rogue Advocate's* core geographical interests are private lands in Jackson County and Josephine County, but its land use concerns are the Rogue Valley basin-wide.

Historically the biggest threats to realizing sustainable and livable communities were the lack of a dependable, comprehensive review and response to local land use proposals that are not in compliance with sustainability and livability standards. Rogue Advocates' goal is to fill this gap and address the threats by infusing vision, intelligence, and forethought into local county and city land use planning processes. This vision uses Oregon's land use laws, environmental laws, science, public education and collaboration, to facilitate the Rogue Valley becoming an example of a sustainable and livable community.

## **Goal One Coalition**

The Goal One Coalition champions the role of citizens in creating communities that are livable and economies that are sustainable, within a healthy and diverse natural environment.

- It advocates for the protection of our waters, farms, rangelands, forests, coasts, and other natural landscapes from loss and degradation.
- It works for vibrant, compact cities and economies that provide for everyone equitably.
- It helps citizens and citizen groups to organize and advocate effectively, provide information, education and advice about how the land use planning program works, and provide assistance with important issues.
- It encourages local governments to invite and welcome citizen participation in planning for economically and ecologically sustainable communities.

The Goal One Coalition's most important task in building healthy, sustainable communities is to encourage and help people to take charge of their own future.

**III. LOCAL ASSIGNMENT OF ISSUE/ERROR (AOI/AOE) TESTIMONY**

**A. Assignments of Issue/Error (AOIs/AOEs)**

To be researched.

**B. Local Government Appeals**

To be researched.

## **IV. APPEALS TO OREGON LAND USE BOARD OF APPEALS (LUBA)**

### **A. Land Use Board of Appeals**

<http://www.oregon.gov/LUBA/Pages/index.aspx>

The Land Use Board of Appeals (LUBA) was created by legislation in 1979 (ORS Chapter 197) and has exclusive jurisdiction to review all governmental land use decisions, whether legislative or quasi-judicial in nature.

### **B. LUBA's Frequently Asked Questions (FAQs)**

<http://www.oregon.gov/LUBA/Pages/FAQ.aspx>

The following is found at LUBA's web site for FAQs. There are 15 questions and answers provided by LUBA. The preface and portions of a few of the questions and answers follow.

**Preface** This is an introduction to LUBA and how it handles land use appeals. It answers the questions most often asked by persons who wish to represent themselves in appeals. This is not a procedure manual, nor is it a legal document.

The laws governing LUBA are in Oregon Revised Statutes (ORS) Chapter 197 and in procedural rules adopted by LUBA. Read the statutes and rules before becoming involved in an appeal. The statutes are available online and at most public libraries.

**Question 1: What is LUBA and what does it do?** Answer: The Land Use Board of Appeals (LUBA) was established by the Oregon Legislature in 1979. LUBA hears and rules on appeals of land use decisions made by local governments and special districts. LUBA is the only forum that can hear appeals of local land use decisions. The circuit courts no longer can hear such appeals. LUBA consists of three Board members who are appointed by the Governor. They are attorneys who are experts in land use planning law.

**Question 6: Who are the parties in a LUBA appeal?** Answer: The parties in a LUBA appeal are the "Petitioner," the "Respondent" and persons who "intervene" on the side of either.

The Petitioner is the person, organization or corporation dissatisfied with the land use decision or limited land use decision made by the local government or special district. The Petitioner is the party appealing the decision to LUBA.

The Respondent is the unit of government that made the decision appealed to LUBA. The Respondent is automatically a party to the LUBA appeal (more information at web site).

**Question 7: How is an appeal started in LUBA?** Answer: An appeal is started when a Petitioner files a "Notice of Intent to Appeal" a land use decision or a limited land use decision. You can find an example of a Notice of Intent to Appeal appended to LUBA's rules as Exhibit 1 (Rule Exhibits) (more information at LUBA's web site).

**Question 12: How is a LUBA appeal different from the hearings by the local government?**

Answer: LUBA is like an appellate court. It is not a political body. This means that LUBA's procedures are more formal and its role is more technical than the role of local government decision makers. When you file a LUBA appeal, you are challenging the *legal sufficiency of the local government's decision* based on the evidence that was before the local government. A LUBA appeal is not an opportunity to present new evidence (more information at web site).

**Question 13: What happens after the Notice of Intent to Appeal is filed at LUBA?**

Answer: A sequence of steps is followed. There are deadlines for each step. These are outlined below.

Step 1. Filing the Record (OAR 661-010-0025). Within 21 days after the Notice of Intent to Appeal is filed at LUBA, the Respondent (the unit of government that made the land use decision or limited land use decision) must file a copy of the record of the decision with LUBA. The record consists of the materials submitted to, and not rejected by, the decision makers in the course of the local proceedings (more information at web site). .

Step 2. Objections to Record (OAR 661-010-0026). Within 14 days after the record is filed, any party may object to the contents of the record. An objection may assert that the record: is incomplete, *i.e.*, does not include all the materials that were actually submitted to, and not rejected by, the local decision makers; or contains material that was not actually placed before the decision makers (more information at web site).

Step 3. Filing the Petition for Review (OAR 661-010-0030). Unless an objection to the record is filed, the Petitioner must file a "Petition for Review" (Petitioner's brief) within *21 days after LUBA receives the record from the local government*. If a record objection is filed, the Petition for Review must be filed within 21 days after the date the record is settled by LUBA.

The Petition for Review sets forth the reasons why the land use decision or limited land use decision should be reversed or remanded. In preparing the Petition for Review, keep in mind the bases on which LUBA may reverse or remand a decision (see question 12) (more information at web site).

**C. LUBA's Final Opinions & Orders by Year**

<http://www.oregon.gov/luba/pages/opinions.aspx>

**1. LUBA** Petitions for review to LUBA and LUBA opinions are categorized chronologically. The titles for the LUBA opinions are those provided at LUBA's web site. For example, the year of the LUBA opinion followed by a dash (-) and the LUBA number(s), and the opinion name expressed as the petitioner versus the respondent (e.g., 2013-102/103 *Rogue Advocates v. Jackson County*, etc.).

**Petition For Review** When you file a LUBA appeal with a petition for review, you are challenging the *legal sufficiency of the local government's decision* based on the evidence that

was before the local government. The Petition for Review sets forth the reasons why the land use decision or limited land use decision should be reversed or remanded.

**LUBA Opinions** In law, a legal opinion is usually a written explanation by a judge or group of judges (i.e., LUBA consists of three Oregon Land Use Board Of Appeal members who are appointed by the Oregon Governor. They are attorneys who are experts in land use planning law) that accompanies an order or ruling in a case, laying out the rationale and legal principles for the ruling (From Wikipedia, the free encyclopedia. [http://en.wikipedia.org/wiki/Legal\\_opinion](http://en.wikipedia.org/wiki/Legal_opinion)).

Opinions are usually published at the direction of the court, and to the extent they contain pronouncements about what the law is and how it should be interpreted, they reinforce, change, establish, or overturn legal precedent. If a court decides that an opinion should be published, the opinion is included in a volume from a series of books called law reports (or reporters in the United States). Published opinions of courts are also collectively referred to as case law, which is one of the major sources of law in common law legal systems.

The following are LUBA opinions that the sponsors had involvement(e.g., dismissed, affirmed, remanded, reversed, etc.). They usually reflect AOE's in synch with the goal of effective land use testimony.

**LUBA Orders** A LUBA order is different than a LUBA opinion and order. It is a direction issued by LUBA requiring a person to do or not do something (i.e., such rulings require or authorize the carrying out of certain steps by one or more parties to a case).

This paper will also address applicable published LUBA orders by initially providing one example for *Walker v. Josephine County*, 60 Or LUBA 186 (2009).

Published Orders By Year

LUBA

<http://www.oregon.gov/luba/pages/orders.aspx>

Rogue Advocates, Hugo Neighborhood Association & Historical Society, & Goal One Coalition. May 5, 2011; Revised June 20, 2014. *Example History of Ockenden LUBA Remand: March 5, 2008 - 2014 (Walker v. Josephine County, 60 Or LUBA 186 (2009))*, with specific interest for Objections to the Record process per OAR 661-010-0025 Records, and OAR 661-010-0026 Objections to the Records.

**2. LUBA's Selected Final Opinions & Orders by Year** The following selected LUBA final opinions and orders are from LUBA's web site, including the associated petition for review.

LUBA

<http://www.oregon.gov/LUBA/Pages/index.aspx>

Those selected are part of the institutional land use memory of the sponsors. At the first level the opinions are organized chronologically by year starting with 2014.

The second and main identifier is the appeal name as identified on LUBA's web page. For example *Rogue Advocates v. Jackson County*.

LUBA Opinions By Year

<http://www.oregon.gov/luba/pages/opinions.aspx>

The first element to follow the name identifier is the *Petitioners'* associated petition for review to LUBA. In parenthesis on this same name identifier line is the nature of the decision, and therefore, the nature of the LUBA appeal, from the opinion.

After the petition for review (i.e., in this case *Rogue Advocates v. Jackson County*) the LUBA appeal number is provided from the final opinion and order per LUBA's web sites.

1. LUBA Number (e.g., No. 2008-224, etc.). LUBA notice of appeal identifications are eventually standardized in its reporter. For example, case decisions are published in a "reporter" (bound volumes and paperback updates) available in law libraries. Each case has its own citation, which tells you the volume and page number where the case is found. An example of a LUBA case citation is: *Walker v. Josephine County*, 60 Or LUBA 186 (2009); its LUBA Number was No. 2008-224.

For the example, "*Walker v. Josephine County*" (underlined or italicized) is the name of the case, signifying "[the name (or last name if an individual) of the Petitioner or lead Petitioner] versus [the name of the Respondent or lead Respondent]." Following the case name is a comma, and then the location of the written opinion, indicating the following:

The "60" is the volume number. "Or LUBA" is the reporter. The "186" is the first page where the case is found. The "(2009)" is the year of the opinion.

This paper does not use the LUBA Reporter citation identifier as LUBA reporters are not provided on a web site and they are expensive.

2. LUBA Final Opinion & Order decision and date with decision such as dismissed, affirmed, remanded, reversed, etc. (e.g., LUBA Opinion & Order, Affirmed (LUBA No. 2013-102) 04/22/2014; Remanded (LUBA No. 2013-103) 04/22/2014, etc.).
3. Petitioners' Names, Including any Intervenors (e.g., Shelley Wetherell, *Petitioner*; Holger T. Sommer, Hal B. Anthony, Mike Walker, Ron Ray, Phyllis Ray, Jean Mount, Herbert Neelund and Valerie Neelund, *Petitioners*; Landwatch Lane County; *Petitioner*; Michael L. Walker, Hal Anthony, Steve Lievbenberg, Susan Liebenberg, Wayne McKy, Madelyn Readmond, Bob Rotach, James Sargent, Patricia Sargent, and William Stein, *Petitioners*; Holger T. Sommer, *Intervenor-Petitioner*; Rogue Advocatges, *Petitioner*; etc.).
4. How Petitioners and/or Intervenors Represented Themselves (e.g., Shelley Wetherell, Umpqua, filed the petition for review and argued on her own behalf; Jannett Wilson, Attorney, Eugene, filed the petition for review and argued on behalf of petitioner, With

her on the brief was Goal One Coalition; Holger T. Sommer, Merlin, Hal B. Anthony, Mike Walker and Jean Mount, Grants Pass, filed the petition for review and Holger T. Sommer and Mike Walker argued on their own behalf. Ron Ray, Phyllis Ray, Herbert Neelund and Valerie Neelund, Grants Pass, represented themselves.

5. Web Address of LUBA Opinion  
(<http://www.oregon.gov/LUBA/docs/opinions/2009/12-09/08224.pdf>)

The following is an example of a product listed from this process.

2014

*Landwatch Lane County v. Lane County*

Nature of Decision. Petitioner appeals a county ordinance taking a reasons exception to 3 Statewide Planning Goal 14 (Urbanization) to allow urban levels of industrial 4 development on existing rural industrials lands in the unincorporated 5 community of Goshen.

Petition for Review

XXX

- . LUBA No. 2013-058 *Landwatch Lane County v. Lane County*
- . Final LUBA Opinion & Order, Remanded 02/20/2014
- . Landwatch Lane County, *Petitioner*; Sean T. Malone, Attorney, Eugene, filed the petition for review and argued on 19 behalf of petitioner.
- . <http://www.oregon.gov/LUBA/docs/Opinions/2014/04-14/13102.pdf>

\*\*\*\*\*

Name

Nature of Decision.

Petition for Review

XXX

- . LUBA # & Name
- . Final Opinion and Order,
- .
- .

### **LUBA's Selected Final Opinions & Orders by Year**

**2014**

***Rogue Advocates v. Jackson County***

Nature of Decision. Web Link Broken.

Petition for Review

XXX

- . LUBA No. 2013-102/103 *Rogue Advocates v. Jackson County*
- . LUBA Opinion & Order, Affirmed (LUBA No. 2013-102) 04/22/2014; Remanded (LUBA No. 2013-103) 04/22/2014
- . <http://www.oregon.gov/LUBA/docs/Opinions/2014/04-14/13102.pdf>

***Landwatch Lane County v. Lane County***

Nature of Decision. Petitioner appeals a county ordinance taking a reasons exception to 3 Statewide Planning Goal 14 (Urbanization) to allow urban levels of industrial 4 development on existing rural industrial lands in the unincorporated 5 community of Goshen.

Petition for Review

XXX

- . LUBA No. 2013-058 *Landwatch Lane County v. Lane County*
- . Final LUBA Opinion & Order, Remanded 02/20/2014
- . Landwatch Lane County, *Petitioner*; Sean T. Malone, Attorney, Eugene, filed the petition for review and argued on 19 behalf of petitioner.
- . <http://www.oregon.gov/LUBA/docs/Opinions/2014/04-14/13102.pdf>

**2013**

***Goal One Coalition v. Lane County***

Nature of Decision. Petitioners request that this appeal be dismissed. Accordingly, this appeal is dismissed.

Petition for Review

XXX

- . LUBA No. 2013-107 *Goal One Coalition v. Lane County*
- . Final Opinion and Order, Dismissed 12/18/2013
- . Goal One Coalition, Landwatch Lane County and Bob Emmons, *Petitioners*
- . <http://www.oregon.gov/LUBA/docs/Opinions/2013/12-13/13107.pdf>

***Wetherell v. Douglas County***

Nature of Decision. Petitioners appeal a county decision that approves a temporary use permit for a music festival.

Petition for Review

XXX

- . LUBA No. 2012-051 *Wetherell v. Douglas County*
  - . Final Opinion and Order, Transferred 03/27/2013
  - . Shelley Wetherell and Friends Of Douglas County, *Petitioners*; Anne C. Davies, Attorney, Eugene, filed a petition for review.
- <http://www.oregon.gov/LUBA/docs/Opinions/2013/03-13/12051.pdf>

## 2012

### *Rogue Advocates v. Josephine County*

Nature of Decision.

Petition for Review

XXX

- . LUBA No. 2011-037 *Rogue Advocates v. Josephine County*
- . Broken Link at LUBA web page

**Headnote 28.4 LUBA Scope of Review – Postacknowledgment Amendments.** That a county’s comprehensive plan was acknowledged in the 1990s to comply with Goal 4 does not shield the county from the obligation, at ORS 197.646(1) and (3), to apply subsequently adopted amendments to Goal 4 or the Goal 4 rule until the county incorporates those amendments into its comprehensive plan. Because the Goal 4 rule was amended in 2008 and 2011 to provide a prioritized list of data sources a county must consider when determining whether land is forest land subject to Goal 4, the county cannot simply apply its acknowledged comprehensive plan standards for identifying forest land, but must also apply the amended Goal 4 rule, until the county incorporates those rule amendments into its comprehensive plan. *Rogue Advocates v. Josephine County*, 66 Or LUBA 45 (2012). <http://www.oregon.gov/LUBA/docs/headnotes/28.4.pdf>

**Headnote 28.4 LUBA Scope of Review – Postacknowledgment Amendments.** Because OAR 660-006-0010 provides a set of prioritized, mandatory sources of data and a prescribed alternative method that must be used to determine whether land is forest land subject to Goal 4, the applicability of OAR 660-006-0010 cannot be avoided by concluding, based on different data or different methodology, that land is not forest land subject to Goal 4. *Rogue Advocates v. Josephine County*, 66 Or LUBA 45 (2012). <http://www.oregon.gov/LUBA/docs/headnotes/28.4.pdf>

## 2011

-

## 2010

### *Walker v. Josephine County*

Nature of Decision. Petitioners appeal a county decision approving a subdivision on resource land. This appeal concerns a subdivision that could not be approved under existing land use laws. That subdivision was approved, notwithstanding existing land use laws, based on Ballot Measure 37 (2004) waivers. The decision approving the disputed subdivision was rendered after Ballot Measure 49 took effect on December 6, 2007.

Petition for Review

XXX

- . LUBA No. 2008-136 *Walker v. Josephine County*
- . Final Opinion and Order, Reversed 01/14/2010
- . Mike Walker, Hal B. Anthony and Wayne McKy, *Petitioners*; Holgert T. Sommer, Intervenor-Petitioner; Mike Walker, Hal B. Anthony, and Wayne McKy, Grants Pass, represented themselves.
- . <http://www.oregon.gov/LUBA/docs/opinions/2010/01-10/08136.pdf>

***LandWatch Lane County v. Lane County***

Nature of Decision. Petitioners requests that this appeal be dismissed. Accordingly, this appeal is dismissed.

Petition for Review

XXX

- . LUBA No. 2004-104 *LandWatch Lane County v. Lane County*
- . Final Opinion and Order, Dismissed 01/26/2010
- . LandWatch Land County, Robert Emmons and Norman Maxwell, *Petitioners*; Janet Wilson, Attorney, Eugene represented petitioners.
- . <http://www.oregon.gov/LUBA/docs/opinions/2010/01-10/04102.pdf>

***Rogue Advocates v. Jackson County***

Nature of Decision. Petitioner appeals a county decision approving comprehensive plan and zoning map amendments from resource designations to rural residential designations.

Petition for Review

XXX

- . LUBA No. 2009-102 *Rogue Advocates v. Jackson County*
- . Final Opinion and Order, Reversed 02/08/2010
- . Rogue Advocates, *Petitioner*; Sean T. Malone, Attorney, Eugene, filed the petition for review and argued on 19 behalf of petitioner.
- . <http://www.oregon.gov/LUBA/docs/opinions/2010/02-10/09-102.pdf>

***Wetherell v. Douglas County***

Nature of Decision. Petitioner appeals a decision determining that a 76.21-acre parcel is non-resource land and approving comprehensive plan map and zoning map amendments to allow five-acre rural residential development.

Petition for Review

XXX

- . LUBA No. 2010-052 *Wetherell v. Douglas County*
- . Final Opinion and Order, Remanded 09/16/2010
- . Shelley Wetherell, *Petitioner*; Shelley Wetherell, Umpqua, filed the petition for review and argued on her own behalf.
- . <http://www.oregon.gov/LUBA/docs/opinions/2010/09-10/10052.pdf>

**2009**

***Sommer v. Josephine County*** (Planning Fees)

Nature of Decision. Petitioners appeal a 2006 county order that adopted fees for planning permits and services.

Petition for Review

XXX

- . LUBA No. 2006-150 *Sommer v. Josephine County*
- . Final Opinion and Order, Remanded 03/18/2009
- . Holger T. Sommer, Hal B. Anthony, Mike Walker, Ron Ray, Phyllis Ray, Jean Mount, Herbert Neelund and Valerie Neelund, *Petitioners*; Holger T. Sommer, Merlin, Hal B. Anthony, Mike Walker and Jean Mount, Grants Pass, filed the petition for review and Holger T. Sommer and Mike Walker argued on their own behalf. Ron Ray, Phyllis Ray, Herbert Neelund and Valerie Neelund, Grants Pass, represented themselves.
- . <http://www.oregon.gov/LUBA/docs/opinions/2009/03-09/06150.pdf>

***Wetherell v. Douglas County***

Nature of Decision. Petitioners appeal a county decision on remand determining that a 160-acre parcel is nonresource land and amending the comprehensive plan and zoning map designations to permit residential development on five-acre lots.

Petition for Review

XXX

- . LUBA No. 2009-004 *Wetherell v. Douglas County*
- . Final Opinion and Order, Affirmed 04/30/2009
- . Shelley Wetherell and Janell Stradtner, *Petitioners*; Shelley Wetherell, Umpqua, and Janell Stradtner, Roseburg, filed a petition for review and argued on their own behalf.

. <http://www.oregon.gov/LUBA/docs/opinions/2009/04-09/09004.pdf>

***Just v. Linn County***

Nature of Decision. Petitioner appeals a county decision approving a property line adjustment.

Petition for Review

XXX

- . LUBA No. 2009-024 *Just v. Linn County*
- . Final Opinion and Order, Affirmed 06/09/2009
- . James Just, *Petitioner*; James Just, Lebanon, filed the petition for review and argued on his own behalf.
- . <http://www.oregon.gov/LUBA/docs/opinions/2009/06-09/09024.pdf>

***Just v. Linn County***

Nature of Decision. Petitioner appeals a decision by the county approving an accessory farm dwelling.

Petition for Review

XXX

- . LUBA No. 2009-036 *Just v. Linn County*
- . Final Opinion and Order, Affirmed 07/23/2009
- . James Just, *Petitioner*; James Just, Lebanon, filed the petition for review and argued on his own behalf.
- . <http://www.oregon.gov/LUBA/docs/opinions/2009/07-09/09036.pdf>

***Just v. Linn County***

Nature of Decision. Petitioner appeals a county decision that approves comprehensive plan and zoning map amendments for a 15-acre parcel. The challenged decision changes those designations to Non-Resource (comprehensive plan map) and Non Resource – 5-acre minimum (NR-5) (zoning map). In approving those map changes the county found that the subject property does not qualify as either agricultural lands or forest lands.

Petition for Review

XXX

- . LUBA No. 2009-068 *Just v. Linn County*
- . Final Opinion and Order, Remanded 11/09/2009
- . James Just, *Petitioner*; James Just, Lebanon, filed the petition for review and argued on his own behalf.
- . <http://www.oregon.gov/LUBA/docs/opinions/2009/11-09/09068.pdf>

### ***Wetherell et al v. Douglas County***

Nature of Decision. Petitioners appeal a decision on remand approving comprehensive plan map and zoning map amendments to allow a 259-acre parcel to be divided into five-acre residential lots.

Petition for Review

XXX

- . LUBA No. 2009-094 *Wetherell et al v. Douglas County*
- . Final Opinion and Order, Reversed 12/03/2009
- . Shelley Wetherell, Robin Wisdom, Gerald Wisdom and Rich Holcomb, *Petitioners*; Shelley Wetherell argued on her own behalf. Robin Wisdom, Gerald Wisdom and Richard Holcomb represented themselves.
- . <http://www.oregon.gov/LUBA/docs/opinions/2009/12-09/09094.pdf>

### ***Walker et al v. Josephine County***

Nature of Decision. Intervenor applied for comprehensive plan and zoning map amendments for his 158-acre parcel. The property consists of approximately 147 acres designated in the comprehensive plan as Forest and zoned Woodlot Resource 80-acre minimum (WR-80), and approximately 11 acres designated in the plan as Agricultural and zoned Farm Resource 80-acre minimum (FR-80). The requested amendments would change the designation for the entire parcel to Residential and zoning to Rural Residential 5-acre minimum (RR-5). Petitioners appeal a county decision approving comprehensive plan and zoning maps amendments from resource to nonresource designations.

Petition for Review

XXX

- . LUBA No. 2008-224 *Walker et al v. Josephine County*
- . Final Opinion and Order, Remanded 12/15/2009
- . Michael L. Walker, Hal Anthony, Steve Lievbenberg, Susan Liebenberg, Wayne McKy, Madelyn Readmond, Bob Rotach, James Sargent, Patricia Sargent, and William Stein, *Petitioners*; Holger T. Sommer, *Intervenor-Petitioner*; Michael L. Walker, Hal Anthony, Steve Lievbenberg, Susan Liebenberg, Wayne McKy, Madelyn Readmond, Bob Rotach, James Sargent, Patricia Sargent, and William Stein filed the petition for review and Michael L. Walker argued on his own behalf; Hal Anthony, Steve Lievbenberg, Susan Liebenberg, Wayne McKy, Madelyn Readmond, Bob Rotach, James Sargent, Patricia Sargent, and William Stein represented themselves; Holger T. Sommer represented himself.
- . <http://www.oregon.gov/LUBA/docs/opinions/2009/12-09/08224.pdf>

**2008**

### ***Wetherell v. Douglas County***

Nature of Decision. Petitioner appeals a county decision approving a nonfarm dwelling on resource land.

Petition for Review

XXX

- . LUBA No. 2007-133 *Wetherell v. Douglas County*
- . Final Opinion and Order, Remanded 02/12/2008
- . Shelley Wetherell, *Petitioner*; Shelley Wetherell, Umpqua, filed the petition for review and argued on her own behalf.
- . <http://www.oregon.gov/LUBA/docs/opinions/2008/02-08/07133.pdf>

***Landwatch Lane County v. Lane County***

Nature of Decision. Petitioner appeals a county ordinance amending its rural comprehensive plan and approving zone changes to nineteen properties, and adopting exceptions to Statewide Planning Goals 3 and 4 for two of the properties.

Petition for Review

XXX

- . LUBA No. 2006-235 *Landwatch Lane County v. Lane County*
- . Final Opinion and Order, Affirmed 04/01/2008
- . Landwatch Lane County; *Petitioner*; Jannett Wilson, Attorney, Eugene, filed the petition for review and argued on behalf of petitioner. With her on the brief was Goal One Coalition.
- . <http://www.oregon.gov/LUBA/docs/opinions/2008/04-08/06235.pdf>

***Landwatch Lane County v. Lane County***

Nature of Decision. Petitioners requests that this appeal be dismissed. Accordingly, this appeal is dismissed.

Petition for Review

XXX

- . LUBA No. 2008-032 *Landwatch Lane County v. Lane County*
- . Final Opinion and Order, Dismissed 04/22/2008
- . Landwatch Lane County and Jim Reed, *Petitioners*; Jannett Wilson, Attorney, Eugene, represented petitioners.
- . <http://www.oregon.gov/LUBA/docs/opinions/2008/04-08/08032.pdf>

***Sommer v. City of Cave Junction***

Nature of Decision. Petitioner appeals two city decisions annexing two properties. The city moves to dismiss the appeals as being untimely filed. LUBA ruled that under either the first or

second sentence of OAR 661-010-0015(1)(a), the NITAs were not timely filed. Accordingly, under OAR 661-010-0015(1)(a), the appeals must be dismissed.

Petition for Review

XXX

. LUBA No. 2008-008/012 *Sommer v. City of Cave Junction*

. Final Opinion and Order, Dismissed 07/08/2008

Holger T. Sommer, *Petitioner*; Holger T. Sommer, Merlin, represented himself.

. <http://www.oregon.gov/LUBA/docs/opinions/2008/07-08/08008.pdf>

### ***Wetherell v. Douglas County***

Nature of Decision. Petitioner appeals a county decision amending its comprehensive plan and adopting a reasons exception to expand the boundary of a rural community to include four additional parcels.

Petition for Review

XXX

. LUBA No. 2008-024 *Wetherell v. Douglas County*

. Final Opinion and Order, Remanded 08/19/2008

. Shelley Wetherell, *Petitioner*; Jannett Wilson, Attorney, Eugene, filed the petition for review and argued on behalf of petitioner. With her on the brief was Goal One Coalition.

. <http://www.oregon.gov/LUBA/docs/opinions/2008/08-08/08024.pdf>

### ***Wetherell v. Douglas County***

Nature of Decision. Petitioner appeals a county decision that grants approval for a nonfarm dwelling on a .3-acre portion of a three-acre Farm Forest zoned parcel.

Petition for Review

XXX

. LUBA No. 2008-074 *Wetherell v. Douglas County*

. Final Opinion and Order, Remanded 09/17/2008

. Shelley Wetherell, *Petitioner*; Shelley Wetherell, Umpqua, filed the petition for review and argued on her own behalf.

. <http://www.oregon.gov/LUBA/docs/opinions/2008/09-08/08074.pdf>

### ***Wetherell v. Douglas County***

Nature of Decision. Petitioners appeal a decision approving comprehensive plan map and zoning map amendments to allow a 259-acre parcel to be divided into 5-acre residential lots.

Petition for Review

XXX

- . LUBA No. 2008-071 *Wetherell v. Douglas County*
- . Final Opinion and Order, Remanded 12/31/2008
- . Shelley Wetherell, Robin Wisdom, and Gerald Wisdom, *Petitioners*; Shelley Wetherell, Umpqua, Robin Wisdom and Gerald Wisdom Roseburg, filed the petition for review. Shelley Wetherell argued on her own behalf.
- . <http://www.oregon.gov/LUBA/docs/opinions/2008/12-08/08071.pdf>

**2007**

***Friends of Linn County v. Linn County***

Nature of Decision. Petitioners appeal the county's approval of a partition and access application.

Petition for Review

XXX

- . LUBA No. 2006-223 *Friends of Linn County v. Linn County*
- . Final Opinion and Order, Remanded 05/09/2007
- . Friends of Linn County, Clement Ogilby, Trumbull Ogilby, Robert Jump and Barbara Jump, *Petitioners*; Jannett Wilson, Attorney, Eugene, filed the petition for review and argued on behalf of petitioners. With her on the brief was the Goal One Coalition.
- . <http://www.oregon.gov/LUBA/docs/opinions/2007/05-07/06223.pdf>

***Sommer v. Josephine County***

Nature of Decision. Intervenor-respondent (intervenor) seeks a comprehensive plan map amendment to change the subject property's designation from Agriculture to Residential and a zoning map amendment from Farm Resource to Rural Residential 5-Acre. The county originally approved the application in 2004. Petitioners appealed that decision to LUBA, and LUBA remanded the county's decision. *Sommer v. Josephine County*, 49 Or LUBA 134 (2005) (*Sommer I*). In *Sommer I*, LUBA held that the county should have applied JCCP Goal 11, Policy (3)(B)(2) instead of JCCP Goal 11, Policy (3)(B)(1). *Id.* at 154-55. On remand, the county limited the scope of the proceedings to consideration of JCCP Goal 11, Policy (3)(B)(2) and approved the application. Petitioners appeal a county decision on remand that approves comprehensive plan and zoning map amendments.

Petition for Review

XXX

- . LUBA No. 2006-209 *Sommer v. Josephine County*
- . Final Opinion and Order, Affirmed 06/27/2007

- . Holger T. Sommer, Lynda Spangler, Raymond Konopa, Mike Walker, Wayne Mcky and Hal B. Anthony, *Petitioners*; Holger T. Sommer, Raymond Konopa, Lynda Spangler, City of Merlin, and Michael L. Walker, Wayne McKy, Hal B. Anthony, City of Grants Pass, filed the petition for review. Holger T. Sommer argued on behalf of petitioners.
- . Orville F. Meade, *Intervenor-Respondent*; Duane Wm. Schultz, Attorney, City of Grants Pass, filed the response brief and argued on behalf of intervenor-respondent.
- . <http://www.oregon.gov/LUBA/docs/opinions/2007/06-07/06209.pdf>

### ***Wetherell v. Douglas County***

Nature of Decision. County found parcel does not qualify as either agricultural land or forest land. This appeal is before us [LUBA] on remand from the Court of Appeals and Supreme Court. *Wetherell v. Douglas County*, 50 Or LUBA 275 (2005), *aff'd in part, rem'd in part* 204 Or App 778, 132 P3d 50 (2006), *aff'd in part, rev'd in part*, 342 Or 666, \_\_\_ P3d \_\_\_ (2007). The appeal concerns a 26-acre parcel that the county found does not qualify as either agricultural land or forest land. Based on those findings the county found that the property need not be zoned for exclusive farm use under Statewide Planning Goal 3 (Agricultural Lands) or zoned for forest use under Goal 4 (Forest Lands). The county then granted comprehensive plan and zoning map amendments from a mixed farm and forest zone to a rural residential zone that would allow the property to be partitioned into parcels as small as 5 acres and developed with rural residences.

Petition for Review

XXX

- . LUBA No. 2005-075 *Wetherell v. Douglas County*
- . Final Opinion and Order, Remanded 07/25/2007
- . Shelley Wetherell, *Petitioner*; Shelley Wetherell, Umpqua, represented herself.
- . <http://www.oregon.gov/LUBA/docs/opinions/2007/07-07/05075.pdf>

### ***Anthony v. Josephine County***

Nature of Decision. Petitioners requests that this appeal be dismissed. Accordingly, this appeal is dismissed.

Petition for Review

XXX

- . LUBA No. 2006-234 *Anthony v. Josephine County*.
- . Final Opinion and Order, Dismissed 07/27/2007.
- . Hal Anthony and Wayne Mcky, *Petitioners*; Hal Anthony, and Wayne McKy, Grants Pass, represented themselves.
- . <http://www.oregon.gov/LUBA/docs/opinions/2007/07-07/06234.pdf>

### ***Wetherell v. Douglas County***

Nature of Decision. Petitioner appeals Ordinance 2006-11-02 (the Ordinance), a legislative amendment that adopts a rural community inventory and a rural residential land inventory into the Douglas County Comprehensive Plan (DCCP), and adds several policies and findings to the Rural Community and Rural Residential portions of the DCCP.

Petition for Review

XXX

- . LUBA No. 2006-242 *Wetherell v. Douglas County*
- . Final Opinion and Order, Affirmed 07/03/2007
- . Shelley Wetherell, *Petitioner*; Jannett Wilson, Attorney, Eugene, filed the petition for review and argued on behalf of petitioner. With her on the brief was Goal One Coalition.
- . <http://www.oregon.gov/LUBA/docs/opinions/2007/07-07/06242.pdf>

### ***Wetherell v. Douglas County***

Nature of Decision. Petitioners appeal a county decision determining that a 162-acre parcel is not agricultural or forest lands subject to the statewide planning goals, and amending the comprehensive plan and zoning designations to allow five-acre rural residential lots.

Petition for Review

XXX

- . LUBA No. 2005-045 *Wetherell v. Douglas County*
- . Final Opinion and Order, Remanded 08/01/2007
- . Shelley Wetherell, Janell Stradtner, and Friends of Douglas County, *Petitioners*; Ann V. Wolf, Attorney, Portland, represented petitioners.
- . <http://www.oregon.gov/LUBA/docs/opinions/2007/08-07/05045.pdf>

### ***Wetherell v. Douglas County***

Nature of Decision. Petitioner appeals a county decision, on remand from LUBA, that approves comprehensive plan map and zoning map amendments to designate property as nonresource land.

Petition for Review

XXX

- . LUBA No. 2007-073 *Wetherell v. Douglas County*
- . Final Opinion and Order, Remanded 08/08/2007
- . Shelley Wetherell, *Petitioner*; Shelley Wetherell, Umpqua, filed the petition for review and argued on her own behalf.
- . <http://www.oregon.gov/LUBA/docs/opinions/2007/08-07/07073.pdf>

### ***Sommer v. City of Cave Junction***

Nature of Decision. Petitioner appeals decisions by the city rezoning two parcels of land.

Petition for Review

XXX

- . LUBA No. 2007-120 *Sommer v. City of Cave Junction*
- . Final Opinion and Order, Affirmed 12/19/2007
- . Holger T. Sommer, *Petitioner*; Holger T. Sommer, Merlin, filed the petition for review and argued on his own behalf.
- . <http://www.oregon.gov/LUBA/docs/opinions/2007/12-07/07120.pdf>

### ***Sommer v. City of Grants Pass and Josephine County***

Nature of Decision. Petitioner appeals a decision by the city and the county approving an amendment to the city's urban growth boundary (UGB) to add approximately 1.2 acres, and establishing residential comprehensive plan map and zoning map designations for a portion of the property.

Petition for Review

XXX

- . LUBA No. 2007-121 *Sommer v. City of Grants Pass and Josephine County*
- . Final Opinion and Order, Affirmed 12/10/2007
- . Holger T. Sommer, *Petitioner*; Holger T. Sommer, Merlin, filed the petition for review and argued on his own behalf.
- . <http://www.oregon.gov/LUBA/docs/opinions/2007/12-07/07121.pdf>

## **2006**

### ***Lovinger v. Lane County***

Nature of the Decision. Petitioner appeals the county's approval of a forest template dwelling and of a request for a riparian setback modification.

Petition for Review

XXX

- . LUBA No. 2005-098 *Lovinger v. Lane County*
- . Final Opinion and Order, Affirmed 01/12/2006
- . Nena Lovinger and James Just, *Petitioners*; Nena Lovinger, Fall Creek, and James Just, Lebanon, filed the petition for review. James Just argued on his own behalf.
- . <http://www.oregon.gov/LUBA/docs/opinions/2006/01-06/05098.pdf>

### ***Ray v. Josephine County***

Nature of the Decision. Petitioner appeals a decision approving a site plan for a rock crushing, processing and asphalt batching plant within the unincorporated community of Murphy.

Petition for Review

XXX

- . LUBA No. 2004-209 *Ray v. Josephine County*.
- . Final Opinion and Order, Affirmed 03/07/2006.
- . Ronald C. Ray, *Petitioner*, and Holger T. Sommer, Phyllis Ray, Lionel Campbell, Rose Clearwaters, David Clearwaters, Shawn Daily and Naomi Daily, *Intervenors-petitioner*; Ronald C. Ray, Grants Pass, filed a joint petition for review and argued on his own behalf. With him on the brief was Holger T. Sommer. Holger T. Sommer, Merlin, filed a joint petition for review and argued on his own behalf. With him on the brief was Ronald C. Ray. Phyllis Ray, Murphy, Lionel Campbell, Rose Clearwaters, David Clearwaters, Shawn Daily and Naomi Daily, Grants Pass represented themselves.
- . <http://www.oregon.gov/LUBA/docs/opinions/2006/03-06/04209.pdf>

### ***Wetherell v. Douglas County***

Nature of the Decision. Petitioner appeals a county decision approving a single family dwelling not in conjunction with farm use (nonfarm dwelling).

Petition for Review

XXX

- . LUBA No. 2005-174 *Wetherell v. Douglas County*
- . Final Opinion and Order, Remanded 05/15/2006
- . Shelley Wetherell, *Petitioner*; Shelley Wetherell, Umpqua, filed the petition for review and argued on her own behalf.
- . <http://www.oregon.gov/LUBA/docs/opinions/2006/05-06/05174.pdf>

### ***Wetherell v. Douglas County***

Nature of the Decision. Petitioner appeals a county decision approving a comprehensive plan map amendment from Agriculture (AGG) and Farm Forest Transitional (FFT) to Committed Residential – 5 Acre (RC5), a zone change from Exclusive Farm Use – Grazing (FG) and Farm Forest (FF) to Rural Residential – 5 Acre (5R), and taking an irrevocably committed exception to Statewide Planning Goal 3 (Agricultural Lands) and Goal 4 (Forest Lands).

Petition for Review

XXX

- . LUBA No. 2005-181 *Wetherell v. Douglas County*
- . Final Opinion and Order, Remanded 05/17/2006

. Shelley Wetherell, *Petitioner*; Shelley Wetherell, Umpqua, filed the petition for review and argued on her own behalf.

. <http://www.oregon.gov/LUBA/docs/opinions/2006/05-06/05181.pdf>

### ***Sommer v. Josephine County***

Nature of the Decision. Petitioner appeals a county decision approving a variance to lot line setback requirements.

Petition for Review

XXX

. LUBA No. 2006-033 *Sommer v. Josephine County*

. Final Opinion and Order, Affirmed 06/29/2006

. Holger T. Sommer, *Petitioner*; Holger T. Sommer, Merlin, filed the petition for review and argued on his own behalf.

. <http://www.oregon.gov/LUBA/docs/opinions/2006/06-06/06033.pdf>

### ***Landwatch Lane County v. Lane County***

Nature of Decision. Petitioner appeals a county order that increases the fees that the Lane County Land Management Division charges for its planning, subsurface sanitation, surveyor and building permit activities.

Petition for Review

XXX

. LUBA No. 2006-039 *Landwatch Lane County v. Lane County*

. Final Opinion and Order, Remanded 06/27/2006

. Landwatch Lane County, *Petitioner*; Jannett Wilson, Attorney, Eugene, filed the petition for review and argued on behalf of petitioner. With her on the brief was the Goal One Coalition.

. <http://www.oregon.gov/LUBA/docs/opinions/2006/06-06/06039.pdf>

### ***Just v. Linn County***

Nature of Decision. Petitioner appeals a county decision that amends the comprehensive plan map designation of a 28.62-acre parcel from Farm/Forest Rural Residential Reserve to Non-Resource, and a concurrent zone change from Farm/Forest (F/F) to Non-Resource (NR-5).

Petition for Review

XXX

. LUBA No. 2006-045 *Just v. Linn County*

. Final Opinion and Order, Affirmed 06/21/2006

- . James Just, *Petitioner*; James Just, Lebanon, filed the petition for review and argued on his own behalf.
- . <http://www.oregon.gov/LUBA/docs/opinions/2006/06-06/06045.pdf>

### ***Friends of Linn County v. City of Lebanon***

Nature of Decision. Petitioners request that this appeal be dismissed. Accordingly, this appeal is dismissed.

Petition for Review

XXX

- . LUBA No. 2000-220 *Friends of Linn County v. City of Lebanon*
- . Final Opinion and Order, Dismissed 07/11/2006
- . Friends of Linn County and 1000 Friends of Oregon, *Petitioner*; Michael K. Collmeyer, Attorney, Portland, represented petitioners.
- . <http://www.oregon.gov/LUBA/docs/opinions/2006/07-06/00220.pdf>

### ***Sommer v. Josephine County***

Nature of Decision. Petitioner requests that this appeal be dismissed. Accordingly, this appeal is dismissed.

Petition for Review

XXX

- . LUBA No. 2006-079 *Sommer v. Josephine County*
- . Final Opinion and Order, Dismissed 08/21/2006
- . Holger T. Sommer, *Petitioner*; Holger T. Sommer, Merlin, represented himself.
- . <http://www.oregon.gov/LUBA/docs/opinions/2006/08-06/06079.pdf>

### ***Wetherell v. Douglas County***

Nature of Decision. Petitioner appeals a comprehensive plan amendment and zone change to designate property as nonresource land.

Petition for Review

XXX

- . LUBA No. 2006-122 *Wetherell v. Douglas County*
- . Final Opinion and Order, Remanded 10/29/2006
- . Shelley Wetherell, *Petitioner*; Shelley Wetherell, Umpqua, filed the petition for review and argued on her own behalf.
- . <http://www.oregon.gov/LUBA/docs/opinions/2006/10-06/06122.pdf>

### ***Sommer v. City of Grants Pass***

Nature of Decision. Petitioner requests that this appeal be dismissed. Accordingly, this appeal is dismissed.

Petition for Review

XXX

- . LUBA No. 2006-130 *Sommer v. City of Grants Pass*
- . Final Opinion and Order, Dismissed 11/13/2006
- . Holger T. Sommer and Lisa Berger, *Petitioners*; Holger T. Sommer, Merlin, Lisa Berger, Grants Pass, represented themselves.
- . <http://www.oregon.gov/LUBA/docs/opinions/2006/11-06/06130.pdf>

This preliminary list of is unfinished.

An estimate is that the list should include historical LUBA appeals back to approximately 1997.

## V. STATEWIDE LAND USE TOPICS & LUBA HEADNOTES

One of the future goals of the Institutional Land Use Memory Program is to research and identify all LUBA appeals by the sponsors and/or affiliated entities and the nature of the decision that was appealed along with the specific assignments of error (AOE). The idea is to provide the interested public with the opportunity to learn from the sponsors' research, education, and experience. It is believed that this agenda can best be accomplished by organizing and web publishing the following information.

- Sponsors' LUBA Appeals by Case Title, & Date
- Topic
- LUBA Headnote
- Petitioners
- Interventors-petitions
- Persons/volunteers
- "On the Brief"
- Attorneys
- Interest
- Concern
- Question
- Assignments of Issue at Local Land Use Proceedings
- Assignments of Error at LUBA

LUBA Headnotes offers an important tool for important land use cases by topic. Each time a volume of LUBA Reports is published (approximately every five to six months), the paralegal collects and posts all headnotes in that volume on LUBA's website as part of the LUBA Digest, which is a free and unique research tool available to the public, making LUBA's decisions more accessible

Headnotes provide a quick reference to the holdings of LUBA cases. Each holding is organized by topic and each topic is assigned a number (e.g. 36.2; Nonconforming Uses—Definition). Once you find the topic you are searching for, you can browse the LUBA headnotes for holdings related to your case. While headnotes provide a convenient reference, they should not be the full extent of legal research as they are not considered part of the LUBA's opinions and cannot be cited as legal authority. Once you have found headnotes that relate to your argument, you should read the case carefully to see if its holding can be applied to your case.

### **LUBA Headnotes**

Oregon Land Use Board of Appeals  
<http://www.oregon.gov/LUBA/Pages/Headnote-Index.aspx>

LUBA Headnote Index (through December 2012)  
Last Updated: 04/24/2014

Note: These headnotes are provided as a research aid only. Changes made prior to publication in the Oregon LUBA Reports may not be reflected here. Headnotes are not considered part of the Board's opinions and should not be cited as legal authority.

## **VI. STATISTICS**

Present research on the sponsors' LUBA appeals by case title, date, topic, LUBA headnote, petitioners, intervenors-petitions, persons/volunteers, "on the brief", attorneys, assignments of issue at local land use proceedings and assignments of error at LUBA, . . . , and web published addresses. The relationship of using statistics and the conclusions, assumptions, and facts of the sponsors is wide open for brain-storming and development.

## **VII. INTERNSHIP?**

One of the future goals of the Institutional Land Use Memory Program is to clarify and refine this paper by researching and identifying all LUBA appeals by the sponsors and/or affiliated entities and the nature of the decision that was appealed along with the specific assignments of error (AOE). The idea is to provide the interested public with the opportunity to learn from the sponsors' research, education, and experience. It is believed that this agenda can best be accomplished by organizing and providing web published information.

The intern(s) task would include, but not be limited to the above goal. It was also include an evaluation of the Effective Land Use Testimony Training Program with recommendations for future designs. It could include implementing on of those designs by updating and/or revising the ELUT program, including web publishing.

### **A. Sponsors**

Sponsors' Goal: To help students find or create high quality learning experiences that integrate academic knowledge and work experience in a professional environment.

Sponsors' Work Experience: Developing effective land use testimony education/training aids and sharing these aids with a public wanting to submit effective land use testimony. An example of an educational/training aid would be researching and finalizing this document for web publishing.

### **B. Examples of Academic Internship Programs**

#### **Oregon State University**

#### **Internships Overview**

<http://oregonstate.edu/internships/internship-overview>

Downloaded June 12, 2014

#### **What is an Internship?**

NACE (National Association of Colleges and Employers) provides the following definition: An internship is a form of experiential learning that integrates knowledge and theory learned in the classroom with practical application and skills development in a professional setting. Internships give students the opportunity to gain valuable applied experience and make connections in professional fields they are considering for career paths; and give employers the opportunity to guide and evaluate talent.

An internship is usually a formal program that provides practical experience for beginners in a specific occupation or profession. They can be paid or unpaid and are usually 3-6 months in length and can be completed at any point during the year, with most students choosing summer term.

They are typically short-term work assignments related to your major or career of interest.

### **Why do an internship?**

- Explore your interests and gain valuable experience
- Apply theory and knowledge from the classroom
- Develop new skills & confidence
- Build your resume
- Network with employers and professionals
- Explore possible career paths
- Transition into a job or prepare for graduate school

### **Sustainable Land Use Project Environmental & Natural Resources Law Oregon Law University of Oregon**

<http://enr.uoregon.edu/slup/>

Downloaded June 12, 2014

*Sustainable Land Use Project - Evaluating land use laws, theories, and practices to ensure sustainable development in our communities.*

Launched in 2005 following the passage of Oregon's Measure 37, a property compensation initiative, the SLU Project addresses legal issues surrounding how we choose to develop, or not to develop, lands within our communities. Faculty leaders are Tom Lininger and Mary Wood.

### **SLUP Fellows**

**Kyler Danielson** is looking forward to serving as a Sustainable Land Use Fellow this year. As a third-year law student, she has focused her studies on property, land use, and local government law. Originally from the Seattle area, she spent her last two summers working in Washington for the Bellevue City Attorney's Office and for the Land Use Section of the King County Prosecutor's Office. Before law school, she worked as a legal assistant for Leahy McLean

Fjelstad, a firm located in Kirkland, Washington that primarily represents condominium associations. Kyler graduated *cum laude* from Western Washington University with a bachelor's degree in political science and French. While an undergraduate, she had the opportunity to serve as an intern for the William J. Clinton Foundation and the Office of Congressman Rick Larsen. She spends her free time providing tech support to friends and family, crafting, hiking, and appreciating the natural beauty of the Pacific Northwest.

**KC McFerson** is in her final year at the University of Oregon School of Law and is concurrently pursuing a Master of Community and Regional Planning. KC has worked on land use law and planning issues at multiple levels of government, including local governments in Oregon, the Colorado Governor's Office of Economic Development and International Trade, the Colorado Department of Local Affairs, and projects with Western Resource Advocates involving federal land management agencies. At the law school, KC has served several student groups and worked as and a tutor in the Legal Research and Writing Program. This is her third year on the Sustainable Land Use Project and she is excited to work on her Bowerman Fellowship project, explaining and analyzing legal mechanisms for open space preservation and executing a report for the City of Medford discussing how the city can acquire and preserve open spaces.

### **VIII. Land Use Disclaimer**

Land use publications (e.g., letters, local government land use comments, brochures, citizen issue papers, effective land use testimony training, LUBA appeals, newspaper articles, etc.) of the sponsors (i.e., Hugo Neighborhood Association & Historical Society, Rogue Advocates, and Goal One Coalition) are as much about providing information and provoking questions as they are about opinions of the *sponsors* concerning land use issues and concerns.

These training aids do not provide recommendations to citizens and they are not legal advice. They do not take the place of a lawyer. If citizens use information contained in these publications or training, it is their personal responsibility to make sure that the facts and general information contained in them are applicable to their situation. The sponsors assume no liability for information provided.

## **Appendix A. Citizen Petitioner Steve Doob At LUBA**

Steve Doob was a neighbor living in the Hugo, Oregon region when he became involved in land use in approximately 1997.

Doob's LUBA cases are listed in chronological order from the most recent. They will eventually be incorporated into the main text.

### **Doob v. Josephine County, LUBA No. 2002-066, 2003**

Robert Leonhardt & Leon Oliver

Deadlines: Because petitioner's petition for review was due on November 22, 2002, and it was not filed until November 25, 2002 when UPS delivered the petition for review to LUBA, this appeal must be dismissed.

With two exceptions, failure to file a document with LUBA on or before the deadlines specified in our rules is treated as a technical violation of our rules. Technical violations of our rules do not provide a basis for dismissing an appeal, unless such violations prejudice the substantial rights of one or more parties.

As the above-emphasized language makes clear, failure to file a petition for review within the deadline established by OAR 661-010-0030(1) is not a mere technical violation of our rules.

APPEAL DISMISSED

### **Doob v. Josephine County, LUBA No. 2001-134, 2002**

Robert Leonhardt & Leon Oliver

Adequacy Of Findings: Petitioner appeals a county decision that approves comprehensive plan and zoning map amendments for a 40-acre parcel that is owned by intervenor-respondent Leonhardt.

County improperly applied JCCP Goal 11, Policy 3(A)(2) in concluding that the property is otherwise unsuitable for farm use.

As explained in *Doob, 31 Or LUBA* at 284, all JCCP Goal 11, Policy 3(A)(2) factors must be considered and the county did not do so in the challenged decision. The county must consider all the JCCP Goal 11, Policy 3(A)(2) factors in determining whether the subject property is otherwise unsuitable for farm use.

In conclusion, we agree with petitioner the county has not demonstrated under JCCP Goal 11, Policy 3(B) that the soils on the subject property are non-forest soils.

APPEAL REMANDED

**Doob v. Josephine County, LUBA No. 2002-067, 2002**

Allen Eliason & Virginia Eliason

Standing: Petitioner appeals a county decision that approves comprehensive plan map and zoning map amendments. Intervenors challenge petitioner’s standing and move to dismiss the appeal. Intervenors and respondent also move for a voluntary remand. We resolve those motions below.

Under ORS 197.830(2), one of the requirements that petitioner must satisfy to have standing to appeal to LUBA is that he must have “[a]ppeared before the local government \* \* \* orally or in writing.” Petitioner appeared several times below. Petition for Review 4. Intervenors contend that those appearances were inadequate to establish standing for petitioner to bring this appeal on his own behalf, because petitioner’s local appearances were made on behalf of other persons, rather than on his own behalf.

Petitioner disputes intervenors’ characterization of the nature of his appearances and contends they were adequate to constitute appearances on his own behalf. We agree with petitioner.

APPEAL REMANDED

**Doob v. Josephine County, LUBA No. 2000-108, 2001**

Jerry Davis & Connie Davis

Standing: Petitioner appeals a decision by the county board of commissioners determining that petitioner lacks standing to file a local appeal of an administrative decision approving a conditional use permit.

The only statutory authority petitioner advances to appeal the planning director’s decision to LUBA is ORS 197.830(4)(b). That provision allows a person who is not entitled to notice of a decision made without a hearing, but who is adversely affected by that decision, to appeal to LUBA within 21 days after the expiration of the period for filing a local appeal of the decision established by the county.

The commissioners’ decision states:

“The [commissioners] conclude that [petitioner] is not adversely affected within the meaning of ORS 215.416(11). This conclusion is based on the fact that [petitioner] does not own property within sight and sound of the campground. The [commissioners] find from the evidence that [petitioner] has not demonstrated how his property will be specifically and negatively affected by the decision. There is no evidence that substantial or any portion of the traffic to and from the development will pass by his property. There is no evidence that any of the campground activities can be heard or seen from [petitioner’s] property. Although [petitioner] claims the campground will adversely

impact certain philosophical interests he has regarding land use matters, these concerns do not physically affect his property.

“The [commissioners] further conclude that [petitioner] is not adversely affected because travel on the Merlin-Galice Road will possibly be more congested and therefore dangerous to him. Although [petitioner] has reason to travel the road past the campground, any impacts related to this travel are indistinguishable from the public at large. The same is true for issues about urbanization and police protection. \* \* \*

“The [commissioners] further conclude that [petitioner] is not aggrieved within the meaning of ORS 215.416(11) because he did not participate in the planning director’s record prior to the director’s decision, either orally or in writing.” Record 6.

To the extent petitioner’s discussion of the commissioners’ decision in the standing section of the petition for review can be read to challenge the above-quoted conclusions, that discussion is insufficient to demonstrate error in those conclusions. In particular, we disagree with petitioner that his previous experience in appealing other land use decisions or his philosophical interest in correct application of the county’s land use regulations renders him “adversely affected” by the planning director’s decision in this case, within the meaning of ORS 215.416(11)(a) or 197.830(4)(b). Such experience or interest may be germane to whether a person who appears before the county can qualify as “aggrieved” by a county land use decision, see *League of Women Voters v. Coos County*, 76 Or App 705, 712 P2d 111 (1985), but it is not germane to whether that person is adversely affected.

#### COUNTY’S DECISION AFFIRMED

#### **Doob v. Josephine County, LUBA No. 2000-073, 2001**

Multi/Tech Engineering Services, Inc.

Clear & Objective Criteria & Standards: Petitioner appeals a county decision approving a manufactured home park (MHP).

In Multi/Tech Engineering, we remanded the county’s decision, because it denied intervenor’s application based on UGAZO conditional use criteria that did not constitute “clear and objective criteria and standards for the placement and design of mobile home or manufactured dwelling parks,” in violation of ORS 197.480(5). We concluded that ORS 197.480(5) applied to the proposed MHP in the R-2 zone, because the county had failed to conduct the inventory and need analysis required by ORS 197.480(1) and (2), and had failed to provide for MHPs as an allowed use in any of the residential zones in the urban growth area. Consequently, we held that the county can apply only “clear and objective criteria and standards.”

Petitioner is undoubtedly correct that if the county had conducted the inventory and needs analysis required by ORS 197.480, and made a determination of “needed housing” in the county, nothing in the statute compels the county to provide for additional MHPs beyond

those necessary to satisfy the identified need for that type of housing. By the same token, however, nothing in ORS 197.480 prohibits the county from approving more MHPs than may be found to be necessary. More importantly, as our decision in Multi/Tech Engineering indicates, the UGAZO provides for MHPs in the R-2 zone, and ORS 197.480(5) requires that where MHPs are provided for, only clear and objective criteria may be applied to them. The county's failure to conduct the inventory and needs analysis required by ORS 197.480 does not waive the county's obligation to approve or deny the application under its code and statute, or otherwise prohibit the county from approving the proposed MHP, if it complies with applicable clear and objective criteria.

## APPEAL REMANDED

### **Doob v. City of Grants Pass, LUBA No. 98-006 (1998)**

Doob v. City of Grants Pass, 34 Or LUBA 480 (1998)

Community Development Corporation of Josephine County

Clearly Supported Findings: LUBA cannot determine whether inadequate findings are “clearly supported” by the record under ORS 197.835(11)(b) where the local provision to which the findings are directed is subject to numerous interpretations and the decision does not contain an adequate interpretation of that local provision. LUBA will not both fashion an interpretation of a local provision and then review the record for evidence clearly supporting findings of compliance with that provision, as interpreted. *Doob v. City of Grants Pass, 34 Or LUBA 480 (1998)*.

The Supreme Court first articulated the now well-established standard for evaluating the adequacy of local findings in *Sunnyside Neighborhood v. Clackamas Co., Comm.*, 280 Or 3, 21, 569 P2d 1063 (1977):

“No particular form is required, and no magic words need be employed. What is needed for adequate judicial review is a clear statement of what, specifically, the decision-making body believes, after hearing and considering all the evidence, to be the relevant and important facts upon which its decision is based. Conclusions are not sufficient.”

In *Le Roux v. Malheur County*, 30 Or LUBA 268 (1995), we explained the requirement for adequate findings as follows:

“The county's \* \* \* findings must (1) identify the relevant approval standards, (2) set out the facts relied upon, and (3) explain how the facts lead to the conclusion that the request satisfies the approval standards. *Sunnyside Neighborhood v. Clackamas Co., Comm.*, 280 Or 3, 20-21, 569 P2d (1977). *See also Penland v. Josephine County*, 29 Or LUBA 213 (1995); *Reeves v. Yamhill County*, 28 Or LUBA 213 (1995); *Hart v. Jefferson County*, 27 Or LUBA 612 (1994). In addition, when, as here, a party raises issues regarding compliance with any particular approval criteria, it is incumbent upon the local government to address those issues. *Hillcrest Vineyard v. Bd. of Comm. Douglas Co.*, 45 OR App 283,

293, 608 P2d 201 (1980); *Collier v. Marion County*, 29 Or LUBA 462 (1995). Moreover, when the evidence is conflicting, the local government may choose which evidence to accept, but must state the facts it relies on and explain why those facts lead to the conclusion that the applicable standard is satisfied. *Moore v. Clackamas County*, 29 Or LUBA 372 (1995).” *Le Roux v. Malheur County*, 30 Or LUBA at 271[.]

**Doob v. Josephine County, LUBA No. 96-115 (1997)**

Doris Bickham, Betty L. Michalski & Jean D. Frers

Findings Failed To Demonstrate Compliance: Petitioner appeals the county’s approval of a zone change.

Water is adequate from site specific well log data.

Goal 1 was not violated as no violation of the county’s acknowledged citizen participation program was identified.

No basis under ORS 197.829 to reject the county’s interpretation as it applies to the sheriff’s letter.

Findings failed to demonstrate compliance with Goal 14. County’s finding merely states a conclusion. This assignment of error is sustained.

APPEAL REMANDED

**Doob v. Josephine County, LUBA No. 96-115 (1997)**

Myrna Falfalovich

Findings Inadequate: Petitioner appeals the county’s approval of a zone map amendment.

The conclusory statement that “the area \* \* \* has adequate water” fails to explain how facts about surrounding properties “[d]emonstrate the carrying capacity of the land to support the uses permitted in the proposed zone.” Error sustained.

APPEAL REMANDED

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation . Given the express language in Goal 3 that future availability of water for irrigation must be considered in evaluating suitability of soils for agricultural uses, the county's interpretation that it need not consider potential availability of irrigation in determining soil suitability is incorrect, and LUBA will not defer to that interpretation. *Doob v. Josephine County*, 31 Or LUBA 275 (1996).

1.1.3 Administrative Law – Interpretation of Law – Effect of Local Government Interpretation .  
Where a local comprehensive plan provision is designed to implement, and in fact essentially mirrors, the requirements for compliance with Goal 3, LUBA owes deference to the local government's interpretation only to the extent that interpretation is consistent with Goal 3. *Doob v. Josephine County*, 31 Or LUBA 275 (1996).

Where expert testimony that grazing use of property would require .45 inches of irrigation water per day during peak irrigation times is not challenged below, the county could reasonably rely on that testimony. *Doob v. Josephine County*, 41 Or LUBA 303 (2002).