

27.1 LUBA Procedures/Rules – Generally. LUBA will not consider at oral argument power point slides or written copies of a party’s oral argument, other than copies of materials already in the record. *Claus v. City of Sherwood*, 62 Or LUBA 67 (2010).

27.1 LUBA Procedures/Rules – Generally. Where one party moves to strike portions of another party’s oral argument that allegedly raises new issues not presented in the briefs, given the difficulty of resolving disputes about what is a “new” issue and how to “strike” portions of oral argument, LUBA will view the motion as a request that LUBA focus its review on the issues framed in the briefs, the evidence cited in the record, and the portions of oral argument that discuss those issues and evidence. *Claus v. City of Sherwood*, 62 Or LUBA 67 (2010).

27.1 LUBA Procedures/Rules – Generally. When a party informs LUBA the day before oral argument that he wishes to appear by phone, but fails to call into LUBA’s hearing room as directed by LUBA staff, LUBA will consider that the party has waived oral argument under OAR 661-010-0040(2), conduct oral argument without his participation, and deny the party’s later-submitted motion to file “written oral argument.” *Kane v. City of Beaverton*, 61 Or LUBA 234 (2010).

27.1 LUBA Procedures/Rules – Generally. When a petitioner waits until the rebuttal portion of oral argument to respond to an argument that issues were waived under ORS 197.763(1) and 197.835(3) and provides only a general response that does not include citations to the record, LUBA will rule on the waiver argument as if there had been no response at all. *Boucot v. City of Corvallis*, 60 Or LUBA 57 (2009).

27.1 LUBA Procedures/Rules – Generally. When a dispute arises as to whether new issues were raised at oral argument, rather than submitting a formal motion to strike and response to the motion, the better practice is to briefly object at oral argument or submit a concise written objection. The purpose of the objection is not to convince LUBA that a new issue was raised, but simply to alert LUBA that a party believes a new issue was raised so that the LUBA will focus its attention on the issues presented in the briefs and the oral arguments that discuss the issues raised in the briefs. *NAAVE v. Washington County*, 59 Or LUBA 153 (2009).

27.1 LUBA Procedures/Rules – Generally. Parties may seek advice from LUBA’s administrative staff, but parties assume the risk that the advice may be incorrect. Parties themselves are ultimately responsible for complying with LUBA’s rules and deadlines. *Waluga Neighborhood Association v. City of Lake Oswego*, 59 Or LUBA 380 (2009).

27.1 LUBA Procedures/Rules – Generally. If a petition for review is delivered to the United States Postal Service and mailed to LUBA via “Priority Mail” it is mailed by “First Class Mail” and therefore filed on the date it was delivered to the United States Postal Service under OAR 661-010-0075(2)(a)(B), where the United States Postal Service defines “First Class Mail” to include “Priority Mail.” *Canfield v. Lane County*, 59 Or LUBA 505 (2009).

27.1 LUBA Procedures/Rules – Generally. Whether the OAR 661-010-0030(1) requirement that a LUBA appeal be dismissed if the petition for review is not filed within the 21-day deadline established by that rule is a *jurisdictional* requirement or merely a *compulsory non-jurisdictional* basis for dismissing the appeal, the ten-day rule in OAR 661-010-0065(2) that requires a motion to be filed within 10-days after discovery of a failure to comply with LUBA’s rules does not apply to a motion to dismiss based on a petitioner’s failure to comply with the deadline established by OAR 661-010-0030(1) for filing the petition for review. *Canfield v. Lane County*, 59 Or LUBA 505 (2009).

27.1 LUBA Procedures/Rules – Generally. LUBA will decline a request to interpret a code provision in the first instance under ORS 197.829(2) and affirm the decision under the proposed interpretation, when the request and proposed interpretation are advanced for the first time at oral argument, and the interpretative issue is a mixed question of law and fact that the city council is in the best position to resolve in the first instance. *Fessler v. City of Fossil*, 55 Or LUBA 1 (2007).

27.1 LUBA Procedures/Rules – Generally. Argument presented in a petitioner’s post-oral argument letter is not timely submitted where that argument could have been included in the petitioner’s reply brief. *Rinhart v. Umatilla County*, 53 Or LUBA 402 (2007).

27.1 LUBA Procedures/Rules - Generally. Under OAR 661-010-0075(6) corporations, including municipal corporations, must be represented by an attorney in a LUBA appeal. Although LUBA does not require that the local government record of an appealed land use decision be filed by an attorney, any subsequent appearance by a city—after the record is filed—to oppose record objections, oppose any other motions, file motions on the local government’s behalf or otherwise appear on behalf of the local government must be through an attorney who is admitted to practice in the State of Oregon. *Robson v. City of La Grande*, 53 Or LUBA 604 (2006).

27.1 LUBA Procedures/Rules – Generally. Inadvertent introduction of new evidence at oral argument, while improper, does not provide a basis for striking the entirety of oral argument; rather, to the extent oral argument includes evidence not in the record, it will be disregarded. *Hecker v. Lane County*, 52 Or LUBA 91 (2006).

27.1 LUBA Procedures/Rules – Generally. An intervenor company’s failure to identify itself correctly in its motion to intervene might warrant a motion to require an amended motion to intervene but it does not justify denying the motion to intervene. *O’Brien v. City of Portland*, 52 Or LUBA 113 (2006).

27.1 LUBA Procedures/Rules – Generally. Delaying oral argument in an appeal of a local government’s decision following a remand from LUBA is not an authorized sanction for the local government’s delay in responding to an order awarding costs to petitioners in the prior appeal that led to the remand. *Rice v. City of Monmouth*, 52 Or LUBA 786 (2006).

27.1 LUBA Procedures/Rules – Generally. Petitioner’s late filing of a motion to transfer is a technical violation of OAR 661-010-0075(11)(b) where it is filed approximately five months after the first motion challenging LUBA’s jurisdiction, but only 16 days after an amended motion to dismiss is filed, and the motion to transfer could not have been ruled on before LUBA ruled on the jurisdictional challenge in any event. *ZRZ Realty Company v. City of Portland*, 49 Or LUBA 309 (2005).

27.1 LUBA Procedures/Rules – Generally. While LUBA may have general authority to adopt rules allowing for extension of less critical statutory deadlines, it is unlikely that the legislature intended LUBA to have the authority to adopt rules extending more critical deadlines, including the 21-day deadline for filing the motion to intervene. *Grahn v. City of Newberg*, 49 Or LUBA 762 (2005).

27.1 LUBA Procedures/Rules – Generally. Where a party commits multiple violations of LUBA’s rules regarding service, whether those violations are “technical violations” that shall not interfere with LUBA’s review under OAR 661-01-0005 depends on the cumulative effect of those violations on other parties’ substantial rights, rather than the individual effect of each violation. *Moreland v. City of Depoe Bay*, 48 Or LUBA 136 (2004).

27.1 LUBA Procedures/Rules – Generally. Adding highlighting to a copy of a zoning map that is in the record may not technically comply with OAR 661-010-0040(5) regarding demonstrative exhibits at oral argument, but the map will be allowed where there is no prejudice to the opposing party. A table summarizing the local government’s findings and corresponding pages of the appendix to the petition for review where those findings can be located could have and should have been included in the brief, and will not be considered if presented at oral argument. *Emmons v. Lane County*, 48 Or LUBA 457 (2005).

27.1 LUBA Procedures/Rules – Generally. Parties may facilitate LUBA’s legal research by providing copies of cases, briefs that were filed in other appeals, or other research materials in their briefs. *Milne v. City of Canby*, 46 Or LUBA 213 (2004).

27.1 LUBA Procedures/Rules – Generally. LUBA will not consider a post-oral argument submittal where (1) the Board did not request the submittal, (2) the submittal does not address new case law or arguments that could not have been raised in the briefs, and (3) the submittal is not necessary to resolve assignments of error. *West Side Rural F.P.D v. City of Hood River*, 46 Or LUBA 451 (2004).

27.1 LUBA Procedures/Rules – Generally. A petitioner at LUBA may not cite to evidence supporting petitioners’ arguments for the first time during rebuttal at oral argument. Nevertheless, in the absence of a showing that reference to evidence in the record prejudices a party’s substantial rights, LUBA will deny a motion to strike that rebuttal. *Laurance v. Douglas County*, 45 Or LUBA 393 (2003).

27.1 LUBA Procedures/Rules - Generally. Where a petition for review is signed by a person who is not an active member of the Oregon State Bar, LUBA will allow the petition for review to be amended so that petitioners may sign the petition for review on their own behalf or an active member of the Oregon State Bar may sign the petition for review. *Roe v. City of Union*, 45 Or LUBA 736 (2003).

27.1 LUBA Procedures/Rules – Generally. Although LUBA may not apply technical pleading requirements that have no statutory basis, that prohibition is not violated by requiring that a petitioner correctly identify the part of the challenged decision that is challenged and the legal theory for that challenge. *Doherty v. Morrow County*, 44 Or LUBA 141 (2003).

27.1 LUBA Procedures/Rules – Generally. Even though granting a motion for voluntary remand would give a local government a second chance to respond to issues that it failed to respond to in the appealed decision, a motion for voluntary remand will not be denied for that reason alone, because forcing the local government to defend a decision that it does not believe is defensible would not serve the ORS 197.805 goal of quickly reaching finality in land use matters. *Doob v. Josephine County*, 43 Or LUBA 130 (2002).

27.1 LUBA Procedures/Rules – Generally. Denial of a motion for voluntary remand may be warranted if it is shown that a local government is making only half-hearted attempts to respond to relevant issues and then seeking serial voluntary remands to correct those half-hearted attempts. *Doob v. Josephine County*, 43 Or LUBA 130 (2002).

27.1 LUBA Procedures/Rules – Generally. Where two appeals concern the same decision, but the petitioner in one appeal will raise different issues than the petitioner in the other appeal, LUBA will not consolidate the appeals or suspend the second appeal while the first appeal is suspended for settlement discussions, where LUBA will ultimately have to reach the issues that will be raised in the second appeal in any event and the parties in first appeal agree not to take any action that would moot the second appeal while it is still pending at LUBA. *Doherty v. Morrow County*, 43 Or LUBA 627 (2002).

27.1 LUBA Procedures/Rules – Generally. While reply memoranda are not expressly provided for in LUBA's rules, and LUBA may strike such reply memoranda where they expand on or raise new issues not presented in the original motion, LUBA will not grant a motion to strike a reply memorandum that merely reiterates arguments made in an earlier motion, where granting the motion to strike would delay resolution of the underlying dispute. *Home Builders Assoc. v. City of Eugene*, 41 Or LUBA 553 (2001).

27.1 LUBA Procedures/Rules – Generally. LUBA will not reschedule oral argument to allow an intervenor to observe oral argument where intervenor's attorney can appear at oral argument as scheduled and rescheduling oral argument would result in a hardship on petitioner and would likely prevent LUBA from issuing its final opinion within the

deadline established by ORS 197.830(14). *Farrell v. Jackson County*, 40 Or LUBA 601 (2001).

27.1 LUBA Procedures/Rules – Generally. When LUBA grants a stipulated motion for voluntary remand, LUBA leaves it to the parties to ensure that the procedures they agree to employ on remand are adequate to accommodate the rights of any persons who are entitled to participate in those proceedings on remand. LUBA does not review and approve those procedures in advance. *Boly v. City of Portland*, 40 Or LUBA 537 (2001).

27.1 LUBA Procedures/Rules – Generally. Although parties to a stipulated voluntary remand may be bound by an agreement to limit the issues on remand concerning a disputed parking lot, non-parties are not bound by the stipulation and such non-parties have not waived their right to raise issues under *Beck v. City of Tillamook*, 313 Or 148, 153-54, 831 P2d 678 (1992), where the notice of hearing that preceded the only local hearing on the remanded decision failed to refer to the parking lot. *Boly v. City of Portland*, 40 Or LUBA 537 (2001).

27.1 LUBA Procedures/Rules – Generally. LUBA's rules do not require that we automatically provide copies of all pleadings and orders that were filed and issued before a party's motion to intervene is received. *Pereira v. Columbia County*, 39 Or LUBA 760 (2001).

27.1 LUBA Procedures/Rules – Generally. Where a brief includes as an appendix two letters that post-date the challenged decision and are not included in the record, LUBA will grant a motion to strike the letters but will not strike the brief in its entirety. *Willhoft v. City of Gold Beach*, 39 Or LUBA 743 (2000).

27.1 LUBA Procedures/Rules – Generally. Although LUBA's rules do not expressly authorize the filing of replies to responses to motions, LUBA's practice is to allow such reply memoranda when they are limited to new issues raised in a response memorandum. *Frevach Land Company v. Multnomah County*, 38 Or LUBA 729 (2000).

27.1 LUBA Procedures/Rules – Generally. LUBA may allow a party to submit a memorandum of additional citations of relevant authority with brief summaries. However, the memorandum will not be considered if it contains additional arguments, replies to issues raised in the response brief, or does not allow other parties adequate time to address the additional citations. *Stockwell v. Benton County*, 38 Or LUBA 621 (2000).

27.1 LUBA Procedures/Rules – Generally. While not obligated to do so, LUBA will consider replies and responses to replies to motions where appropriate and where such consideration will not unduly delay the appeal process. *Cedar Mill Creek Corr. Comm. v. Washington County*, 37 Or LUBA 1011 (2000).

27.1 LUBA Procedures/Rules – Generally. LUBA will grant a seven-week delay in oral argument at the request of petitioner and respondent, over the objection of intervenors-respondent, where the parties requesting the delay demonstrate that the local proceedings that will occur during the delay may result in a more expeditious resolution of the issues

presented in the petition for review. *Genstar Land Company Northwest v. City of Sherwood*, 36 Or LUBA 765 (1999).

27.1 LUBA Procedures/Rules – Generally. In deciding whether to grant a request for voluntary remand over petitioner’s objection, LUBA considers whether (1) all issues presented in the petition for review will be considered on remand and (2) the proceedings on remand will be *capable* of providing the petitioner with everything he would be entitled to from LUBA. In such circumstances, LUBA will grant a motion for voluntary remand over a petitioner’s objection unless LUBA concludes that its review to narrow the issues is more important or that the motives for the motion for voluntary remand are improper. *Quest International, Inc. v. City of Silverton*, 36 Or LUBA 259 (1999).

27.1 LUBA Procedures/Rules – Generally. A Board member is not obligated to recuse herself from participating in an appeal, where the party who requests recusal has not shown that the Board member is biased or otherwise disqualified from participating. *Claus v. City of Sherwood*, 35 Or LUBA 758 (1998).

27.1 LUBA Procedures/Rules – Generally. A motion for voluntary remand will be denied where the local government does not propose to address arguments that the challenged decision is prohibited as a matter of law or arguments that the local government improperly shifted the burden of proof. *Murphy Citizens Advisory Comm. v. Josephine County*, 35 Or LUBA 732 (1998).

27.1 LUBA Procedures/Rules – Generally. A motion to strike arguments presented by petitioner for the first time at oral argument will be denied where petitioner’s new arguments were presented in response to arguments presented in the respondent’s brief. *Goddard v. Jackson County*, 34 Or LUBA 402 (1998).

27.1 LUBA Procedures/Rules – Generally. LUBA allows parties to submit simple demonstrative handouts at oral argument. However, where such a handout is lengthy and complex and reformulates arguments contained in a lengthy petition for review, the handout will not be considered. *Sanders v. Yamhill County*, 34 Or LUBA 69 (1998).

27.1 LUBA Procedures/Rules – Generally. Generally, where the legislature fails to express any intention concerning the retroactivity of a statute, the statute applies only prospectively if the statute will impair existing rights, create new obligations or impose additional duties with respect to past transactions. *Gutoski v. Lane County*, 33 Or LUBA 866 (1997).

27.1 LUBA Procedures/Rules – Generally. Where petitioner fails to demonstrate that its substantial rights have been prejudiced, a motion for voluntary remand filed by the local government one week prior to oral argument will be allowed. *Smith v. Douglas County*, 33 Or LUBA 682 (1997).

27.1 LUBA Procedures/Rules – Generally. LUBA's rules do not permit additional submissions beyond the answer to a record objection or motion, and a party that relies on

LUBA's leniency, particularly when that party provides no explanation of why leniency is justified, takes a risk that additional submissions will not be read. *Village Properties, L.P. v. Oregon City*, 33 Or LUBA 206 (1997).

27.1 LUBA Procedures/Rules – Generally. The city's filing of a corrected response to record objections does not justify the filing of supplemental record objections well beyond the deadline for filing record objections. *Village Properties, L.P. v. City of Oregon City*, 32 Or LUBA 475 (1996).

27.1 LUBA Procedures/Rules – Generally. Although LUBA does on occasion refer to the Oregon Rules of Civil Procedure when the Board's rules do not address procedural issues, those rules are not binding on LUBA. *Pfeifer v. City of Silverton*, 32 Or LUBA 463 (1996). (*unpublished* headnote) *R&R'd on other grounds* by 146 Or App 191, 931 P2d 833 (1997).

27.1 LUBA Procedures/Rules – Generally. Although LUBA's rules do not expressly provide for the filing of reply memoranda in support of motions, LUBA may exercise its discretion to allow the filing of reply memoranda that address new issues raised in response memoranda. *Fechtig v. City of Albany*, 31 Or LUBA 441 (1996).

27.1 LUBA Procedures/Rules – Generally. A party may not assign error in a motion to dismiss. *Young v. Douglas County*, 31 Or LUBA 545 (1996).

27.1 LUBA Procedures/Rules – Generally. When a party makes a colorable claim that it will be substantially prejudiced by LUBA's failure to enforce its rules, LUBA will enforce the rules. *Save Amazon Coalition v. City of Eugene*, 30 Or LUBA 448 (1995).

27.1 LUBA Procedures/Rules – Generally. Motions to dismiss do not suspend the time limits for other events in LUBA's review process, and a combination of factors determines when during the appeal process LUBA decides such motions. *Pilate v. City of Banks*, 30 Or LUBA 433 (1995).

27.1 LUBA Procedures/Rules – Generally. OAR 660-10-025(1)(c) requires the local record submitted to LUBA to include minutes and tape recordings of the proceedings conducted by the governing body, regardless of whether such minutes and tapes were actually placed before the decision maker below. Under OAR 660-10-010(4), "governing body" includes a commission whose decision would become the local government's final decision if no local appeal were filed. *Champion v. City of Portland*, 28 Or LUBA 742 (1994).

27.1 LUBA Procedures/Rules – Generally. LUBA is not authorized to reject a document filed on behalf of a represented party because the attorney filing the document did not first obtain specific authority from that party to file the document. *Gettman v. City of Bay City*, 28 Or LUBA 121 (1994).

27.1 LUBA Procedures/Rules – Generally. LUBA's administrative rules were amended on June 22, 1994. These amendments apply to any appeal proceeding initiated by a notice of intent to appeal filed after June 30, 1994. *Champion v. City of Portland*, 28 Or LUBA 730 (1994).

27.1 LUBA Procedures/Rules – Generally. Allegations that a local government decision should be reversed for failure to follow local code provisions governing deadlines for holding a public hearing and issuing a final decision are properly presented in the petition for review, not in a motion to reverse. *Sanchez v. Clatsop County*, 27 Or LUBA 713 (1994).

27.1 LUBA Procedures/Rules – Generally. LUBA does not have authority to deny respondent the right to appear and defend its decision in an appeal before LUBA. *Sanchez v. Clatsop County*, 26 Or LUBA 631 (1994).

27.1 LUBA Procedures/Rules – Generally. LUBA no longer has authority to defer its review of appeals challenging decisions submitted for LCDC review under the pre-1991 periodic review process, because Oregon Laws 1993, chapter 435, repeals the statute authorizing LCDC continuation of previously initiated periodic reviews under the pre-1991 periodic review process. *Williams v. Clackamas County*, 26 Or LUBA 612 (1993).

27.1 LUBA Procedures/Rules – Generally. LUBA proceedings are not contested case proceedings governed by ORS 183.482 and the Attorney General's Model Rules of Procedure. *DLCD v. Klamath County*, 26 Or LUBA 589 (1993).

27.1 LUBA Procedures/Rules – Generally. Judicial review of LUBA decisions is governed solely by ORS 197.850. ORS 197.850 does not authorize LUBA to consider petitions for reconsideration or to stay its final opinions and orders. *DLCD v. Klamath County*, 26 Or LUBA 589 (1993).

27.1 LUBA Procedures/Rules – Generally. In considering an applicant's request for voluntary remand of a decision granting development approval, where petitioner objects to the request, LUBA will not infer bad faith or improper motives from the potential economic return the applicant may receive if the proposed development is ultimately approved. *Hastings Bulb Growers, Inc. v. Curry County*, 25 Or LUBA 558 (1993).

27.1 LUBA Procedures/Rules – Generally. Unless the particular circumstances of a case make narrowing the issues on remand clearly more important than allowing a local government's request for a voluntary remand of its decision to address each of the issues raised in the petition for review, a motion for voluntary remand should be granted. *Hastings Bulb Growers, Inc. v. Curry County*, 25 Or LUBA 558 (1993).

27.1 LUBA Procedures/Rules – Generally. LUBA has no authority to reconsider or clarify its final opinions and orders. *Caine v. Tillamook County*, 25 Or LUBA 785 (1993).

27.1 LUBA Procedures/Rules – Generally. Where a motion to dismiss is filed on the basis that petitioners failed to exhaust local remedies, but an appeal of a local government decision not to accept petitioners' local appeal of the decision challenged at LUBA is pending below, LUBA cannot determine whether petitioners failed to exhaust local remedies, and will suspend consideration of the motion to dismiss until the local government makes a final decision on whether to accept petitioners' local appeal. *Hart v. Jefferson County*, 25 Or LUBA 773 (1993).

27.1 LUBA Procedures/Rules – Generally. LUBA may satisfy the requirement of ORS 197.850(11) that it "respond to the [appellate] court's mandate within 30 days" either by issuing a final opinion and order, or by taking some other appropriate action, such as requesting the submission of additional briefs, memoranda or oral argument, where desirable to aid LUBA in addressing the issues that provide the basis for remand by the appellate court. *Schrock Farms, Inc. v. Linn County*, 24 Or LUBA 649 (1993).

27.1 LUBA Procedures/Rules – Generally. Reversal of a local government land use decision approving a permit application means the subject application cannot be approved under the applicable criteria as a matter of law, and that a new or amended permit application is required to correct at least one allegation of error sustained in LUBA's final opinion. *Seitz v. City of Ashland*, 24 Or LUBA 311 (1992).

27.1 LUBA Procedures/Rules – Generally. Where a local government imposes an improper condition in granting land use approval, but does not rely on the improper condition in finding applicable approval criteria are met, LUBA will reverse the condition and otherwise affirm the decision granting land use approval. *Olson Memorial Clinic v. Clackamas County*, 21 Or LUBA 418 (1991).

27.1 LUBA Procedures/Rules – Generally. ORS 183.450 is not applicable to review proceedings conducted by LUBA. However, under ORS 197.805, LUBA has the authority to take official notice of judicially cognizable law, as provided by Oregon Evidence Code Rule 202. *Schatz v. City of Jacksonville*, 21 Or LUBA 149 (1991).

27.1 LUBA Procedures/Rules – Generally. Where the Court of Appeals reverses or remands a LUBA decision, the 30 day period specified in ORS 197.850(11) for LUBA to respond commences on the date the appellate court judgment becomes effective. *Byrnes v. City of Hillsboro*, 20 Or LUBA 408 (1991).

27.1 LUBA Procedures/Rules – Generally. Where a city comprehensive plan policy provides that "[d]evelopment intensity will be limited to that allowed under" a particular document, that policy incorporates development intensity limits in the document into the plan, and LUBA will take official notice of such standards in the document. *Hoffman v. City of Lake Oswego*, 19 Or LUBA 607 (1990).

27.1 LUBA Procedures/Rules – Generally. If it is demonstrated, through citations to the record or to documents of which LUBA may take official notice, that the city adopted a particular document as regulatory standards applicable to the appealed city decision,

LUBA may take official notice of that document. *Hoffman v. City of Lake Oswego*, 19 Or LUBA 607 (1990).

27.1 LUBA Procedures/Rules – Generally. LUBA will not accept a memorandum of supplemental argument filed by petitioner 24 days after the conclusion of oral argument, if accepting such a memorandum would delay the issuance of LUBA's final opinion and, therefore, adversely affect other parties' substantial rights to "the speediest practicable review." *East McAndrews Neigh. Assoc. v. City of Medford*, 19 Or LUBA 604 (1990).

27.1 LUBA Procedures/Rules – Generally. Where the parties in an appeal proceeding contend the appeal should be dismissed, LUBA will dismiss the appeal, even though the parties contend the appeal should be dismissed for different reasons. *Kirpal Light Satsang v. Douglas County*, 18 Or LUBA 795 (1990).