

25.1 Local Government Procedures – Generally. In the limited circumstance in which an applicant has withdrawn an application that led to a decision that is pending before LUBA, a local government could, consistent with *Standard Insurance Co. v. Washington County*, 17 Or LUBA 647, 660, *rev'd on other grounds* 97 Or App 687, 776 P2d 1315 (1989), adopt a new land use decision that revokes the decision that has been appealed to and is pending before LUBA. That new decision would likely have the effect of rendering the pending appeal of the previous decision moot. *Jacobsen v. Douglas County*, 62 Or LUBA 461 (2010).

25.1 Local Government Procedures – Generally. The failure of a local government to provide LUBA with the entire local record does not in itself require remand. However, where the record is so inadequate that LUBA cannot adequately review the decision, the local government's failure to provide the whole record may result in remand. *McCulloh v. City of Jacksonville*, 49 Or LUBA 345 (2005).

25.1 Local Government Procedures - Generally. ORS 215.185 and ORS 197.825(3)(a) do not provide the exclusive procedures by which a county may enforce its zoning ordinance to require that property owners stop using their property in a way that the county believes violates its zoning ordinance. *Cookman v. Marion County*, 44 Or LUBA 630 (2003).

25.1 Local Government Procedures – Generally. Where a local ordinance limits appeals of local land use decisions to “land use decisions” as that term is defined in the local ordinance, a petitioner is not entitled to a local appeal where petitioner fails to demonstrate that the decision he wishes to appeal is a “land use decision” within the city's definition of the term. *Robinson v. City of Silverton*, 40 Or LUBA 159 (2001).

25.1 Local Government Procedures – Generally. Where petitioner submits a letter to the city that expresses an opinion concerning the elevation of petitioner's property but provides no evidence to support that opinion, the city's failure to object to the opinion in the letter does not constitute a waiver of the city's right to disagree with petitioner's opinion at a later time. *Rivera v. City of Bandon*, 38 Or LUBA 736 (2000).

25.1 Local Government Procedures – Generally. Where prior dealings between petitioner and city building officials concerning the elevation of native grade on petitioner's property simply show there was confusion about the issue, the city is not estopped from taking a position contrary to petitioner's regarding the location of native grade. *Rivera v. City of Bandon*, 38 Or LUBA 736 (2000).

25.1 Local Government Procedures – Generally. A city is not estopped from finding that a dwelling exceeds a code-mandated 28-foot height limit where a city building official approved the plans for the proposed dwelling, but the city building official who approved the plans did not have the authority to authorize a dwelling in excess of 28 feet. *Rivera v. City of Bandon*, 38 Or LUBA 736 (2000).

25.1 Local Government Procedures – Generally. A county does not commit a procedural error where local ordinances allow the county to call up a hearings officer

decision and refer it back for reconsideration without first providing an opportunity for a hearing. A party is not prejudiced by such a summary procedure where it is provided an opportunity to appeal the hearings officer's decision on reconsideration. *R/C Pilots Association v. Marion County*, 33 Or LUBA 532 (1997).

25.1 Local Government Procedures – Generally. The failure of a city council expressly to consider denial of an application is not a basis for reversal or remand when the city council concluded the record supported approval. *Brown v. City of Ontario*, 33 Or LUBA 180 (1997).

25.1 Local Government Procedures – Generally. A city does not err by adopting an alternative decision on the merits in addition to dismissing a local appeal, where petitioner is not prejudiced by the alternative decision. *Shaffer v. City of Salem*, 33 Or LUBA 57 (1997).

25.1 Local Government Procedures – Generally. Where petitioner appealed a planning director determination that a solid waste transfer station is an outright permitted use in a particular zone, the city was neither required nor authorized to expand the scope of the local appeal hearing to include consideration of whether a solid waste transfer station is also an appropriate use in that zone. *Pend-Air Citizen's Comm. v. City of Pendleton*, 29 Or LUBA 362 (1995).

25.1 Local Government Procedures – Generally. A local government does not violate Goal 1 or comprehensive plan policies implementing Goal 1 by adopting a decision six weeks after the final planning staff report is available, where a great deal of citizen involvement and participation preceded issuance of the final staff report. *Friends of Cedar Mill v. Washington County*, 28 Or LUBA 477 (1995).

25.1 Local Government Procedures – Generally. A local government adjustment committee's failure to adopt written rules of procedure is a procedural error and provides a basis for reversal or remand only if petitioners' substantial rights are violated. *Edwards v. City of Portland*, 27 Or LUBA 262 (1994).

25.1 Local Government Procedures – Generally. That a stipulation concerning the applicability of a local government's land use regulations to certain property is entered into by the local government and a property owner outside the confines of a land use proceeding and without following the procedures required for land use decision making does not make the decision any less a land use decision. *DLCD v. Benton County*, 27 Or LUBA 49 (1994).

25.1 Local Government Procedures – Generally. There is no basis for the application of the "exclusionary rule," which applies to criminal proceedings, to local land use proceedings. *Choban v. Washington County*, 25 Or LUBA 572 (1993).

25.1 Local Government Procedures – Generally. There is no general legal requirement that petitioners be provided an opportunity to rebut proposed local government findings. *Adler v. City of Portland*, 25 Or LUBA 546 (1993).

25.1 Local Government Procedures – Generally. Claim preclusion applies to preclude relitigation of a claim that has been litigated. Where a party's claim of a vested right to residential use of certain property was determined in a circuit court judgment, to which the local government and other parties to the LUBA appeal were also parties, the local government is precluded from making a new determination on that vested right claim, even if it would otherwise have jurisdiction to do so. *Joines v. Linn County*, 24 Or LUBA 456 (1993).

25.1 Local Government Procedures – Generally. In the absence of a specific provision in the local code to the contrary, there is no general requirement that a party have an opportunity to object to proposed findings submitted to the local decision maker by the prevailing party in a local land use proceeding. *Adler v. City of Portland*, 24 Or LUBA 1 (1992).

25.1 Local Government Procedures – Generally. Where the maximum penalty for each separate violation of an ordinance is 500 dollars, and there is no possibility of imprisonment for violating the ordinance, the penalties provided by the ordinance are civil, not criminal, in nature. Therefore, a vagueness challenge based solely on the constitutional vagueness analysis applied where criminal sanctions are possible, provides no basis for reversal or remand of such ordinance *Cope v. City of Cannon Beach*, 23 Or LUBA 233 (1992).

25.1 Local Government Procedures – Generally. Where petitioners are afforded a *de novo* evidentiary hearing before a hearings officer, and where petitioners had an adequate opportunity to explain to the hearings officer why the planning department decision appealed from was wrong, that the planning department decision may have been based on erroneous assumptions provides no basis for reversal or remand of the hearings officer's decision. *Ralston v. Clackamas County*, 22 Or LUBA 573 (1992).

25.1 Local Government Procedures – Generally. A local code provision requiring that only members of the board of commissioners reviewing the entire record may act on a matter under review does not impose an affirmative obligation on each county commissioner to demonstrate he or she reviewed the entire record. Absent some indication in the record to the contrary, LUBA will assume a county commissioner performed her duties in accordance with the local code provision. *Toth v. Curry County*, 22 Or LUBA 488 (1991).

25.1 Local Government Procedures – Generally. Although a local decision maker is required to *consider and weigh* all relevant evidence before it in making its decision, it is not required to *refer to* all evidence considered in its findings. *Angel v. City of Portland*, 21 Or LUBA 1 (1991).

25.1 Local Government Procedures – Generally. City charter requirement for a majority vote of the governing body (as opposed to a majority vote of a quorum) is to be given effect and may leave a quorum of the governing body unable to achieve the required majority vote. *Strawn v. City of Albany*, 20 Or LUBA 344 (1990).

25.1 Local Government Procedures – Generally. It is not error for a governing body to provide a lower local tribunal with a memorandum in the nature of a declaratory ruling interpreting certain code provisions while an application to which those code provisions apply is pending before the lower tribunal. Even if it were a procedural error, there would be no prejudice if petitioners had an adequate opportunity in a local appeal to address the interpretation and applicability of the code provisions in question before the governing body. *Hoffman v. City of Lake Oswego*, 20 Or LUBA 64 (1990).

25.1 Local Government Procedures – Generally. A city charter provision delaying the effective date of an ordinance does not also delay the date the ordinance becomes a final decision subject to appeal to LUBA. *Club Wholesale v. City of Salem*, 19 Or LUBA 576 (1990).