

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. A local government may use additional hearing procedures other than the minimums specified in ORS 197.763 as long as it does not deny any participants’ rights under the statute. Where a hearings officer allows a post-hearing open record period, followed by a responsive open record period where any party may submit new evidence to respond to new evidence submitted in the first open record period, the hearings officer is not required by ORS 197.763 or local code to allow participants the right to rebut new evidence submitted in the responsive open record period. Under ORS 197.763, there is generally no right to rebut new evidence submitted in response to evidence in the record. *Curl v. City of Bend*, LUBA No 2020-103 (July 21, 2021).

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. Where a local government requires opponents to be represented at a hearing by one spokesperson, their attorney, and prohibits oral testimony from the opponents themselves, and where the local government makes express and repeated findings that the opponents’ written testimony is not credible or not supported when viewed through the “obscured” lens of the local government’s judgement of the opponents’ attorney’s credibility, LUBA will conclude that the local government’s procedure prejudiced the opponents’ substantial rights to submit their case and to receive a full and fair hearing. *Schrepele v. Yamhill County*, 81 Or LUBA 895 (2020).

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. Any party may request an opportunity under ORS 197.763(6)(c) to respond to “additional written evidence” that was submitted during an open record period prior to the conclusion of the initial evidentiary hearing. But that response must be limited to responding to the “additional written evidence” that is submitted during the open record period. *Grahn v. City of Yamhill*, 76 Or LUBA 258 (2017).

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. Where a party’s evidentiary response to “additional written evidence” that was submitted during the initial open record period at the conclusion of the initial evidentiary hearing pursuant to ORS 197.763(6)(c) includes additional evidence that goes beyond responding to that “additional written evidence” that was submitted during the initial open record period, a local government must either reject the additional evidence or give all parties an opportunity to rebut the additional evidence. *Grahn v. City of Yamhill*, 76 Or LUBA 258 (2017).

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. Neither ORS 197.830(13)(b) nor OAR 661-010-0021 dictate the scope of the issues that must be addressed when a local government withdraws a decision for reconsideration after it has been appealed to LUBA. The statute and rule also do not dictate how a local government must address offers of additional evidence at a reconsideration hearing. *Central Oregon Landwatch v. Crook County*, 76 Or LUBA 396 (2017).

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. Under ORS 197.763(6)(a) through (c), prior to the conclusion of the initial evidentiary hearing any party may request an opportunity to present additional evidence. In that event, the hearing body must either continue the hearing or leave the record open to receive the additional evidence, and failure to do so is a procedural error. However, where the party making the request appeals and is given a de novo hearing before the local appellate body at which it is allowed to submit additional evidence,

the hearings body's error did not result in prejudice to the party's substantial rights and therefore provides no basis for LUBA to remand. *Pinnacle Alliance Group, LLC v. City of Sisters*, 73 Or LUBA 169 (2016).

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. A local government does not err in rejecting as “new evidence” annotated site plans and calculations that were submitted after the close of the record in order to rebut the applicant's testimony that the proposed development complies with lot coverage standards. *Knapp v. City of Jacksonville*, 70 Or LUBA 259 (2014).

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. The requirements for continuances and open record periods in ORS 197.763(6)(a), (b) and (c) only apply to the initial evidentiary hearing and do not apply to subsequently continued hearings or open record periods. *Warren v. Josephine County*, 67 Or LUBA 74 (2013).

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. A hearings officer's failure to clearly explain to petitioner that the applicable procedures limit final written argument to the applicant does not constitute procedural error; indeed, allowing petitioner to submit final written argument as petitioner requested would violate the applicable procedures. *Purtzer v. Jackson County*, 67 Or LUBA 205 (2013).

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. Where a city councilor at first announces that she will not participate in a land use appeal but later elects to participate, she must (1) disclose the substance of any *ex parte* communications she had in the matter as soon as possible after that election, and (2) give all parties an opportunity to respond to and rebut the substance of those communications. *Wal-Mart Stores, Inc. v. City of Hood River*, 67 Or LUBA 332 (2013).

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. Where a quasi-judicial land use decision maker fails to disclose any *ex parte* contacts, a petitioner does not waive its right to assign error to that failure at LUBA by failing to object below to the failure to disclose *ex parte* contacts. *Wal-Mart Stores, Inc. v. City of Hood River*, 67 Or LUBA 332 (2013).

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. A city councilor cannot claim to be unbiased and participate as a decision maker in a quasi-judicial land use appeal where that city councilor initially declared she would not participate as a decision maker due to bias or potential bias, and thereafter submitted documents as a party opposing the application. *Wal-Mart Stores, Inc. v. City of Hood River*, 67 Or LUBA 332 (2013).

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. Although there are LUBA decisions that have found a decision maker was biased because the decision maker exhibited an “emotional commitment” for or against a land use application, an “emotional commitment” is not required for disqualifying bias. A decision maker who, while acting as a party in a quasi-judicial land use proceeding, expresses opposition to a proposal in focused, unemotional and analytical terms can be just as biased as a decision maker who does so in emotional terms. *Wal-Mart Stores, Inc. v. City of Hood River*, 67 Or LUBA 332 (2013).

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. Where the record suggests that a deadlocked city council might have broken that deadlock with continued deliberations and thereby avoided the need to invoke the “rule of necessity” to permit a biased city councilor to vote and break the tie, the city council invoked the rule of necessity prematurely. *Wal-Mart Stores, Inc. v. City of Hood River*, 67 Or LUBA 332 (2013).

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. Where the rule of necessity is properly invoked, because the votes necessary to break a tie and take action on a land use appeal cannot be achieved through further deliberation and there is no other body that can render the decision, the rule of necessity may be invoked and a decision maker who previously withdrew from participation due to bias or potential bias may participate as a decision maker to break the tie and allow the city council to take action. *Wal-Mart Stores, Inc. v. City of Hood River*, 67 Or LUBA 332 (2013).

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. Parties to a land use proceeding have the right to review and respond to substantive changes in the application that occur during the proceedings. If such a change occurs after the close of the record or hearing, the local government may be required to re-open the record to allow other parties a reasonable opportunity to submit responsive testimony and evidence. Failure to do so can be procedural error and a basis for remand, if the petitioners demonstrate the error prejudiced their substantial rights. *Conte v. City of Eugene*, 66 Or LUBA 334 (2012).

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. Remand is warranted, where a city’s procedural error in rejecting the petitioner’s request to submit evidence to respond to a substantive change in the application after the close of the record prejudiced the petitioner’s substantial rights to respond to the changed application. *Conte v. City of Eugene*, 66 Or LUBA 334 (2012).

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. LUBA will deny a motion to consider petitioner’s affidavit regarding how his testimony to the planning commission would have been different if he had not been misinformed regarding the time limits, where the decision before LUBA is the city council decision conducted after an evidentiary hearing, and petitioner does not explain why any error committed by the planning commission was not cured by the proceedings before the city council. *Buel-McIntire v. City of Yachats*, 63 Or LUBA 452 (2011).

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. A petitioner’s allegations that the city mayor cut off his oral testimony to censor the content of petitioner’s testimony is not supported by the record, where the mayor gave the petitioner the same amount of time to speak as other participants and there is no indication in the record that the mayor’s attempt to hold petitioner to the announced three-minute time limit was based on the content of petitioner’s testimony. *Claus v. City of Sherwood*, 62 Or LUBA 67 (2010).

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. A city council hearing on a planning commission recommendation to approve a planned unit

development application is not a “continued” evidentiary hearing for purposes of a code provision implementing ORS 197.763(6) that allows participants to request the opportunity to respond to new evidence submitted at a continued hearing. *Claus v. City of Sherwood*, 62 Or LUBA 67 (2010).

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. Limiting a party to 10 minutes for oral testimony in a quasi-judicial land use hearing before a design review board, while allowing unlimited written testimony, and limiting an appeal of the design review board to the city council to an on-the-record review does not violate the party’s right to due process. *Reeves v. City of Wilsonville*, 62 Or LUBA 142 (2010).

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. When during the proceedings on remand from LUBA, the local government allows additional argument but no new evidence, and the local government redacts written testimony that it considers new evidence, the unredacted documents are not properly part of the record. *Columbia Riverkeeper v. Clatsop County*, 60 Or LUBA 454 (2009).

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. When during the proceedings on remand from LUBA, the local government allows additional argument but no new evidence, the local government is not required to erase oral testimony that contains new evidence from the recordings of meetings submitted to LUBA. OAR 661-010-0025(1)(b) only applies to *written* documents, not oral testimony. *Columbia Riverkeeper v. Clatsop County*, 60 Or LUBA 454 (2009).

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. A local government that accepts a letter on the last day of the rebuttal period does not err in accepting a signed version of the same letter one day later after the rebuttal period has ended. *Oregon Shores Cons. Coalition v. City of Brookings*, 58 Or LUBA 421 (2009).

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. A local government may allow public testimony and materials to be submitted into the record for the limited purpose of determining whether the proposed decision properly describes a prior oral decision, even if that testimony and materials relate to the merits of the underlying decision, *if* the local government makes clear that the scope of the hearing is limited to that narrow issue. *Thompson v. Jackson County*, 53 Or LUBA 317 (2007).

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. A hearings officer’s refusal to leave the record open to allow the petitioners to respond to alleged “new evidence” that was submitted during the final evidentiary hearing is not a basis to reverse or remand the decision, where petitioners fail to establish that in fact “new evidence” was submitted or that there is anything to rebut under the hearings officer’s unchallenged interpretation of the applicable code provision. *Angius v. Washington County*, 52 Or LUBA 222 (2006).

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. A city council does not err in denying an applicant’s request for a *de novo* appeal hearing before the city council, where the city code provides that local appeals are limited to the record before the planning commission and a zoning ordinance provision that permits the city council to hear appeals

de novo does not limit the city council's discretion in determining whether it will do so. *Smith v. City of St. Paul*, 45 Or LUBA 281 (2003).

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. If a county rejects evidence that was submitted after the close of the record, and does not consider that evidence in making its decision, the county's refusal to permit rebuttal of that late submittal does not provide a basis for reversal or remand. *Sheppard v. Clackamas County*, 45 Or LUBA 507 (2003).

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. Where it is clear that a decision maker considered evidence that was submitted after the close of the record, and that the decision maker may have relied on that evidence in making its decision, the decision maker errs in refusing to allow rebuttal to that evidence, notwithstanding a statement in the final decision document that the disputed evidence was rejected. *Sheppard v. Clackamas County*, 45 Or LUBA 507 (2003).

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. A local government properly rejects evidence submitted after the close of the evidentiary record, where the proponent of the evidence did not adequately request or preserve the opportunity to submit additional evidence. *Doty v. Jackson County*, 43 Or LUBA 34 (2002).

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. Even where no specific statutory or local provisions govern limits on presentation of evidence on remand from LUBA, the parties have a fundamental right during an evidentiary proceeding to present and rebut evidence. An evidentiary proceeding on remand that fails to offer any opportunity to rebut new evidence submitted on remand is inconsistent with *Fasano v. Washington Co. Comm.*, 264 Or 574, 503 P2d 23 (1973). *Crowley v. City of Bandon*, 43 Or LUBA 79 (2002).

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. A local government does not commit reversible error by limiting a party to two minutes of testimonial rebuttal where (1) the party agreed to the two-minute limit, (2) there is no legal obligation for the city to hold the record open or continue the evidentiary hearing to allow written rebuttal, and (3) the party does not demonstrate to LUBA that the evidence the party wishes to rebut is relevant. *Lord v. City of Oregon City*, 43 Or LUBA 361 (2002).

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. Where a party and the party's attorney are given an adequate opportunity to rebut the substance of a short letter, the local government commits no error in refusing to provide an additional hearing for the party to offer further rebuttal of the letter. *Lord v. City of Oregon City*, 43 Or LUBA 361 (2002).

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. A local code providing that the scope of review for an appeal of a planning commission decision to the city council is a "Record Hearing," and defining a "Record Hearing" as a hearing limited to review of the existing record or evidence previously submitted, does not limit the *legal issues* or arguments that may be presented on appeal; only the *evidence* that may be considered. *Haug v. City of Newberg*, 42 Or LUBA 411 (2002).

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. A local appellate body may, on its own, raise issues that are not presented in the notice of local appeal, where the local code does not specifically limit the scope of review on appeal to the issues identified in the notice of local appeal. *Haug v. City of Newberg*, 42 Or LUBA 411 (2002).

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. Where a local government departs from the procedures for continuing a hearing set out in ORS 197.763(6)(a) to (c), the revised procedures must be clearly communicated to all parties and, preferably, reduced to writing. *Hawman v. Umatilla County*, 42 Or LUBA 223 (2002).

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. Where the circumstances under which oral testimony would be allowed at a continued hearing are not clearly defined, and petitioners allege that they were prejudiced by being denied an opportunity to present oral testimony at the continued hearing based on the ambiguity of the procedures, remand is appropriate to ensure that petitioners receive an opportunity to present that oral testimony. *Hawman v. Umatilla County*, 42 Or LUBA 223 (2002).

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. Where, on remand from LUBA, the local government adopts a procedure that is proposed by the parties and that allows all sides to submit written evidence and written rebuttals, but limits oral testimony at the evidentiary hearing before the local government to summaries and explanations of previous submittals, the procedure is not correctly interpreted to prohibit an oral explanation of previously submitted evidence that includes additional supportive facts in response to the previously submitted written rebuttal. *Terra v. City of Newport*, 40 Or LUBA 286 (2001).

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. Under ORS 197.763(6)(e), a local government may consider final written legal argument. However, a local government may not consider new factual allegations, as part of legal arguments submitted under ORS 197.763(6)(a), without providing an opportunity for rebuttal. *Dept. of Transportation v. City of Eugene*, 38 Or LUBA 814 (2000).

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. Where a city allows one party more time to present oral testimony during a land use hearing than is allowed another party, the unequal allocation of time will not constitute error so long as the city's decision explains the reason for the differentiation, there is an unlimited opportunity to submit written testimony, and the unequal allocation of time does not cause substantial prejudice. *Kane v. City of Beaverton*, 38 Or LUBA 183 (2000).

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. A local government may limit oral testimony if adequate opportunity is provided for the submission of written testimony. *Wild Rose Ranch Enterprises v. Benton County*, 37 Or LUBA 368 (1999).

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. Under ORS 215.416(11)(a), a hearings officer is obligated to conduct a *de novo* hearing that allows the introduction and consideration of all relevant evidence notwithstanding that the evidence could

have been presented to the initial decision maker, but was not. *Johnson v. Clackamas County*, 37 Or LUBA 73 (1999).

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. Absent land use regulations that specify a particular procedure when a decision is withdrawn for reconsideration pursuant to OAR 661-010-0021, the procedures that govern depend on what stage in the process the local government returns to on reconsideration. Procedures governing evidentiary hearings are not applicable when the local government does not reopen the evidentiary record during the reconsideration proceedings. *McElroy v. City of Corvallis*, 36 Or LUBA 185 (1999).

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. A staff recommendation regarding appropriate conditions of approval that is submitted after the close of the evidentiary hearing is not new “evidence” that might, if submitted by one of the parties, trigger an obligation to reopen the record for rebuttal. *Hunt v. City of Ashland*, 35 Or LUBA 467 (1999).

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. ORS 197.763(6)(c) requires a participant to file a written request with the local government for an opportunity to respond to new evidence submitted during the period after a hearing that the record is left open. *Brown v. City of Ontario*, 33 Or LUBA 180 (1997).

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. ORS 197.763(6)(e) allows an applicant seven days after the record is closed to all other parties to submit final written arguments in support of the application. *Brown v. City of Ontario*, 33 Or LUBA 180 (1997).

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. Where a continuance required by ORS 197.753(4)(b) to allow opponents to respond to new evidence was not granted before the city and county planning commissions made their recommendation to the city council and county commissioners, a procedural error occurred, but that error is no basis for remand when the opponents submitted a detailed rebuttal during the year-long interim between the date of the recommendation and the decision of the governing bodies, who considered additional evidence and testimony as part of a de novo review of the applications. *Concerned Citizens v. Jackson County*, 33 Or LUBA 70 (1997).

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. A local government commits procedural error when it does not allow petitioners the opportunity to address the applicability of an ordinance that had not been identified as an applicable criterion, and then adopts findings based on that ordinance. If the ordinance is extrinsic to the applicable criteria, then it is evidence which the parties have the right to rebut; if the ordinance is an applicable criterion, then it must be identified in the hearing notice with greater specificity than “all other adopted county ordinances.” *Nicholson v. Clatsop County*, 32 Or LUBA 399 (1997).

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. Where petitioners are qualified participants in a local appeal, but are denied the opportunity to respond to

issues raised in the local appeal, their substantial rights are prejudiced and the challenged decision must be remanded. *Spencer Creek Neighbors v. Lane County*, 32 Or LUBA 349 (1997).

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. Under ORS 197.763(6), the local government is only obligated to leave the record open for seven days after the *initial* evidentiary hearing; language in a local hearing notice to the contrary cannot create additional requirements under that statute. *Gross v. City of Tigard*, 32 Or LUBA 93 (1996).

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. The city council’s notice of hearing stating that any participant “may request” that the record remain open for seven days after the hearing does not bind the city to grant such a request when it is not otherwise required by statute, and petitioner is not deprived of procedural due process rights where the city denies his request that the record be left open. *Gross v. City of Tigard*, 32 Or LUBA 93 (1996).

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. Although the county’s refusal to permit a party below to participate in a hearing on remand prejudiced that party’s substantial rights, ORS 197.835(9)(a)(B) permits remand only where the failure to satisfy applicable procedural requirements prejudiced the substantial rights of the *petitioner*. *Fraley v. Deschutes County*, 32 Or LUBA 27 (1996).

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. Statements by city staff at a local appeal hearing regarding evidence already in the record do not give petitioner a right to rebuttal. *Thornton v. City of St. Helens*, 31 Or LUBA 287 (1996).

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. Where a local ordinance specifies that board of commissioner hearings are conducted on the record, and where petitioners establish no violation of any statutory notice requirement, petitioners establish no basis for relief in alleging that they relied on various notices, which appeared to petitioners to be contradictory, to conclude they were not required to present all evidence before the planning commission, but would be able to present their case *de novo* before the board of commissioners. *Canfield v. Yamhill County*, 31 Or LUBA 25 (1996).

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. When the city council did not attempt to limit the issues addressed by petitioner at a city council hearing on appeal from the planning commission, petitioner may raise at LUBA any issues raised before the city council. *Thompson v. City of St. Helens*, 30 Or LUBA 339 (1996).

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. Where a local governing body is authorized to limit issues on appeal to issues raised before the planning commission but the local government failed to keep an adequate record of the planning commission proceedings, and LUBA cannot determine whether the governing body correctly limited its review to two particular issues, LUBA will remand the governing body’s decision. *Andrews v. City of Prineville*, 28 Or LUBA 653 (1995).

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. A local government commits error by approving a modified partition application after the local evidentiary hearing is closed and refusing petitioner an opportunity to comment on the modified application before approving it. *Tognoli v. Crook County*, 28 Or LUBA 527 (1995).

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. Where a decision maker improperly refuses to allow relevant testimony, and it is not clear whether the decision maker’s later allowance of expanded oral and written testimony rendered the initial error harmless, the decision will be remanded. *Salem-Keizer School Dist. 24-J v. City of Salem*, 27 Or LUBA 351 (1994).

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. ORS 197.763(7) does not preclude a local government from reopening an evidentiary record for limited purposes after it has been closed. It simply provides that if the record is reopened, new issues may be raised in an appeal to LUBA with regard to the evidence accepted after the record is reopened. *Sorte v. City of Newport*, 26 Or LUBA 236 (1993).

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. Where a local government denies a person the right to present testimony on her own behalf, that person “appeared” within the meaning of ORS 197.830(6) and OAR 661-10-050(1), at least for the purpose of challenging the local government’s decision to limit testimony. *Sorte v. City of Newport*, 25 Or LUBA 828 (1993).

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. A local government decision maker is entitled to consult with its attorney regarding evidence submitted during the evidentiary phase of the local proceeding and interpretive issues. Parties have no right to rebut the substance of a local government attorney’s advice to the local government decision maker. *Linebarger v. City of The Dalles*, 24 Or LUBA 91 (1992).

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. A local government may limit its proceedings on remand from LUBA to correcting the deficiencies that led to the remand and, unless the local code so requires, need not repeat the entire process it followed in making the initial decision. *Bartels v. City of Portland*, 23 Or LUBA 182 (1992).

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. An uncontroverted allegation that a party was provided *no opportunity* to rebut evidence placed before the decision maker through *ex parte* contacts and site observations is sufficient to demonstrate prejudice to that party’s substantial rights. *Angel v. City of Portland*, 21 Or LUBA 1 (1991).

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. Where the local record indicates a petitioner was not allowed to speak at a hearing because his testimony would include new evidence, the acceptance of which would indisputably have been improper, and petitioners do not claim that his testimony would *not* have included new evidence, petitioners fail to identify a basis upon which LUBA may grant relief. *White v. City of Oregon City*, 20 Or LUBA 470 (1991).

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. Where petitioners have adequate notice of hearing, and are not surprised by a modified application or by newly applicable standards, the right to rebut evidence does not require the county to continue its hearings to provide petitioners more time to develop a rebuttal. *Stefan v. Yamhill County*, 18 Or LUBA 820 (1990).

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. Where a city is not required under its code to allow surrebuttal if rebuttal is limited to nonevidentiary testimony and evidence already in the local record, parties asserting city denial of surrebuttal as reversible error must show that the rebuttal included new evidence and that denial of an opportunity to rebut such evidence prejudices their substantial rights. *Walker v. City of Beaverton*, 18 Or LUBA 712 (1990).

25.6.2 Local Government Procedures – Hearings – Limitations on Presentation. A city does not commit error in refusing to accept irrelevant evidence. A petitioner challenging a city's refusal to accept evidence on the basis of irrelevancy must demonstrate that the offered evidence is relevant to the approval criteria. *Walker v. City of Beaverton*, 18 Or LUBA 712 (1990).