

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. Where a local subdivision ordinance defines “minor subdivision” to include subdivisions located inside the urbanizing area that, “in the judgment of the Planning Commission,” meet certain criteria, and where the ordinance exempts from its applicability subdivisions located outside the urbanizing area that would be minor subdivisions if located inside the urbanizing area, a hearings officer does not err in concluding that a landowner need not apply for a planning commission determination of whether a proposed subdivision located outside the urbanizing area would be a minor subdivision if located inside the urbanizing area in order to determine whether the proposed subdivision is exempt from the ordinance. *Landwatch Lane County v. Lane County*, LUBA No 2020-086 (Jan 25, 2021).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. Where a local code provision requires that a proposed conditional use be “consistent with the character of the area,” and where nothing in the code defines or describes the relevant study area for purposes of the provision, a local government does not err by expanding the scope of the study area beyond that described in the application. *Tarr v. Multnomah County*, 81 Or LUBA 242 (2020).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. Approving a boundary line adjustment to a parcel under applicable standards does not “collaterally attack” a previous land partition decision that originally created the subject parcel under different standards, even assuming the adjusted parcel after the boundary line adjustment would not comply with the partition standards that were applied earlier when the parcel was created. *Friends of Douglas County v. Douglas County*, 78 Or LUBA 11 (2018).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. When the county is entitled to deference under ORS 197.829(1), the decision can be reversed only if the interpretation is inconsistent with the express language, purpose or policy underlying the relevant code language. Under a non-deferential standard of review petitioner must demonstrate that the commissioners’ interpretation is reversible. *Oregon Coast Alliance v. Curry County*, 78 Or LUBA 81 (2018).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. When a code provision requires geotechnical analysis, the feasibility of the planned development must be shown at the preliminary plan stage; however, technical matters that require expert evaluation may be deferred to administrative review and final plan approval even when final plan approval does not require a public hearing. *Lundeen v. City of Waldport*, 78 Or LUBA 95 (2018).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. When a county opts to approve a permit without a public hearing, any person who is adversely affected or aggrieved, or who is entitled to notice of the decision may appeal a decision made without a hearing. The county cannot require participation prior to a decision, either by attending a conference (that may or may not have occurred), or providing written comments, or in any other manner. Additionally, the county may not enact additional restrictions to prevent a person who is entitled to file an appeal under the ORS 215.416(11)(a)(A) right to file a local appeal. *Hood River Valley Residents Comm. v. Hood River County*, 78 Or LUBA 282 (2018).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. When a party raises an issue for the first time at oral argument LUBA will ignore all statements made at oral argument, by any party, that go beyond the issues framed in the briefs and the evidence cited in the record, and will confine its review to the issues framed in the briefs, the evidence cited in the record, and the portions of the oral argument that discuss those issues and evidence. *See* OAR 661-010-0040(1) and ORS 197.835(2)(a). *Conte v. City of Eugene*, 78 Or LUBA 289 (2018).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. Pursuant to *Gutoski v. Lane County*, 155 Or App 369, 963 P2d 145 (1998), where a planning commission initially finds a proposal complies with a planned unit development (PUD) approval standard without requiring transportation improvements, but on remand based on a different evidentiary record finds that some improvements are necessary to ensure compliance with the PUD approval standard, drawing a different conclusion based on a different evidentiary record does not mean that the planning commission changed its interpretation of the PUD approval standard. *Conte v. City of Eugene*, 77 Or LUBA 69 (2018).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. Remand for new proceedings to allow the petitioner to present new evidence to respond to an allegedly new, unanticipated interpretation of an approval standard is not warranted under *Gutoski v. Lane County*, 155 Or App 369, 963 P2d 145 (1998), where the allegedly new interpretation is consistent with the position for which the petitioner argued and presented supporting evidence during the initial proceedings below. *Conte v. City of Eugene*, 77 Or LUBA 69 (2018).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. Where LUBA remands a county’s decision adopting an ordinance so that the county can provide the published notice of the board of county commissioners’ hearing that ORS 215.060 requires, considering petitioners’ arguments directed at the ordinance would be inconsistent with sound principles of judicial review when a different ordinance may be adopted as a result of LUBA’s remand. *Oregon Coast Alliance v. Clatsop County*, 75 Or LUBA 277 (2017).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. Where a petitioner did not raise the issue in its filed statement of appeal before the hearings officer that street tree planting is required only when a new street is created, a planning commission exceeds its authority by considering the issue under the local code provisions governing the scope of appeals to the planning commission. *Rockbridge Capital v. City of Eugene*, 75 Or LUBA 364 (2017).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. Where a county’s land development ordinance provides petitioner with the right to appeal its staff decision to a hearings officer, whether the county’s provisions for appealing a planning director decision are permissive or mandatory, they are “remedies” that are “available by right” to petitioner, within the meaning of the ORS 197.825(2)(a) requirement that a petitioner exhaust available local remedies, and therefore LUBA lacks jurisdiction if petitioner did not avail herself of the county’s procedures for local appeal. *Levy v. Jackson County*, 75 Or LUBA 401 (2017).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. Where LUBA

remands a decision for the county to interpret an approval standard in the first instance, the county need not adopt additional findings applying the standard to the application under the new interpretation, where the interpretation adopted on remand is consistent with the county's original findings of compliance, which the county re-adopted on remand. *Foland v. Jackson County*, 69 Or LUBA 49 (2014).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. LUBA will strike documents attached to the petition for review that are offered as “context” for interpreting an administrative rule adopted in 1990, where the documents are not subject to official notice, long post-date the 1990 administrative rule, and could not provide “context” for interpreting the rule. *Fritch v. Clackamas County*, 68 Or LUBA 184 (2013).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. A city's final decision includes adequate findings and a code interpretation adequate for review, where the final decision adopts a planning staff decision as its own, and the planning staff decision embodies a code interpretation that is adequate for review. *Sellwood-Moreland Improvement League v. City of Portland*, 68 Or LUBA 213 (2013).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. Where a zoning ordinance requires that a notice of local appeal “include” “a clear and distinct identification of the specific grounds” for appeal and that compliance with that requirement is “jurisdictional,” a local government may insist on strict compliance with the zoning ordinance requirements of a local notice of appeal. It is not inconsistent with the text of the zoning ordinance to conclude that a local appeal should be dismissed where the notice of intent to appeal includes no grounds for appeal and instead attempts to incorporate by reference legal issues stated in a different document that was created for a different reason, without attaching a copy of that document. *Lang v. City of Ashland*, 64 Or LUBA 250 (2011).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. For purposes of ORS 197.829, LUBA must recognize as adequate for review a governing body's implicit interpretation of a local approval standard, where the findings and decision carry with it only one possible meaning for the standard and an easily inferred explanation of that meaning. *Green v. Douglas County*, 245 Or App 430, 263 P3d 355 (2011). *Foland v. Jackson County*, 64 Or LUBA 265 (2011).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. A finding that “public facilities exist that are adequate to serve” proposed development is not sufficient to embody a reviewable interpretation of a plan map amendment standard requiring that “adequate public facilities can be provided to the property,” where the findings fail to clarify whether the governing body understands the standard to be concerned only with the existence of public facilities in the area with adequate capacity, or whether the standard is also concerned with whether the public facility provider is willing and able to provide services to the property. *Foland v. Jackson County*, 64 Or LUBA 265 (2011).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. Under ORS 197.829(2), where the local government fails to interpret a local standard or adopt a reviewable

interpretation, LUBA may interpret the standard in the first instance or remand the decision for the local government for an interpretation. Where the meaning of the local standard is “far from obvious” and the local government is in a better position than LUBA to clarify the meaning through interpretation of context and legislative history, LUBA should exercise its discretion to remand for an interpretation. *Green v. Douglas County*, 245 Or App 430, 263 P3d 355 (2011). *Foland v. Jackson County*, 64 Or LUBA 265 (2011).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. Dismissal of a local appeal for failure to comply with an informational requirement like specifying the date of the appealed decision in the local notice of appeal is a sufficiently harsh sanction that a local government may only dismiss the appeal if its code expressly provides that dismissal is the sanction for not complying with the informational requirement. *Golden v. City of Silverton*, 58 Or LUBA 399 (2009).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. A local government is not bound by ORS 215.427 to interpret a local code provision in the manner that it has been interpreted in prior quasi-judicial proceedings on a different application. *Greenhalgh v. Columbia County*, 54 Or LUBA 626 (2007).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. Where a local appeal deadline is a mandatory standard, and planning staff provides erroneous information to petitioner regarding the local appeal deadline, petitioner’s reliance on that information does not excuse petitioner’s untimely filing of the local appeal. *Jacobsen v. City of Winston*, 51 Or LUBA 602 (2006).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. A local government does not lose its inherent authority to interpret or reinterpret an ambiguous code provision in a quasi-judicial context when it decides to initiate a legislative code amendment process to resolve the code ambiguity. *Bemis v. City of Ashland*, 48 Or LUBA 42 (2004).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. Where the applicable area plan specifically allows submittal of a master plan application without the signatures of all owners of the property subject to the application, petitioners cannot collaterally attack that provision when a master plan application is filed, and city’s interpretation that the provision in area plan controls over a more general code provision requiring the consent of all owners is supportable under *Clark v. Jackson County*, 313 Or 508, 836 P2d 710 (1992). *Lowery v. City of Keizer*, 48 Or LUBA 568 (2005).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. When a petitioner raises an issue concerning a specific comprehensive plan provision, a local government is obligated to explain the extent to which, if any, the provision applies to the decision. *Doob v. Josephine County*, 47 Or LUBA 147 (2004).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. A prerequisite for application of the deferential standard of review under ORS 197.829(1) is, at a minimum, a written decision or document adopted by the governing body that contains an express or implicit

interpretation of a local provision that is adequate for review. A city attorney's interpretation of a local provision is not entitled to deference under that standard, even assuming that the city council informally directed the city attorney to apply that interpretation in denying the challenged building permits. *West Coast Media v. City of Gladstone*, 44 Or LUBA 503 (2003).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. A code provision stating that the planning director “may” issue a clarification of ambiguous code language through a process requiring a hearing is permissive and does not require the director to provide a hearing in evaluating a particular development proposal that happens to involve ambiguous code language. *Holtz v. City of Portland*, 44 Or LUBA 595 (2003).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. A code provision limiting the planning director's interpretative powers, and prohibiting interpretations of the zoning ordinance that find a use not listed in the zone is “substantially similar” to a listed use, does not necessarily limit the board of commissioners' interpretative powers. To the extent it may, the commissioners' interpretation that the proposed use *is* a listed use is consistent with the code prohibition. *Yeager v. Benton County*, 42 Or LUBA 72 (2002).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. LUBA will decline to interpret a local provision in the first instance, to determine whether a proposed radio communication tower is a “radio and television transmission and receiving” tower and therefore subject to a special setback, where viewed in context the meaning and apparent purpose of the provision is subject to considerable doubt. *Luedtke v. Clackamas County*, 41 Or LUBA 493 (2002).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. LUBA will remand for the county to determine to what extent a code standard imposing a riparian buffer prohibits the removal of native vegetation and whether a proposal for a recreational vehicle camp site within the buffer violates that standard because maintenance of the site requires removal of certain small trees and some native vegetation. *Tylka v. Clackamas County*, 37 Or LUBA 922 (2000).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. The term “farm use” as defined in ORS 215.203(2)(a) is not a “delegative term,” and a county commits no error by failing to adopt county legislation to clarify the meaning in advance of making a decision about whether a particular use qualifies as a “farm use.” *Best Buy in Town, Inc. v. Washington County*, 35 Or LUBA 446 (1999).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. In determining whether a particular use qualifies as an “other agricultural or horticultural use,” as that phrase is used in ORS 215.203(2)(a), there is no requirement that a county hearings officer develop a list of salient characteristics of such uses. *Best Buy in Town, Inc. v. Washington County*, 35 Or LUBA 446 (1999).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. Where a city code provision grants a city authority to prescribe the “manner” of submitting the “application and related information” but the city has not adopted substantive requirements to implement that

authority, the city may not interpret the code provision to deny an application simply because it was signed by the applicant rather than the record title holder. *Doumani v. City of Eugene*, 35 Or LUBA 388 (1999).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. Where petitioner alleges a decision violates an ambiguous land use regulation provision, LUBA must first determine whether the decision includes a reviewable interpretation that is entitled to deference under ORS 197.829(1). *Botham v. Union County*, 34 Or LUBA 648 (1998).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. LUBA is only required to defer to a local government’s express or implied interpretation where the interpretation is adequate for review. *Botham v. Union County*, 34 Or LUBA 648 (1998)

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. Where an interpretation cannot be implied by the way the code was applied and cannot be implied to resolve an irreconcilable conflict between code provisions, the decision lacks an implied interpretation. *Botham v. Union County*, 34 Or LUBA 648 (1998).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. Where there is no express or implied interpretation of an ambiguous local code provision, LUBA may interpret the code in the first instance. *Botham v. Union County*, 34 Or LUBA 648 (1998).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. Where the purpose of an ambiguous code provision is not clear and the provision is subject to more than one sustainable interpretation, it is appropriate for LUBA to remand the decision to the local government to interpret its land use regulation in the first instance. *Botham v. Union County*, 34 Or LUBA 648 (1998).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. The local government may be required to reopen the evidentiary hearing where the local government (1) changes to a significant degree an established interpretation of an approval standard; (2) the change makes relevant a different type of evidence that was irrelevant under the old interpretation; and (3) the party seeking to submit evidence responsive to the new interpretation identifies what evidence not already in the record it seeks to submit. *Gutoski v. Lane County*, 34 Or LUBA 219 (1998).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. Where the inapplicability of a local code provision is clear on its face, or petitioner’s challenge to its applicability is so untenable as to obviate the need for the local government’s authoritative interpretation, a remand for such purpose is unnecessary. *Cummings v. Tillamook County*, 30 Or LUBA 17 (1996).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. Where a local regulation allows certain development applicants to apply for a waiver of their application fees, no interpretation of that regulation would allow a development opponent to qualify for a waiver of appeal fees, and to remand for such findings would be devoid of substantive purpose. *Cummings v. Tillamook County*, 30 Or LUBA 17 (1996).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. A local government’s interpretation of its zoning ordinance must be provided in the challenged decision or supporting findings, not in the local government’s brief. *Friends of Neabeack Hill v. City of Philomath*, 30 Or LUBA 46 (1995).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. ORS 197.829(2) permits LUBA to determine whether a local government decision is correct, even when local government fails to interpret adequately a provision of its comprehensive plan or land use regulations. *East Lancaster Neigh. Assoc. v. City of Salem*, 30 Or LUBA 147 (1995).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. There is no statutory or administrative law requirement that *all* legislative land use decisions be supported by findings. However, where a challenged legislative land use decision was made by the local governing body and the apparently applicable legal standards at issue on appeal are local comprehensive plan provisions, the interpretation of those provisions must initially be made by the governing body in its decision. *Central Eastside Industrial Council v. Portland*, 29 Or LUBA 429 (1995).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. A city’s hearing notice is not defective for failure to list certain comprehensive plan provisions when the city makes specific findings that those provisions are not approval criteria. *Stevens v. City of Medford*, 29 Or LUBA 422 (1995).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. Although LUBA owes no deference to a hearings officer’s interpretation of a local enactment, LUBA may remand a challenged decision in cases where the interpretation at issue is not explained in the findings or differs from an earlier interpretation, in order to give the hearings officer an opportunity to interpret the local enactment in the first instance. *Moore v. Clackamas County*, 29 Or LUBA 372 (1995).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. Whether certain persons are “applicants” for destination resort preliminary development plan approval, as defined in the local code, requires an interpretation by the local governing body in the first instance. *Skrepetos v. Jackson County*, 29 Or LUBA 193 (1995).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. Where determining whether a notice of intent to appeal was timely filed under ORS 197.830(3) depends on determining which code notice of hearing provision applied to the local proceeding, and LUBA can infer from the challenged decision which notice provision the local governing body believes governs the local proceeding and agrees with that interpretation, even without the deference required by *Clark*, LUBA is not required to remand the decision for the governing body to make its interpretation explicit. *Orenco Neighborhood v. City of Hillsboro*, 29 Or LUBA 186 (1995).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. When reviewing a local governing body’s decision, LUBA cannot interpret local enactments in the first

instance. Where petitioners challenge a local governing body's decision on the basis of failure to comply with certain arguably applicable comprehensive plan and code provisions, and the challenged decision contains neither an interpretation of the applicability of the plan and code provisions, nor a determination of whether they are satisfied, the challenged decision must be remanded. *McCrary v. City of Talent*, 29 Or LUBA 110 (1995).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. Without a demonstration that the interpretation of a local code provision in the challenged decision is significantly different from a previously established local government interpretation of that provision, petitioners fail to establish the local government erred by announcing the disputed interpretation for the first time in its final decision. *Wicks v. City of Reedsport*, 29 Or LUBA 8 (1995).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. Where the challenged decision was adopted by a decision maker other than the local governing body, and the decision fails to contain an interpretation of relevant code provisions, LUBA may interpret the local code. *Beveled Edge Machines, Inc. v. City of Dallas*, 28 Or LUBA 790 (1995).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. In reviewing a decision adopted by a local governing body, LUBA must review the governing body's interpretation of local code provisions and may not interpret the local code in the first instance, unless there is "no possible rational dispute" regarding the correct interpretation. *Champion v. City of Portland*, 28 Or LUBA 618 (1995).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. In reviewing a decision adopted by the local governing body, LUBA must review the governing body's interpretation of local code provisions and may not interpret the local code in the first instance, unless there is "no possible rational dispute" regarding the correct interpretation of the local code. *Foster v. Coos County*, 28 Or LUBA 609 (1995).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. Where the challenged decision is adopted by the governing body, LUBA must grant considerable deference to the governing body's interpretations of the local code and cannot interpret the local code in the first instance. *Friends of the Metolius v. Jefferson County*, 28 Or LUBA 591 (1995).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. The question of whether the governing body erroneously accepted a local appeal turns on the interpretation of relevant provisions of the city's code. Because LUBA may not interpret the local code in the first instance when reviewing a decision by a governing body, the decision must be remanded for such an interpretation. *Shapiro v. City of Talent*, 28 Or LUBA 542 (1995).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. To determine whether a use is a motel under the local code, a local government does not err in examining the original prospectus for the use. *Kaady v. City of Cannon Beach*, 28 Or LUBA 509 (1995).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. Where the

challenged decision is made by a governing body and does not explain whether or to what extent apparently applicable comprehensive plan standards apply to the proposal, the challenged decision must be remanded for such an explanation. *Lamm v. City of Portland*, 28 Or LUBA 468 (1995).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. Where the challenged decision is adopted by the governing body, LUBA may not interpret the applicability of arguably applicable comprehensive plan policies. Rather, the governing body must interpret the applicability of such plan policies in the first instance. *Welch v. City of Portland*, 28 Or LUBA 439 (1994).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. Where a comprehensive plan provision potentially applies to a proposal, and a governing body’s decision is silent concerning the applicability of such a plan provision, the challenged decision must be remanded for the governing body to interpret the plan provision. *Neuman v. City of Albany*, 28 Or LUBA 337 (1994).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. Where the local code provides for discretionary review of certain development applications by the planning director, and also provides a process for the planning director to refer questions concerning code interpretation to the governing body, the code does not divest the planning director of authority to interpret the code in carrying out his duties. *Knee Deep Cattle Company v. Lane County*, 28 Or LUBA 288 (1994).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. LUBA is not required to remand a decision for a local government to interpret its comprehensive plan in the first instance unless petitioners offer some explanation for why they believe the plan provision the local government failed to address in its decision applies in the circumstances presented in the appeal. *Holsheimer v. Columbia County*, 28 Or LUBA 279 (1994).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. Where a local governing body’s findings are unclear with regard to whether the local government interprets the provisions of the local code’s unstable slopes overlay district as applicable to approval of a subdivision preliminary plat, the challenged decision does not contain an interpretation adequate for review and must be remanded. *ONRC v. City of Oregon City*, 28 Or LUBA 263 (1994).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. Where a challenged city council decision approving the provision of city sewer and water services outside city limits does not interpret arguably relevant comprehensive plan provisions with regard to whether they are approval criteria for the challenged decision, LUBA must remand the decision to the city to adopt such interpretations, before LUBA can determine whether the challenged decision is a land use decision subject to LUBA review. *Fraser v. City of Joseph*, 28 Or LUBA 217 (1994).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. If a city council decision approving a subdivision does not explain how the city interprets relevant comprehensive plan and code provisions to allow a 40-foot street right-of-way, the decision must be remanded for the city council to interpret the local provisions in the first instance. *Woodstock*

Neigh. Assoc. v. City of Portland, 28 Or LUBA 146 (1994).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. A hearings officer’s reliance on a dictionary definition of “in conjunction with” without providing the dictionary definition relied upon is harmless error, where it is apparent from the decision that the hearings officer interpreted the code term to require establishment of a customer/seller or seller/customer relationship between the proposed commercial use and timber and farm uses in the community. *Stroupe v. Clackamas County*, 28 Or LUBA 107 (1994).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. Where one of the local government’s critical findings depends on the scope of the term “houseboat,” and the term is not defined in the local code or in the challenged decision, the decision must be remanded for the local government to supply the needed explanation of the scope of the term. *Cole v. Columbia County*, 28 Or LUBA 62 (1994).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. Even if a local code provision requiring that six percent of the gross area of a proposed subdivision be dedicated for open space is properly interpreted as a minimum rather than a maximum requirement, a decision requiring dedication of much more than six percent of the gross area of a proposed subdivision must be remanded so that the local government may adopt findings explaining that interpretation and showing the “rough proportionality” requirement of *Dolan v. City of Tigard* is satisfied. *Davis v. City of Bandon*, 28 Or LUBA 38 (1994).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. Where a challenged decision determines certain comprehensive plan policies are mandatory approval standards applicable to the proposed action, but LUBA cannot determine from the decision what the local government believes those policies require, the decision must be remanded for the local government to interpret the policies. *Beck v. City of Happy Valley*, 27 Or LUBA 631 (1994).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. Where a challenged decision adopts a new plan policy stating the city will allow a particular commercial-designated area to be developed “to serve both neighborhood commercial needs and as a community commercial center,” but declines to change a plan policy that commercial development of the area should be at an intensity consistent with General Office or Neighborhood Commercial zoning, LUBA will remand the decision for the city to interpret the relevant plan and code provisions in the first instance. *Graville Properties, Ltd. v. City of Eugene*, 27 Or LUBA 583 (1994).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. Where petitioners contend legislative land use regulation amendments are inconsistent with certain arguably relevant comprehensive plan provisions, and those plan provisions are not interpreted in the challenged decision, LUBA must remand the challenged decision for the local government to adopt the necessary plan interpretations as part of its decision. *Redland/Viola/Fischer’s Mill CPO v. Clackamas County*, 27 Or LUBA 560 (1994).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. If the local

government interpretation of an applicable comprehensive plan provision expressed in a challenged decision is unclear, such that LUBA cannot determine whether the findings supporting the decision are adequate to demonstrate compliance with that plan provision, LUBA will remand the decision to the local government to clarify its interpretation. *Furler v. Curry County*, 27 Or LUBA 546 (1994).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. Where petitioner contends the challenged decision fails to address a comprehensive plan provision that appears to contain a standard applicable to the proposal, the local government must explain in its decision why the plan provision either is inapplicable to the proposal or is satisfied by the proposal. LUBA may not make such determinations in the first instance. *Laine v. City of Rockaway Beach*, 27 Or LUBA 493 (1994).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. Where a challenged decision incorrectly concludes arguments based on an arguably applicable comprehensive plan provision are precluded by the acknowledgment of an earlier decision, and does not interpret that plan provision, LUBA must remand the decision for the local government to interpret the plan provision in the first instance. *Rea v. City of Seaside*, 27 Or LUBA 443 (1994).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. LUBA lacks authority to interpret local comprehensive plan provisions in the first instance. Where certain comprehensive plan policies are arguably applicable to a development application and the challenged decision approving or denying that application does not include an interpretation of those policies, LUBA must remand the decision so the local government can interpret and apply its plan policies. *Barrick v. City of Salem*, 27 Or LUBA 417 (1994).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. Where a local government relies on conditions to ensure that use of an approved parking structure is limited to “short term parking,” as required by its code, any interpretations of code provisions necessary to support its determination that the code limitation to “short term parking” is satisfied must be set out in the challenged decision or supporting findings, not in the local government’s brief. *BCT Partnership v. City of Portland*, 27 Or LUBA 278 (1994).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. If petitioners contend the challenged decision fails to demonstrate compliance with certain local comprehensive plan and code provisions that are not addressed in the challenged decision, and those provisions are capable of being interpreted as approval standards under the permissive scope of review standard of ORS 197.829, LUBA must remand the decision to the local government to interpret and apply the plan and code provisions in the first instance. *Dorgan v. City of Albany*, 27 Or LUBA 64 (1994).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. Where an exclusive farm use zone does not allow asphalt batch plants or their accessory uses, and petitioner contends the county erred by permitting a private access road across exclusive farm used zoned property to serve an asphalt batch plant, the county must respond in its decision to that interpretive question. Where the county fails to do so and simply concludes such roads are allowable, the

decision must be remanded so that the county can adopt an interpretive response adequate for LUBA review. *Zippel v. Josephine County*, 27 Or LUBA 11 (1994).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. LUBA is not required to remand a decision for a local government interpretation of its code, where the interpretive issue raised by petitioner is so untenable that LUBA can reject it without an authoritative determination by the local decision maker. *Towry v. City of Lincoln City*, 26 Or LUBA 554 (1994).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. Where “private school” is listed as a conditional use in a particular zone, but the challenged decision does not interpret the code definitions of “private school” and “commercial school,” or explain why application of those definitions to the facts leads to the conclusion that the proposed school is a “private school,” LUBA must remand the challenged decision to the county to adopt the required interpretation in the first instance. *Eppich v. Clackamas County*, 26 Or LUBA 498 (1994).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. Where a local code provision implementing ORS 215.283(1)(a) lists schools “including all buildings essential to the operation of a school” as a conditional use in an EFU zone, and the local government fails to interpret and apply the quoted provision in approving a conditional use permit for a school, LUBA must remand the decision for the local government to interpret its code provision in the first instance. *Eppich v. Clackamas County*, 26 Or LUBA 498 (1994).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. Where petitioners contend the challenged decision does not demonstrate compliance with an applicable approval standard, and the decision does not interpret the standard sufficiently for LUBA to review that interpretation and consider petitioners’ arguments, LUBA will remand the decision to the local government. *Bottum v. Union County*, 26 Or LUBA 407 (1994).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. Even though LUBA might agree with a county’s argument in its brief that the purpose section of its EFU zoning district is not an approval standard for a farm dwelling permit application, if the challenged decision itself does not interpret the code provision, LUBA must remand the decision for the county to interpret the provision in the first instance. *Testa v. Clackamas County*, 26 Or LUBA 357 (1994).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. Where property is annexed and it is not clear whether a plan policy and implementing measure governing annexations applies in the particular circumstances, a remand is required so that the local government may either apply the plan policy and implementing measure or explain why it does not apply. *Sorte v. City of Newport*, 26 Or LUBA 236 (1993).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. Where the challenged decision fails to explain whether an arguably relevant comprehensive plan provision imposes limitations on the kinds of uses allowed in the applicable zone, LUBA must remand the decision for such an interpretation. *Murphy Citizens Advisory Comm. v. Josephine County*, 26 Or

LUBA 181 (1993).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. Where petitioners raised an issue below concerning whether a particular code provision is an applicable approval standard, and the challenged decision contains no interpretation explaining that code provision is either inapplicable or satisfied, LUBA must remand the challenged decision. *Hixson v. Josephine County*, 26 Or LUBA 159 (1993).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. Where a question of proper interpretation of a comprehensive plan provision is raised during local proceedings, the interpretation required for LUBA review of the decision on appeal must be provided in the decision. The local government may not supply the interpretation in its brief on appeal. *Eskandarian v. City of Portland*, 26 Or LUBA 98 (1993).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. A local government decision that makes a binding interpretation of its regulations, without amending or adopting regulation provisions or granting or denying a development application, is a “final” decision, even if other actions are required to give that decision practical effect. *City of Grants Pass v. Josephine County*, 25 Or LUBA 722 (1993).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. The fact that a challenged local government decision does not include an interpretation of a particular local code provision, alleged to be applicable by petitioners, does not provide a basis for reversal or remand if the code provision in question is *not* ambiguous or susceptible to different sustainable interpretations. *Gage v. City of Portland*, 25 Or LUBA 449 (1993).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. LUBA is limited to considering the interpretations of ambiguous code language that are adopted by the decision-making body and may not consider interpretations that are not adopted by the decision maker, even if the offered interpretation is reasonable. *Miller v. Washington County*, 25 Or LUBA 169 (1993).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. LUBA is required to defer to a local government’s interpretation of its own ordinances, unless that interpretation is contrary to the express words, policy or context of the local enactment. LUBA may not interpret a local government’s ordinances in the first instance, but rather must review the local government’s interpretation of its ordinances. *O’Mara v. Douglas County*, 25 Or LUBA 25 (1993).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. Where a relevant ordinance provision is capable of more than one meaning, the challenged decision does not expressly interpret the ordinance provision, and LUBA cannot infer the local government’s interpretation from the decision, LUBA must remand the decision for the local government to interpret the provision in the first instance. *O’Mara v. Douglas County*, 25 Or LUBA 25 (1993).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. Where LUBA

must determine whether an ambiguous code provision (*i.e.*, one that is capable of more than one sustainable interpretation) is applicable to a challenged decision, and the challenged decision does not contain a reviewable interpretation of that provision, LUBA must remand the decision for the local government to interpret the provision in the first instance. *Terra v. City of Newport*, 24 Or LUBA 438 (1993).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. Where petitioners contend a local government erred in failing to apply a code provision to the challenged decision, and the decision contains no interpretation of that code provision, but the code language unambiguously establishes that the provision in question is not applicable to the challenged decision, LUBA is not required to remand the decision so the local government can interpret its code in the first instance. *Terra v. City of Newport*, 24 Or LUBA 438 (1993).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. That a local governing body ultimately adopts an interpretation of an applicable code standard that is different from that adopted by the hearings officer, and declines to reopen the evidentiary record, does not provide a basis for reversal or remand where (1) there was no “established” local interpretation of the code standard, (2) the governing body’s interpretation does not make relevant any new type of evidence, and (3) petitioner does not identify any evidence it wishes to submit if the evidentiary hearing is reopened. *Heceta Water District v. Lane County*, 24 Or LUBA 402 (1993).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. Where a county plan policy provides that a particular zone change requires that “parcels are generally five acres,” and the county’s decision simply states that a total of 58.8 percent of the parcels in the relevant area being five acres or less does *not* satisfy this plan policy, the decision does not interpret what the policy requires, and LUBA will remand the decision so the county can interpret its plan in the first instance. *Thatcher v. Clackamas County*, 24 Or LUBA 207 (1992).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. It is a local government’s responsibility to interpret the terms of its own enactments in the first instance. *Wilson Park Neigh. Assoc. v. City of Portland*, 24 Or LUBA 98 (1992).

1.1.4 Administrative Law – Interpretation of Law – Procedural Requirements. It is the local government which, in the first instance, should interpret its own enactments. Where a local government has not interpreted and applied applicable provisions of its code, and it is not clear how those code provisions apply to the subject application, LUBA will remand the challenged decision so that the local government may do so. *Gage v. City of Portland*, 24 Or LUBA 47 (1992).