

QUASI-JUDICIAL LAND USE HEARING

Oregon Revised Statute 197.763 identifies conduct of local quasi-judicial land use hearings

A quasi-judicial land use hearing requires adequate prior notice, an opportunity to both present and rebut evidence at the hearing on the decision, the right to have a record made of the hearing and adequate findings adopted explaining the reasons for the decision. The failure of a property owner to receive notice shall not invalidate the proceedings if the local government can demonstrate by affidavit that such notice was sent.

Commissioners are asked whether they have had ex parte contact with any party at interest and if so, explain the contact and whether they will be disqualifying themselves with reason(s) for abstention. The public may challenge a commissioner(s) as having bias in any scheduled hearing and if so, the challenge must be supported by evidence, and made before the hearing begins.

A staff report will be presented which identifies the criteria and standards applying to the application and summarizes basic findings of fact concerning the application. Testimony will be taken from the applicants and supporters of the application, followed by testimony from those in opposition and other interested parties. Written testimony will be introduced and Commissioners may ask questions of staff, proponents or opponents at any time. An opportunity for rebuttal will follow, from the applicant or other proponents.

When final comments have been heard, any participant may request an opportunity to present additional evidence, arguments or testimony regarding the application. The local hearings authority shall grant such request by continuing the public hearing or leaving the record open for additional written evidence, arguments or testimony.

If the hearings authority grants a continuance, the hearing shall be continued to a date, time and place certain at least seven days from the date of the initial evidentiary hearing. An opportunity shall be provided at the continued hearing for persons to present and rebut new evidence, arguments or testimony. If new written evidence is submitted at the continued hearing, any person may request, prior to the conclusion of the continued hearing, that the record be left open for at least seven days to submit additional written evidence, arguments or testimony for the purpose of responding to the new written evidence.

If the hearings authority leaves the record open for additional written evidence, arguments or testimony, the record shall be left open for at least seven days. Any participant may file a written request with the local government for an opportunity to respond to new evidence submitted during the period the record was left open. If such a request is filed, the hearings authority shall reopen the record pursuant to subsection (7) of this section.

Unless waived by the applicant, the local government shall allow the applicant at least seven days after the record is closed to all other parties to submit final written arguments in support of the application. The applicant's final submittal shall be considered part of the record, but shall not include any new evidence.

When a local governing body, planning commission, hearings body or hearings officer reopens a record to admit new evidence, arguments or testimony, any person may raise new issues which relate to the new evidence, arguments, testimony or criteria for decision-making which apply to the matter at issue.

If a continuance is requested by a participant, and the applicant agrees, such an extension shall not be subject to the 150 day final action period set in statute.

All testimony and evidence must be directed toward the applicable criteria or other criteria in the Union County Land Use Plan or land use regulations that the person believes applies to the decision. The failure to raise an issue precludes appeal to the County Board of Commissioners or the Land Use Board of Appeals on that issue. All testimony may be limited to five minutes or less.

The Planning Commission's decision must be based on adequate findings of fact presented as evidence prior to or during the hearing. When making a motion for a decision, the criteria, basic findings, and ultimate findings must be stated fully. All Commissioners are responsible for the adequacy or inadequacy of each finding in the motion. If a finding is challenged by a fellow Commissioner, a vote may be taken on the findings singly, apart from the motion. An applicant whose request is approved or denied will receive notice of the decision within five working days. Decisions are appealable within 30 days of the final decision. A petitioner must submit a Notice of Appeal and a \$500.00 fee to the Planning Department by the deadline.