

28.8.9 LUBA Scope of Review – Grounds for Reversal/Remand – Other. When the arguments presented in support of an assignment of error are so poorly stated and developed that the overwhelming majority of the assignment of error cannot reasonably be responded to, LUBA will not require respondents to respond to every disjointed argument presented in the assignment of error. *Sommer v. Josephine County*, 54 Or LUBA 507 (2007).

28.8.9 LUBA Scope of Review – Grounds for Reversal/Remand – Other. In the absence of a reviewable interpretation by a local government of its code, LUBA is authorized under ORS 197.829(2) to interpret the local government's code in the first instance. *Munkhoff v. City of Cascade Locks*, 54 Or LUBA 660 (2007).

28.8.9 LUBA Scope of Review – Grounds for Reversal/Remand – Other. A local government errs in approving a development that proposes multiple duplex and fourplex buildings on one lot where the definition of those buildings and the context of that definition establishes that the local government's code allows only one building per lot. *Munkhoff v. City of Cascade Locks*, 54 Or LUBA 660 (2007).

28.8.9 LUBA Scope of Review – Grounds for Reversal/Remand – Other. Remand is necessary to either withdraw a condition of approval requiring fencing around a property or explain what criterion it relates to and what purpose it serves, where the decision approves development in part and denies it in part, and it is not clear whether the condition of approval relates to approved or denied aspects of the proposed development. *Horning v. Washington County*, 51 Or LUBA 303 (2006).

28.8.9 LUBA Scope of Review – Grounds for Reversal/Remand – Other. Where an assignment of error relies exclusively on an allegation that the challenged decision contains no findings regarding a particular approval criterion, and in fact findings addressing the approval criterion do exist, but the petitioner fails to challenge those findings, the assignment of error fails to provide a basis to reverse or remand the challenged decision. *Wetherell v. Douglas County*, 51 Or LUBA 699 (2006).

28.8.9 LUBA Scope of Review – Grounds for Reversal/Remand – Other. To obtain voluntary remand over a petitioner's objections, the local government must demonstrate only that it will review all of the issues raised in the petition for review. Voluntary remand requires no confession of error, and petitioner is not guaranteed a particular result. *Grabhorn v. Washington County*, 50 Or LUBA 510 (2005).

28.8.9 LUBA Scope of Review – Grounds for Reversal/Remand – Other. Voluntary remand is warranted where the local government states that it will either address all issues raised in the petition for review or revoke the decision in its entirety. At least where the petitioner seeks to reverse or nullify the challenged decision, petitioner is not entitled to dictate the basis on which the local government revokes a remanded decision. *Grabhorn v. Washington County*, 50 Or LUBA 510 (2005).

28.8.9 LUBA Scope of Review – Grounds for Reversal/Remand – Other. LUBA will reverse a city council decision that interprets its code provisions regarding accessory uses to include a tennis facility that includes four grass courts, bleachers, restrooms and shower facilities and parking and camping areas as accessory uses to a single-family dwelling, where the code permits “service clubs, lodges and other public uses” as a conditional use in the zone, and the tennis facility appears to fall squarely within that category. *McCormick v. City of Baker City*, 46 Or LUBA 50 (2003).

28.9 LUBA Scope of Review – State Agency Decisions. LUBA does not have jurisdiction to review a decision by the Department of Land Conservation and Development approving a county periodic review work task. *Colony v. Wallowa County*, 46 Or LUBA 586 (2004).

28.8.9 LUBA Scope of Review – Grounds for Reversal/Remand – Other. LUBA will remand a city’s zoning designation decision, where the decision is dependent on the validity of a concurrent annexation decision that LUBA has concluded does not comply with applicable law. *Just v. City of Lebanon*, 45 Or LUBA 179 (2003).

28.8.9 LUBA Scope of Review – Grounds for Reversal/Remand – Other. In applying local legislation to grant a permit holder’s request to extend a two-year forest template dwelling permit for one additional year, a county commits reversible error in providing that the permit will expire if the dwelling is not completed within that three year period where ORS 215.417(1) and OAR 660-033-0140(5)(a) require that a forest template dwelling permit be honored for four years. Where the county concedes on appeal to LUBA that it erroneously failed to apply OAR 660-033-0140(5)(a), LUBA will reverse the county’s decision even though the permit opponent does not assign error to that aspect of the county’s decision. *Butori v. Clatsop County*, 45 Or LUBA 553 (2003).

28.8.9 LUBA Scope of Review – Grounds for Reversal/Remand – Other. That a county may have required hunting preserve buffers in other decisions that approve hunting preserves does not necessarily mean that the county errs in not requiring a hunting preserve buffer in an appealed decision, where there may have been factual differences or different evidence in the proceedings that led to the appealed decision that explain the different results. *Underhill v. Wasco County*, 45 Or LUBA 566 (2003).

28.8.9 LUBA Scope of Review – Grounds for Reversal/Remand – Other. Where LUBA and the Court of Appeals have already decided that local ordinance provisions require that an applicant for a lot line adjustment demonstrate that the proposed use of the property after the lot line adjustment is served by adequate public facilities and is compatible with comprehensive plan policies, a city may not interpret those same provisions in such a way as to relieve an applicant of that burden. *Robinson v. City of Silverton*, 44 Or LUBA 308 (2003).

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

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

28.8.9 LUBA Scope of Review – Grounds for Reversal/Remand – Other. Where all of the assignments of error in petitioner's petition for review challenge a condition of approval for a planned unit development that requires a 5,000 square foot minimum lot size, and the local government moves for a voluntary remand to consider all of petitioners' assignments of error and reconsider whether it can impose the minimum lot size, LUBA will grant the motion for voluntary remand over petitioner's objection. In that circumstance, the possibility that the city will again impose the minimum lot size condition of approval is not, in and of itself, a sufficient reason to deny the motion. *OTAK, Inc. v. City of Sherwood*, 40 Or LUBA 218 (2001).

28.8.9 LUBA Scope of Review – Grounds for Reversal/Remand – Other. A city's discretionary decision to not continue a hearing is reviewable by LUBA for an abuse of discretion. *Reeder v. City of Oregon City*, 37 Or LUBA 794 (2000).

28.8.9 LUBA Scope of Review – Grounds for Reversal/Remand – Other. Where a local appeal is on the record, and the issues to be considered are limited to those raised in the notice of appeal, and there is likely to be a significant delay in the resolution of the appeal if a hearing is continued, a city does not abuse its discretion by denying an applicant's request for a continuance. *Reeder v. City of Oregon City*, 37 Or LUBA 794 (2000).

28.8.9 LUBA Scope of Review – Grounds for Reversal/Remand – Other. Residents of annexation territory who signed consents to annexation to obtain city water and sewer services were not coerced into doing so, even though their consents were given because their wells were contaminated and septic tanks were failing. The city did not cause the contamination, nor did the city require the extraterritorial residents to connect to city systems. *Johnson v. City of La Grande*, 37 Or LUBA 380 (1999).

28.8.9 LUBA Scope of Review – Grounds for Reversal/Remand – Other. A local government is not estopped from following the appeal procedure that is required by its code where it is unclear whether county staff (1) made any false statements to the applicant concerning appeal procedures, (2) were aware that any of their representations were incorrect, or (3) intended that the applicant take any action based on such

representations; and the applicant does not identify how she was induced to act differently by the county's representations. *Lawrence v. Clackamas County*, 36 Or LUBA 273 (1999).

28.8.9 LUBA Scope of Review – Grounds for Reversal/Remand – Other. LUBA will grant a city's motion for a voluntary remand in order to reconsider its Goal 5 determinations in light of petitioner's concerns, even though LUBA would owe no deference to the city's interpretation and application of Goal 5. *Hribernick v. City of Gresham*, 35 Or LUBA 329 (1998).

28.8.9 LUBA Scope of Review – Grounds for Reversal/Remand – Other. Petitioner is not denied the right to have its record objection reviewed by a superior tribunal if LUBA grants the city's request for a voluntary remand. Any error that LUBA may have committed in resolving the record objection may be raised if petitioner appeals the city's decision on remand, and appellate review is available to challenge any LUBA decision in such a subsequent appeal. *Hribernick v. City of Gresham*, 35 Or LUBA 329 (1998).

28.8.9 LUBA Scope of Review – Grounds for Reversal/Remand – Other. An evidentiary hearing to establish decision makers' "personal interest" in a proposal due to their ownership of proximate property is not warranted because, even if true, such a "personal interest" could not provide a basis for reversing or remanding the decision. *ODOT v. City of Mosier*, 34 Or LUBA 797 (1998).

28.8.9 LUBA Scope of Review – Grounds for Reversal/Remand – Other. Where a necessary interpretation of a local ordinance is absent or inadequate, LUBA will decline to interpret the local provision in the first instance, pursuant to ORS 197.829(2), when multiple interpretations are possible, and neither the county nor the applicant files a response brief. *Wodarczak v. Yamhill County*, 34 Or LUBA 453 (1998).

28.8.9 LUBA Scope of Review – Grounds for Reversal/Remand – Other. A county is not bound by "issue" or "claim" preclusion to a prior finding of noncompliance with an approval criterion in a prior land use proceeding. *Femling v. Coos County*, 34 Or LUBA 328 (1998).

28.8.9 LUBA Scope of Review – Grounds for Reversal/Remand – Other. Where more than one site plan appears in the record, a local government errs if its decision does not adequately identify which site plan is approved. *Brown v. City of Portland*, 33 Or LUBA 700 (1997).

28.8.9 LUBA Scope of Review – Grounds for Reversal/Remand – Other. Where petitioner fails to demonstrate that its substantial rights have been prejudiced, a motion for voluntary remand filed by the local government one week prior to oral argument will be allowed. *Smith v. Douglas County*, 33 Or LUBA 682 (1997).

28.8.9 LUBA Scope of Review – Grounds for Reversal/Remand – Other. When petitioner objects to a motion for voluntary remand by a local government, petitioner

must identify circumstances that make a LUBA decision on the merits clearly more important than remanding to first allow the local government to address the issues raised in the petition for review. *Smith v. Douglas County*, 33 Or LUBA 682 (1997).

28.8.9 LUBA Scope of Review – Grounds for Reversal/Remand – Other. A party challenging a local land use decision must provide some particularized basis for showing it to be subject to remand or reversal. *Laurence v. Douglas County*, 33 Or LUBA 292 (1997).

28.8.9 LUBA Scope of Review – Grounds for Reversal/Remand – Other. A voluntary remand is appropriate if the local government agrees to reconsider all of the issues raised by the petitioners. It is not necessary for the local government to confess error. *Village Properties, L.P. v. Oregon City*, 33 Or LUBA 206 (1997).

28.8.9 LUBA Scope of Review – Grounds for Reversal/Remand – Other. The failure of a city council expressly to consider denial of an application is not a basis for reversal or remand when the city council concluded the record supported approval. *Brown v. City of Ontario*, 33 Or LUBA 180 (1997).

28.8.9 LUBA Scope of Review – Grounds for Reversal/Remand – Other. In the absence of a reviewable interpretation concerning the applicability of a possibly relevant zoning code provision, LUBA will remand for an interpretation. *DeBates v. Yamhill County*, 32 Or LUBA 276 (1997).

28.8.9 LUBA Scope of Review – Grounds for Reversal/Remand – Other. Under ORS 197.829(2), enacted in 1995, LUBA is not required to remand decisions for local government interpretations of local provisions when LUBA is able to make the necessary interpretations. *Friends of Metolius v. Jefferson County*, 31 Or LUBA 160 (1996).

28.8.9 LUBA Scope of Review – Grounds for Reversal/Remand – Other. When a petitioner requests a voluntary remand over the objections of an intervenor after the time allowed for a voluntary remand under ORS 197.830(12)(b), and the county's agreement to consider all issues on remand is equivocal, LUBA will deny the motion for a remand. *Brugh v. Coos County*, 30 Or LUBA 467 (1996).

28.8.9 LUBA Scope of Review – Grounds for Reversal/Remand – Other. When a county approves one exception area, LUBA cannot select and approve certain parts of that exception area while remanding for further action on the balance. *DLCD v. Coos County*, 30 Or LUBA 229 (1995).

28.8.9 LUBA Scope of Review – Grounds for Reversal/Remand – Other. When a petitioner mistakenly bases a challenge on zoning variance criteria rather than applicable, very similar subdivision variance criteria, LUBA will consider arguments to the extent they can be related to the applicable criteria. *Williams v. City of Philomath*, 30 Or LUBA 5 (1995).

28.8.9 LUBA Scope of Review – Grounds for Reversal/Remand – Other. That an applicant's objective is reasonable is not relevant to whether the city adjustment committee erred in applying the city's zoning ordinance sign adjustment criteria to deny requested sign height adjustment. *Blue Beacon International v. City of Portland*, 29 Or LUBA 536 (1995).

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

28.8.9 LUBA Scope of Review – Grounds for Reversal/Remand – Other. Code provisions that provide interim resource protection to property not on a local government's acknowledged Goal 5 resource inventories, until the Goal 5 planning process can be carried out, do not implement Goal 5. Therefore, local interpretations of such code provisions are not subject to reversal by LUBA under ORS 197.829(4). *Gage v. City of Portland*, 28 Or LUBA 307 (1994).

28.8.9 LUBA Scope of Review – Grounds for Reversal/Remand – Other. During the local proceedings, the applicant for development approval bears the burden of proof to establish its application satisfies relevant approval standards. Where the local government shifted that burden to opponents of the development application, the challenged decision must be remanded. *Murphy Citizens Advisory Comm. v. Josephine County*, 28 Or LUBA 274 (1994).

28.8.9 LUBA Scope of Review – Grounds for Reversal/Remand – Other. ORS 197.835(8) applies only where LUBA determines a local government made a land use decision exceeding the local government's discretionary authority under applicable comprehensive plan and land use regulation provisions, not where LUBA determines the local government misconstrued its permissible scope of review on remand from a previous LUBA appeal. *Louisiana Pacific v. Umatilla County*, 28 Or LUBA 32 (1994).

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

28.8.9 LUBA Scope of Review – Grounds for Reversal/Remand – Other. Where the sole issue raised in the petition for review concerns the proper interpretation of a local government regulation, and the challenged decision does not contain an interpretation of that regulation for LUBA to review, proceeding with the appeal can do nothing to narrow

the issues on remand, and LUBA will grant a motion for voluntary remand over petitioner's objections. *Mazeski v. Wasco County*, 27 Or LUBA 45 (1994).

28.8.9 LUBA Scope of Review – Grounds for Reversal/Remand – Other. Even though LUBA might agree with a county's argument in its brief that the purpose section of its EFU zoning district is not an approval standard for a farm dwelling permit application, if the challenged decision itself does not interpret the code provision, LUBA must remand the decision for the county to interpret the provision in the first instance. *Testa v. Clackamas County*, 26 Or LUBA 357 (1994).

28.8.9 LUBA Scope of Review – Grounds for Reversal/Remand – Other. LUBA cannot interpret a local government's ordinances in the first instance, but rather must review the local government's interpretation of its ordinances. Consequently, the failure of the local government to make the initial interpretation of local ordinance provisions is a basis for remand. *Friends of Bryant Woods Park v. Lake Oswego*, 26 Or LUBA 185 (1993).

28.8.9 LUBA Scope of Review – Grounds for Reversal/Remand – Other. Where findings adopted by the initial local decision maker interpreted a local ordinance provision, but those findings were *replaced* by findings adopted by the local governing body which do not include an interpretation of the ordinance provision, LUBA must remand the decision to the local government to interpret the provision in the first instance. *Friends of Bryant Woods Park v. Lake Oswego*, 26 Or LUBA 185 (1993).

28.8.9 LUBA Scope of Review – Grounds for Reversal/Remand – Other. Where the challenged local government decision is not included in the record submitted to LUBA, LUBA must remand the decision. *Lathrop v. Wallowa County*, 25 Or LUBA 693 (1993).

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

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

28.8.9 LUBA Scope of Review – Grounds for Reversal/Remand – Other. LUBA will not deny a request for voluntary remand of a challenged land use decision, simply because different approval criteria may apply on remand. Petitioners are entitled to obtain

review by LUBA to assure a correct decision is rendered, whatever approval criteria may be applicable. *Hastings Bulb Growers, Inc. v. Curry County*, 25 Or LUBA 558 (1993).

28.8.9 LUBA Scope of Review – Grounds for Reversal/Remand – Other. LUBA owes local governments no deference in interpreting state law. However, where a number of the issues raised in the petition for review do not turn on interpretation of state law, the presence of questions of state law does not, alone, make a voluntary remand inappropriate. *Hastings Bulb Growers, Inc. v. Curry County*, 25 Or LUBA 558 (1993).

28.8.9 LUBA Scope of Review – Grounds for Reversal/Remand – Other. Where petitioner fails to establish a false representation was made, and also fails to establish that the representation made was made by a person with authority to bind the local decision maker, petitioner has not adequately alleged estoppel against the local decision maker. *DLCD v. Wasco County*, 25 Or LUBA 529 (1993).

28.8.9 LUBA Scope of Review – Grounds for Reversal/Remand – Other. Where petitioner asserts the local government is estopped from denying his application, but fails to allege the facts establishing the elements of estoppel, petitioner has not provided a basis for reversal or remand of the challenged decision. *Cemper v. Clackamas County*, 25 Or LUBA 486 (1993).

28.8.9 LUBA Scope of Review – Grounds for Reversal/Remand – Other. Where a local government concedes one of petitioner's ten assignments of error and agrees to address petitioner's remaining assignments of error on remand, remand is appropriate so that the local government may consider petitioner's arguments in the first instance and provide any required interpretations of local law. *Weeks v. City of Tillamook*, 117 Or App 449, 844 P2d 914 (1992). *Fechtig v. City of Albany*, 24 Or LUBA 577 (1993).

28.8.9 LUBA Scope of Review – Grounds for Reversal/Remand – Other. LUBA will grant a motion to remand a challenged decision that is submitted after the petition for review is filed, over the objections of petitioners, regardless of whether the motion is submitted by the respondent or intervenor-respondent, so long as the respondent represents to the Board that it will consider and address on remand all issues raised in the petition for review. *Mulholland v. City of Roseburg*, 24 Or LUBA 240 (1992).

28.8.9 LUBA Scope of Review – Grounds for Reversal/Remand – Other. Where a petition for review has been filed, granting a local government request for remand of an appealed decision, over petitioner's objection, is consistent with the statutory policy favoring complete and expeditious review only if the local government demonstrates that the proceedings on remand will be capable of providing petitioner with the relief it would otherwise be entitled to receive from LUBA. *Hollywood Neigh. Assoc. v. City of Portland*, 22 Or LUBA 267 (1991).

28.8.9 LUBA Scope of Review – Grounds for Reversal/Remand – Other. To establish a claim of bias sufficient to result in reversal or remand of a challenged decision, a petitioner is required to clearly demonstrate that the public officials charged with bias are

incapable of making a decision on the basis of the evidence and argument presented. *Cummins v. Washington County*, 22 Or LUBA 129 (1991).

28.8.9 LUBA Scope of Review – Grounds for Reversal/Remand – Other. If a local government request for remand of its decision does not demonstrate that *all* of the allegations of error made by petitioner in the petition for review will be addressed on remand, LUBA will not remand the decision over petitioner's objections. *Angel v. City of Portland*, 20 Or LUBA 541 (1991).