

1.2.1 Administrative Law – Denials – Generally. In considering an application for a three-parcel partition, the failure of an existing intersection that is not adjacent to the property to satisfy local zoning ordinance standards that apply to the design and construction of a new road or intersection does not provide a basis for the county to deny an application for a partition, where no new roads or intersections are proposed as part of the partition. *Pelz v. Clackamas County*, 59 Or LUBA 219 (2009).

1.2.1 Administrative Law – Denials – Generally. Where a local government denies an application based on one approval criterion, and LUBA remands the decision in part for the local government to consider whether additional approval standards apply, it is possible that in determining that additional approval standards apply the local government could identify additional bases for denial under the additional criteria, even if such additional bases for denial were not cited in the original decision. *Easterly v. Polk County*, 59 Or LUBA 417 (2009).

1.2.1 Administrative Law – Denials – Generally. Remand is necessary where a hearings officer misunderstood the applicant’s argument regarding a critical piece of evidence, that misunderstanding played a significant role in denying the application, and LUBA cannot determine if the hearings officer’s misunderstanding was harmless error. *Wal-Mart Stores, Inc. v. City of Gresham*, 54 Or LUBA 16 (2007).

1.2.1 Administrative Law – Denials – Generally. A hearings officer does not err in concluding that even though a 1975 partition created a unit of land, that unit of land is not a “legal lot” as that term is defined in the county’s code, where that unit of land did not conform to the applicable lot dimension standards when it was created. *Hogrefe v. Lane County*, 54 Or LUBA 514 (2007).

1.2.1 Administrative Law – Denials – Generally. Absent local code provisions that prohibit re-submittal of denied land use applications, nothing prohibits an applicant from re-submitting, or the local government from accepting, a previously denied application supported by the same or additional evidence. *Gordon v. Polk County*, 50 Or LUBA 502 (2005).

1.2.1 Administrative Law – Denials – Generally. Assuming, without deciding, that an applicant’s misrepresentation of a material fact in a discretionary permit proceeding would allow a local government to deny subsequent administrative permits necessary to carry out the earlier permit approval, the record supporting denial must establish that the applicant indeed misrepresented a material fact. *Safeway, Inc. v. City of North Bend*, 47 Or LUBA 489 (2004).

1.2.1 Administrative Law – Denials – Generally. Where a city attorney denies four applications for “billboards” on the grounds that “billboards” are not among the types of signs allowed under the city’s sign ordinance, it is reasonably clear that the basis for denial is the fact that the applicant proposed a type of sign not allowed by the city’s code. The city’s *post-hoc* explanation that the basis for denial was actually the size of the proposed

signs is not credible, where the challenged decision contains no hint that size was a consideration. *West Coast Media v. City of Gladstone*, 44 Or LUBA 503 (2003).

1.2.1 Administrative Law – Denials – Generally. LUBA will remand a city decision denying a partition application where it is not clear what documents make up the local decision and the documents that are identified as containing the final land use decision do not set out the city’s rationale for denying the application. *Martin v. City of Dunes City*, 43 Or LUBA 354 (2002).

1.2.1 Administrative Law – Denials – Generally. A city’s decision violates ORS 227.173(1) where the city relies on “factors” or “considerations” that are unconnected to approval standards established in its land use regulations to deny a permit application. *Ashley Manor Care Centers v. City of Grants Pass*, 38 Or LUBA 308 (2000).

1.2.1 Administrative Law – Denials – Generally. Evidence that industrial uses are occurring on industrially zoned property within two miles of the subject property is insufficient to demonstrate, as a matter of law, that a proposed excavation business located in a rural residential zone complies with a requirement that the use “will not interfere with existing uses on nearby land or with other used permitted in the zone in which the property is located.” *Munn v. Clackamas County*, 37 Or LUBA 621 (2000).

1.2.1 Administrative Law – Denials – Generally. In determining whether a denial is supported by substantial evidence, LUBA considers all relevant evidence, including that which supports and that which detracts from the county’s decision. *Evenson v. Jackson County*, 36 Or LUBA 251 (1999).

1.2.1 Administrative Law – Denials – Generally. To successfully challenge the evidentiary basis for denial, it is not sufficient for petitioner to show there is evidence in the record to support his position; petitioner must show the evidence is such that a reasonable trier of fact could only decide in his favor. Where the record contains credible, conflicting evidence, petitioner has not sustained his burden to show, as a matter of law, that the trier of fact should only have believed petitioner’s evidence. *Evenson v. Jackson County*, 36 Or LUBA 251 (1999).

1.2.1 Administrative Law – Denials – Generally. Typically only one adequate basis for denial of a land use permit is required to sustain the decision on appeal to LUBA. However, where the approval criteria provide that a setback exception can be granted if any one of several alternative criteria are met and LUBA rejects the hearings officer’s findings of noncompliance with two of those alternative criteria, a remand is appropriate. *Parsley v. Jackson County*, 34 Or LUBA 540 (1998).

1.2.1 Administrative Law – Denials – Generally. While it is the applicants' burden to demonstrate compliance with relevant approval criteria, if a local government determines an approval criterion is not satisfied, it must adopt findings explaining why it believes the applicants failed to meet this burden. *Neuman v. Benton County*, 29 Or LUBA 172 (1995).

1.2.1 Administrative Law – Denials – Generally. Local government denial of proposed partitions because the ability of the school district to provide the level of school services required by certain plan policies has not been established does not constitute the imposition of a development moratorium prohibited by ORS 195.110(8). *Beck v. City of Happy Valley*, 27 Or LUBA 631 (1994).