

27.16 LUBA Procedures/Rules – Withdrawal of Decision. Notwithstanding that under OAR 661-010-0015 a notice of intent to appeal is deemed filed with LUBA on the date it is mailed by registered or certified mail, LUBA is not at liberty to read a similar provision into notices of intent to appeal decisions on reconsideration under OAR 661-010-0021(5). Notices under OAR 661-010-0021(5) are filed on the date they are delivered to or received by LUBA. *West Coast Media v. City of Tigard*, 45 Or LUBA 703 (2003).

27.16 LUBA Procedures/Rules – Withdrawal of Decision. Untimely filing of a notice of intent to appeal a decision on reconsideration under OAR 661-010-0021(5) is a technical violation of LUBA's rules and does not affect LUBA's review, absent prejudice to the substantial rights of the parties. *West Coast Media v. City of Tigard*, 45 Or LUBA 703 (2003).

27.16 LUBA Procedures/Rules – Withdrawal of Decision. 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).

27.16 LUBA Procedures/Rules – Withdrawal of Decision. 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).

27.16 LUBA Procedures/Rules – Withdrawal of Decision. Where a land use decision has been withdrawn for reconsideration under OAR 661-010-0021, but LUBA later determines that the LUBA appeal was not timely filed and for that reason dismisses the appeal, LUBA will not address arguments about the possible consequences of that dismissal on the local proceedings to reconsider the withdrawn decision. *Larner v. City of Portland*, 41 Or LUBA 471 (2002).

27.16 LUBA Procedures/Rules – Withdrawal of Decision. A notice of intent to appeal a decision on reconsideration that duplicates the initial notice of intent to appeal is sufficient to challenge the substance of the decision on reconsideration, where no one argues that the decision on reconsideration is materially different from the initial decision. *Piltz v. City of Portland*, 41 Or LUBA 461 (2002).

27.16 LUBA Procedures/Rules – Withdrawal of Decision. A notice of withdrawal of a decision for reconsideration under OAR 661-010-0021(1) and ORS 197.830(12)(b) must be filed on or before the date the record is due. A notice of withdrawal filed after that date will be denied. *Bates v. City of Cascade Locks*, 37 Or LUBA 993 (1999).

27.16 LUBA Procedures/Rules – Withdrawal of Decision. Where a county gives adequate assurances that it will comprehensively review petitioner’s assignments of error, LUBA will grant a motion for voluntary remand and will not assume the motion for voluntary remand is motivated by delay or other improper reasons simply because there has been a lengthy course of litigation in the matter. *Murphy Citizens Advisory Committee v. Josephine Co.*, 35 Or LUBA 117 (1998).

27.16 LUBA Procedures/Rules – Withdrawal of Decision. Where a local government moves for voluntary remand of its decision after the record and petition for review have been submitted to the Board, LUBA will allow the motion when the voluntary remand is more likely to result in a thorough and expeditious resolution of the land use matter than would a review by the Board. *Deal v. City of Hermiston*, 34 Or LUBA 767 (1998).

27.16 LUBA Procedures/Rules – Withdrawal of Decision. The burden is on the local government seeking voluntary remand to show that the remand is more likely to bring about a thorough and expeditious resolution of the land use matter than would LUBA review. *Deal v. City of Hermiston*, 34 Or LUBA 767 (1998).

27.16 LUBA Procedures/Rules – Withdrawal of Decision. Whether multiple enactments constitute a single decision for purposes of appeal to LUBA depends on the relationship between the enactments. Where a decision on reconsideration reenacts the original decision together with a supplemental enactment that is characterized as an "integral part" of the reconsidered decision, there is a single decision for purposes of appeal of the decision on reconsideration to LUBA. *Barnard Perkins Corp. v. City of Rivergrove*, 34 Or LUBA 660 (1998).

27.16 LUBA Procedures/Rules – Withdrawal of Decision. OAR 661-10-021, which allows a local government to withdraw a limited land use decision for reconsideration, does not impose an obligation on the parties to make or waive additional objections after the 14-day period for comment allowed under ORS 197.195(3)(c)(A). *Clark v. City of Albany*, 29 Or LUBA 325 (1995).

27.16 LUBA Procedures/Rules – Withdrawal of Decision. It is not necessary for a party who filed a motion to intervene before a decision was withdrawn for reconsideration to refile its motion to intervene, or file a second motion to intervene, if an original notice of intent to appeal is refiled, or an amended notice of intent to appeal is filed, after the decision on reconsideration is filed with LUBA. *ONRC v. City of Seaside*, 29 Or LUBA 39 (1995).

27.16 LUBA Procedures/Rules – Withdrawal of Decision. Under OAR 661-10-021, a local government has a unilateral right to withdraw a decision for reconsideration if the notice of withdrawal is filed on or before the date the record is due. A motion for voluntary remand may be filed after the record is filed and, if granted by LUBA, is not governed by the provisions of OAR 661-10-021, including the 90-day deadline specified in that rule for decisions on reconsideration. *Sanchez v. Clatsop County*, 29 Or LUBA 26 (1995).

27.16 LUBA Procedures/Rules – Withdrawal of Decision. OAR 661-10-075(6) requires a local government to be represented by an attorney in a LUBA appeal. Therefore, a local government's notice of withdrawal of the challenged decision, pursuant to ORS 197.830(12)(b), is properly submitted by the local government's attorney. *Tylka v. Clackamas County*, 28 Or LUBA 417 (1994).

27.16 LUBA Procedures/Rules – Withdrawal of Decision. Neither ORS 197.830(12) nor OAR 661-10-021 establishes any requirements regarding the nature of the local government proceedings conducted after withdrawal. However, the local government must follow any applicable requirements its own land use regulations impose for making a new final decision. *Tylka v. Clackamas County*, 28 Or LUBA 417 (1994).

27.16 LUBA Procedures/Rules – Withdrawal of Decision. Where a local government decision maker authorizes the withdrawal of a challenged local government decision for reconsideration, pursuant to ORS 197.830(12)(b), that decision is reflected in the Notice of Withdrawal filed with LUBA, and that notice is part of the local record of the proceedings leading to the local government's decision on reconsideration. *Tylka v. Clackamas County*, 28 Or LUBA 712 (1994).

27.16 LUBA Procedures/Rules – Withdrawal of Decision. Letters to and from LUBA concerning the filing of a local government decision on reconsideration and refiling of a notice of intent to appeal, pursuant to ORS 197.830(12)(b), postdate the adoption of the challenged decision on reconsideration and, therefore, are not part of the *local* record. They are, however, part of LUBA's record. *Tylka v. Clackamas County*, 28 Or LUBA 712 (1994).

27.16 LUBA Procedures/Rules – Withdrawal of Decision. While ORS 197.830(12)(b) grants a local government the unilateral power to withdraw an appealed decision for reconsideration before the date the record is due, it does not eliminate the discretion LUBA has under ORS 197.835 and 197.805 to grant a motion for voluntary remand after the record is filed, in accordance with sound principles of judicial review. *Mazeski v. Wasco County*, 27 Or LUBA 45 (1994).

27.16 LUBA Procedures/Rules – Withdrawal of Decision. Where a local government withdraws a challenged decision for reconsideration pursuant to ORS 197.830(12)(b) and OAR 661-10-021(1), OAR 661-10-021(3) requires that the *decision* on reconsideration itself, not simply notice of the decision, be filed with LUBA and served on the parties to the LUBA appeal. *Home Builders Association v. City of Portland*, 26 Or LUBA 653 (1994).

27.16 LUBA Procedures/Rules – Withdrawal of Decision. Neither ORS 197.830(12)(b) nor OAR 661-10-021 prescribes the scope of a local government's reconsideration of a decision that is withdrawn following the filing of a notice of intent to appeal. Therefore, the scope of reconsideration may be determined by the local government that withdraws its decision. *ONRC v. City of Seaside*, 26 Or LUBA 645 (1994).

27.16 LUBA Procedures/Rules – Withdrawal of Decision. Where a local government withdraws a challenged land use decision for reconsideration pursuant to ORS 197.830(12)(b) and OAR 661-10-021 and thereafter adopts a decision on reconsideration, and petitioner does not refile the original notice of intent to appeal or file an amended notice of intent to appeal within the time provided in OAR 661-10-021(5)(a), the appeal will be dismissed. *Matrix Development v. City of Tigard*, 25 Or LUBA 557 (1993).

27.16 LUBA Procedures/Rules – Withdrawal of Decision. Under ORS 197.830(12)(b) and OAR 661-10-021(1), LUBA cannot refuse to allow a local government to withdraw a challenged decision for reconsideration, so long as the local government files a notice of withdrawal on or before the date the record is due. *Fraser v. Wallowa County*, 25 Or LUBA 788 (1993).