

28.8.4 LUBA Scope of Review - Grounds for Reversal/Remand - Procedural Errors.

Where the purpose of a zoning code requirement that a permit application be initiated in one of six specified ways is to ensure that the current property owner or purchaser of the affected property knows about and agrees with the application, and the record establishes that the current property owner agrees with the application, the county's procedural error in allowing the permit application to be initiated in other than one of the six ways specified in the zoning code could not prejudice a permit opponent's rights and provides no basis for reversal or remand. *Womble v. Wasco County*, 54 Or LUBA 68 (2007).

28.8.4 LUBA Scope of Review - Grounds for Reversal/Remand - Procedural Errors.

A county's procedural error in providing a permit opponent notice of a planning commission decision on the permit rather than a copy of the permit decision itself could result in prejudice to the opponent's substantial rights, where it prevented the opponent from being able to file a timely appeal to the board of county commissioners. However, where the opponent was nevertheless able to file a timely local appeal, there was no prejudice to the opponent's substantial rights, and the county's failure provides no basis for reversal or remand at LUBA. *Womble v. Wasco County*, 54 Or LUBA 68 (2007).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors.

A city's argument that all of petitioner's assignments of error should be denied for failure to argue that the alleged errors prejudiced petitioner's substantial rights will be rejected where non-procedural errors need not prejudice a petitioner's substantial rights and petitioner's assignments of error allege substantive rather than procedural errors. *Caster v. City of Silverton*, 54 Or LUBA 441 (2007).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors.

That a conditional use permit application is deemed complete under ORS 227.178 does not necessarily mean that the application is supported by substantial evidence that demonstrates compliance with all applicable approval criteria. *Caster v. City of Silverton*, 54 Or LUBA 441 (2007).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors.

A local government errs in accepting new information into the record after the public hearing on a matter is closed without allowing other parties an adequate opportunity to respond to the new evidence. *Gunzel v. City of Silverton*, 53 Or LUBA 174 (2006).

28.8.4 LUBA Scope of Review - Grounds for Reversal/Remand - Procedural Errors.

A county does not err by interpreting a development code compatibility standard for the first time in its written decision, where the interpretation was not beyond the range of interpretations that could reasonably have been anticipated during the evidentiary phase of the county's proceedings, and petitioners do not demonstrate (1) that there is specific evidence that they could present that differs in substance from the evidence that they already submitted or (2) that the new evidence is directly responsive to the county's interpretation. *Gutoski v. Lane County*, 155 Or App 369, 963 P2d 145 (1998). *Clark v. Coos County*, 53 Or LUBA 325 (2007).

28.8.4 LUBA Scope of Review - Grounds for Reversal/Remand - Procedural Errors.

Although local governments frequently attempt to advise permit applicants regarding the scope and nature of evidence that will be required to demonstrate that a proposal complies with applicable land use approval criteria, it is not the local government's burden to accurately predict in advance all of the evidence that may ultimately be needed to obtain approval of a land use application. *Gillette v. Lane County*, 52 Or LUBA 1 (2006).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors.

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).

28.8.4 LUBA Scope of Review - Grounds for Reversal/Remand - Procedural Errors.

Where a hearings officer reopens the evidentiary record to allow parties to present arguments and evidence concerning whether a different adjustment/variance criterion than had been applied before should be applied to an application for a adjustment/variance, and petitioners do not argue that the hearings officer's actions failed to provide petitioners with an adequate opportunity to present their arguments on the merits concerning which adjustment/variance criterion should apply, petitioners fail to demonstrate that the hearings officer's action resulted in prejudice to their substantial rights or that any substantive error on the hearings officer's part was not harmless error. *Bickford v. City of Tigard*, 52 Or LUBA 301 (2006).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors.

Given the Department of Land Conservation and Development Commission's (DLCDC's) critical role in the plan amendment review process, complete failure to provide notice of post-acknowledgment plan amendments to DLCDC may be a "substantive" error that obviates the requirement to show that the procedural error prejudiced the petitioner's substantial rights. However, it does not follow that failure to provide other types of notice to other parties in other contexts is also a "substantive" error obviating the ORS 197.835(9) requirement that the petitioner show prejudice. *Bollam v. Clackamas County*, 52 Or LUBA 738 (2006).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors.

In making limited land use decisions, it is error for local governments to consider evidence submitted after the close of the comment period. By requesting and accepting a mini traffic study from the applicant that the decision maker relied upon after the close of the comment period, without giving petitioners an opportunity to review and respond to the study, the local government violates petitioners' substantial rights. *Delk v. City of Salem*, 51 Or LUBA 123 (2006).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. In order to prevail on a claim of procedural error, a petitioner must do more than allege his substantial rights were prejudiced; he must also identify the procedure that was allegedly violated. *Stoloff v. City of Portland*, 51 Or LUBA 560 (2006).

28.8.4 LUBA Scope of Review - Grounds for Reversal/Remand - Procedural Errors. Where an applicant submits a traffic impact analysis on the day the last public hearing closes, and an opponent thereafter asks the city planning department to provide him with a copy of all the applicant's traffic materials within the 7-day period the record remained open for opponents to submit additional evidence, the city's failure to provide the opponent with a copy of the traffic impact analysis is a procedural error that prejudiced the opponents' substantial rights. *Jaffer v. City of Monmouth*, 51 Or LUBA 633 (2006).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. When new evidence is submitted after the close of the comment period during limited land use proceedings, as with land use decisions, the local government must either (1) reopen the record to allow participants an opportunity to respond to the new evidence or (2) reject the new evidence as untimely. *Wal-Mart Stores, Inc. v. City of Oregon City*, 50 Or LUBA 87 (2005).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Failure to post notice of a hearing as required under the local government's code is not a basis for reversal or remand, where the petitioner nonetheless knew of the hearing and attended. *Gordon v. Polk County*, 50 Or LUBA 502 (2005).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. The time to reject or accept new evidence that is submitted after the close of the evidentiary record is before the decision maker deliberates and reaches a tentative decision. A local government cannot accept such untimely evidence, reach a tentative decision based on the entire record, and then adopt a final written decision that belatedly rejects or purports not to rely on the evidence. *Ploeg v. Tillamook County*, 50 Or LUBA 608 (2005).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A city's failure to make a staff report available 15 days prior to a hearing as required by the local code prejudices a petitioner's substantial rights where the staff report is made available only 7 days before the hearing and the application is particularly complex. *Hammons v. City of Happy Valley*, 49 Or LUBA 38 (2005).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. 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).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where LUBA can understand a party’s presentation and arguments, the local government’s failure to provide oversized exhibits for use at oral argument does not prejudice the party’s substantial rights. *McCulloh v. City of Jacksonville*, 49 Or LUBA 345 (2005).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A city may not accept a revised planned unit development plan the day before an appeal without providing the local parties an opportunity to review and respond to the revised plan. *Baker v. City of Garibaldi*, 49 Or LUBA 437 (2005).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Although a city may not take procedural short-cuts that it knows or reasonably should know will prejudice one or more party’s substantial rights and thereby provide a reasonably certain basis for an appeal to and remand by LUBA, ORS 197.835(10)(a)(B) or ORS 227.178 do not prohibit a city from expediting its local review process to meet the 120-day deadline, provided that expedited process does not require one or more parties to sacrifice their substantial right to fully and fairly present their position on the merits of the application. *Wal-Mart Stores, Inc. v. City of Central Point*, 49 Or LUBA 472 (2005).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. The ORS 227.178(1) requirement that a city render a final decision on a permit application within 120 days is not satisfied by a *pro forma* denial. To comply with ORS 227.178(1) and comply with the ORS 197.835(10)(a)(B) requirement that the city not take action to avoid the requirements of ORS 227.178, the city’s decision must be a *real* decision that is made in good faith, in the sense that the decision is supported by findings and is based on an evidentiary record that the city could reasonably believe are adequate to allow that decision to be defended in the event of an appeal to LUBA. *Wal-Mart Stores, Inc. v. City of Central Point*, 49 Or LUBA 472 (2005).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Neither the text of ORS 197.835(10)(a)(B) nor contextual statutes dictate that *any* deviation by a city from its procedures to render a timely final decision within the 120-day deadline imposed by ORS 227.178(1) necessarily constitutes an “action [taken] to avoid the requirements of ORS *** 227.178,” within the meaning of ORS 197.835(10)(a)(B). *Wal-Mart Stores, Inc. v. City of Central Point*, 49 Or LUBA 472 (2005).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. The actions taken to avoid the requirements of ORS 227.178, which may provide a basis for reversal by LUBA under ORS 197.835(10)(a)(B), are not limited to a city’s final action. Actions the city takes before adopting its final decision may also violate the statute. *Wal-Mart Stores, Inc. v. City of Central Point*, 49 Or LUBA 472 (2005).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Petitioners are in no position to fault the city for accepting new evidence during a non-evidentiary hearing, where petitioners were the only persons who testified and were the persons who submitted the new evidence. That the city accepted petitioners’ evidence did not convert the hearing into an evidentiary hearing, or require the city to renounce the hearing and provide additional opportunities to present evidence. *Patterson v. City of Independence*, 49 Or LUBA 589 (2005).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A petitioner’s failure to object to untimely disclosure of a site visit and to request the opportunity to rebut the site visit precludes assigning error to that disclosure, where the disclosure was made ten days prior to the hearing at which the local government adopted the final decision, and petitioner could have entered an objection at any time during that ten days or during the final hearing, but did not. *Carrigg v. City of Enterprise*, 48 Or LUBA 328 (2004).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where statutory notice of hearing requirements are not jurisdictional, failure to comply with those statutory requirements is reviewed under ORS 197.835(9)(a)(B), which establishes LUBA’s scope of review for procedural errors. *Kneeland v. Douglas County*, 48 Or LUBA 347 (2005).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a notice for the required second hearing on formation of a special district corrects certain errors in the notice of the first hearing, any defects in the first notice are cured. *Kneeland v. Douglas County*, 48 Or LUBA 347 (2005).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where applicable criteria require that the applicant and city identify the intended use and evaluate its impacts, a city errs when, in a combined role as applicant and decision-maker, it substantially changes a “intended use” of property proposed for rezoning after the close of the evidentiary hearing without providing the petitioner an opportunity to present argument and evidence with respect to the new intended use. *Nielson v. City of Stayton*, 47 Or LUBA 52 (2004).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A citizen participation requirement for appointment of a three-person citizens’ advisory committee when considering major land use regulation amendments is a procedural requirement. A petitioner who wishes to assign error to the local government’s failure to appoint such a committee must have objected to that failure during the proceedings below. *Dobson v. City of Newport*, 47 Or LUBA 267 (2004).

28.8.4 LUBA Scope of Review - Grounds for Reversal/Remand - Procedural Errors. An ambiguous statement that could be understood to refer to *ex parte* contacts, but could also be understood to refer to contacts that were not *ex parte* contacts might be sufficient to warrant an evidentiary hearing to clarify the meaning of the reference, but is not

sufficient to support a conclusion that there were improper undisclosed *ex parte* contacts. *Frewing v. City of Tigard*, 47 Or LUBA 331 (2004).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. LUBA is unable to perform its review function and remand is required where the county rejects, without any explanation, evidence that is arguably relevant to an applicable criterion. *Nez Perce Tribe v. Wallowa County*, 47 Or LUBA 419 (2004).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. ORS 215.422(4), which excludes certain contacts between planning staff and the local decision maker from the definition of *ex parte* contacts, does not authorize a decision maker to rely on evidence provided by planning staff that it specifically refuses to include in the record, after the close of the record, without providing an opportunity for rebuttal. *Nez Perce Tribe v. Wallowa County*, 47 Or LUBA 419 (2004).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Assuming, without deciding, that it is reversible error to combine a unitary legislative proceeding with a geographically and otherwise unrelated site-specific proposal, a city decision that applies a height bonus to a particular property that is within a 535-acre study area subject to a number of legislative plan and land use regulation amendments is not geographically or otherwise unrelated to the legislative proceeding. *NWDA v. City of Portland*, 47 Or LUBA 533 (2004).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Any prejudice to petitioners' substantial rights that might have resulted from late filing of a staff report and late evidentiary submissions prior to a final hearing was avoided by providing petitioners an opportunity to submit additional evidence and testimony after that hearing. *McCulloh v. City of Jacksonville*, 46 Or LUBA 267 (2004).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. When neither the notice, nor the staff report, nor the local government's public discussion, nor the decision ever mentions the applicable criteria, a local government commits procedural errors that prejudice a petitioner's substantial rights. *Naumes Properties, LLC v. City of Central Point*, 46 Or LUBA 304 (2004).

28.8.4 LUBA Scope of Review - Grounds for Reversal/Remand - Procedural Errors. Before the "raise it or waive it" provisions now codified at ORS 197.763(1) and 197.835(3) were adopted, LUBA required that a petitioner who asserts procedural error at LUBA must have raised the procedural error below. While the obligation to object locally to procedural errors overlaps with ORS 197.763(1) and 197.835(3), it exists independently and may require that a petitioner enter an objection after the close of the final evidentiary hearing. *Hayden Island, Ltd. v. City of Portland*, 46 Or LUBA 439 (2004).

28.8.4 LUBA Scope of Review - Grounds for Reversal/Remand - Procedural Errors. That a committee entertained questions from the public during its deliberations after the close of its final evidentiary hearing does not mean the committee would have allowed a

legal challenge to its reliance on a committee rule, or that it would have reconsidered its decision to rely on that rule to deny a local appeal. A petitioner's failure to object to the rule at that stage does not mean the issue is waived in a subsequent LUBA appeal. *Hayden Island, Ltd. v. City of Portland*, 46 Or LUBA 439 (2004).

28.8.4 LUBA Scope of Review - Grounds for Reversal/Remand - Procedural Errors.

A city does not err in approving a subdivision applicant's tree protection plan with a condition that the applicant provide the city arborist with construction documents so that the arborist can determine whether additional trees must be removed. While that condition could be viewed as an improper deferral of a finding concerning the adequacy of the tree protection plan, it does not do so where the condition does not specify that the tree protection plan may be revised without additional public hearings and the condition simply creates a more structured approach for computing the mitigation that would be required in any event without the condition. *Miller v. City of Tigard*, 46 Or LUBA 536 (2004).

28.8.4 LUBA Scope of Review - Grounds for Reversal/Remand - Procedural Errors.

Where a party is present at a rezoning hearing where a county commissioner discloses that he and a county planner made a site visit to the subject property, and that party testifies after the disclosure without objecting to the site visit, the planner's attendance at the site visit or the adequacy of the county commissioner's disclosure of the site visit, that party waives his right to assign error based on the site visit in an appeal at LUBA. *Mattson v. Clackamas County*, 46 Or LUBA 552 (2004).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors.

A petitioner's argument that a city's erroneous notice regarding the date it would reconsider a decision following remand from LUBA provides no basis for reversal or remand, where petitioner's entire argument is based on an erroneous assumption that an evidentiary hearing was required on remand and that the notice the city gave did not comply with ORS 197.763(2). *McFall v. City of Sherwood*, 46 Or LUBA 735 (2004).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors.

A local government does not err in failing to provide an evidentiary hearing on remand to accept updated information regarding the current status of petitioner's property, where LUBA's remand did not require the local government to conduct additional evidentiary hearings, and petitioner fails to identify any authority that requires the local government to conduct an additional evidentiary hearing to accept updated information. *Manning v. Marion County*, 45 Or LUBA 1 (2003).

28.8.4 LUBA Scope of Review - Grounds for Reversal/Remand - Procedural Errors.

A city commits no error by processing a lot line adjustment as a quasi-judicial land use matter before the planning commission rather than as a ministerial matter before the planning department, where the lot line adjustment decision requires that the city exercise significant legal and factual judgment. *Smith v. City of St. Paul*, 45 Or LUBA 281 (2003).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Petitioners do not have a right to rebut recitations of fact in adopted findings, and such findings do not constitute “evidence,” although if adopted findings of fact that are not supported by the record, that lack of evidentiary support may be a basis for reversal or remand under ORS 197.835(9)(a)(C). *Bruce Packing Company v. City of Silverton*, 45 Or LUBA 334 (2003).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. An assignment of error that alleges that petitioners’ substantial rights were prejudiced by a city’s failure to provide notice of an applicable approval criterion provides no basis for reversal or remand, where (1) the record shows that the criterion was identified at a public hearing as being applicable; (2) petitioners had an opportunity to respond to the assertion that the criterion was applicable; and (3) petitioners’ attorney responded to the assertion by contending that the criterion was not applicable. *Martin v. City of Dunes City*, 45 Or LUBA 458 (2003).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. 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).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. 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).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Providing only 22 days notice of hearing to DLCD of a post-acknowledgment plan amendment, rather than the full 45 days notice required by ORS 196.610(1), is not reversible error, where both petitioner and DLCD participated in the proceedings, and there is no attempt to demonstrate that short notice prevented any other person that might rely on the notice from participating in the local government’s proceedings. *Bryant v. Umatilla County*, 45 Or LUBA 653 (2003).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Alleged statements made by a decision maker at a social function that the decision maker would listen to the evidence and testimony regarding an application for a plan amendment and zone change, but would nevertheless vote to approve the application are not sufficient to establish prejudgment bias where the accuracy of those statements were disputed and the decision maker stated that he had considered the testimony and evidence and was prepared to make a decision based on that testimony and evidence. *Roberts v. Clatsop County*, 44 Or LUBA 178 (2003).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. The absence of required information or analysis in an application is not necessarily viewed as a procedural error, and may be a basis for reversal or remand even without a showing of prejudice to petitioner’s substantial rights, where the information or analysis is necessary to determine compliance with approval criteria. *Bauer v. City of Portland*, 44 Or LUBA 210 (2003).

28.8.4 LUBA Scope of Review - Grounds for Reversal/Remand - Procedural Errors. A city commits no error in proceeding with a decision on an application for a subdivision, and does not violate a subdivision opponent’s due process rights, where a quiet title action is pending to resolve an ownership dispute between the opponent and the subdivision applicant, but the applicant is the record fee owner of the property. *McFall v. City of Sherwood*, 44 Or LUBA 493 (2003).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A petitioner’s substantial rights include the right to a final written decision by the final decision maker on petitioner’s local appeal. An allegation that the city council failed to adopt a final written decision on petitioner’s appeal is sufficient to allege prejudice to petitioner’s substantial rights. *Shaffer v. City of Happy Valley*, 44 Or LUBA 536 (2003).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A petitioner fails to demonstrate that he was entitled to an evidentiary hearing before the local government following a remand from LUBA under *Gutoski v. Lane County*, 155 Or App 369, 963 P2d 145 (1998), where the arguments petitioner sought to present in that evidentiary hearing on remand were legal arguments rather than an expanded evidentiary presentation. *Dimone v. City of Hillsboro*, 44 Or LUBA 698 (2003).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. That certain documents may not have been provided to the planning commission provides no basis for remand, where the planning commission decision was appealed to the city governing body, the governing body adopted the city’s final decision and there is no contention that the disputed documents were provided to the city governing body. *Lord v. City of Oregon City*, 43 Or LUBA 361 (2002).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Petitioners fail to establish that they are entitled to a new evidentiary hearing to respond to an interpretation setting an unanticipated evidentiary standard, where petitioners do not describe what additional evidence responsive to the unanticipated interpretation they would produce, or how that evidence differs in substance from evidence already in the record. *Stahl v. Tillamook County*, 43 Or LUBA 518 (2003).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. LUBA will not remand a decision based on an allegation that the decision maker failed to follow the consultation and coordination requirements of OAR 340-252-0060,

where the record makes clear that all parties required by the rule to be consulted were aware of and actively participated in the process leading to the challenged decision, and any failure to follow the procedures set out by the rule was attributable to someone other than the decision maker. *Witham Parts and Equipment Co. v. ODOT*, 42 Or LUBA 435.

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. While ORS 197.835(4) operates as a limited defense to a waiver challenge under ORS 197.763(1) and 197.835(3), it does not obviate the requirement that a party given the opportunity to object to a procedural error below must do so in order to seek reversal or remand based on that error. *Confederated Tribes v. City of Coos Bay*, 42 Or LUBA 385.

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Failure to complete a conditional use application on city forms created for that purpose will not result in reversal or remand absent some argument from petitioners that the lack of a formal application prejudiced their substantial rights. *Monogios and Co. v. City of Pendleton*, 42 Or LUBA 291.

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a local government departs from the procedures for continuing a hearing set out in ORS 197.763(6)(a)-(c), the revised procedures must be clearly communicated to all parties and, preferably, reduced to writing. *Hawman v. Umatilla County*, 42 Or LUBA 223.

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. 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.

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Decision maker bias in a land use matter must be deduced from the totality of the circumstances. Where a decision maker is a member of a church congregation and the church is an applicant for a land use permit, the decision maker's church membership does not, in itself, require the decision maker's recusal for bias. *Friends of Jacksonville v. City of Jacksonville*, 42 Or LUBA 137.

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a land use decision maker is a member of a church congregation and the church has applied for a land use permit, and the decision maker has expressed concern regarding the impact proposed conditions of approval would have on church operations but nevertheless declares that she is able to render a decision regarding the church's application based on the facts and law before her, that decision maker has not impermissibly prejudged the application. *Friends of Jacksonville v. City of Jacksonville*, 42 Or LUBA 137.

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a land use decision maker is a member of a church congregation and the church has applied for a land use permit, and the decision maker has (1) testified as an individual in favor of the application prior to his election to the decision making body; and (2) stated that he did not believe he had to be objective regarding the application and would support the application “all the way to the Supreme Court,” the decision maker has impermissibly prejudged the church’s application and, absent some need for his participation in order to reach a decision, recusal is required. *Friends of Jacksonville v. City of Jacksonville*, 42 Or LUBA 137.

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A local government’s failure to comply with the notice requirements of OAR 660-018-0040(1) provides DLCDC and other parties subject to notice under ORS 197.615 an opportunity to appeal the county’s decision beyond the deadline established in ORS 197.830. It does not provide an independent ground for reversal or remand, in the absence of an argument that the failure to comply with the standard prejudged petitioner’s substantial rights. *Doty v. Coos County*, 42 Or LUBA 103.

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a city provides notice that it will provide a hearing to comment on a proposed expedited annexation if a hearing is requested, and petitioner requested a hearing, the city errs in approving the expedited annexation without providing the requested hearing. *Cape v. City of Beaverton*, 41 Or LUBA 515 (2002).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Notwithstanding a city’s procedural error in failing to provide a hearing on a proposed expedited annexation, petitioner’s substantial rights were not thereby violated where petitioner was nevertheless allowed to appear before the city council and present his comments before the city council approved the expedited annexation. *Cape v. City of Beaverton*, 41 Or LUBA 515 (2002).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A city council’s failure to adopt required findings explaining why it allowed a partial *de novo* appeal hearing, rather than an on-the-record review, provides no basis for reversal or remand where petitioner does not show that the city council’s failure to adopt the required findings prejudged his substantial rights. *Dimone v. City of Hillsboro*, 41 Or LUBA 167 (2001).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. An allegation that a city mischaracterized its decision as a limited land use decision does not itself provide a basis for reversal or remand, absent a further allegation that the city failed to follow the procedures applicable to the decision and that petitioners’ substantial rights were prejudged by that failure. *Crowley v. City of Bandon*, 41 Or LUBA 87 (2001).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Whatever prejudice to petitioners’ substantial rights might have occurred before

the initial decision maker, when the city arguably failed to provide petitioners an adequate opportunity to comment before the planning commission on whether a proposed design complied with applicable criteria, was cured by providing petitioners an opportunity to present testimony directed at applicable criteria in a subsequent appeal to the city council. *Crowley v. City of Bandon*, 41 Or LUBA 87 (2001).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where new evidence is improperly submitted as part of an applicant’s final legal arguments, but that evidence has no bearing on the relevant approval criteria, the error in accepting the new evidence results in no prejudice to other parties’ substantial rights and provides no basis for reversal or remand. *Farrell v. Jackson County*, 41 Or LUBA 1 (2001).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Any error that may have been committed by failing to provide a proposed comprehensive plan amendment to DLCD 45 days before the first evidentiary hearing was corrected on remand by offering to provide the proposal to DLCD more than 45 days before the evidentiary hearing on remand, where there is no contention that DLCD failed to receive the proposal or failed to provide notice of the proposal in accordance with ORS 197.610(1) and DLCD advises the county that it does not oppose the proposal. *Donnell v. Union County*, 40 Or LUBA 455 (2001).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where an applicant’s final legal rebuttal under ORS 197.763(6)(e) is not limited to legal arguments and includes factual assertions, but petitioner fails to demonstrate that the factual assertions concerned a legally relevant issue, such factual assertions provide no basis for reversal or remand. *Donnell v. Union County*, 40 Or LUBA 455 (2001).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Even if evidence is improperly accepted by the local government, remand is not appropriate where petitioners fail to demonstrate that the improperly accepted evidence is potentially relevant to an approval criterion. Evidence regarding development of a neighborhood plan, ownership patterns in the neighborhood, and whether a proposed hotel can meet height limitations is not potentially relevant to a criterion that requires a proposed hotel to be consistent with regard to “building size, height, color, material and form” with other structures in the neighborhood. *Terra v. City of Newport*, 40 Or LUBA 286 (2001).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. That petitioner was mailed notice of a hearing only 10 days prior to the hearing is not reversible error. The fact that petitioner was not available to receive the given notice does not demonstrate substantial prejudice. *Hausam v. City of Salem*, 40 Or LUBA 234 (2001).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where petitioner knew or should have known of the county’s procedural error in omitting local code criteria from the notice of hearing, but failed to object to that

procedural error and request appropriate relief, the county's procedural error provides no basis to seek remand of the county's decision. *Central Klamath County CAT v. Klamath County*, 40 Or LUBA 111 (2001).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Any procedural error by a local government in failing to provide written notice of a proposed annexation decision to persons other than petitioner resulted in no prejudice to petitioner's substantial rights, and therefore provides no basis for reversal or remand of the annexation decision, where petitioner learned of the proposal and made a written appearance opposing the proposal. *Cape v. City of Beaverton*, 40 Or LUBA 78 (2001).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Reference to "a portion of Sunset Highway" in a notice of proposed annexation decision is likely insufficient to provide reasonable notice of the decision under applicable code and statutory requirements. However, where a petitioner nevertheless was able to determine the nature and scope of the proposal and submit written opposition to the proposal, the petitioner may not successfully assert possible injury to other persons' substantial rights as a basis for reversal or remand. *Cape v. City of Beaverton*, 40 Or LUBA 78 (2001).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Petitioner does not demonstrate an actual conflict of interest, as that term is defined in ORS 244.020, on the part of two decision makers who own homes in a PUD where uses allowed on commonly held property are subject to a land use appeal. *Halvorson Mason Corp. v. City of Depoe Bay*, 39 Or LUBA 702 (2001).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A city councilor has prejudged an application and must recuse himself from participating in a decision on the application where the councilor, prior to the time a land use matter came before the city council, actively opposed an application, and sent correspondence to the other city councilors in which he advocated in opposition to the application, stating that the law and evidence point to denial of the application. *Halvorson Mason Corp. v. City of Depoe Bay*, 39 Or LUBA 702 (2001).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. The bias of one decision maker may warrant reversal or remand of a land use decision pursuant to ORS 197.835(9)(a)(B), where participation of that decision maker prevented petitioner from receiving a full and fair hearing, one of petitioner's substantial rights. *Halvorson Mason Corp. v. City of Depoe Bay*, 39 Or LUBA 702 (2001).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A county's error in providing notice of a planning commission hearing to property owners within 500 feet of the subject property, rather than to those within 750 feet of the subject property as required by local legislation, is a procedural error and provides no basis for reversal or remand unless petitioner's substantial rights are violated by the error. Where petitioner received notice of the planning commission hearing and

the proper notice was given prior to a subsequent hearing by the board of county commissioners, there was no prejudice to petitioner's substantial rights. *Donnell v. Union County*, 39 Or LUBA 419 (2001).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Failure to provide proper notice pursuant to ORS 197.763(3) is a procedural error and does not provide a basis for reversal or remand unless the error prejudices a party's substantial rights. *Lange-Luttig v. City of Beaverton*, 39 Or LUBA 80 (2000).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where petitioners appeared below and testified about the uses that would be authorized by a conditional use permit, petitioners may not claim that their substantial rights were prejudiced by a local government's failure to specifically identify all proposed uses in the notice of the hearing. *Lange-Luttig v. City of Beaverton*, 39 Or LUBA 80 (2000).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A lack of supporting information in an application does not provide a basis for reversal or remand when the missing information is not necessary to determine compliance with a specific approval standard. *Roth v. Jackson County*, 38 Or LUBA 894 (2000).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Absent a state or local provision to the contrary, once the local record is closed to new evidence the local government is not compelled to reopen the record to accept new evidence, no matter how relevant that evidence is to the local government's decision. *Utsey v. Coos County*, 38 Or LUBA 516 (2000).

28.8.4 LUBA Scope of Review - Grounds for Reversal/Remand – Procedural Errors. A city does not violate an applicant's right to due process by denying its request to cross-examine witnesses, where the local code provides no right of cross-examination and the applicant fails to explain why an alternative process offered by the city in place of cross-examination would be insufficient to protect the applicant's right to due process. *Oregon Entertainment Corp. v. City of Beaverton*, 38 Or LUBA 440 (2000).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A city's failure to provide notice that it considered a particular comprehensive plan goal to be an approval criterion is a procedural error, and where that failure denies the applicant an opportunity to present argument and evidence concerning that plan goal, the procedural error prejudices the applicant's substantial rights. *Oregon Entertainment Corp. v. City of Beaverton*, 38 Or LUBA 440 (2000).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Failure to list applicable criteria in a pre-hearing notice in violation of ORS 197.763(3)(a) allows petitioner to raise issues at LUBA relating to the omitted criteria without having raised those issues before the local government. However, failure to list

applicable criteria does not, in itself, provide a basis for reversal or remand. *Ashley Manor Care Centers v. City of Grants Pass*, 38 Or LUBA 308 (2000).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where petitioner fails to allege that it was entitled to written notice of hearing under Ballot Measure 56, a local government’s failure to provide written notice of hearing under Ballot Measure 56 did not prejudice petitioner’s substantial rights and provides no basis for reversal or remand. *Homebuilders Association v. City of Portland*, 37 Or LUBA 707 (2000).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A condition of approval that is suggested by the applicant after the close of the evidentiary hearing in a quasi-judicial land use proceeding is not “new evidence,” within the meaning of ORS 197.763(6)(e), and there is no legal requirement that parties be given a right to rebut such a proposed condition of approval. *Marine Street LLC v. City of Astoria*, 37 Or LUBA 587 (2000).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where LUBA remands a decision for additional proceedings requiring that the current members of the county board of commissioners review the record compiled before the previous board, such remand cures the procedural error, if any, resulting from the fact that, due to an intervening election, only one of the three commissioners who signed the final written order attended the evidentiary hearings and participated in the oral vote on the merits of the application. *Greer v. Josephine County*, 37 Or LUBA 261 (1999).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a county lacks decisional authority over annexation requests, it exceeds its jurisdiction in denying an annexation that is part of a combined application for a plan map amendment and zone change over which the county has co-adoption authority. *Copper Basin, Inc. v. Umatilla County*, 37 Or LUBA 147 (1999).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a local government elects to conduct additional hearings prior to making a decision following remand of a decision by LUBA, all parties to the LUBA appeal that led to the remand are entitled to some form of individualized notice of the proceedings on remand, and a local government’s failure to provide notice to one of those parties is procedural error. *DLCD v. Crook County*, 37 Or LUBA 39 (1999).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A party’s right to appeal a local decision that is adopted following a remand by LUBA does not eliminate prejudice to that party’s substantial rights caused by the local government’s failure to provide notice of its proceedings on remand. The rights the party has in seeking LUBA review of the decision on remand are much more circumscribed than the rights the party has during a local land use hearing. *DLCD v. Crook County*, 37 Or LUBA 39 (1999).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a decision maker discloses the existence but not the substance of *ex parte* communications at the beginning of the public hearing, and despite being given an opportunity to do so petitioner fails to object to the inadequacy of the decision maker's disclosure, petitioner has waived the right to raise the decision maker's inadequate disclosure of *ex parte* communications before LUBA as a basis for reversal or remand of the challenged decision. *Mulford v. Town of Lakeview*, 36 Or LUBA 715 (1999).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A city commits procedural error where it fails to identify the relevant approval criteria in its notice of hearing or in its oral statement at the beginning of the hearing on a conditional use request. The city also commits procedural error where the staff report that identifies the relevant approval criteria is not made available seven days before the hearing and the report is only provided to the city council at the hearing. Where these errors contribute to confusion about the nature of the use for which approval is requested and the city's legal theory for approving the request, petitioners' substantial rights are prejudiced by the city's procedural errors and remand is required. *Latta v. City of Joseph*, 36 Or LUBA 708 (1999).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where LUBA rejects as a matter of law a county's erroneous interpretation of its comprehensive plan as imposing a 2.3-acre minimum residential density, procedural errors the county may have committed in considering evidence outside the record in reaching that erroneous interpretation provide no additional basis for remand. *Columbia Hills Development Co. v. Columbia County*, 36 Or LUBA 691 (1999).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Failure to observe statutory notice and hearing requirements prior to making a permit decision will result in remand by LUBA where petitioner's substantial rights were prejudiced because petitioner was entirely prevented from participating in the decision making process. *Friends of the Creek v. Jackson County*, 36 Or LUBA 562 (1999).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Failure to observe statutory notice and hearing requirements prior to making a permit decision will result in remand by LUBA, where petitioner's substantial rights were prejudiced because petitioner was entirely prevented from participating in the decision making process. *Friends of Clean Living v. Polk County*, 36 Or LUBA 544 (1999).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A city's procedural error in failing to send notice of a hearing at which zone changes affecting petitioner's property would be considered does not prejudice petitioner's substantial rights, where petitioner nonetheless participated in the hearing and the city continued the hearing to allow petitioner an adequate time to prepare. *Herman v. City of Lincoln City*, 36 Or LUBA 521 (1999).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A county's failure to explain in its notice of hearing that all evidence and the

staff report would be available for review seven days before the hearing provides no basis for reversal or remand, where petitioner did not object to the adequacy of the notice, does not claim he was surprised by anything in the staff report and does not explain how his substantial rights were violated by the inadequate notice. *Woods v. Grant County*, 36 Or LUBA 456 (1999).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where the county’s notice of hearing failed to include notice of the procedures to be followed at the hearing, but petitioner did not object below to the inadequate notice and does not explain how his substantial rights were violated by the defective notice, the notice defect provides no basis for reversal or remand. *Woods v. Grant County*, 36 Or LUBA 456 (1999).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A petitioner does not waive his right to object to the county’s failure to list the applicable criteria governing permit revocation in the notice of hearing by failing to object below, where it was not clear until the end of the hearing what criteria would be applied or that the decision makers intended to revoke petitioner’s permit. *Woods v. Grant County*, 36 Or LUBA 456 (1999).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where petitioner was provided a local appeal and hearing before the county governing body, the failure of the planning commission to give notice before its hearing of the criteria that it intended to apply or that it intended to revoke petitioner’s permit provides no basis for reversal or remand, where petitioner does not explain why the appeal to the governing body was inadequate to avoid any prejudice to his substantial rights. *Woods v. Grant County*, 36 Or LUBA 456 (1999).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a decision is withdrawn for reconsideration following appeal to LUBA and a new ordinance is adopted without following the applicable local adoption procedures, such a procedural error provides no basis for reversal or remand where petitioner was given an opportunity for meaningful participation and there was no prejudice to petitioner’s substantial rights. *Barnard Perkins Corp. v. City of Rivergrove*, 34 Or LUBA 660 (1998).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Consideration of a legislative action more than once within a 12-month period despite a code requirement that such actions be considered only once in a 12-month period provides no basis for reversal or remand, where all parties were given a full opportunity to participate in the proceedings and there was no prejudice to a party’s substantial rights. *Barnard Perkins Corp. v. City of Rivergrove*, 34 Or LUBA 660 (1998).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a local government decision maker commits a procedural error by failing to require a transcript of the proceedings below, but petitioner fails to demonstrate that

failure prejudiced his substantial rights, the procedural error provides no basis for remand. *Johns v. City of Lincoln City*, 34 Or LUBA 594 (1998).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A city council's procedural error in failing to require preparation of a transcript of proceedings on remand before the planning commission cannot have any bearing on whether the challenged decision is supported by substantial evidence, where the proceedings on remand were on the record. *Johns v. City of Lincoln City*, 34 Or LUBA 594 (1998).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Procedural errors before a lower-level local decision maker provide no basis for reversal or remand at LUBA where the errors are cured by *de novo* review by a higher-level local decision maker. *Rouse v. Tillamook County*, 34 Or LUBA 530 (1998).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Even if a local government's notice is not sufficiently specific to identify all approval criteria, petitioner fails to establish any prejudice to its substantial rights when the approval criteria are identified in a staff report and petitioner was in fact made aware of and addressed the criteria in the proceedings below. *Northwest Aggregates Co. v. City of Scappoose*, 34 Or LUBA 498 (1998).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where the notice of a hearing fails to list all of the criteria required for approval of an application, that procedural error does not prejudice petitioners' substantial rights where all of the applicable criteria were raised and addressed at the public hearing. *Turrell v. Harney County*, 34 Or LUBA 423 (1998).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. If the city committed a procedural error by approving final subdivision and PUD plans without providing a hearing or opportunity for local appeal, such error provides no basis for remand where the petitioner at LUBA was allowed to submit 65 pages of comments to the city prior to its decision. *Rochlin v. City of Portland*, 34 Or LUBA 379 (1998).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where the comprehensive plan requires that the planning commission forward findings and a report to the city council for consideration with a proposed plan amendment, the planning commission commits a procedural error by not forwarding the required findings and report. *Fogarty v. City of Gresham*, 34 Or LUBA 309 (1998).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A planning commission's error in not forwarding findings and a report to the city council with a proposed legislative plan amendment provides no basis for remand where petitioner does not specify any arguments he was prevented from making due to the error. Alleged inability to "bolster" petitioner's arguments is not sufficient to demonstrate

petitioner's substantial rights were prejudiced. *Fogarty v. City of Gresham*, 34 Or LUBA 309 (1998).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. The city's failure to provide any notice of the hearing at which the challenged ordinance was adopted was procedural error that prejudiced petitioners' substantial rights to participate in the process, notwithstanding that petitioners had participated in earlier proceedings leading to the challenged decision. *Casey Jones Well Drilling, Inc. v. City of Lowell*, 34 Or LUBA 263 (1998).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. The local government may be required to reopen the evidentiary hearing where the local government (1) changes to a significant degree an established interpretation of an approval standard; (2) the change makes relevant a different type of evidence that was irrelevant under the old interpretation; and (3) the party seeking to submit evidence responsive to the new interpretation identifies what evidence not already in the record it seeks to submit. *Gutoski v. Lane County*, 34 Or LUBA 219 (1998).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a revised site plan is introduced after the close of the record, and evidence exists that petitioner was aware of the addition but did not object below, that procedural error does not justify reversal or remand by LUBA. *Brown v. City of Portland*, 33 Or LUBA 700 (1997).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. If a local government determines an ex parte contact that is prohibited by local code occurred during local proceedings, other parties must be allowed the opportunity to rebut the substance of the ex parte contact. *Opp v. City of Portland*, 33 Or LUBA 654 (1997).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. There is no legal requirement that decision makers disclose the substance of their site observations and provide an opportunity for rebuttal where the decision is legislative rather than quasi-judicial. *Valerio v. Union County*, 33 Or LUBA 604 (1997).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A county errs in not requiring a scaled drawing of a proposed dwelling as required by local code, where the drawing is necessary to determine that the proposed dwelling complies with applicable height and roof pitch standards, and the missing information is not otherwise in the record. *Pekarek v. Wallowa County*, 33 Or LUBA 225 (1997).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A city's error in converting an appeal of a quasi-judicial decision into a *de novo* legislative proceeding is substantive rather than procedural, and its decision is prohibited as a matter of law. *Anderson v. City of Shady Cove*, 33 Or LUBA 173 (1997).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. To demonstrate prejudice to substantial rights as a result of a procedural error, a petitioner must explain with some specificity what would have been different or more complete had the correct procedures been followed. LUBA requires more than general assertions that the petitioner's case would have been better presented had there been no procedural violations below. *Concerned Citizens v. Jackson County*, 33 Or LUBA 70 (1997).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. 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).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where petitioners do not explain how the city's failure to conduct a public hearing (if one was required under local code) prejudiced their substantial rights, there is no basis for reversal or remand pursuant to ORS 197.828(2)(d). *Venable v. City of Albany*, 33 Or LUBA 1 (1997).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. When a hearing audio tape is inadvertently destroyed, the city cannot include it in the record. However, the city's failure to include the tape in the record does not require remand unless LUBA cannot perform its review function as a result. *Village Properties, L.P. v. City of Oregon City*, 32 Or LUBA 475 (1996).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. 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).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. The city's failure to provide petitioner with the notice of hearing to which she was entitled under ORS 197.763(2) effectively denied petitioner the right to participate in the hearings process and to present evidence, thereby violating her substantial rights. *Wicks-Snodgrass v. City of Reedsport*, 32 Or LUBA 292 (1997).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a party has the opportunity to object to a procedural error before the local government, but fails to do so, that error cannot be assigned as grounds for reversal or

remand of the local government's decision in an appeal to LUBA. *Wicks-Snodgrass v. City of Reedsport*, 32 Or LUBA 292 (1997).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Because the county's violation of ORS 215.422 is not a procedural error, petitioner is not required to show that his substantial rights were prejudiced by the county's error in order to obtain a remand. *Brown v. Union County*, 32 Or LUBA 168 (1996).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Even if petitioner was not afforded an opportunity below to present argument and rebuttal on the issue of how the city should proceed on remand, petitioner has not demonstrated prejudice to its substantial rights where it was provided both an adequate opportunity to prepare and submit a case and a full and fair hearing. *Prineville Properties, Inc. v. City of Prineville*, 32 Or LUBA 139 (1996).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. 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).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where the proceedings on remand were limited to argument and the petitioner was allowed to present argument, the county's improper refusal to allow another party to present argument did not prejudice the substantial rights of the petitioner. *Fraley v. Deschutes County*, 32 Or LUBA 27 (1996).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. The county's failure to provide adequate notice of a proposed goal exception under ORS 197.732(5) is a procedural error that will not result in reversal or remand where the record demonstrates that petitioners' substantial rights were not prejudiced. *Middleton v. Josephine County*, 31 Or LUBA 423 (1996).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. The city's violation of the notice requirements of ORS 197.763(3) does not justify reversal or remand absent a showing by petitioners that their substantial rights were prejudiced as a result of the improper notice. *Tucker v. City of Adair Village*, 31 Or LUBA 382 (1996).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. LUBA reviews the final decision made by the county board of commissioners, not the decision of the planning commission. A procedural violation by the planning commission is not ground for reversal or remand unless petitioner establishes that the

board of commissioners did not correct the violation. *Simonds v. Hood River County*, 31 Or LUBA 305 (1996).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. The requirement of ORS 197.763(4)(b) that a staff report be available seven days prior to a land use hearing is a procedural requirement; under ORS 197.835(9)(c), its violation is ground for reversal or remand only if petitioner demonstrates that his substantial rights were prejudiced. *Simonds v. Hood River County*, 31 Or LUBA 305 (1996).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. 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).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where the county allows the applicants to provide a requisite septic system evaluation after the final hearing, and petitioners are provided seven days to respond, petitioners' procedural rights are not violated. *Friends of Indian Ford v. Deschutes County*, 31 Or LUBA 248 (1996).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A memorandum from planning staff to the city council concerning interpretation of the city code is not evidence. Therefore, that petitioners had no opportunity to rebut the substance of staff's memorandum at a continued hearing provides no basis for reversal or remand of the challenged decision. *Sullivan v. City of Woodburn*, 31 Or LUBA 192 (1996).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Under ORS 197.763(6)(b), oral evidence submitted at a continued hearing provides no basis for a request that the record be left open for a response. Therefore, that petitioners had no opportunity to rebut the substance of testimony given at a continued hearing provides no basis for reversal or remand of the challenged decision. *Sullivan v. City of Woodburn*, 31 Or LUBA 192 (1996).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. LUBA may reverse or remand a local decision based on a local government's failure to comply with applicable notice requirements only if the defect prejudices a petitioner's substantial rights. *Thomas v. Wasco County*, 30 Or LUBA 142 (1995).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. The existence of procedural error resulting from defects in a notice of final decision fails to establish prejudice to substantial rights in the absence of a causal relationship between the defects and petitioner's failure to participate in the process. *Thomas v. Wasco County*, 30 Or LUBA 142 (1995).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where petitioner's failure to file a timely local appeal resulted from his absence during the appeal period, and not from the failure of the notice of decision to include required findings of fact, the necessary relationship between the procedural defects and petitioner's substantial rights was not established. *Thomas v. Wasco County*, 30 Or LUBA 142 (1995).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Under ORS 12.270, a boundary alteration, initiated and purported to be effective, is conclusively presumed effective one year after the purported effective date, notwithstanding procedural defects in adoption. *Carlson v. City of Dunes City*, 30 Or LUBA 129 (1995).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A procedural error is grounds for remand or reversal only when a party establishes the violation prejudices its substantial rights. LUBA will not search the record to find evidence to support the alleged procedural error. *Wakeman v. Jackson County*, 29 Or LUBA 521 (1995).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where petitioners contend a local government's notice of hearing on a conditional use permit application did not comply with the requirement of ORS 197.763(3)(a) to explain the nature of the application and the uses that could be authorized, but do not contend their substantial rights were prejudiced by the alleged error, petitioners provide no basis for reversal or remand. ORS 197.835(7)(a)(B). *Jackman v. City of Tillamook*, 29 Or LUBA 391 (1995).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A local government's failure to comply with the requirements of ORS 197.763(3)(h) and (i) that its notice of hearing state the staff report and applicant's materials are available for inspection and that copies will be provided at reasonable cost is a procedural error, and does not provide a basis for reversal or remand unless petitioners explain how their substantial rights were prejudiced by the error. *Jackman v. City of Tillamook*, 29 Or LUBA 391 (1995).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where petitioners do not move for an evidentiary hearing, and the only undisputed fact alleged by petitioners is that a petitioner was required to pay 14 dollars for the local government's 14-page staff report, petitioners fail to establish the local government's failure to provide a copy of the staff report at a reasonable cost, as required by ORS 197.763(3)(i), violated petitioners' substantial rights. *Jackman v. City of Tillamook*, 29 Or LUBA 391 (1995).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where the challenged decision is that of the governing body, made on appeal from a planning commission decision, allegations of procedural error in the manner in

which the planning commission adopted its order and findings do not provide a basis for reversal or remand. *Jackman v. City of Tillamook*, 29 Or LUBA 391 (1995).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where petitioners are denied the opportunity to rebut evidence that is potentially relevant to applicable approval standards in a quasi-judicial land use proceeding, their substantial rights are prejudiced and the challenged decision must be remanded. *Jackman v. City of Tillamook*, 29 Or LUBA 391 (1995).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Under ORS 197.835(7)(a)(B), LUBA may reverse or remand a challenged decision because the decision maker failed to follow applicable procedural requirements, including notice requirements, only if that failure prejudiced the substantial rights of the petitioner. *Moore v. Clackamas County*, 29 Or LUBA 372 (1995).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where petitioners allege the planning commission denied them an opportunity to submit evidence relevant to a proposed comprehensive plan amendment, but petitioners were able to submit the evidence during a *de novo* hearing on the proposed plan amendment before the governing body, the alleged error in the planning commission proceedings was cured by the governing body's *de novo* review. *O'Rourke v. Union County*, 29 Or LUBA 303 (1995).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A local government's failure to provide notice that it was considering a floodplain permit application was a procedural error which prejudiced petitioners' substantial rights because the error deprived petitioners of an adequate opportunity to address floodplain issues relevant to local floodplain permit requirements. *Mission Bottom Assoc. v. Marion County*, 29 Or LUBA 281 (1995).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. When the local government decision maker reviews allegations of procedural irregularities and finds, based on substantial evidence, that no such irregularities exist, LUBA is bound by the finding. *Huntzicker v. Washington County*, 29 Or LUBA 587 (1995).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a local governing body improperly accepts potentially relevant new evidence while conducting an on-the-record review of a lower level decision maker's decision, and does not provide petitioners an opportunity to rebut that new evidence, petitioners' substantial rights are prejudiced, and the local government's decision must be remanded. *Penland v. Josephine County*, 29 Or LUBA 213 (1995).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A local government's failure to provide notice of its hearings to persons other than petitioners is a procedural error that does not prejudice petitioners' substantial rights

if petitioners received notice of the local government hearings and participated in them. *Skrepetos v. Jackson County*, 29 Or LUBA 193 (1995).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where petitioners were allowed to submit evidence to the planning commission, and do not identify any additional evidence they tried to submit which was refused by the governing body, any error by the governing body in conducting its hearing "on the record" did not prejudice petitioners' substantial rights. *Skrepetos v. Jackson County*, 29 Or LUBA 193 (1995).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a party has the opportunity to object to a procedural error before a local government, but fails to do so, that error cannot be assigned as grounds for reversal or remand of the local government decision in an appeal to LUBA. *Skrepetos v. Jackson County*, 29 Or LUBA 193 (1995).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Petitioner's argument that it was denied a meaningful opportunity to rebut evidence presented at a local government hearing does not provide a basis for remand, if petitioner does not identify any evidence relevant to applicable approval standards that was submitted at the hearing and which petitioner was denied an opportunity to rebut. *ONRC v. City of Oregon City*, 29 Or LUBA 90 (1995).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where petitioner submits detailed argument to the local government regarding the applicability of a particular code provision and whether that code provision is satisfied by the subject application, the local government's failure to list that code provision as an applicable criterion in the notice of its initial evidentiary hearing, as required by ORS 197.763(3)(b), did not prejudice petitioner's substantial rights. *ONRC v. City of Oregon City*, 29 Or LUBA 90 (1995).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where petitioners do not argue the challenged decision violates any criterion which they failed to raise below because that criterion was not listed in the local government's notice of initial hearing or proposed action, as required by ORS 197.763(3)(b) or ORS 197.195(3)(c)(C), petitioners fail to show their substantial rights were prejudiced by the error and establish no basis for reversal or remand. *Wicks v. City of Reedsport*, 29 Or LUBA 8 (1995).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where members of a local decision making body disclose, at the beginning of the initial evidentiary hearing, that they made site visits to the subject property, and petitioners fail to object to the adequacy of that disclosure, insufficiency of the disclosure cannot be assigned as grounds for reversal or remand. *Wicks v. City of Reedsport*, 29 Or LUBA 8 (1995).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where the local governing body is the final decision maker, after a *de novo* review of a planning commission decision, failure of members of the planning commission to disclose the substance of observations made during a site visit provides no basis for reversal or remand. *Wicks v. City of Reedsport*, 29 Or LUBA 8 (1995).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. The improper exclusion of evidence relevant to an arguably applicable approval standard is a prejudicial procedural error, where LUBA is unable to determine the improperly excluded evidence could not have affected the decision reached. *Wicks v. City of Reedsport*, 29 Or LUBA 8 (1995).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where the local governing body improperly accepts new evidence while conducting an on-the-record review of a lower level decision maker's decision, and does not provide petitioners an opportunity to rebut that new evidence, petitioners' substantial rights are prejudiced. *Wicks v. City of Reedsport*, 29 Or LUBA 8 (1995).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. 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).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where petitioner submitted evidence and argument to the city council during its *de novo* review of a decision of the city landmarks commission, even if procedural errors were made in the proceeding before the landmarks commission, petitioner's substantial rights were not prejudiced. *Champion v. City of Portland*, 28 Or LUBA 618 (1995).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. To obtain reversal or remand of a decision because information required by the local code is missing from the application, petitioner must explain why the missing information is necessary to determine compliance of the proposed development with applicable approval standards, and the missing information must not be found elsewhere in the record. *Champion v. City of Portland*, 28 Or LUBA 618 (1995).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where the local government's notice of its first evidentiary hearing before the planning commission failed to list the applicable standards, as required by ORS 197.763(3)(b), petitioners may raise issues at LUBA even though such issues may not have been raised during the local proceedings. However, this procedural error provides no basis for reversal or remand of the decision where petitioners fail to establish

the error caused prejudice to their substantial rights. *Shapiro v. City of Talent*, 28 Or LUBA 542 (1995).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Even if a local government committed a procedural error in following legislative rather quasi-judicial procedures, if the only claimed prejudice to petitioner's substantial rights is inadequate time to prepare its case and LUBA concludes the local government provided petitioner ample time to prepare its case, there is no basis for reversal or remand. *Friends of Cedar Mill v. Washington County*, 28 Or LUBA 477 (1995).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A code provision prohibiting a hearings officer from taking "notice of any communications * * * or other materials prepared in connection with the particular case unless the parties are afforded an opportunity to contest the material" gives parties a substantial right to an opportunity to rebut materials submitted during a hearings officer's proceeding. Therefore, violation of such a code provision provides a basis for reversal or remand by LUBA. *Tylka v. Clackamas County*, 28 Or LUBA 417 (1994).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where the local decision maker conducted a site view, but failed to place on the record the substance of its site observations and failed to provide the parties any opportunity to rebut the evidence obtained from the site view, the decision maker committed procedural errors that prejudiced petitioners' substantial rights. *McNamara v. Union County*, 28 Or LUBA 396 (1994).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Because petitioners do not have a right to seek a referendum on a quasi-judicial land use decision, a local government error in adopting such a decision as an emergency ordinance provides no basis for reversal or remand. *Neuman v. City of Albany*, 28 Or LUBA 337 (1994).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. ORS 215.416(5) and 197.763(3)(b) require a county to identify applicable approval standards in its notices of hearing. Where petitioner's right to participate in the local proceedings is impaired by the county's failure to identify relevant standards, the challenged decision must be remanded. *Murphy Citizens Advisory Comm. v. Josephine County*, 28 Or LUBA 274 (1994).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A petitioner may not assert his own ex parte contacts with the decision maker as a basis for reversal or remand, where the contacts were disclosed and petitioner did not object to the adequacy or completeness of the disclosure. *Jones v. Lane County*, 28 Or LUBA 193 (1994).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where (1) a local decision maker makes a procedural error in allowing new

evidence to be submitted during an on-the-record review; (2) petitioners object to receipt of that new evidence; and (3) the local decision maker does not provide petitioners with an opportunity to rebut the new evidence; LUBA will remand the challenged decision for the local decision maker to provide the required opportunity for rebuttal. *Tucker v. Douglas County*, 28 Or LUBA 134 (1994).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a party has the opportunity to object to a procedural error before the local government, but fails to do so, that error cannot be assigned as grounds for reversal or remand of a local government decision in an appeal to LUBA. *Woodstock Neigh. Assoc. v. City of Portland*, 28 Or LUBA 146 (1994).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where petitioner had notice that the applicant revised his subdivision proposal to include cluster housing, and had an opportunity to present and rebut evidence regarding the proposed cluster housing in a *de novo* evidentiary hearing before the city council, petitioner's substantial rights were not prejudiced simply because the cluster housing proposal was not referred to the hearings officer for hearing. *Woodstock Neigh. Assoc. v. City of Portland*, 28 Or LUBA 146 (1994).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. If the applicant presented new *evidence* relevant to the applicable approval standards during the rebuttal period of the local government hearing, and petitioner was denied an opportunity to rebut that evidence, petitioner's substantial rights were prejudiced. *Woodstock Neigh. Assoc. v. City of Portland*, 28 Or LUBA 146 (1994).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where the record shows petitioner was aware of the applicable approval criteria in the comprehensive plan and participated effectively in the local hearing, a local government's failure to comply with the requirements of ORS 197.763(3)(b) and (j), regarding listing applicable criteria from the plan and explaining hearing procedures in its notice of hearing, does not prejudice petitioner's substantial rights or provide a basis for reversal or remand. *Furler v. Curry County*, 27 Or LUBA 546 (1994).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Although a local governing body may be authorized to conduct a *de novo* review of a development application, its refusal to allow petitioner to submit the planning commission decision and staff report on the subject application into the record as relevant evidence prejudices petitioner's substantial right to submit evidence. *Furler v. Curry County*, 27 Or LUBA 497 (1994).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. In order for a petitioner to obtain reversal or remand of a decision because information required by the local code is missing from the application, petitioner must explain why the missing information is necessary to determine compliance of the proposed development with applicable approval standards, and the missing information

must not be found elsewhere in the record. *Furler v. Curry County*, 27 Or LUBA 497 (1994).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A local government's failure to follow the notice and hearing requirements of ORS 197.763 provides no basis for reversal or remand, where petitioner neither assigns that failure as error nor explains how his substantial rights were prejudiced by that failure. *Fechtig v. City of Albany*, 27 Or LUBA 480 (1994).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. 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).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. 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).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where petitioners presented evidence and argument concerning the necessity for a solar height adjustment and argued the relevant standards were not met, the city's procedural error in not providing notice that it would consider approval of the solar height adjustment did not prejudice petitioners' substantial rights and provides no basis for reversal or remand. *Edwards v. City of Portland*, 27 Or LUBA 262 (1994).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A local government's failure to make available all evidence in support of a quasi-judicial land use application at the time the notice of hearing is provided, as required by ORS 197.763(4)(a), is a procedural error. However, if such evidence is made available prior to or at the hearing and the hearing record is left open for seven days to allow time for additional written testimony from the parties, petitioners' substantial rights are not violated. *Edwards v. City of Portland*, 27 Or LUBA 262 (1994).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where petitioner alleges that he was not provided with written notice of a city manager's letter, in violation of ORS 197.763(2), but petitioner learned of the city manager's letter and appealed it to the city council, petitioner alleges only procedural error, for which prejudice must be shown for LUBA to reverse or remand the challenged city council decision. *Poddar v. City of Cannon Beach*, 26 Or LUBA 429 (1994).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Conditioning approval of a farm dwelling on the applicant obtaining a zoning permit with the board of county commissioners acting as initial decision maker on the

zoning permit rather than the planning director is at most a procedural error, which provides a basis for reversal or remand only if petitioner's substantial rights are violated. *Louisiana Pacific v. Umatilla County*, 26 Or LUBA 247 (1993).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. ORS 197.763(1) and 197.835(2) do not supersede LUBA's prior rulings that where a party has an opportunity locally to object to a *procedural* error, at any stage of the local government proceedings, but fails to do so, that error cannot be assigned as grounds for reversal or remand of the local government's decision in an appeal to LUBA. *Mazeski v. Wasco County*, 26 Or LUBA 226 (1993).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where petitioners are denied the opportunity to rebut evidence that is relevant to applicable approval standards in a quasi-judicial land use proceeding, their substantial rights are prejudiced and the challenged decision must be remanded. ORS 197.835(7)(a)(B). *Mazeski v. Wasco County*, 26 Or LUBA 226 (1993).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Local government failure to comply with ORS 197.763(3) notice of hearing requirements (1) means that under ORS 197.835(2)(a), LUBA may consider issues that were not raised below; and (2) is a procedural error which, under ORS 197.835(7)(a)(B), provides a basis for reversal or remand of the challenged decision only if such error prejudices petitioners' substantial rights. *Mazeski v. Wasco County*, 26 Or LUBA 226 (1993).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. That a person moving to intervene in an appeal at LUBA failed to object to a local government's decision not to allow that person to present testimony is not fatal to that person's assertion of standing to intervene, where two other persons objected below to the local government's decision to limit testimony. *Sorte v. City of Newport*, 25 Or LUBA 828 (1993).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. The failure to initiate a timely local rehearing process is *not* a procedural defect which LUBA may overlook if no prejudice is shown. *Rochlin v. Multnomah County*, 25 Or LUBA 637 (1993).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. **28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors.** That a public hearing may have been conducted erroneously, is at most a procedural error which does not prejudice petitioners' substantial rights to an adequate opportunity to be heard, to prepare and submit their case, and to a full and fair hearing. *McInnis v. City of Portland*, 25 Or LUBA 376 (1993).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. In the absence of a local code requirement to the contrary, a local government is

not required to allow parties to rebut staff summaries of evidence in the record. *McInnis v. City of Portland*, 25 Or LUBA 376 (1993).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a local government's staff briefs an absentee decision maker concerning matters in the record and does not impermissibly advocate denial of the application, but rather simply provides administrative support to the decision maker, the fact that petitioners had no opportunity to rebut the substance of that staff briefing provides no basis for reversal or remand of the challenged decision. *McInnis v. City of Portland*, 25 Or LUBA 376 (1993).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where petitioner failed to object to the board of commissioners concerning the county's failure to comply with the procedural requirements of ORS 197.763 in the notice of, and announcement at, a planning commission hearing, petitioner cannot assign those errors as a basis for reversing or remanding the county's decision. *Murphy Citizens Advisory Comm. v. Josephine County*, 25 Or LUBA 312 (1993).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. In order for a petitioner to obtain reversal or remand by LUBA of a challenged decision because information required by the local code is missing from the subject land development application, petitioner must argue that the missing information is not found elsewhere in the record and explain why the missing information is necessary to determine compliance of the proposed development with applicable approval standards. *Murphy Citizens Advisory Comm. v. Josephine County*, 25 Or LUBA 312 (1993).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A local government is required to provide parties with an opportunity to rebut evidence submitted during local proceedings on remand from this Board under either ORS 197.763(4)(b) or *Fasano*. A local government's failure to provide petitioner with such opportunity is a procedural error that prejudices petitioner's substantial rights. *Caine v. Tillamook County*, 25 Or LUBA 209 (1993).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Even though a city may have committed error in accepting evidence concerning traffic impacts, if the issue of traffic impacts was not properly before the city, such a procedural error would provide no basis for reversal or remand. *Westlake Homeowners Assoc. v. City of Lake Oswego*, 25 Or LUBA 145 (1993).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. LUBA will not look past the written decision to determine whether local government decision makers were influenced by improperly accepted evidence, where the written decision takes the position that the issue to which the disputed evidence relates was not subject to review and that determination concerning the local scope of review is not dependent on the disputed evidence. *Westlake Homeowners Assoc. v. City of Lake Oswego*, 25 Or LUBA 145 (1993).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. In LUBA's review of alleged procedural errors, the substantial rights referred to in ORS 197.828(2)(d) concerning limited land use decisions are the same rights referred to in ORS 197.835(7)(a)(B) concerning land use decisions. *Mannenbach v. City of Dallas*, 25 Or LUBA 136 (1993).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. The post-acknowledgment amendment notice requirements of ORS 197.610(1) and 197.615(1) are procedural in nature. Local government failure to follow these requirements provides a basis for reversal or remand only if such error prejudiced petitioner's rights to an adequate opportunity to prepare and submit its case and a full and fair hearing before the local government. *Oregon City Leasing, Inc. v. Columbia County*, 25 Or LUBA 129 (1993).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Petitioners' allegations that various procedural errors occurred below provide no basis for reversal or remand, unless petitioners establish how such errors prejudiced their substantial rights. *Burghardt v. City of Molalla*, 25 Or LUBA 43 (1993).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Under ORS 197.828(2)(d), in determining whether remand is appropriate where a local government commits procedural error, LUBA must determine whether the substantial rights of the parties were prejudiced by the error. The substantial rights of parties include the rights to an adequate opportunity to prepare and submit their case and a full and fair hearing. *Warren v. City of Aurora*, 25 Or LUBA 11 (1993).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Even though a local code requirement for publication of notice 10 days prior to hearing is mandatory, it is a procedural requirement, and any error in failing to provide the required notice provides a basis for reversal or remand only if petitioner's substantial rights were prejudiced by the error. *West Amazon Basin Landowners v. Lane County*, 24 Or LUBA 508 (1993).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where the petitioner is a neighborhood association that did not come into existence until after the local government committed an alleged procedural error, and petitioner and its members participated in hearings held after the alleged procedural error, the error did not prejudice petitioner's substantial rights and provides no basis for reversal or remand. *West Amazon Basin Landowners v. Lane County*, 24 Or LUBA 508 (1993).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. While a showing of prejudice to substantial rights is generally required in order to secure a remand for procedural error, no such showing is required to secure a remand where the procedural requirements of ORS 215.060 are not followed. *West Amazon Basin Landowners v. Lane County*, 24 Or LUBA 508 (1993).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. That a local governing body ultimately adopts an interpretation of an applicable code standard that is different from that adopted by the hearings officer, and declines to reopen the evidentiary record, does not provide a basis for reversal or remand where (1) there was no "established" local interpretation of the code standard, (2) the governing body's interpretation does not make relevant any new type of evidence, and (3) petitioner does not identify any evidence it wishes to submit if the evidentiary hearing is reopened. *Heceta Water District v. Lane County*, 24 Or LUBA 402 (1993).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. In rendering a decision on a permit, a city is required to hold at least one public hearing or provide notice of the decision and an opportunity for an appeal. A city's failure to do so requires that the decision be remanded. *Hood River Sand v. City of Mosier*, 24 Or LUBA 381 (1993).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. LUBA will only reverse or remand a challenged decision on procedural grounds where the error causes prejudice to petitioner's substantial rights. A local government's failure to list certain DEQ rules in the notice of hearing does not prejudice petitioner's substantial rights, where petitioner was provided an opportunity to respond to those DEQ rules during the local proceedings *Stockwell v. Clackamas County*, 24 Or LUBA 358 (1992).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a local government advised petitioners of the substance of an applicable requirement, but failed to identify the ordinance that is the source of the requirement, this is a procedural error which does not prejudice petitioners' substantial rights. *Woosley v. Marion County*, 24 Or LUBA 231 (1992).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a hearings officer improperly conducted a site visit without providing prior notice and an opportunity for rebuttal, a governing body decision that relies on findings of the hearings officer based on that improper site visit is subject to reversal or remand. *Wilson Park Neigh. Assoc. v. City of Portland*, 24 Or LUBA 98 (1992).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. 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).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where the local code requires that the decision maker give an oral statement at the beginning of a local hearing to the effect that any party may request that the record remain open for a period of seven days, and where such oral statement is not given,

petitioners' substantial right to submit their case is thereby prejudiced and this error provides a basis for remanding the challenged decision. *Adler v. City of Portland*, 24 Or LUBA 1 (1992).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where petitioners identify no provision of state statute or local ordinance requiring parties to a quasi-judicial land use proceeding to serve documents they submit to the local government on other parties, another party's failure to serve such documents on petitioners does not violate petitioners' *Fasano* right to rebut evidence. *Chauncey v. Multnomah County*, 23 Or LUBA 599 (1992).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where some of the notices preceding local government quasi-judicial hearings on a land use application failed to identify applicable approval criteria, but the notice of the first hearing identified the applicable approval criteria and the record shows all parties were aware of the applicable criteria, the notice errors are at most procedural errors which did not prejudice the parties' substantial rights. Such errors provide no basis for reversal or remand. *Reeder v. Clackamas County*, 23 Or LUBA 583 (1992).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Rejection of relevant evidence by a local decision maker is, at most, a procedural error. Where a planning commission improperly rejected relevant evidence offered by petitioner, but the governing body conducted a *de novo* evidentiary hearing and petitioner did not attempt to submit the evidence to the governing body, petitioner's substantial right to submit evidence was not prejudiced. *Heiller v. Josephine County*, 23 Or LUBA 551 (1992).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Poor quality tape recordings of local land use proceedings provide no basis for reversal or remand where petitioner fails to demonstrate that any properly submitted evidence was not considered by the local decision makers. *Reed v. Benton County*, 23 Or LUBA 486 (1992).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. That a hearings officer committed procedural error by conducting a site visit without providing prior notice to the parties, disclosing his observations and providing an opportunity to rebut such observations, does not prejudice petitioners' substantial rights where the final decision on the subject application was made by the governing body, after a *de novo* review. *Wilson Park Neigh. Assoc. v. City of Portland*, 23 Or LUBA 708 (1992).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. LUBA may only reverse or remand a land use decision on the basis of procedural error, if the error causes prejudice to the petitioner's substantial rights. *Seeger v. City of Portland*, 23 Or LUBA 334 (1992).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Petitioners' allegation that the local government failed to provide required notice of local proceedings following LUBA's remand of a land use decision provides no basis for remand, where petitioners do not contend they were in any way prejudiced by the alleged failure to provide the required notice of the local proceedings. *Wentland v. City of Portland*, 23 Or LUBA 321 (1992).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Alleged errors in the manner in which the findings of a lower level local decision maker were adopted, are harmless if the final decision was properly adopted by the final decision maker. *Rath v. Hood River County*, 23 Or LUBA 200 (1992).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Even if a local government erred by failing to provide notice of local hearings following remand from LUBA to persons other than parties in the LUBA appeal, that failure results in no prejudice to the substantial rights of the parties who did receive notice of the local hearings on remand. *Bartels v. City of Portland*, 23 Or LUBA 182 (1992).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Delay in disclosing an ex parte contact until after the close of the public hearing, and failure to make an announcement of the right to rebut the substance of the ex parte communication, as required by ORS 227.180(3)(b), are at most procedural errors. *Horizon Construction, Inc. v. City of Newberg*, 23 Or LUBA 159 (1992).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. If petitioners were present at a local government meeting when an alleged procedural error occurred, petitioners must enter an objection in order to preserve their right to raise that procedural error in an appeal to LUBA, even where the local evidentiary record had previously been closed and there was no scheduled opportunity for public input at the meeting in question. *Horizon Construction, Inc. v. City of Newberg*, 23 Or LUBA 159 (1992).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a local government improperly rejected relevant evidence during its proceeding below, LUBA must remand the challenged decision. *Silani v. Klamath County*, 22 Or LUBA 735 (1992).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. The failure of local notices of hearing to summarize the issues involved in a proposed goal exception, as required by ORS 197.732(5), constitutes procedural error and does not provide a basis for reversal or remand of the challenged decision in the absence of prejudice to petitioner's substantial rights. *Caine v. Tillamook County*, 22 Or LUBA 687 (1992).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Local government failure to comply with ORS 197.763(3) notice of hearing requirements (1) is a procedural error, which will result in reversal or remand of the challenged decision only if such error prejudices petitioner's substantial rights; and (2) under ORS 197.835(2)(a), allows LUBA to consider issues that were not raised below. *Caine v. Tillamook County*, 22 Or LUBA 687 (1992).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Although under ORS 215.422(3) it may be error for a hearings officer to fail to disclose prior contacts with the planning department, it is a procedural error. LUBA may not reverse or remand on the basis of procedural error unless such error prejudices petitioner's substantial rights. Petitioner's substantial rights are not prejudiced by such error where petitioner was aware of and had an opportunity to respond to the substance of the contacts with the planning department. *Marson v. Clackamas County*, 22 Or LUBA 497 (1991).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A petitioner may not assert the occurrence of his own ex parte contacts with the decision maker as a basis for reversal or remand, where the contacts were disclosed and petitioner did not object to the adequacy or completeness of the disclosure of such ex parte contacts. *Toth v. Curry County*, 22 Or LUBA 488 (1991).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A local government's failure to follow the procedures specified in the local code for the adoption of legislative code amendments is an error of procedure. Where the error does not prevent petitioner from fully participating in such code amendment proceedings, petitioner does not demonstrate that the alleged error caused prejudice to his substantial rights, and such error provides no basis for reversal or remand. *Smith v. City of Portland*, 22 Or LUBA 485 (1991).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A city permit decision rendered without providing the public hearing or notice of decision and opportunity for local appeal required by ORS 227.175(3) and (10) must be remanded so that the city may comply with the statutory requirements. *Citizens Concerned v. City of Sherwood*, 22 Or LUBA 390 (1991).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where an application for a conditional use permit for a mobile home park includes neither a site plan nor other specific information required under the local code, and the site plan and specific information are relevant to determining compliance with applicable approval criteria, their omission is not a harmless procedural error. *Burghardt v. City of Molalla*, 22 Or LUBA 369 (1991).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where substantive approval standards are the same, a local government error in characterizing a plan map amendment as legislative, rather than quasi-judicial, is

procedural in nature and warrants reversal or remand only if petitioners demonstrate their substantial rights were prejudiced because of failure to provide the procedural safeguards required in a quasi-judicial proceeding. *Gray v. Clatsop County*, 22 Or LUBA 270 (1991).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where an application for a residential care facility does not include a vicinity map showing the proposed site in relation to public transportation systems, as required by the local code, but information concerning the location of public transportation is found elsewhere in the record, the failure to include such vicinity map in the application is a procedural error which does not prejudice petitioner's substantial rights. *Murray v. Clackamas County*, 22 Or LUBA 247 (1991).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. ORS 197.763(3)(b) and (5)(a) require a local government to identify the standards it believes to be applicable to an application for quasi-judicial land use approval prior to conducting hearings on the application. LUBA is required to reverse or remand a local government's decision if it failed to follow applicable procedures in a manner that prejudiced petitioner's substantial rights, which include "rights to an adequate opportunity to prepare and submit their case and a full and fair hearing." *Bradbury v. City of Independence*, 22 Or LUBA 783 (1991).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A local government's failure to identify approval standards applicable to a permit application may prejudice petitioner's substantial rights to prepare and submit his case. *Bradbury v. City of Independence*, 22 Or LUBA 783 (1991).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Although the party initiating a challenged zoning ordinance amendment was not clearly identified on the application and notices of local public hearings as required by the local code, such procedural errors provide no basis for reversal or remand where petitioners' substantial rights were not prejudiced. *Parmenter v. Wallowa County*, 21 Or LUBA 490 (1991).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. If petitioners were present at a local government meeting when an alleged procedural error occurred, petitioners must make their objections known to the decision making body below in order to assign the procedural error as a basis for reversal or remand by LUBA. *Schellenberg v. Polk County*, 21 Or LUBA 425 (1991).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a county orally voted to grant land use approval with conditions, but later learned one of the conditions was based on an erroneous factual assumption and could not be complied with, and the county thereafter denied the application, the county did not commit procedural error and the petitioner's substantial rights were not violated.

Petitioner's substantial rights do not include a right to a particular decision on his request for land use approval. *Carsey v. Deschutes County*, 21 Or LUBA 118 (1991).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. The failure of a local government to identify its general procedures for the conduct of hearings in its notice of hearing, as required by ORS 197.763(3)(j), is a procedural error, for which LUBA is empowered to reverse or remand the challenged decision only if such error "prejudiced the substantial rights of the petitioner." ORS 197.835(7)(a)(B). *Stefan v. Yamhill County*, 21 Or LUBA 18 (1991).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a local government failed to identify its 15-minute time limitation on the presentation of oral testimony and argument in its notice of hearing, but allowed additional time at the hearing for the presentation of petitioners' oral argument and a continuance of the hearing, petitioners' substantial rights were not prejudiced. *Stefan v. Yamhill County*, 21 Or LUBA 18 (1991).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. 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).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where petitioners failed to take advantage of an opportunity to rebut evidence presented in proceedings below, they did not establish how the local decision maker's alleged procedural error in admitting such evidence caused harm to their substantial rights. ORS 197.835(7)(a)(B). *White v. City of Oregon City*, 20 Or LUBA 470 (1991).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where the local code vests total discretion to refuse to reconsider a decision with the local decision maker, it is not error for the decision maker to refuse to reconsider a disputed decision. *West v. Clackamas County*, 20 Or LUBA 433 (1991).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. The requirements of ORS 197.763(4)(b) and the local code that staff reports be available a certain number of days prior to land use hearings are procedural requirements; their violation is grounds for reversal or remand of the local government's decision only if petitioner demonstrates prejudice to its substantial rights. ORS 197.835(7)(a)(B). *Forest Park Estate v. Multnomah County*, 20 Or LUBA 319 (1990).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Petitioner fails to establish that its substantial rights were prejudiced by a late staff report, where petitioner does not identify ways in which its written and oral responses at the local hearing would have been different or more complete if the staff

report had been available earlier. *Forest Park Estate v. Multnomah County*, 20 Or LUBA 319 (1990).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Generally, the failure to send notice of hearing to parties other than petitioner would not prejudice the substantial rights of petitioner, so long as petitioner received proper notice. *Forest Park Estate v. Multnomah County*, 20 Or LUBA 319 (1990).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where the record demonstrates that petitioner was fully aware of the criteria applicable to its land use application prior to the local hearing, local failure to comply with the requirement of ORS 197.763(3)(b) that notice of hearing list applicable plan and code approval criteria did not prejudice petitioner's substantial rights. ORS 197.835(7)(a)(B). *Forest Park Estate v. Multnomah County*, 20 Or LUBA 319 (1990).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Under ORS 197.763(3)(j), a local government is required to provide in its notice of hearing a general explanation regarding the right under ORS 197.763(6) to request that the record of the initial evidentiary hearing remain open. A local government's failure to provide such notice is a procedural error which, if it prejudiced the parties' substantial rights, would require reversal or remand of the challenged decision. *Wissusik v. Yamhill County*, 20 Or LUBA 246 (1990).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where petitioners allege the local government violated the procedural requirements of ORS 197.763, but do not contend that violation is a basis for reversal or remand of the challenged decision, and respondents do not argue that petitioners are precluded from raising any issue raised in the petition for review, LUBA need not determine whether the local government committed a procedural error. *Wissusik v. Yamhill County*, 20 Or LUBA 246 (1990).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where the local code requires physical constraints review to be conducted simultaneously with site review, and approval of a physical constraints review permit requires application of substantive criteria which could result in denial of the proposed development, the city's failure to require a proposed development to obtain a required physical constraints review permit at the time of site review approval is not a mere procedural error. *Neuenschwander v. City of Ashland*, 20 Or LUBA 144 (1990).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. 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).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A hearings officer's acceptance of evidence submitted after the deadline established by local code provides no basis for reversal or remand where petitioner did not request a continuance, and petitioner fails to explain how he was prejudiced by the hearings officer's action. *Reed v. Lane County*, 19 Or LUBA 276 (1990).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. The planning commission's error in failing to consider the propriety of a commissioner's participation in the decision on the subject application, where the issue was raised before the commission, is procedural and, therefore, petitioner must establish the error caused prejudice to his substantial rights. *Murphey v. City of Ashland*, 19 Or LUBA 182 (1990).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. If the governing body holds a *de novo* hearing on an appeal of the planning commission's decision on the subject application, such hearing cures any prejudice due to a planning commissioner's allegedly improper participation in the planning commission proceedings. *Murphey v. City of Ashland*, 19 Or LUBA 182 (1990).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A city's failure to adopt ordinances specifying the city council's scope of review in appeals of planning commission decisions and providing procedures for hearings on such appeals, as required by ORS 227.170, is a procedural error. *Murphey v. City of Ashland*, 19 Or LUBA 182 (1990).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where petitioner was not given notice of the city council's *de novo* scope of review in appeals of planning commission decisions, but the city council continued its hearing to provide an opportunity for parties to submit evidence, petitioner's substantial rights were not prejudiced by the procedural error. *Murphey v. City of Ashland*, 19 Or LUBA 182 (1990).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where there is no dispute concerning the authenticity or identity of a document a party believes was improperly excluded from the record by the local government, the parties may stipulate that the document be included in the LUBA record for the limited purpose of reviewing the correctness of the local government's decision to exclude the document from the local government record. Alternatively, the document may be attached to a party's brief, and if any party objects to LUBA's consideration of the document, the party offering the document may move for an evidentiary hearing. *Von Lubken v. Hood River County*, 19 Or LUBA 548 (1990).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a party has the opportunity to object to a *procedural* error before the local government, but fails to do so, that error cannot be assigned as a basis for reversal or remand of the local government's decision in an appeal to LUBA. *Torgeson v. City of Canby*, 19 Or LUBA 511 (1990).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. In order to obtain reversal or remand of a city decision due to a procedural error, petitioners must demonstrate that their substantial rights were prejudiced. ORS 197.835(7)(a)(B). Where the alleged procedural error is participation by a planning commissioner, in violation of a city ordinance, petitioners must demonstrate that the commissioner's participation denied them a fair hearing. *Torgeson v. City of Canby*, 19 Or LUBA 511 (1990).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. 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).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a mayor's ex parte contacts were completely disclosed, although late in the deliberations and after an incomplete disclosure earlier in the proceedings, and the mayor invited challenges and inquiries, the remedial purpose of ORS 227.180(3) is nevertheless served. Where petitioners did not object to the timing and manner of the disclosure, and do not show their substantial rights were violated, there is no basis for remand. *Walker v. City of Beaverton*, 18 Or LUBA 712 (1990).