

## TYPES OF LAND USE DECISIONS

### LEGISLATIVE QUASI-JUDICIAL MINISTERIAL

Legislative - Land Use Plan or Zoning, Partition and Subdivision Ordinance text or map changes (PC & BOC) (Rule-of-thumb: large amount of land and/or large numbers of people).

Quasi-judicial - Partition or Subdivision, Conditional Use (PC) (Rule-of-thumb: fair and impartial tribunal).

Ministerial - Interpretation of Ordinance (PD) (Rule-of-thumb: decisions made based on "clear and objective" standards; no or minimal discretion).

CLASSIFICATION OF LAND USE DECISIONS

TYPE:	LEGISLATIVE	QUASI-JUDICIAL	MINISTERIAL
PURPOSE:	Create Policy	Interpret Policy	Staff Permit
EFFECTS:	Jurisdiction	Owner	Owner
METHODS:	Plan/Code Amend	Land Use App	Land Use App
DECISION:	Adopt Policy	Approve/Deny	Approve/Deny

## MINISTERIAL DECISIONS

- A. Board of Commissioners delegates decision-making authority to one of the following:
  - I. Planning Director.
  - 2. Hearings Officer.
  
- B. Appeals - to Planning Commission  
Options -
  - I. On record only, or
  - 2. De novo.
  
- C. Notice  
  
Notice of the final decision and an opportunity for a hearing are only required if the decision involved discretion.
  
- D. Burden
  - I. Burden of proof is on the applicant.
  - 2. Decision-maker weighs facts and adopts findings.

QUASI-JUDICIAL DECISIONS (most difficult)

- A. Board of Commissioners delegate decision-making authority to one of following:
  - 1. Planning Commission.
  - 2. Planning Director.
  - 3. Hearings Officer.
  - 4. Inside Cities UGB'ss.
- B Appeals - move up levels of authority  
Options -
  - 1. On record only.
  - 2. De novo - a new (new testimony).
- C. Notice and opportunity for a public hearing
  - 1. Planning Commission - notice of a public hearing.
  - 2. Planning Director or Hearings Officer - notice of the final decision and opportunity for a hearing.
- D. Conflict of Interest
  - 1. Excused when direct financial interest or family member or business involvement in previous two (2) years.
  - 2. Disclosure of any pre-hearing or ex-parte (outside) contact. Must disclose the substance of the contact. Cannot invalidate decision.
- E. Burden
  - 1. Burden of proof is on the applicant.
  - 2. Decision-maker weighs facts and adopt findings.

## LEGISLATIVE

- A. Board of Commissioners final decision-maker
  - 1. Accept recommendations from Planning Commission when approved.
- B. Appeals
  - 1. Planning Commission decision to deny may be appealed to Board of Commissioners.
  - 2. Board of Commissioners decision appealed to LUBA.
  - 3. Appeals to Board of Commissioners may be -
    - a. On record only, or
    - b. De novo - a new (new testimony).
- C. Notice
  - 1. Site specific - adjacent and nearby neighbors.
  - 2. Policy - only newspaper.
  - 3. Always DLCD 45 days prior to final decision.
- D. No conflict of Interest - may be lobbied
- E. Burden
  - 1. Burden of proof on applicant.
  - 2. Decision-maker weighs facts and adopts findings.

## EVIDENCE

### A. Burden of Proof

- 1 Applicant bears responsibility to present substantial relevant evidence to address all of the criteria and standards.
2. Opponent must demonstrate applicant's facts are incorrect or inadequate to address criteria and standards.

### B. Substantial Evidence

Decision must be based on "substantial evidence" in the record as a whole.

2. Substantial evidence is evidence which a reasonable mind could accept as adequate to support the conclusion.

### C. Relevant Evidence

Evidence submitted to hearings body to assure equal opportunity for review and rebuttal.

2. Personal knowledge is not evidence in the record.
3. Relevance relates to the review criteria or standards and depend on their scope, i.e. general vs. specific.

### D. Conflicting Evidence

When applicant, staff or opponents submit conflicting data.

Decision-makers may accept any of the data as long as a reasonable person might accept the data as correct.

3. While not legally required, the best course of action is to explain why certain data was not accepted in the decisions findings.

PREPARING FINDINGS OF FACT - OPTIONS

- A. Prepared by proponents and opponents
  - 1. Reviewed for adequacy.
  - 2. Adopted by decision-makers.
- B. Prepared by Staff before hearing
  - 1. Based on a Staff recommendation to approve, conditionally approve or deny.
  - 2. Adopted by decision-makers.
- C. Prepared by Staff after hearing
  - 1. Decision-makers make a tentative decisions.
  - 2. Staff draft findings.
  - 3. Decision-makers modify and/or adopt final findings at a second meeting.
- D. Partially prepared by Staff and completed by decision-makers
  - 1. Staff prepares Criteria and Basic Findings.
  - 2. Decision-makers prepare Ultimate Findings that explain the reasons(s) for the decision.
  - 3. Findings adopted at first or second meeting.
- E. Prepared by Decision Makers
  - 1. Findings prepared entirely by decision-makers at first or second meeting.

FINDINGS REQUIRED IN QUASI-JUDICIAL DECISIONS [ORS 215.416(6)]

- (1) Criteria and standards relevant to the decision;
- (2) Facts relied on in the decision; and
- (3) An explanation tying the facts to the criteria and justifying the land use decision.

A. Purpose

1. Ensures the decision is responsive to the criteria and standards governing the application.
2. Explains to the parties the reasoning for the decision.
3. Explains to an appeal body the logic and reasons for the decision and that all of the evidence was considered.

B. Criteria and Standards

1. Source -
  - a. ORS or OAR
  - b. Land Use Plan policies
  - c. Zoning, Partition and Subdivision Ordinance
2. Relevance.
  - a. Only "relevant criteria" should be used to judge the application.
  - b. Inapplicable criteria should be dismissed with facts and reasons.
3. Criteria and standards should be agreed to before the evidentiary portion of the hearing.
4. Examples -
  - a. Criteria - Nonfarm dwelling:  
The dwelling will be sited on a portion of the tract generally unsuitable for resource use.
  - b. Standard - Farm dwelling:  
The tract is equal to or greater than 160 acres.

C. Facts

1. Relevant factual information submitted as evidence for the record.
  - a. Written or oral testimony
  - b. Staff reports
  - c. Findings should make reference to documents and testimony relied upon in the record.



2. Conflicting facts.
  - a. Safest course of action is to state there was conflicting evidence and explain why the decision-makers selected one set over another.
3. Examples
  - a. The dwelling site is comprised of capability Class VII soils (USDA SCS) and has not been used for crop or livestock grazing production.
  - b. The subject tract is 165 acres and entirely in wheat production.

D. Ultimate Findings

1. The criteria and facts are tied together in an explanation of the decision-makers reasons for the decision.
2. Each criteria should be explained how it has been satisfied.
3. A simple restatement of the criteria in a positive or negative context is not adequate (Conclusionary statement).
4. If any one criteria has not been satisfied the decision must be to deny the application.
5. If a criteria is not applicable the reason(s) why it does not apply should be stated here.
6. Examples:
  - a. The proposed nonfarm dwelling will be sited on a portion of the tract generally unsuitable for resource use because the Soil Conservation Service has identified the soils in the vicinity of the site as capability Class VII and the applicant has testified the site has not been used for resource production.
  - b. The subject tract is greater than 160 acres because the Assessor Map identifies the tract as 165 acres.