**30.4 Zoning Ordinances – Interpretation.** Where a significant resource overlay zone provision requires that (1) resource sites not be altered or impacted to a degree that destroys their significance, (2) the proposed development not result in the loss of habitat for threatened or endangered species, (3) all feasible alternatives to the development that would not result in a substantial adverse impact on identified resource values be considered and rejected, (4) the development be sited on the property in such a manner that minimizes adverse impacts on identified resources, and (5) documentation be provided regarding requirements for state or federal permits or licenses and that appropriate resource management agencies have reviewed the development proposal against their plans, policies, and programs, the local government does not err in concluding that that provision applies at the development stage rather than the PAPA stage. *VanSickle v. Klamath County*, 80 Or LUBA 241 (2019).

**30.4 Zoning Ordinances – Interpretation.** Where a local code provision requires that a minimum of 250 square feet of "outdoor area" be provided for each residential lot and specifically states that the outdoor area may include "decking" and a "covered patio," as long as that covered patio is not "fully enclosed," the local government does not err by concluding that a covered deck that is attached to the dwelling, but not enclosed, can satisfy the minimum outdoor area requirement. *Bohan v. City of Portland*, 80 Or LUBA 263 (2019).

**30.4 Zoning Ordinances – Interpretation.** Where a design guideline for a historic district in a city requires that exterior alterations and additions to historic resources "be designed to be compatible primarily with the original resource, secondarily with adjacent properties, and finally * * * with the rest of the District," where the city council interprets the term "compatible" as not requiring uniformity, and where the petitioner has not demonstrated that that interpretation is inconsistent with the express language, purpose, or underlying policy that provides the basis for that design guideline, LUBA will uphold the city council's conclusion that two proposed new buildings meet the design guideline because they are similar to a historic resource on the same property, to adjacent properties, and to the historic district with respect to some design elements, even where they are dissimilar to adjacent properties with respect to other design elements. *NDNA v. City of Portland*, 80 Or LUBA 269 (2019).

**30.4 Zoning Ordinances – Interpretation.** Where a county code provision allows "[p]arks, playgrounds, [and] community centers" in the Rural Residential (RR) zone, where the county code does not include a definition of "park," and where the board of county commissioners county relies upon the dictionary definition of "park" and the types of park uses recognized nationally and found in a nearby city park and in other county parks to conclude that the provision allows (1) year-round use of a portion of RR-zoned property for day camps, retreats, and environmental education programming for a maximum of 100 persons and a weeklong overnight camp serving youth, and (2) the use of another portion of the property "for small social gatherings of its members and guests of up to 500 persons in size for picnics, weddings, and memorials during the months of April through October weather permitting," LUBA will affirm the board of county commissioners' interpretation of the provision, even if a different interpretation might be better. *Klein v. Lane County*, 80 Or LUBA 287 (2019).

**30.4 Zoning Ordinances – Interpretation.** Where a county code provision allows "campgrounds" in the Rural Residential (RR) zone but not "youth camps," and where the board of

county commissioners relies on the definition of "youth camp" elsewhere in the code to conclude that a "youth camp" must be a permanent use, LUBA will affirm the board of county commissioners' interpretation of the provision to allow a weeklong youth overnight camp in the RR zone where the petitioners do not identify any provision of any statute or administrative rule with which the county's interpretation is inconsistent or establish that the county's interpretation is inconsistent with the express language of the county code or the underlying purpose of the RR zone. *Klein v. Lane County*, 80 Or LUBA 287 (2019).

**30.4 Zoning Ordinances – Interpretation.** Where a local code provision generally prohibits development and grading in "areas of land movement," LUBA will affirm a hearings officer's interpretation of that provision to prohibit development and grading in "an area where a land slide or some other earth movement has already occurred—not an area where such activity *could* occur." *Chang v. Clackamas County*, 80 Or LUBA 321 (2019).

**30.4 Zoning Ordinances – Interpretation.** A local government errs by finding that compliance with a local code provision prohibiting diversion of storm water into areas with steep slopes and "areas of land movement, slump or earth flow, and mud or debris flow" is satisfied by compliance with a separate local code provision requiring development to provide "[p]ositive drainage and adequate conveyance of surface water * * * from roofs, footings, foundations, and other impervious or near-impervious surfaces to an appropriate discharge point." *Chang v. Clackamas County*, 80 Or LUBA 321 (2019).

**30.4 Zoning Ordinances – Interpretation.** The planning commission's conclusion that the subject properties are subject to "site review requirements" is not supported by anything in the text of the Old Code, Ordinance 20224, or the New Code. *Simons Investment Properties, LLC v. City of Eugene*, 80 Or LUBA 458 (2019).

**30.4 Zoning Ordinances – Interpretation.** In the context of an application to construct a 94-unit apartment complex, where a local code provision defines "net density" to mean "the number of dwelling units per acre of land in actual residential use and reserved for the exclusive use of the residents in the development, such as common open space or recreation facilities," while a maintenance building and internal parking circulation areas are properly included in the net density calculation, a leasing office should be excluded from the acreage used to calculate net density. *Hulme v. City of Eugene*, 80 Or LUBA 488 (2019).

**30.4 Zoning Ordinances – Interpretation.** Where the circumstances under which a local code provision applies are not clearly articulated in that provision or specified in any other local code provision, LUBA cannot say that an argument that the governing body misinterpreted that provision is one that "no reasonable lawyer would conclude * * * possessed legal merit" for purposes of awarding attorney fees under ORS 197.830(15)(b), even where the governing body's interpretation was required to be affirmed under ORS 197.829(1). *Vannatta v. City of St. Helens*, 80 Or LUBA 1018 (2019).

**30.4 Zoning Ordinances – Interpretation.** Where a local ordinance prohibits development within a floodway without a permit and provides an exemption for agricultural uses under which "temporary, removable structures should be allowed during drier months if their removal can be

assured by late fall," but where the ordinance does not contain an express requirement that the structures be moved to or stored on the subject property, a hearings officer errs in deciding that such an exemption cannot be applied simply because the record does not include any evidence that the subject property contains a usable storage area outside the floodplain. *Armstrong v. Jackson County*, 79 Or LUBA 161 (2019).

**30.4 Zoning Ordinances – Interpretation.** Where a city's minimum lot size requirements are based, in part, upon a code provision which requires a measurement of a lot's "slope," and the city interprets the term "slope" to be determined using post-development grades, rather than pre-development grades, LUBA will uphold the city's interpretation as "plausible" subject to *Siporen v. City of Medford*, 349 Or 247, 243 P3d 776 (2010), where the city found that "slope" is an ambiguous term, and the city interprets the term in a manner consistent with its interpretation of the text and in context of historical application of the code provision. An ambiguous code provision term is one with more than one possible construction of the term, and the local government interprets such a term in a "plausible" manner when read consistently with the express language of the code, as read in context. *Estroff v. City of Dundee*, 79 Or LUBA 189 (2019).

**30.4 Zoning Ordinances – Interpretation.** Where a code provision states that the "provisions of this code shall be interpreted as minimum requirements. When this code imposes a greater restriction than is required by other provisions of law * * * the provisions of this code shall control," and petitioners argue that the city erred in applying the least restrictive, rather than the most restrictive interpretation of the city's code requirement that minimum lot size be determined by "slope," by allowing project applicants to measure slope after grading, rather than before grading, to maximize their potential minimum developable lot size, but petitioners do not identify what other provision of law imposes a lesser restriction as regards to minimum lot size that the city should have applied, petitioners have not provided a basis for reversal or remand. *Estroff v. City of Dundee*, 79 Or LUBA 189 (2019).

**30.4 Zoning Ordinances – Interpretation.** Even if a local government's interpretation of its code were less plausible than petitioners' preferred interpretation, the "existence of a stronger or more logical interpretation does not render a weaker or less logical interpretation 'implausible' under the *Siporen* [*v. City of Medford*, 349 Or 247, 243 P3d 776 (2010),] standard." *Mark Latham Excavation, Inc. v. Deschutes County*, 250 Or App 543, 555, 281 P3d 644 (2012). *Estroff v. City of Dundee*, 79 Or LUBA 189 (2019).

**30.4 Zoning Ordinances – Interpretation.** Where an applicant proposes to occupy one guest apartment within an 18,000-square-foot dwelling while allowing the remainder of the dwelling and all of its amenities to be used by bed and breakfast guests, a county's conclusion that the bed and breakfast is not a "subordinate use" of the dwelling, and therefore not a home occupation, and that the applicant is not a "resident of the dwelling" is consistent with the plain meaning of the code language and is supported by substantial evidence in the record where there is evidence that the applicant "spends a couple of days a week" at a different home, and that the subject dwelling does not appear to be occupied when viewed from the road or neighboring properties, even though the applicant provides a copy of her driver's license that lists the subject dwelling. *Lee v. Marion County*, 79 Or LUBA 199 (2019).

**30.4 Zoning Ordinances – Interpretation.** Where a local code defines a bed and breakfast inn as "having no more than five sleeping rooms for [that] purpose[,]" and where an applicant proposes to make seven bedrooms in a dwelling available for rental even though only five would be rented at any one time, a county may correctly conclude that the proposal does not qualify as a bed and breakfast inn and the county is not obligated to develop conditions that might permit approval of the proposal. However, where a local code does not include any qualitative limits on the use of the dwelling and its premises, a county may not conclude that a proposal does not qualify as a bed and breakfast inn because it does not limit guests' use of the dwelling to their sleeping quarters and an area of the dwelling in which to eat the single morning meal. *Lee v. Marion County*, 79 Or LUBA 199 (2019).

**30.4 Zoning Ordinances – Interpretation.** Where the county planning director processed a similar use determination under the county's Type II review to determine whether an electrical transmission line is allowed in a particular zone, the board of county commissioners reviewed the director's similar use determination in a consolidated appeal under a Type III process, and petitioners argue that the county erred by not providing an intermediate decision by a decisionmaker other than the county governing body, that alleged procedural error provides no basis for reversal or remand because that alleged error does not prejudice petitioner's substantial rights. *Tilla-Bay Farms, Inc. v. Tillamook County*, 79 Or LUBA 235 (2019).

**30.4 Zoning Ordinances – Interpretation.** Where a county determines an electrical transmission line is a "similar use" authorized in a particular zone pursuant to the county's "similar use determination" process, which allows a similar use "[w]here a proposed use is not specifically identified by [the code], or [the code] is unclear as to whether the use is allowed in a particular zone," petitioners' argument that the county may make a similar use determination only if the proposed use is not specifically identified anywhere in the county's code is without merit. A similar use determination is not necessary or appropriate where the use is specifically permitted or prohibited in the subject zone. In adopting the similar use determination process, the county contemplated instances where a use is specifically identified as an allowed use in some zones but not specifically identified as an allowed use in the subject zone. *Tilla-Bay Farms, Inc. v. Tillamook County*, 79 Or LUBA 235 (2019).

**30.4 Zoning Ordinances – Interpretation.** Where petitioners argue that the county made inadequate findings that a proposed electrical transmission project is consistent with general use priorities for estuary zones because the county did not address certain code provisions addressing estuary zones, LUBA is not required to remand the decision to the county for it to interpret its local code provisions in the first instance; LUBA may make its own determination of whether the local government decision is correct. ORS 197.829(2). Where the county determined that the code provision in question is a general priority statement, which does not constitute mandatory approval criteria, LUBA will uphold the county's decision where the provision provides an inclusive list of general use priorities for estuarine resources and value, and where, in the alternative, the county addressed those impacts to the estuarine resources and values in other applicable parts of the county's code. *Tilla-Bay Farms, Inc. v. Tillamook County*, 79 Or LUBA 235 (2019).

**30.4 Zoning Ordinances – Interpretation.** A city council's interpretation of a local code provision which provides that, "[i]n the event of a tie [vote by the city council], the [planning

commission's] decision which is the subject of appeal * * * shall stand," as not limiting the number of times that the city council may vote on a matter is not inconsistent with the express language of that provision and therefore affirmable under ORS 197.829(1)(a). *Vannatta v. City of St. Helens*, 79 Or LUBA 271 (2019).

**30.4 Zoning Ordinances – Interpretation.** Where a local code provision prohibits uses that "alter the character of the surrounding area in a manner that substantially limits, impairs, or precludes the use of surrounding properties," a hearings officer errs in reducing the inquiry into a single inquiry into whether the proposed use makes the use of nearby properties "substantially worse," since the words "limit" and "impair' have different meanings and since, where a local code uses two different terms in the same provision, it is presumed that the enacting body intends two different meanings. *York v. Clackamas County*, 79 Or LUB 278 (2019).

**30.4 Zoning Ordinances – Interpretation.** Where a local code provision requires a finding that a proposed use "will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel," the proper comparison is between the proposed use and the pre-existing use, not between the proposed use and typical uses of the same type. *York v. Clackamas County*, 79 Or LUB 278 (2019).

**30.4 Zoning Ordinances – Interpretation.** Where a local code provision requires (1) that an applicant for an extension of a conditional use permit on resource-zoned lands "state[] reasons that prevented [them] from beginning or continuing development within the approval period" and (2) that the local government determine that those are "reasons for which the applicant was not responsible," a local government interpretation that the provision may be satisfied where the reason for the delay is that additional state or federal approvals have been applied for, but not yet secured, even where the application for such state or federal approval proposes development which differs from that approved by the conditional use permit, is not inconsistent with the express language of the provision and therefore provides no basis for reversal or remand under ORS 197.829(1)(a). *Williams v. Coos County*, 79 Or LUBA 352 (2019).

**30.4 Zoning Ordinances – Interpretation.** Where one local code provision authorizes the local government to grant "an extension of up to two (2) years" for a conditional use permit on non-resource lands, and another provision provides that "[a]dditional extensions may be applied," a local government interpretation of those provisions as allowing supplemental extensions beyond the one allowed under the first provision is supported by the plain meaning of the word "additional," is not inconsistent with the express language of either provision, and therefore provides no basis for reversal or remand under ORS 197.829(1)(a). *Williams v. Coos County*, 79 Or LUBA 352 (2019).

**30.4 Zoning Ordinances – Interpretation.** Where a local code provision prohibits the local government from approving an application for development if the property is "in violation of applicable land use regulations," a local governing body's interpretation that a decision that (1) determines only that existing development requires land use approvals, or (2) denies an application to approve existing development does not constitute a determination of a "violation" is not inconsistent with the express language, purpose, or policy of the code provision and is therefore

entitled to deference under ORS 197.829(1)(a) to (c). *Bishop v. Deschutes County*, 79 Or LUBA 380 (2019).

**30.4 Zoning Ordinances – Interpretation.** Where a local code provision prohibits a "[p]layground, recreation facility or community center owned and operated by a government agency or nonprofit community organization," a local governing body does not misconstrue the provision by interpreting the phrase "owned and operated by a government agency or nonprofit community organization" as applying to each antecedent rather than just to the last antecedent, community centers, and therefore as permitting a private recreation facility in the zone, where (1) the provision's language implements state law, which is concerned only with public facilities, (2) the code sets out a separate use category for "recreation-oriented facility," and (3) the local government has historically viewed the provision to encompass only public facilities. *Bishop v. Deschutes County*, 79 Or LUBA 380 (2019).

**30.4 Zoning Ordinances – Interpretation.** Where the predominant use of a proposed facility controls whether it is permitted in a zone, a local government does not err in concluding that the allocation of two-thirds of the physical space in a building to office uses makes the office use the predominant use of the building, even where the primary purpose of the office uses is to facilitate other uses in the building which are not allowed in the underlying zone. *Sky Lakes Medical Center, Inc. v. City of Klamath Falls*, 79 Or LUBA 490 (2019).

**30.4 Zoning Ordinances – Interpretation.** A local code amendment is not inconsistent with an administrative rule, so as to require reversal or remand of the amendment decision, merely because the amendment uses the phrase "ministerial decision" while the rule uses the phrase "administrative decision," where the code does not treat those phrases differently. In addition, a local code amendment is not inconsistent with an administrative rule authorizing counties to grant extensions of permits if they determine the applicant was unable to begin or continue development "for reasons for which the applicant was not responsible" merely because the amendment provides a list of examples of such reasons, especially where the rule provides no definition or guidance for that phrase. *McCaffree v. Coos County*, 79 Or LUBA 512 (2019).

**30.4 Zoning Ordinances – Interpretation.** While a variance should not be used as a substitute for rezoning, a local government does not err in granting a variance without a showing that strict application of the zoning ordinance would cause "practical difficulties or unnecessary hardships because of exceptional or extraordinary circumstances or conditions affecting the applicant's property" in a zone which the local code specifically exempts from that standard. *City of Albany v. Linn County*, 79 Or LUBA 528 (2019).

**30.4 Zoning Ordinances – Interpretation.** Where the only variable between multiple Urban Growth Area-Urban Growth Management (UGA-UGM) zones is lot size, and where a county code provision provides that "[t]he density of one UGA-UGM zoning district is not interchangeable with the density of another UGA-UGM zoning district without prior review and approval by the affected city and * * * County," an interpretation by the county that the provision applies to zone changes of the subject property or changes to the underlying density of the zone in which the subject property is located, but that it does not apply to lot size variances, is inconsistent with the express language of the provision. In such cases, where the local code does not define "density"

and the dictionary defines "density" as the quantity or number per unit of area, LUBA will make its own determination that a lot size variance in a UGA-UGM zone may qualify as an "interchange[]" with the density of another UGA-UGM zone, thereby requiring city review and approval. *City of Albany v. Linn County*, 79 Or LUBA 528 (2019).

**30.4 Zoning Ordinances – Interpretation.** Where a local code provision provides that "[a]pproval of [a] variance is limited to the minimum necessary to permit otherwise normal development of the property for the proposed use," an interpretation by the local government that the provision means a variance may be approved if it permits development consistent with the surrounding land use pattern and the uses permitted in the underlying zone, and that it does not mean a variance may only be approved if it is necessary to permit development that is allowed in the zone, is not inconsistent with the language of the code or the purposes or policies underpinning the provision. *City of Albany v. Linn County*, 79 Or LUBA 528 (2019).

**30.4 Zoning Ordinances – Interpretation.** The fact that a tentative plan for a destination resort proposes a different pace of development than the final master plan, such as by sub-phasing development, does not materially affect the findings of fact on which the final master plan approval was based so as to constitute a "substantial change" to the final master plan, thereby requiring a new application, where neither the final master plan nor applicable regulations require that all development authorized in the first phase of the final master plan occurs at the same time. *Gould v. Deschutes County*, 79 Or LUBA 561 (2019).

**30.4 Zoning Ordinances – Interpretation.** Where the final master plan for a destination resort includes a mitigation plan requiring the applicant to replace the water consumed by the resort with a quantity and quality of water that will maintain fish habitat in an impacted stream, the fact that the tentative plan for one phase of development modifies the timing, but not the overall amount, of the mitigation water required to be provided does not materially affect the findings of fact on which the final master plan approval was based so as to constitute a "substantial change" to the final master plan, thereby requiring a new application, where there is no evidence that such modification will impact the efficacy of mitigation and there is evidence that such modification will result in more gradual, spread out impacts. *Gould v. Deschutes County*, 79 Or LUBA 561 (2019).

**30.4 Zoning Ordinances – Interpretation.** Where a local code provision provides that issuance of a conditional use permit requires a determination that "[t]he proposed use is or may be made compatible with existing adjacent permitted uses and other uses permitted in the underlying zone," an interpretation by the local government that it need not consider the impact of the proposed use on property values and neighbor peace of mind is not inconsistent with the provision's express language or underlying policies. *Currie v. Douglas County*, 79 Or LUBA 585 (2019).

**30.4 Zoning Ordinances – Interpretation.** LUBA will reject a county's interpretation of its code—that a code provision which sets forth approval criteria regarding an application for a variance to the minimum lot size requirements within the county's urban growth area may not apply to the county's decision because it only applies to decisions made by the county's planning director but not to decisions made by the planning commission or board of county commissioners—that was made for the first time in its response brief, because that interpretation

is not reflected in the decision and is therefore not an interpretation by the local government. *City of Albany v. Linn County*, 78 Or LUBA 1 (2018).

**30.4 Zoning Ordinances – Interpretation.** Where the county approved a proposed variance to the 20-acre minimum lot size for two one-acre parcels, pursuant to a county code provision that provides that the county planning director may approve a variance for a proposed project if the city does not object to the variance, LUBA will reverse the county's decision as "prohibited as a matter of law" pursuant to OAR 661-010-0071(c) where the county approved the variance as "consistent with the * * * city's comprehensive plan," but the city objected to the proposed variance because of the proposal's inconsistency with the city's comprehensive plan. *City of Albany v. Linn County*, 78 Or LUBA 1 (2018).

**30.4 Zoning Ordinances – Interpretation.** Where a local code provision requires that a proposed development project not "seriously interfere" with the preservation of "fish and wildlife areas and habitat" as identified under the county's comprehensive plan, a hearings officer does not err in applying the code provision only to that portion of the property that is designated as "fish and wildlife areas and habitat." *McAndrew v. Washington County*, 78 Or LUBA 21 (2018).

**30.4 Zoning Ordinances – Interpretation.** When a city approves an application, nothing requires the city or intervenor to rezone the property in connection with the application, when the current zoning is inconsistent with the comprehensive plan, and the current zoning does not allow for more intensive development than contemplated in the comprehensive plan. *Richardi v. City of Eugene*, 78 Or LUBA 299 (2018).

**30.4 Zoning Ordinances – Interpretation.** A zone verification is a limited tool and only those issues actually addressed in the zone verification decision are protected from collateral attack. *Richardi v. City of Eugene*, 78 Or LUBA 299 (2018).

**30.4 Zoning Ordinances – Interpretation.** Where a LUBA decision merely "ascertain[ed] and declare[d]" what the laws at issue provided from the time of their enactment pursuant to ORS 174.010, such interpretative exercise cannot constitute a "change in the law." *Hood River Valley Residents Comm. v. Hood River County*, 78 Or LUBA 478 (2018).

**30.4 Zoning Ordinances – Interpretation.** LUBA will affirm a governing body's code interpretation of a county zoning ordinance that provides that a permit extension may be granted if the "approval criteria for the original decision found in a state goal, policy, statute or administrative rule, the Comprehensive Plan or this Ordinance have not changed," and the county board of commissioners interprets "have not changed" to mean an administrative or legislative amendment to the administratively enacted or codified law described in the same provision, and not include decisional law not that is not administratively enacted or codified, as long as such interpretation is "plausible." *Hood River Valley Residents Comm. v. Hood River County*, 78 Or LUBA 478 (2018).

**30.4 Zoning Ordinances – Interpretation.** LUBA will affirm a city governing body's code interpretation where a prohibition on adjustment "[t]o allow an increase in density in the [low density residential] RL zone" does not specify what denominator should be used to determine

whether a proposed adjustment increases the density in the RL zone, or explain how "density in the RL zone" is measured, and the city used as the denominator the gross acreage of a subdivision as a whole, rather than the acreage of individual properties. *Hunt v. City of the Dalles*, 78 Or LUBA 509 (2018).

**30.4 Zoning Ordinances – Interpretation.** The city's comprehensive plan housing goal, Goal 10, and its policies and implementing measures, provide further contextual support for the city's interpretation of its code regarding a prohibition on lot size adjustment "[t]o allow an increase in density in the [low density residential] RL zone" by using as the denominator the gross acreage of a subdivision as a whole, rather than the acreage of individual properties. One of the Goal 10 housing goals is to "[p]romote the efficient use of vacant land by encouraging infill development which is sensitive to existing neighborhoods, and by encouraging new development which achieves the density allowed by the comprehensive plan." The city's interpretation is consistent with Goal 10 and the policies and implementing measures because it interprets "density" and "acre" to allow new infill development of vacant land to achieve a density that is allowed by the comprehensive plan. *Hunt v. City of the Dalles*, 78 Or LUBA 509 (2018).

**30.4 Zoning Ordinances – Interpretation.** Where petitioner argues the city governing body's finding regarding the applicability of a zoning ordinance was erroneous, and the city concedes the finding is erroneous, but when the error is not critical to the city council's interpretation or ultimate conclusions, the error does not provide a basis for reversal or remand. *Hunt v. City of the Dalles*, 78 Or LUBA 509 (2018).

**30.4 Zoning Ordinances – Interpretation.** Where a county's code defines "recreational vehicle" (RVs) as a temporary dwelling unit intended for vacation, emergency or recreational use, but that cannot be used for permanent residential use, the county errs in interpreting the provisions of a forest zone, which allows as a conditional use "recreational vehicles" without any express durational limits, to allow an RV to be used as a permanent residence, because that interpretation gives no effect to the categorical exclusions in the code definition of "recreational vehicle." *Oregon Coast Alliance v. Tillamook County*, 77 Or LUBA 192 (2018).

**30.4 Zoning Ordinances – Interpretation.** That county staff have in the past approved recreational vehicles as permanent residential dwellings does not provide a basis to interpret the county code to allow recreational vehicles to be used as permanent residential dwellings, where the county code definition of "recreational vehicle" prohibits their use as permanent residential dwellings. *Oregon Coast Alliance v. Tillamook County*, 77 Or LUBA 192 (2018).

**30.4 Zoning Ordinances – Interpretation.** That different setbacks standards with different language are interpreted to require the same setback distance does not run afoul of the general interpretative requirement to give different effect to different words used in the same statute, where the local government shows that the different words nevertheless support requiring the same setback distance. *Brannon v. Multnomah County*, 77 Or LUBA 275 (2018).

**30.4 Zoning Ordinances – Interpretation.** The question under *Siporen v. City of Medford*, 349 Or 247, 259, 243 P3d 776 (2010), is not whether petitioner's interpretation that a "street alignment and connections standard" and a "street connectivity standard" can be met by street extensions that

terminate in a cul-de-sac is plausible. The question under *Siporen* is whether the city council's contrary interpretation that the standards require street extensions that connect with other streets on both ends is plausible, and the city council's interpretation is certainly plausible. *Martin v. City of Tigard*, 77 Or LUBA 288 (2018).

**30.4 Zoning Ordinances – Interpretation.** A decision that adopts a different position regarding *how* a street connectivity standard applies in a decision following a LUBA remand from the position adopted in the initial decision is not inconsistent with the holding in *Holland v. City of Cannon Beach*, 154 Or App 450, 962 P2d 701, *rev den*, 328 Or 115 (1998). In *Holland*, the Court of Appeals held a city erred by concluding in its initial decision that a slope and density standard had been repealed and therefore did not apply to a land division, and when its decision to deny the land division was remanded by LUBA, took the opposite position and applied the slope and density standard to deny the land division following remand. The change of position in Holland was a change of position in *whether* the standard applied, which is different from a change of position in *how* a standard applied. *Martin v. City of Tigard*, 77 Or LUBA 288 (2018).

**30.4 Zoning Ordinances – Interpretation.** The undefined standard categories "site-related development standards" and "use-related development standards" are ambiguous; a front setback standard and a maximum height standard could fall into either category. *Patel v. City of Portland*, 77 Or LUBA 349 (2018).

**30.4 Zoning Ordinances – Interpretation.** Where a general category called "use-related development standards" is followed by a nonexclusive list of examples, and minimum front setback and maximum height standards are not included on the list, that is some support for concluding that minimum front setback and maximum height standards are not use-related development standards. But where one of the specified examples of a general category called "use-related development standards" is "size of use standards," it is certainly possible that a maximum height standard qualifies as a "size of use standard" and thus could qualify as a "use-related development standard." *Patel v. City of Portland*, 77 Or LUBA 349 (2018).

**30.4 Zoning Ordinances – Interpretation.** A hearings officer's finding that concentrating dwelling units on one area of a property is solely attributable to a density transfer provision is not entirely accurate where modifications (variances) are needed to construct a multi-family structure that is taller and closer to the front lot line than would be permitted in the zone. *Patel v. City of Portland*, 77 Or LUBA 349 (2018).

**30.4 Zoning Ordinances – Interpretation.** Where a hearings officer's findings provide an inadequate explanation for why he concluded minimum front setback and maximum building height standards qualify as "site-related development standards," that prior city hearings officers and the city council have reached the same conclusion is some support for the hearings officer's conclusion. *Patel v. City of Portland*, 77 Or LUBA 349 (2018).

**30.4 Zoning Ordinances – Interpretation.** Although local legislative history is generally not subject to official notice by LUBA and cannot be considered on appeal if it is not included in the local record, where the legislative history is contemporary commentary that was adopted by the

city council when it adopted the legislation, LUBA will consider the commentary. *Patel v. City of Portland*, 77 Or LUBA 349 (2018).

**30.4 Zoning Ordinances – Interpretation.** Where a prior version of the zoning ordinance only allowed modifications for setback and height standards, and the zoning ordinance was amended to allow a general category of standards, that lends some support to the local government's position that the general category of standards includes setback and height standards. *Patel v. City of Portland*, 77 Or LUBA 349 (2018).

**30.4 Zoning Ordinances – Interpretation.** Although LUBA may take official notice of commentary that was adopted with an ordinance, where that ordinance does not enact or amend the ambiguous zoning ordinance language at issue, it is of no significance in resolving the ambiguity. *Patel v. City of Portland*, 77 Or LUBA 349 (2018).

**30.4 Zoning Ordinances – Interpretation.** A hearings officer's findings cannot be faulted for failing to address the impacts of a modification (variance) on petitioner's nearby residence, where the findings expressly address those impacts and the relationship between the proposed structure and petitioner's residence and point out that the proposed structure is downslope and offset from petitioner's residence. *Patel v. City of Portland*, 77 Or LUBA 349 (2018).

**30.4 Zoning Ordinances – Interpretation.** A hearings officer's failure to adopt findings that address potential impacts of a proposed building on one nearby dwelling in granting a maximum height modification (variance) is not a basis for remand, where the "on balance" nature of the modification (variance) approval standard does not necessarily require individual findings for every nearby residence, a public walkway between that dwelling and the proposed dwelling reduces any legitimate expectation of privacy, and the topography and scale of the proposed building is such that where the two structures adjoin each other they will be of similar height. *Patel v. City of Portland*, 77 Or LUBA 349 (2018).

**30.4 Zoning Ordinances – Interpretation.** A city commission's interpretation of its code to permit the city to exercise its property rights under ORS 197.772(1) to refuse to consent to historic landmark designation separately from the city's grant of authority to the historic review board to consider and approve applications for historic landmark designations is plausible, and therefore must be affirmed under ORS 197.829(1) and *Siporen v. City of Medford*, 349 Or 247, 261, 243 P3d 776 (2010). Therefore, the historic review board must terminate consideration of a neighborhood association's application to designate city-owned property as a historic landmark when the city manager refuses to consent to the proposed historic landmark designation. *McLoughlin Neighborhood Association v. City of Oregon City*, 77 Or LUBA 377 (2018).

**30.4 Zoning Ordinances – Interpretation.** A city commission's interpretation of a city manager's general authority to exercise "supervision over all city property" to be broad enough to include authority for the city manager to refuse to consent to a proposed historic landmark designation for city-owned property is not reversible under ORS 197.835(9)(a)(D) ("[i]mproperly construed the applicable law"). *McLoughlin Neighborhood Association v. City of Oregon City*, 77 Or LUBA 377 (2018).

**30.4 Zoning Ordinances – Interpretation.** A local government does not misinterpret the term "substation" by interpreting it to be an example of the use category "utilities" that is broad enough to include a wireless transmission tower. And it does not matter that the wireless transmission tower is a cell tower and that there were no cell towers in 1984 when the legislation defining substation and utilities was adopted. There were radio transmission and communication towers in 1984, which are similar to cell towers, and it is not unusual for new uses to come into existence and fall into existing broad use categories. *Rawson v. Hood River County*, 77 Or LUBA 415 (2018).

**30.4 Zoning Ordinances – Interpretation.** A local governing body's conclusion—that the general category of utility "[d]istribution plants and substations" adopted in 1984 is broad enough to include a wireless transmission tower—is not inconsistent with contemporary and other dictionary definitions of "distribution," "plant" and "substation." *Rawson v. Hood River County*, 77 Or LUBA 415 (2018).

**30.4 Zoning Ordinances – Interpretation.** A local governing body does not err by refusing to view the term "distribution plants and substations" as a technical term or term of art. *Rawson v. Hood River County*, 77 Or LUBA 415 (2018).

**30.4 Zoning Ordinances – Interpretation.** When a local government adopts a new rule of interpretation it is not limited to applying that new rule of interpretation to subsequently enacted legislation. *Rawson v. Hood River County*, 77 Or LUBA 415 (2018).

**30.4 Zoning Ordinances – Interpretation.** Where petitioners take the position that historic review and site plan review approval standards are so incompatible that site plan review entirely displaces historic review, but the city council's interpretation of its code that both reviews are possible and that historic review may be completed before site plan review is plausible, LUBA must defer to the city council's interpretation. *Friends of Canemah v. City of Oregon City*, 77 Or LUBA 434 (2018).

**30.4 Zoning Ordinances – Interpretation.** Where it is not clear whether the enacting body intended comprehensive plan or land use regulation provisions to be mandatory approval criteria, LUBA examines the wording and context of the particular provisions to determine whether they must be applied as mandatory approval criteria. *Friends of Canemah v. City of Oregon City*, 77 Or LUBA 434 (2018).

**30.4 Zoning Ordinances – Interpretation.** A list of special characteristics of a historic district are not mandatory approval criteria where they are not worded as mandatory requirements for future housing proposals. *Friends of Canemah v. City of Oregon City*, 77 Or LUBA 434 (2018).

**30.4 Zoning Ordinances – Interpretation.** Where it is unclear whether historic guidelines operate as mandatory approval criteria, but the guidelines include a column identified as "Principle – Good Example" and a column identified as "Not Allowed," and in each column there is a list of activities and features, the activities and features in the "Not Allowed" column are prohibited. *Friends of Canemah v. City of Oregon City*, 77 Or LUBA 434 (2018).

**30.4 Zoning Ordinances – Interpretation.** A prohibition against "extensive grading of the lot" is subjective. Findings that explain that approved grading is only the amount necessary to allow vehicular access to the lot and that the lowering of the proposed dwelling elevates the prominence of adjoining historic structures are adequate to establish the approved grading does not violate the extensive grading standard. *Friends of Canemah v. City of Oregon City*, 77 Or LUBA 434 (2018).

**30.4 Zoning Ordinances – Interpretation.** A city council's findings that a master plan design guideline to "[d]evelop buildings that are appropriately scaled to the neighborhood," is met by a proposal to build a seven-story apartment building with a five-story wing rather than a four-story wing, representing a proposal to increase the building height by 10 feet, where surrounding buildings range in height from three to seven stories, is not in error. Such a finding is sufficient to satisfy city's local ordinance which requires a finding that under a proposed modification "[t]he resulting development will better meet the applicable design guidelines," and that "[o]n balance the proposal will be consistent with the purpose of the standard modified" where the 10-foot modification represents a trade-off for a clipped corner which allows for increased pedestrian access and sunlight into a proposed public square. *Michaelson v. City of Portland*, 77 Or LUBA 504 (2018).

**30.4 Zoning Ordinances – Interpretation.** A city council's comparative approach of evaluating all design changes related to a proposed development modification at once to determine whether the resulting development better meets applicable guidelines, is not error. The nature of design review often involves tradeoffs and balancing between design features to achieve a more optimal overall design under the applicable guidelines. *Michaelson v. City of Portland*, 77 Or LUBA 504 (2018).

**30.4 Zoning Ordinances – Interpretation.** The city planning commission improperly construed the plain language of a code section that requires that the "front lot line" of a corner lot "must" be considered the narrower street frontage "except when [city staff] determine[] topographical or access problems make such a designation impractical" when it relied on the historical site plan and orientation of the existing house on the corner lot to designate the front lot line, because those considerations are not "topographical or access problems." *McMonagle v. City of Ashland*, 76 Or LUBA 1 (2017).

**30.4 Zoning Ordinances – Interpretation.** Where a municipal code requires that the "front lot line" of a corner lot "must" be considered the narrower street frontage "except when [city staff] determine[] topographical or access problems make such a designation impractical," the city's decision was not supported by substantial evidence in the record pursuant to ORS 197.835(9)(a)(C) when it determined that the lack of sidewalks on the narrower frontage, and the absence of a door on the side of the house facing the narrower frontage were "access problems" that made designating the narrower street frontage the front lot line "impractical." *McMonagle v. City of Ashland*, 76 Or LUBA 1 (2017).

**30.4 Zoning Ordinances – Interpretation.** Where a municipal code requires that the "front lot line" of a corner lot "must" be considered the narrower street frontage "except when [city staff] determine[] topographical or access problems make such a designation impractical," the city's decision was not supported by substantial evidence in the record pursuant to ORS 197.835(9)(a)(C)

when it determined that the lack of sidewalks on the narrower frontage, and the absence of a door on the side of the house facing the narrower frontage were "access problems" that made designating the narrower street frontage the front lot line "impractical." *McMonagle v. City of Ashland*, 76 Or LUBA 1 (2017).

**30.4 Zoning Ordinances – Interpretation.** Where petitioners seek reversal or remand of the city's decision pursuant to OAR 661-010-0071, and LUBA's decision agrees with petitioners that the city's decision improperly construed the municipal code and was not supported by substantial evidence in the record, but it is possible on remand that the petitioner's proposal could demonstrate compliance with the municipal code without significant changes to the proposed development, remand is the appropriate remedy. *McMonagle v. City of Ashland*, 76 Or LUBA 1 (2017).

**30.4 Zoning Ordinances – Interpretation.** Where a standard requires full street connections with spacing of no more than 530 feet between connections, findings that suggest the standard could be met by extending an existing east-west street to connect an existing north-south street with an existing Walmart parking lot require additional explanation, since the standard appears to envision a street that connects one street with another street. *Martin v. City of Tigard*, 76 Or LUBA 85 (2017).

**30.4 Zoning Ordinances – Interpretation.** Where a standard requires public street connections at intervals of no more than 660 feet but authorizes variances where certain conditions exist, a finding that sight distance and existing development might preclude the required extension may be an adequate basis for granting a variance, but those conditions are not a basis for simply overlooking the street interval standard. *Martin v. City of Tigard*, 76 Or LUBA 85 (2017).

**30.4 Zoning Ordinances – Interpretation.** Where a standard requires public street connections at intervals of no more than 660 feet a finding that a public street connection is not required where existing street connections are 930 feet apart because the property to be developed is only 400 feet south of the northern existing street represents a misconstruction of the standard. The standard establishes a maximum distance between streets rather than a maximum distance between property to be developed and the nearest street connection. *Martin v. City of Tigard*, 76 Or LUBA 85 (2017).

**30.4 Zoning Ordinances – Interpretation.** A city council does not err by failing to impose a condition requiring that a hotel be reduced in height to address potential land use conflicts, where the city council finds a shorter hotel is not needed to avoid potential land use conflicts. Whether a hotel of the height proposed will present land use conflicts with neighboring properties is a subjective determination, and where LUBA concludes the record establishes the city council's decision not to impose a condition was within its discretion, LUBA will deny an assignment of error that challenges the city council's failure to impose the condition. *Hagan v. City of Grants Pass*, 76 Or LUBA 196 (2017).

**30.4 Zoning Ordinances – Interpretation.** Where a code "principle" is worded as alternative actions an applicant "should" take, and some of the "standards" that follow that "principle" are clearly worded as mandatory, while others are clearly worded as non-mandatory considerations, where the challenged decision does not address the disputed "principle," remand is required for

the city council to determine if the disputed "principles" are mandatory and, if so, to ensure one of the mandatory alternatives is satisfied. *Hagan v. City of Grants Pass*, 76 Or LUBA 196 (2017).

**30.4 Zoning Ordinances – Interpretation.** LUBA will reverse a governing body's interpretation that a large office complex providing offices for a number of local, regional, state and federal agencies is "accessory" to a small local fire station with a staff of four firefighters, where no reasonable person could conclude that the office complex is incidental and subordinate to the fire station, or subordinate in extent, area or purpose. *Oregon Shores Conservation Coalition v. Coos County*, 76 Or LUBA 346 (2017).

**30.4 Zoning Ordinances – Interpretation.** LUBA will reverse a governing body's interpretation that a 100-seat educational facility is "accessory" to a small local fire station with a staff of four firefighters, where even if it is presumed that the four firefighters sometimes take classes at the facility, no reasonable person could conclude that a 100-seat educational facility is incidental and subordinate to the fire station, or subordinate in extent, area or purpose. *Oregon Shores Conservation Coalition v. Coos County*, 76 Or LUBA 346 (2017).

**30.4 Zoning Ordinances – Interpretation.** LUBA will affirm a finding that a proposed gas processing facility will not cause emissions of steam that could obscure visibility within an airport approach surface, where the finding is supported by substantial expert testimony that the facility will not generate visible steam and in any case is proposed to be located outside the airport approach surface. *Oregon Shores Conservation Coalition v. Coos County*, 76 Or LUBA 346 (2017).

**30.4 Zoning Ordinances – Interpretation.** A County Court's interpretation of a comprehensive plan residential density standard that limits residential density in deer winter range to one dwelling unit per 160 acres to only consider nonfarm dwellings when computing density is not affirmable under ORS 197.829(1)(a) and *Siporen v. City of Medford*, 349 Or 247, 261, 243 P3d 776 (2010), where there is no textual support in the wildlife density standard itself for only counting nonfarm dwellings in computing density and the comprehensive plan policies the density limit was adopted to implement also do not support distinguishing between farm and nonfarm dwellings in computing density. *Central Oregon Landwatch v. Crook County*, 75 Or LUBA 186 (2017).

**30.4 Zoning Ordinances – Interpretation.** Deference under *Siporen v. City of Medford*, 349 Or 247, 243 P3d 776 (2010), and ORS 197.829(1) is only appropriate for interpretations that are adopted by the local governing body. Those interpretations include interpretations that are adopted initially by other bodies, so long as the local governing body adopts those interpretations of other bodies. *Rawson v. Hood River County*, 75 Or LUBA 200 (2017).

**30.4 Zoning Ordinances – Interpretation.** Where a local governing body adopts a planning commission decision on appeal, interpretations adopted directly by the planning commission or adopted by incorporation by the planning commission are entitled to deference under *Siporen v. City of Medford*, 349 Or 247, 243 P3d 776 (2010), and ORS 197.829(1). *Rawson v. Hood River County*, 75 Or LUBA 200 (2017).

**30.4 Zoning Ordinances – Interpretation.** An interpretation of local law that is offered in a brief at LUBA, but was not adopted by the local government, is not entitled to deference under *Siporen v. City of Medford*, 349 Or 247, 243 P3d 776 (2010), and ORS 197.829(1). *Rawson v. Hood River County*, 75 Or LUBA 200 (2017).

**30.4 Zoning Ordinances – Interpretation.** Where a zoning ordinance lists general use categories for a particular zoning district, followed by a listing of particular uses under those general use categories, a local governing body's interpretation that adopts a broad dictionary definition of the use category "Utilities" and finds that a cell tower is a permitted use under that definition, when cell towers are not one of the two particular uses listed under the general category of Utilities, is not an interpretation that must be affirmed under ORS 197.829(1) and is not entitled to deference under *Siporen v. City of Medford*, 349 Or 247, 243 P3d 776 (2010). *Rawson v. Hood River County*, 75 Or LUBA 200 (2017).

**30.4 Zoning Ordinances – Interpretation.** Where a zoning ordinance separation standard applies to "buildings," defined in the zoning ordinance as "[a] structure built for support, shelter, or enclosure of persons, animals, chattels, or property of any kind," a local government is within its interpretive discretion to interpret the separation standard not to apply to cell towers. Although cell towers are "structures," they are not "built for support, shelter, or enclosure of persons, animals, chattels, or property of any kind." *Rawson v. Hood River County*, 75 Or LUBA 200 (2017).

**30.4 Zoning Ordinances – Interpretation.** A county is not required to apply the federal "least intrusive" standard under the Telecommunications Act of 1996 to a permit request under the county's zoning ordinance, where the county's zoning ordinance does not impose that standard. *Rawson v. Hood River County*, 75 Or LUBA 200 (2017).

**30.4 Zoning Ordinances – Interpretation.** Even if a county has historically required "reasonable separation" between certain uses in the past, where the county's zoning ordinance does not include a "reasonable separation" standard, the county does not err by failing to require a cell tower on industrially zoned property to maintain reasonable separation from adjoining exclusive farm use and rural residentially zoned property. *Rawson v. Hood River County*, 75 Or LUBA 200 (2017).

**30.4 Zoning Ordinances – Interpretation.** Where the zoning code does not define "hospital structures" but does separately list "Hospitals" and "Medical and dental clinics, outpatient; [and] infirmary services" as permitted uses, a city does not misconstrue the zoning code by concluding that a "medical office building "does not qualify as a "hospital" and therefore need not have a backup source of electricity, which hospitals are required to have under the zoning code. *Nicita v. City of Oregon City*, 74 Or LUBA 176 (2016).

**30.4 Zoning Ordinances – Interpretation.** Where a county development ordinance requires that all permits and approval for an allowed primary use must be obtained before any accessory use may be established, the county errs by approving a proposal to process aggregate material as an accessory use where the primary use, aggregate mining, is not proposed or approved. *Rogue Advocates v. Jackson County*, 74 Or LUBA 214 (2016).

**30.4 Zoning Ordinances – Interpretation.** A city council's interpretation that the use category of mass shelter is limited to shelters located in a "building" is inconsistent with the express language of the applicable code provisions, where the code defines "mass shelter" in part as a "structure" containing sleeping areas, and as the code defines "structures," they are not limited to structures that are "buildings." *Central Eastside Industrial Council v. City of Portland*, 74 Or LUBA 221 (2016).

**30.4 Zoning Ordinances – Interpretation.** A city council's finding that the use category of "mass shelter" is limited to shelters that provide "indoor space," and therefore a proposed tent camp in an industrial zone is not a mass shelter that is prohibited in the industrial zone, is inconsistent with the definition of "mass shelter," which is not limited to shelters that provide indoor space, and further inconsistent with the purpose of the prohibition on mass shelters in industrial areas: to protect industrial uses from incompatible shelter uses. *Central Eastside Industrial Council v. City of Portland*, 74 Or LUBA 221 (2016).

**30.4 Zoning Ordinances – Interpretation.** A city council's interpretation that a mass shelter's sleeping areas must be located in permanent structures with foundations, and therefore a proposed tent camp that provides sleeping areas within large 10-person tents is not a mass shelter, is inconsistent with the code definition of mass shelter, which does not require that a mass shelter's sleeping areas be located in permanent structures with foundations. *Central Eastside Industrial Council v. City of Portland*, 74 Or LUBA 221 (2016).

**30.4 Zoning Ordinances – Interpretation.** A city council's interpretation that a proposed tent camp is not a "mass shelter" because the campers, rather than the tent camp operators, will provide sleeping pads is not consistent with the applicable text and definitions, which do not turn on who provides sleeping pads that shelter residents will sleep on. *Central Eastside Industrial Council v. City of Portland*, 74 Or LUBA 221 (2016).

**30.4 Zoning Ordinances – Interpretation.** It is inconsistent with the purpose of a code prohibition on mass shelters in an industrial zone to approve, as an outright permitted "Community Service" use, a tent camp that is functionally identical to a mass shelter. *Central Eastside Industrial Council v. City of Portland*, 74 Or LUBA 221 (2016).

**30.4 Zoning Ordinances – Interpretation.** Where the city code excludes from the use category of "Community Service" any uses where tenancy is arranged on a month-to-month basis or longer period, a city errs in concluding that a proposed tent camp, which allows indefinite and potentially permanent tenancy by campers and staff, is a Community Service use allowed outright in an industrial zone. *Central Eastside Industrial Council v. City of Portland*, 74 Or LUBA 221 (2016).

**30.4 Zoning Ordinances – Interpretation.** Where a destination resort has received both conceptual and final master plan approval, and the final master plan approval decision was remanded, the county may again grant final master plan approval, even though the conceptual master plan approval decision has become void due to the passage of time, where the initial final master plan approval decision effectively incorporated and displaced the conceptual master plan approval decision with regard to the only legal issues remaining on remand. *Central Land and Cattle Company, LLC v. Deschutes County*, 74 Or LUBA 326 (2016).

**30.4 Zoning Ordinances – Interpretation.** A code limitation that "[a]ny substantial change to the approved plan will require a new application" does not require a new application for a destination resort whose original owners declared bankruptcy and were replaced by new owners. The code limitation is directed at changes in the approved plan, not at changes in the owners. *Central Land and Cattle Company, LLC v. Deschutes County*, 74 Or LUBA 326 (2016).

**30.4 Zoning Ordinances – Interpretation.** The larger size of a 5,000-square-foot structure in a forest zone is not determinative of whether it can be correctly viewed as "accessory" to a 3,600-square-foot residence. *Kaplowitz v. Lane County*, 74 Or LUBA 386 (2016).

**30.4 Zoning Ordinances – Interpretation.** Whether a proposed use is properly viewed as "accessory" to an existing residential use in a forest zone calls for a subjective judgment. Where a use began as an unauthorized use with a commercial component, and the commercial component is relocated to another site, a hearings official determines a number of limits imposed on the use are sufficient to ensure it is "accessory," and the board of commissioners adopts the hearings official's interpretation as its own, LUBA will defer to that interpretation under ORS 197.829(1). *Kaplowitz v. Lane County*, 74 Or LUBA 386 (2016).

**30.4 Zoning Ordinances – Interpretation.** Where a development code permits an applicant to resubmit the same application for verification of a nonconforming use less than two years after it was denied if the denial decision was based on a material mistake of fact, a hearings officer does not misconstrue the code in concluding that a denial decision that is based on conflicting evidence is not the same thing as a decision that is based on a material mistake of fact. *Kartavykh v. Clackamas County*, 74 Or LUBA 518 (2016).

**30.4 Zoning Ordinances – Interpretation.** Nothing in the express language of ORS 455.315, which exempts agricultural buildings from the requirements of the Oregon Structural Specialty Code, or in the legislative history of the statute, supports a county's interpretation of ORS 455.315 as applying *only* on lands zoned for farm or forest use. *Gross v. Jackson County*, 74 Or LUBA 563 (2016).

**30.4 Zoning Ordinances – Interpretation.** In order for the agricultural building exemption at ORS 455.315 to apply, the structure must be located "on a farm or forest operation[.]" *Gross v. Jackson County*, 74 Or LUBA 563 (2016).

**30.4 Zoning Ordinances – Interpretation.** ORS 455.315 exempts agricultural buildings only from the requirements of "a state structural specialty code" and does not exempt agricultural buildings from electrical and mechanical codes contained in ORS Chapter 455. *Gross v. Jackson County*, 74 Or LUBA 563 (2016).

**30.4 Zoning Ordinances – Interpretation.** LUBA will affirm a hearings officer's interpretation that review of a greenhouse use is required by a local code provision that requires review of "Type I" uses that are allowed "of right," where the local code requires "non-discretionary staff review to demonstrate compliance with the standards of" the zoning ordinance. *Gross v. Jackson County*, 74 Or LUBA 563 (2016).

**30.4 Zoning Ordinances – Interpretation.** Where an assignment of error challenges an interpretation that the decision on appeal does not adopt, the assignment of error does not establish a basis for reversal or remand. *Fernandez v. City of Portland*, 73 Or LUBA 107 (2016).

**30.4 Zoning Ordinances – Interpretation.** A county finding that wind turbines are a conditional use in a commercial zone is not reversible error, even though wind turbines are not listed as a conditional use in the zone, where the balance of the decision clearly demonstrates the county in fact utilized its authority to approve uses that are similar to listed permitted and conditional uses in the zone to approve the wind turbines. *Burgermeister v. Tillamook County*, 73 Or LUBA 291 (2016).

**30.4 Zoning Ordinances – Interpretation.** Where a zoning ordinance expressly allows approval of uses that are not listed as permitted or conditional uses, if they are similar to listed uses in the zone, there is no negative inference that uses may not be approved as similar to uses in the zone, simply because the similar use is listed as a permitted or conditional use in other zones. *Burgermeister v. Tillamook County*, 73 Or LUBA 291 (2016).

**30.4 Zoning Ordinances – Interpretation.** Where the city code requires that a development's sewer facilities must be consistent with the sewer master plan and the sewer master plan calls for an upgraded 15-inch sewer line in a street that adjoins the development, city findings that explain a temporary cross-basin connection to provide sewer service to the development is acceptable because sewer flows from the development are inadequate to result in a properly functioning 15-inch sewer line, and the development approval is conditioned on the development connecting to the adjacent 15-inch sewer line when it becomes available in the future, are adequate to explain why the temporary cross-basin connection is not inconsistent with the code and sewer master plan. *Graser-Lindsey v. City of Oregon City*, 72 Or LUBA 25 (2015).

**30.4 Zoning Ordinances – Interpretation.** A city council does not misconstrue a development code limitation that a temporary use permit may not "be issued for a period exceeding 180 days in any 365 day period" to require a single period of 180 days and not allow the holder of the permit to operate for up to 180 nonconsecutive days in any 365-day period. *Bend/Sisters Garden RV Resort, LLC v. City of Sisters*, 72 Or LUBA 200 (2015).

**30.4 Zoning Ordinances – Interpretation.** A city council's interpretation of a development code limitation that a temporary use permit may not "be issued for a period exceeding 180 days in any 365 day period" to require that the 180-day period begin on the date the permit is issued has the effect of omitting the "in any 365 day period" language and reading in a requirement that the start date for the 180 days must be the date the permit is issued. That interpretation is therefore inconsistent with the express language of the 180-day limit. *Bend/Sisters Garden RV Resort, LLC v. City of Sisters*, 72 Or LUBA 200 (2015).

**30.4 Zoning Ordinances – Interpretation.** Where the authority to impose conditions that specifically applies to temporary use permits does not appear to be broad enough to allow the city to impose a condition of temporary use permit approval regarding vendors, but temporary use permit decisions qualify as Type II decisions, and the development code broadly authorizes Type

II decisions to include conditions of approval, a city does not exceed its conditioning authority in imposing the Vendor condition. *Bend/Sisters Garden RV Resort, LLC v. City of Sisters*, 72 Or LUBA 200 (2015).

**30.4 Zoning Ordinances – Interpretation.** Where LUBA sustains three assignments of error, but denies a fourth assignment of error, rejecting petitioner's challenge to a county commissioners' interpretation that a permit expiration standard that requires a finding that the applicant is not at fault for failing to complete the use authorized by the permit is met because the county's multi-stage destination resort process is so complicated, and LUBA's decision is reversed on appeal, with the Court of Appeals concluding that making the complexity of the multi-stage resort process the *only* consideration in applying the standard is an implausible interpretation of the standard, LUBA will sustain the fourth assignment of error as well. *Gould v. Deschutes County*, 72 Or LUBA 258 (2015).

**30.4 Zoning Ordinances – Interpretation.** Where a standard that permits the base zoning building height maximum to be increased if the "increased height is consistent with the purposes" of the applicable plan district's height limits, but does not expressly require that the proposed height increase must be consistent with all of the purposes or that each of the purposes operates as an approval criterion, a city council interpretation that the proposed height increase does not have to be consistent with all the purposes and that the individual purposes do not apply separately as approval criteria does not insert or omit text from the zoning code, in contravention of ORS 174.010. *Preserve the Pearl, LLC v. City of Portland*, 72 Or LUBA 261 (2015).

**30.4 Zoning Ordinances – Interpretation.** Where a city council explains that interpreting a standard that requires that a proposal to increase building height to be consistent with a list of purposes requires consistency with *all* of those purposes is not possible, which would render the plan designation that makes an area of the city eligible for such building height increases a nullity, that explanation provides contextual support for the city council's interpretation that the proposed building height increase need only be consistent with the purposes on balance. *Preserve the Pearl, LLC v. City of Portland*, 72 Or LUBA 261 (2015).

**30.4 Zoning Ordinances – Interpretation.** Where contextual requirements are written in terms of standards or criteria, all of which must be met, but the disputed standard merely requires that a proposed height increase be consistent with the purposes set out in the applicable height limit section of the code, that context supports the city's interpretation that the proposed height increase need not be consistent with all of the purposes and that the purposes do not operate as individual approval criteria. *Preserve the Pearl, LLC v. City of Portland*, 72 Or LUBA 261 (2015).

**30.4 Zoning Ordinances – Interpretation.** A zoning ordinance regulation that allows fill if it will not increase the elevation of land is not necessarily inconsistent with a comprehensive plan provision that bans fill altogether, where fill only qualifies as fill, as defined in the comprehensive plan, if the fill will raise the elevation of land. *Pennock v. City of Bandon*, 72 Or LUBA 379 (2015).

**30.4 Zoning Ordinances – Interpretation.** Where a resolution only bars extension of public sewer service outside a sewer district, that resolution does not provide a basis for reversing or

remanding a decision that grants land use approval to use an individual septic system. *Pennock v. City of Bandon*, 72 Or LUBA 379 (2015).

**30.4 Zoning Ordinances – Interpretation.** Where a potentially dispositive issue under a zoning code requirement that development be served by public facilities is whether a private septic system qualifies as "public facilities," LUBA will reject arguments in respondent's brief that the city council relied on a comprehensive plan definition of "public facilities" that might be broad enough to include private septic systems as public facilities, where nothing in the city council's decision suggests the city council relied on the comprehensive plan definition. *Pennock v. City of Bandon*, 72 Or LUBA 379 (2015).

**30.4 Zoning Ordinances – Interpretation.** Where a decision includes potentially conflicting findings that (1) all of a geologist's recommendations must be implemented or (2) only those recommendations identified by staff must be implemented, but the first finding can be harmonized with the second because the first finding does not expressly require that all of the geologist's recommendations must be implemented, it is appropriate to interpret the first finding to only require implementation of the staff identified recommendations. *Pennock v. City of Bandon*, 72 Or LUBA 379 (2015).

**30.4 Zoning Ordinances – Interpretation.** Where the word "property" is not defined in the local code, the county correctly considers context provided by the definitions of "property line adjustment" and "property line," both of which include reference to a "lot of record," in order to interpret the meaning of "property" to refer generally to whatever units of land (parcel, lot, or lot of record) that are subject to a property line adjustment. *LaBare v. Clackamas County*, 71 Or LUBA 25 (2015).

**30.4 Zoning Ordinances – Interpretation.** A development ordinance that links the terms "mining" and "quarrying" suggests the term "mining" should not be limited to removal of minerals that exclude rock, where dictionary definitions of "quarrying" frequently define that term to include rock removal. *S. St. Helens LLC v. City of St. Helens*, 71 Or LUBA 30 (2015).

**30.4 Zoning Ordinances – Interpretation.** Where a development code states that "minerals" include three general categories: solids, liquids, and gases, but these general categories are followed by specific examples: "coal and ores," "crude petroleum" and "natural gases," the rule of statutory construction *ejusdem generis* lends some support for interpreting the word "minerals" to be a narrow category of precious and/or valuable substances, as opposed to mere rock or aggregate. *S. St. Helens LLC v. City of St. Helens*, 71 Or LUBA 30 (2015).

**30.4 Zoning Ordinances – Interpretation.** Where a development code definition of the term "excavation" separately lists removal of "minerals" and "rock" as possible examples of "excavation," that suggests "minerals" and "rock" are different things and that "minerals" do not include "rock." *S. St. Helens LLC v. City of St. Helens*, 71 Or LUBA 30 (2015).

**30.4 Zoning Ordinances – Interpretation.** Where a development code definition of "surface mining" duplicates a statute that defines "surface mining" to include mining of "minerals," without expressly incorporating the broad statutory definition of "minerals" or the statutory exceptions to

that broad definition of "minerals" the development code definition of "surface mining" lends some support to the position that the enactors of the development code intended the word "minerals" to have a more narrow meaning than the statutory definition of that term. *S. St. Helens LLC v. City of St. Helens*, 71 Or LUBA 30 (2015).

**30.4 Zoning Ordinances – Interpretation.** One possible inference when a development code definition of "surface mining" duplicates a statute that defines "surface mining" to include mining of "minerals," is that the enactors of the development code intended the word "minerals" to have its statutory meaning, even if the enactors did not expressly incorporate the broad statutory definition of "minerals" or the statutory exceptions to that broad definition of "minerals" into the development code. *S. St. Helens LLC v. City of St. Helens*, 71 Or LUBA 30 (2015).

**30.4 Zoning Ordinances – Interpretation.** There is nothing inherently inappropriate about a local government distinguishing between acceptable excavations that are necessary for development and excavations that are of a nature and extent that constitutes mining. *S. St. Helens LLC v. City of St. Helens*, 71 Or LUBA 30 (2015).

**30.4 Zoning Ordinances – Interpretation.** While dictionaries are not always a reliable way to determine the intended meaning of an undefined term like "minerals," where the development codes expressly directs that undefined terms "have the normal dictionary meaning" it is appropriate to rely on dictionary definitions to interpret the word "minerals" to include basalt rock. *S. St. Helens LLC v. City of St. Helens*, 71 Or LUBA 30 (2015).

**30.4 Zoning Ordinances – Interpretation.** Under the law of the case principle articulated in *Beck v. City of Tillamook*, 313 Or 148, 831 P2d 678 (1992), the parties in a LUBA appeal of a decision following LUBA's remand of an earlier decision may not revisit legal issues that were resolved by LUBA in the prior appeal. Where the board of county commissioners could have reviewed the first decision and resolved interpretive issues differently than the hearings officer did in the first decision, but did not do so prior to the first LUBA appeal, the board of commissioners may not revisit resolved interpretive issues in the decision following remand and is not entitled to the deferential standard of review required by ORS 197.829(1) and *Siporen v. City of Medford*, 349 Or 247, 243 P3d 776 (2010), in the second appeal. *Gould v. Deschutes County*, 71 Or LUBA 78 (2015).

**30.4 Zoning Ordinances – Interpretation.** As a general proposition, a board of commissioners is free to interpret its land use regulations. But a hearings officer would not be free to interpret county land use regulations differently than LUBA did following a LUBA remand of the hearings officer's initial decision, and the board of commissioners is also not free to do so in a local appeal of the hearings officer's decision following LUBA's remand. *Gould v. Deschutes County*, 71 Or LUBA 78 (2015).

**30.4 Zoning Ordinances – Interpretation.** Where a destination resort conceptual master plan approval becomes void under applicable land use regulations if conditions of approval are not "substantially exercised" within two years, and the governing body does not distinguish between conditions based on their importance or the level of difficulty in exercising those conditions, a finding that 19 of 42 conditions have been "fully complied with" is not adequate to establish that

the 42 conditions have been "substantially exercised." *Gould v. Deschutes County*, 71 Or LUBA 78 (2015).

**30.4 Zoning Ordinances – Interpretation.** Where a destination resort conceptual master plan approval becomes void under applicable land use regulations if conditions of approval are not "substantially exercised" within two years, the governing body may not dismiss the significance of the applicant's failure to exercise 22 of 42 conditions because those conditions required the applicant to secure additional permits as the failure of a "contingency" to occur. The conditions were written in a manner that required the applicant to secure the permits to exercise the condition, such that they were a necessary step to exercise the condition, and the significance of the applicant's failure to secure the permits may not be dismissed entirely as a failure of a "contingency." *Gould v. Deschutes County*, 71 Or LUBA 78 (2015).

**30.4 Zoning Ordinances – Interpretation.** Where a destination resort conceptual master plan approval becomes void under applicable land use regulations if conditions of approval are not "substantially exercised" within two years, and the process and complexity of destination resort final master plan approval makes it difficult to do so within two years, the solution is to amend county land use regulations so as not to subject conceptual master plan approval to the two-year deadline or to write conceptual master plan approval conditions so that they can be exercised without first securing final master plan approval. The solution is not to take the position that the two-year deadline to "substantially exercise" the conditions of approval should not be applied, where the county land use regulations as currently written clearly make the two-year deadline applicable. *Gould v. Deschutes County*, 71 Or LUBA 78 (2015).

**30.4 Zoning Ordinances – Interpretation.** Where the county's land use regulations require the county to find that the failure of an applicant to fully comply with any conditions of conceptual master plan approval within two years is not the "fault of the applicant," LUBA will defer to a board of commissioner's finding that the complexity of the proposal and the complexity of the county's destination resort review process relieves the applicant of any fault in fully complying with the conceptual master plan conditions of approval. *Gould v. Deschutes County*, 71 Or LUBA 78 (2015).

**30.4 Zoning Ordinances – Interpretation.** A city council's occasional erroneous reference to a "Definition of Village Character" as a "purpose statement" is not a basis for remand, where it is clear that the city council simply refused to interpret the definition as a mandatory permit approval standard that required the city to compare proposed development with existing development to determine if the proposed development is "small scale." *LO 138 LLC v. City of Lake Oswego*, 71 Or LUBA 195 (2015).

**30.4 Zoning Ordinances – Interpretation.** A city council's interpretation that a code "Definition of Village Character" is not a mandatory permit approval standard, and that village character is achieved through compliance with substantive code standards that follow the definition, is consistent with the text and context of the code, where the code standards that follow the definition all state "village character" will be created or enhanced "by" or "through" "compliance with the following" "requirements," "criteria" or "design standards." *LO 138 LLC v. City of Lake Oswego*, 71 Or LUBA 195 (2015).

**30.4 Zoning Ordinances – Interpretation.** A petitioner's argument that a city's code requires that proposed development be compared with the width and length of buildings on adjoining lots, in addition to height, to ensure the proposed development is "small scale" will be rejected where petitioner cites no code language that requires that the proposed development must be directly compared with adjoining development, petitioner cites nothing to support its contention that width and length must invariably be considered in addition to height, and the code is reasonably interpreted to achieve "village character" through standards set out in the code, rather than through a direct comparison of the proposed development with surrounding development. *LO 138 LLC v. City of Lake Oswego*, 71 Or LUBA 195 (2015).

**30.4 Zoning Ordinances – Interpretation.** A city council's interpretation that the "work" portion of live/work units will "equally or better" meet a plan purpose of achieving a compact commercial core than would a commercial use, because the work area is an office or commercial use in fact if not name, is plausible and a basis for granting an exception to a code standard that would otherwise prohibit ground floor residential development. A petitioner must do more that speculate that work portion of a live/work unit will not be put to office or commercial use. *LO 138 LLC v. City of Lake Oswego*, 71 Or LUBA 195 (2015).

**30.4 Zoning Ordinances – Interpretation.** Where a city council concludes that a proposed development that includes live/work units and an associated library and gym would be at least as supportive of a plan purpose of creating a high-density retail commercial core as a design that complied with a code "no ground floor residential" standard, by including a parking lot instead, that interpretation is plausible and a sufficient basis for granting an exception to the code "no ground floor residential" standard. *LO 138 LLC v. City of Lake Oswego*, 71 Or LUBA 195 (2015).

**30.4 Zoning Ordinances – Interpretation.** In applying a conditional use "compatibility" standard that requires consideration of the "operating characteristics of the use," a local government does not err in considering the safety of the use. *Oregon Pipeline Company v. Clatsop County*, 71 Or LUBA 246 (2015).

**30.4 Zoning Ordinances – Interpretation.** Where county zoning ordinance language replicates and was adopted to implement Goal 4 and LCDC's Goal 4 administrative rule, the board of county commissioner's interpretation of that zoning ordinance language is not entitled to deferential review under ORS 197.829(1) and is instead reviewed under ORS 197.835(9)(a)(D) to determine if the board of commissioners "improperly construed the applicable law." *Oregon Pipeline Company v. Clatsop County*, 71 Or LUBA 246 (2015).

**30.4 Zoning Ordinances – Interpretation.** A board of county commissioners erroneously interprets a county zoning standard that replicates the OAR 660-006-0025(5)(a) requirement that certain nonforest uses in forest zones must not "[f]orce a significant change in, or significantly increase the cost of" forest practices, where under the board of commissioners' interpretation that standard is treated as a broader "significant impacts" standard that is unconnected to "costs" or "changes in" "forest practices." *Oregon Pipeline Company v. Clatsop County*, 71 Or LUBA 246 (2015).

**30.4 Zoning Ordinances – Interpretation.** Even under the deferential standard of review required by ORS 197.829(1) and *Siporen v. City of Medford*, 349 Or 247, 260-61, 243 P3d 776 (2010), interpreting a generally worded forest land protection policy so strictly that a use that is expressly allowed as a conditional use in the forest zone could never be approved is inconsistent with the text of the policy and implausible. *Oregon Pipeline Company v. Clatsop County*, 71 Or LUBA 246 (2015).

**30.4 Zoning Ordinances – Interpretation.** A board of county commissioners' interpretation of a zoning standard that requires that a proposed natural gas pipeline must "not limit the potential for more intensive use of the area" as being violated by the proposal unless the pipeline results in "no restrictions" on more intensive uses is neither inconsistent with the text of the zoning standard nor implausible and therefore is not reversible under ORS 197.829(1) and *Siporen v. City of Medford*, 349 Or 247, 260-61, 243 P3d 776 (2010). *Oregon Pipeline Company v. Clatsop County*, 71 Or LUBA 246 (2015).

**30.4 Zoning Ordinances – Interpretation.** A board of commissioners correctly interprets a zoning standard that requires that a "project's" public benefits outweigh expected adverse impacts to (1) limit consideration to the pipeline for which county permit approval is sought and (2) exclude any public benefits that may be generated by the LNG terminal that would be located in, and require the separate approval of, a city located in the county. The permit applicant's position that the county should consider the benefits of the LNG terminal but not the LNG terminal's expected adverse impacts is incorrect, because "project" cannot mean one thing when considering benefits and something else when considering expected adverse impacts. *Oregon Pipeline Company v. Clatsop County*, 71 Or LUBA 246 (2015).

**30.4 Zoning Ordinances – Interpretation.** While the particular wording of a purpose statement or related provisions can lead to a contrary result, purpose statements generally are not applied as mandatory permit approval criteria. *Oregon Pipeline Company v. Clatsop County*, 71 Or LUBA 246 (2015).

**30.4 Zoning Ordinances – Interpretation.** Where a county code provides a methodology for interpreting ambiguous code provisions, and provides that the "Planning Official shall interpret the meaning of the term," that provision does not operate as a delegation of exclusive interpretative authority to the Planning Official, or require the county governing body to defer to the Planning Official's interpretation. *Stevens v. City of Island City*, 71 Or LUBA 275 (2015).

**30.4 Zoning Ordinances – Interpretation.** A code provision requiring that a home occupation shall not utilize over 600 square feet of floor area cannot plausibly be interpreted to limit only the square feet physically occupied by a truck or trailer as part of a home occupation to perform maintenance work on trucks and trailers. Because the home occupation activity is the maintenance and not the storage of trucks and trailers, any interpretation that ignores the square footage necessary for employees to perform maintenance tasks is not consistent with the text of the code provision. *Stevens v. City of Island City*, 71 Or LUBA 275 (2015).

**30.4 Zoning Ordinances – Interpretation.** LUBA will affirm as plausible a governing body's interpretation of a code provision requiring a geologic assessment where development cannot be

accomplished without measures to "mitigate or control" the risk of geologic hazard, to trigger the need for a geologic assessment only if the development activity itself causes the risk of geologic hazard to increase above its pre-development state, and to not require geologic assessment simply because the applicant proposes measures, such as planting vegetation, intended to reduce existing landslide risk below the pre-development state. *Oregon Coast Alliance v. Curry County*, 71 Or LUBA 297 (2015).

**30.4 Zoning Ordinances – Interpretation.** A hearings officer errs in concluding a previously approved master plan was superseded by a new zoning district where the hearings officer unduly relies on (1) the lack of a clause in the ordinance specifically stating that the underlying master plan is not superseded and (2) the alleged lack of any references to the underlying master plan in the enacting ordinance or its findings, where there are in fact references in the enacting ordinance findings to the master plan, and the hearings officer failed to consider the presumption under the zoning ordinance that new zoning provisions do not repeal or impair existing land use approvals. *Widgi Creek Homeowners Association v. Deschutes County*, 71 Or LUBA 321 (2015).

**30.4 Zoning Ordinances – Interpretation.** Where a new Resort Community Zone is applied to two existing resort areas and includes standards for new development, and one plan policy says new development on undeveloped resort property in the first resort is to be guided by water and sewer service availability and another policy says any new development in the second resort must be consistent with its previously approved master plan, but no plan policy mentions the first resort's master plan, that omission supports a conclusion that the first resort's master plan does not apply to new development in that resort. *Widgi Creek Homeowners Association v. Deschutes County*, 71 Or LUBA 321 (2015).

**30.4 Zoning Ordinances – Interpretation.** Where a zoning ordinance is deeply ambiguous regarding whether a previously approved resort master plan continues to have regulatory effect after a new Resort Community Zone is applied to the property, with parts of the ordinance, its supporting findings and the comprehensive plan supporting opposite conclusions, it is appropriate for LUBA to remand for the hearings officer to first address all of the conflicting language. *Widgi Creek Homeowners Association v. Deschutes County*, 71 Or LUBA 321 (2015).

**30.4 Zoning Ordinances – Interpretation.** Where conditional use approval requires a finding of compliance with a three-pronged standard that "the proposed use will not alter the character of the surrounding area in a manner that substantially limits, impairs, or precludes the use of surrounding properties," and the decision maker only addresses the "precludes" prong in granting approval, remand is required to address the other two prongs. *Morton v. Clackamas County*, 70 Or LUBA 7 (2014).

**30.4 Zoning Ordinances – Interpretation.** Where a hearings officer's findings appear to substitute a common law nuisance standard for the applicable code standard, but the hearings officer never applies the identified common law nuisance standard, LUBA will view the findings as surplusage rather than an improper attempt to substitute an inapplicable standard for the applicable standard. *Morton v. Clackamas County*, 70 Or LUBA 7 (2014).

**30.4 Zoning Ordinances – Interpretation.** A hearings officer correctly concludes that an isolated wetland is not a "riparian corridor," where the code defines riparian corridor as "an area, adjacent to a water area," and the isolated wetland is not "adjacent to a water area." *Carver v. Washington County*, 70 Or LUBA 23 (2014).

**30.4 Zoning Ordinances – Interpretation.** Where the Court of Appeals interpreted similar operative language in a county's code to determine that "riparian zones" are areas adjacent to water areas designated in a community plan, a hearings officer correctly interprets the term "riparian corridor" in that code to apply only to riparian areas that are proximate to designated water areas. *Carver v. Washington County*, 70 Or LUBA 23 (2014).

**30.4 Zoning Ordinances – Interpretation.** A local code provision authorizing a private street if the street is "not needed to provide access to other properties in the area" is not violated by a required pedestrian/bicycle connection between the proposed private street and offsite transit facilities, because "other properties in the area" does not refer to transit facilities in a public right-of-way. *Carver v. Washington County*, 70 Or LUBA 23 (2014).

**30.4 Zoning Ordinances – Interpretation.** A local government errs in denying an application for permit approval because it fails to provide adequate parking facilities, where there is no standard that requires "adequate parking facilities" and the local government finds that the proposal complies with the applicable off-street parking requirement. *Parkview Terrace Development LLC v. City of Grants Pass*, 70 Or LUBA 37 (2014).

**30.4 Zoning Ordinances – Interpretation.** A local government errs in denying an application for approval of a "residential" development for failure to comply with an approval standard that applies to "commercial, institutional and office park uses." *Parkview Terrace Development LLC v. City of Grants Pass*, 70 Or LUBA 37 (2014).

**30.4 Zoning Ordinances – Interpretation.** While a county governing body cannot be faulted for not considering dictionary definitions that were not cited to it below, the county governing body can be faulted for relying on a general on-line dictionary definition of "penstock," when a party asserted that term has a technical meaning and cited two treatises in support its position that the term has a narrower meaning that the on-line general dictionary definition. *Pacificorp v. Deschutes County*, 70 Or LUBA 89 (2014).

**30.4 Zoning Ordinances – Interpretation.** A county governing body's unexplained decision to rely on the on-line Merriam-Webster Dictionary definition of the term "penstock" does not constitute an interpretation that is adequate for review, where the governing body's decision does not show it was a considered choice between possible definitions. *Pacificorp v. Deschutes County*, 70 Or LUBA 89 (2014).

**30.4 Zoning Ordinances – Interpretation.** A hearings officer correctly rejects an interpretation that connecting two dwellings by a causeway creates a single "dwelling," with two or more "dwelling units," based on a general code definition of "dwelling," where a narrower definition of dwelling that limits "dwelling" to a single dwelling unit applies in the zone. *Macfarlane v. Clackamas County*, 70 Or LUBA 126 (2014).

**30.4 Zoning Ordinances – Interpretation.** Even if a structure qualifies as a nonconforming structure with regard to a general 20-foot setback required in the applicable zoning district, that does not obviate a 30-foot setback requirement for schools, where the use of the structure is to be converted for the first time to a school. *Kaimanu v. Washington County*, 70 Or LUBA 217 (2014).

**30.4 Zoning Ordinances – Interpretation.** Even if a structure qualifies as a nonconforming structure with regard to a general 20-foot setback required in the applicable zoning district, that does not obviate a land use code off-street parking requirement for schools, where the use of the structure is to be converted for the first time to a school. *Kaimanu v. Washington County*, 70 Or LUBA 217 (2014).

**30.4 Zoning Ordinances – Interpretation.** ORS 215.750 and OAR 660-006-0027(3) authorize local governments to approve forest template dwellings if at least three dwellings existed within a specified 160-acre area and those dwellings continue to exist at the time forest template dwelling approval is requested. A hearings officer's interpretation of the word "dwelling" in local laws adopted to implement ORS 215.750 and OAR 660-006-0027(3) such that a former dwelling that has been vacant for many years and is in a state of disrepair that would preclude use as a residence does not qualify as a "dwelling" for purposes of satisfying ORS 215.750 and OAR 660-006-0027(3) is more consistent with the underlying purpose of the statute and rule. That underlying purpose is to allow forest template dwellings in circumstances where there is existing limited residential development on forest lands, and the hearings officer's interpretation is more consistent with that underlying purpose than interpreting the word "dwelling" to include long abandoned structures, no matter how derelict and uninhabitable as a dwelling in its current condition. *West v. Multnomah County*, 70 Or LUBA 235 (2014).

**30.4 Zoning Ordinances – Interpretation.** Land use regulations that set out approval criteria for commercial composting operations and also state "[a]dditionally, these facilities shall be subject to" DEQ and Metro rules simply advise applicants for county approval of commercial composting facilities that there are other legal requirements that must be satisfied before a composting facility can commence operation. That language does not obligate the county to apply DEQ and Metro rules and find the proposed facility complies with those rules. *Tolbert v. Clackamas County*, 70 Or LUBA 388 (2014).

**30.4 Zoning Ordinances – Interpretation.** Generally, a land use regulation requirement that a modified conditional use must be "consistent" with the originally approved conditional use is satisfied, where the originally approved conditional use had two parts and the modified conditional use simply eliminates one of those parts and makes minor, non-substantial changes to the remaining part. *Tolbert v. Clackamas County*, 70 Or LUBA 388 (2014).

**30.4 Zoning Ordinances – Interpretation.** Where applicable land use regulations require that a proposal to modify a previously approved conditional use must be "consistent" with previously approved conditional use, and the proposal would eliminate the previously approved composting operation and make minor changes to the previously approved topsoil mining operation, the modified conditional use is correctly viewed as "consistent" with the previously approved conditional use. *Tolbert v. Clackamas County*, 70 Or LUBA 388 (2014).

**30.4 Zoning Ordinances – Interpretation.** In considering whether the proposed modifications to a previously approved conditional use comply with conditional use approval criteria, if legal issues raised in the modification proceedings are relevant issues regarding approval standards that could not have been raised when the original proposal was approved, the local government is required to address those issues. Conversely, if the arguably relevant issues raised in the modification proceedings could have been fully raised when the original proposal was approved, those legal issues are not a product of the modification and the local government is not required to consider those issues. *Tolbert v. Clackamas County*, 70 Or LUBA 388 (2014).

**30.4 Zoning Ordinances – Interpretation.** While a 4.4 units per acre maximum density standard may limit the number of lots that would otherwise be possible with a 5,000-square-foot minimum lot size without the maximum density standard, the minimum lot size and maximum density standards are not inconsistent. Therefore, there would be no textual inconsistency in interpreting the development code to impose a maximum density standard. *Greller v. City of Newberg*, 70 Or LUBA 499 (2014).

**30.4 Zoning Ordinances – Interpretation.** Where the Metro Code requires that a city retain its Goal 5 protections for tree groves unless removing those protections "would allow no more than a *de minimis* increase in the amount of development that could occur in areas identified as upland wildlife habitat," a city does not err in comparing the area of each tree grove where development would occur with the remaining area of each tree grove, rather than comparing the area of each tree grove where development would occur with the entire area identified as upland habitat Metro-wide or within the entire city. *Metro v. City of Lake Oswego*, 68 Or LUBA 136 (2013).

**30.4 Zoning Ordinances – Interpretation.** Where the Metro Code requires that a city retain its Goal 5 protections for tree groves unless removing those protections "would allow no more than a *de minimis* increase in the amount of development that could occur in areas identified as upland wildlife habitat," a city erroneously applies the *de minimis* limitation by assuming, based on speculation that the owner of the large house will not want to further divide the property, that a one-acre lot with a large house on it in a zone that allows 7,500-square-foot lots will not be divided and developed with additional residences. *Metro v. City of Lake Oswego*, 68 Or LUBA 136 (2013).

**30.4 Zoning Ordinances – Interpretation.** A city's final decision includes adequate findings and a code interpretation adequate for review, where the final decision adopts a planning staff decision as its own, and the planning staff decision embodies a code interpretation that is adequate for review. *Sellwood-Moreland Improvement League v. City of Portland*, 68 Or LUBA 213 (2013).

**30.4 Zoning Ordinances – Interpretation.** LUBA will affirm a staff code interpretation to the effect that a district-specific density transfer provision governing single-family development in single-family zones does not supersede or conflict with a general city-wide density transfer provision applicable to multi-family development in multi-family zones, where the two density transfer provisions would never apply to the same development, and therefore would not create incompatibility or conflict, such that the specific would control the general. *Sellwood-Moreland Improvement League v. City of Portland*, 68 Or LUBA 213 (2013).

**30.4 Zoning Ordinances – Interpretation.** A Metro regional trail that includes a multi-use pathway, trailheads, parking, restrooms, shelters, picnic areas, interpretative and educational facilities etc. can constitute a "park" that is prohibited in a city industrial zone, where the proposed trail falls within the broad code definition of "park." That the industrial zone allows bicycle and pedestrian paths in greenways and natural areas does not mean that the proposed regional trail is allowed in the industrial zone, where the trail is not located in a greenway or natural area and is more than a bicycle and pedestrian path. *Terra Hydr Inc. v. City of Tualatin*, 68 Or LUBA 279 (2013).

**30.4 Zoning Ordinances – Interpretation.** Remand is necessary where a city's code requires that the city council "shall" vote on a valid challenge to the impartiality of a council member, but the city council ignores a valid challenge and does not vote. That the code provisions governing the required vote state that the city council "may" disqualify the challenged member is properly read in context as authorizing disqualification, and not as granting the city council the discretion to vote or not, as it sees fit. *STOP Tigard Oswego Project, LLC v. City of West Linn*, 68 Or LUBA 360 (2013).

**30.4 Zoning Ordinances – Interpretation.** LUBA will affirm a city council interpretation of a code standard requiring that a proposed facility is "consistent with the overall needs of the community" to also include consideration of impacts/benefits on citizens of adjoining cities, where that broad understanding of "community" is not inconsistent with the text, context, purpose or policy underlying the standard. *STOP Tigard Oswego Project, LLC v. City of West Linn*, 68 Or LUBA 360 (2013).

**30.4 Zoning Ordinances – Interpretation.** An argument that a city council misconstrued a "mitigate permanent disturbances" standard to apply only to disturbances to the surface of wetlands does not provide a basis for remand, where fairly read the city council findings apply the standard to evaluate disturbances to the soils and water column that constitute a wetland, and conclude that placing a pipe underground in the bedrock 34 to 60 feet below the wetland would not cause permanent disturbance to the wetland. *STOP Tigard Oswego Project, LLC v. City of West Linn*, 68 Or LUBA 360 (2013).

**30.4 Zoning Ordinances – Interpretation.** A standard that requires mitigation of permanent disturbances to wetlands is not properly construed to apply to the entirety of a parcel that contains a wetland area, such that the standard is applied to disturbances elsewhere on the parcel that have no impact on the wetland area. *STOP Tigard Oswego Project, LLC v. City of West Linn*, 68 Or LUBA 360 (2013).

**30.4 Zoning Ordinances – Interpretation.** LUBA will affirm a city council interpretation of a code standard requiring mitigation of "permanent disturbances" to water resource areas, to require no mitigation when a proposed pipeline is laid across a culvert within the paved area of a street, and thus would result in no additional impacts on the water resource, where the interpretation is consistent with the text and apparent purpose of the standard to minimize impacts on water resource areas. *STOP Tigard Oswego Project, LLC v. City of West Linn*, 68 Or LUBA 360 (2013).

**30.4 Zoning Ordinances – Interpretation.** LUBA will not interpret a definition of "multi-dwelling structure" to preclude construction of a building that straddles a lot line, where the definition is written to distinguish "multi-dwelling structures" from attached dwellings which must be located on their own lot. *Beaumont-Wilshire Neighbors v. City of Portland*, 68 Or LUBA 393 (2013).

**30.4 Zoning Ordinances – Interpretation.** A built-in barbeque grill that is constructed on a three-foot concrete based qualifies as a "structure," which is defined as "any object constructed in or on the ground." As such, the barbeque grill is subject to setback requirements that apply to structures. *Beaumont-Wilshire Neighbors v. City of Portland*, 68 Or LUBA 393 (2013).

**30.4 Zoning Ordinances – Interpretation.** While the definition of "structure," which is "any object constructed in or on the ground," is potentially broad enough to include synthetic turf, synthetic turf is more similar to "paved areas and vegetative landscaping materials," which are exempt from the definition of structure. *Beaumont-Wilshire Neighbors v. City of Portland*, 68 Or LUBA 393 (2013).

**30.4 Zoning Ordinances – Interpretation.** In approving a wedding venue and event business in a forest zone under a code provision that allows, on a "temporary" basis, uses otherwise not allowable in the applicable zone, a county must consider whether the proposed use is properly characterized as a "home occupation," which is an allowed conditional use in the forest zone, subject to restrictions. If the proposed is properly characterized as a home occupation allowable in the forest zone, then the code does not allow the county to issue a temporary use permit for that use. *White v. Lane County*, 68 Or LUBA 423 (2013).

**30.4 Zoning Ordinances – Interpretation.** A county errs in approving a five-year renewable permit for an existing wedding venue and event business as a "temporary" use, without considering whether the use is "temporary" as defined under the county code, *i.e.*, something that exists only for a limited, transitory interval, and whether conditions are necessary to limit the duration of the use to ensure that it is in fact a "temporary" use. *White v. Lane County*, 68 Or LUBA 423 (2013).

**30.4 Zoning Ordinances – Interpretation.** A county errs in interpreting a code provision to allow temporary use of an "existing structure" even if the structure was recently and illegally built for a use prohibited in the zone, where the text and context of the temporary use provisions suggest that temporary use of an "existing structure" is intended for a lawful structure, and the county's broader interpretation brings the code into conflict with nonconforming use statutes. *White v. Lane County*, 68 Or LUBA 423 (2013).

**30.4 Zoning Ordinances – Interpretation.** Where an applicant sought confirmation that a methadone clinic is a permitted use in a professional office zone, and there is no reason to believe the applicant's request also sought confirmation for other unspecified medical services, the city's confirmation regarding the methadone clinic does not include other unspecified medical services. An applicant's and city's failure to specify expressly that a methadone clinic that is the subject of a land use approval application was to be an outpatient clinic is not error, where the requirement that the approved methadone clinic must be an outpatient clinic is inferable from the application and decision. *Mariposa Townhouses v. City of Medford*, 68 Or LUBA 479 (2013).

**30.4 Zoning Ordinances – Interpretation.** Absent wording to the contrary, generally worded zoning district purpose statements are not mandatory approval criteria for permits or other site-specific land use decisions. A zoning district purpose statement that development in the zone "is expected to be suitable for locations adjacent to residential neighborhoods" is not a mandatory approval criteria for permits or other site specific land use decisions. *Mariposa Townhouses v. City of Medford*, 68 Or LUBA 479 (2013).

**30.4 Zoning Ordinances – Interpretation.** Where competing interpretations of a development code are equally plausible, and there is some contextual support for the interpretation selected by a hearings officer, LUBA will conclude that the hearings officer did not "[i]mproperly construe[] the applicable law," within the meaning of ORS 197.835(9)(a)(D). *Gould v. Deschutes County*, 67 Or LUBA 1 (2013).

**30.4 Zoning Ordinances – Interpretation.** Where a development code requires that conditions of permit approval be satisfied within two years after the permit approval becomes final to avoid having the permit approval become void, and satisfying those 38 conditions within two years will be difficult because satisfying some of those conditions of approval would require the applicant to first secure additional approval decisions, a hearings officer is not permitted to interpret the code to require that the applicant only satisfy those conditions of approval that do not require additional approval decisions. *Gould v. Deschutes County*, 67 Or LUBA 1 (2013).

**30.4 Zoning Ordinances – Interpretation.** Where a development code requires that permit conditions of approval must be substantially satisfied and that "any failure to fully comply with the conditions is not the fault of the applicant," for a county hearings officer to find that the permit is not void, the hearing hearings officer must be able to find both that all conditions of approval, viewed as a whole, have been substantially exercised *and* that, for any of the conditions of approval where there has been a failure to fully exercise the condition, the applicant is not at fault. *Gould v. Deschutes County*, 67 Or LUBA 1 (2013).

**30.4 Zoning Ordinances – Interpretation.** Where the applicable land use regulations do not require that the owner of the property that is the subject of a permit application sign the application or join in the application, a local government errs by denying the application on the basis that the property owner opposes the permit application. *Willamette Oaks, LLC v. City of Eugene*, 67 Or LUBA 43 (2013).

**30.4 Zoning Ordinances – Interpretation.** A local government errs in finding that a previously approved variance is no longer legally effective, based on a finding that (1) the sign that was approved "can never exist" and (2) the facts that existed at the time of the variance was approved no longer exist, where the findings do not explain why a sign with the characteristics of the sign that was originally approved "can never exist,' or why the change in facts has the legal effect of making the variance legally ineffective. *Willamette Oaks, LLC v. City of Eugene*, 67 Or LUBA 43 (2013).

**30.4 Zoning Ordinances – Interpretation.** Where there is nothing in the applicable land use regulations that requires the applicant for a sign permit pursuant to a previously approved variance to demonstrate that it is not possible to construct a conforming sign, the local government errs in

denying the sign permit based on the applicant's failure to demonstrate it is not possible to construct a conforming sign instead. *Willamette Oaks, LLC v. City of Eugene*, 67 Or LUBA 43 (2013).

**30.4 Zoning Ordinances – Interpretation.** LUBA will not consider whether a county has authority to approve conditional zoning where the applicant modified its proposal making conditional zoning unnecessary before the board of commissioners could make a decision about whether the county had such authority. *Warren v. Josephine County*, 67 Or LUBA 74 (2013).

**30.4 Zoning Ordinances – Interpretation.** A driveway that is located on the property it serves, or on another private property, is properly viewed as a part of the use it serves. But a public right-of-way that provides access to property is not properly viewed as part of the use that the public right-of-way provides access to. *Lost Creek Rock Products, LLC v. Lane County*, 67 Or LUBA 96 (2013).

**30.4 Zoning Ordinances – Interpretation.** Mining truck traffic, while it is on the mining site and inside a 200-foot buffer that separates the mining site from adjoining properties, is properly viewed as part of the mining use for purposes of regulations limiting the impacts of the mining use. But when that truck traffic passes onto a public right-of-way, it is no longer properly viewed as part of the mining use. *Lost Creek Rock Products, LLC v. Lane County*, 67 Or LUBA 96 (2013).

**30.4 Zoning Ordinances – Interpretation.** A zoning overlay height restriction that can be interpreted in isolation to apply to an entire property, instead of only to the portion of the property that is subject to the overlay, should not be interpreted in isolation, where a separate zoning ordinance provision expressly addresses properties that are subject to more than one zone and makes it clear that the overlay zone restrictions should only be applied to the portion of the property that is subject to the overlay zone. *Richmond Neighbors v. City of Portland*, 67 Or LUBA 115 (2013).

**30.4 Zoning Ordinances – Interpretation.** Where limiting application of a zoning main entrance requirement to commercial tenants and not applying that requirement to residential tenants would require that LUBA insert limiting text into the zoning ordinance that is not included in the zoning ordinance, LUBA may not do so and the main entrance requirement applies to both commercial and residential tenants. *Richmond Neighbors v. City of Portland*, 67 Or LUBA 115 (2013).

**30.4 Zoning Ordinances – Interpretation.** Where a city code provides that in reviewing an application for development approval a traffic impact study "may" be required in two circumstances, but petitioners do not establish that either of those circumstances are present, petitioners' argument that the city erred by failing to require a traffic impact study provides no basis for reversal or remand. *Kerns Neighbors v. City of Portland*, 67 Or LUBA 130 (2013).

**30.4 Zoning Ordinances – Interpretation.** Where a city code sets out a particular method for measuring the height of hipped roofs and a different method for measuring other types of roofs, the hipped roof method applies notwithstanding that the proposed hipped roof is a compound hipped roof rather than the simple hipped roof displayed in a code diagram of roof types. *Kerns Neighbors v. City of Portland*, 67 Or LUBA 130 (2013).

**30.4 Zoning Ordinances – Interpretation.** Where a county has specific procedures for identifying and resolving development code violations and appeals from those procedures are to circuit court, LUBA will sustain a county's interpretation that it is not obligated to review a decision by a county enforcement officer that a property is not in violation of the development code as part of a permit application for a home occupation on the property that was the subject of the enforcement officer's decision. *Green v. Douglas County*, 67 Or LUBA 234 (2013).

**30.4 Zoning Ordinances – Interpretation.** LUBA will affirm a county governing body's interpretation of standards governing placement of fill and levees in different areas of the flood plain as allowing fills and levees in the "flood fringe" area as long as the fill or levee does not increase the base flood level by one foot and does not extend from the "flood fringe" into the "floodway," which regulates fill and levees more stringently. *Protect Grand Island Farms v. Yamhill County*, 67 Or LUBA 278 (2013).

**30.4 Zoning Ordinances – Interpretation.** A comprehensive plan and zoning ordinance standard that requires a city to apply to annexed properties the city zone that "most closely approximates" the "standards," "density," and "uses" in the existing county zone requires a three-pronged inquiry. The city's choice of a zone will be affirmed where standards in the zone the city applied and the standards in the zone petitioners believe should have been applied are identical, the density in the zone applied by the city is closer to the county zone, and the two zones are equally approximate for 33 of the uses allowed in the county zone and the zone favored by petitioners more closely approximates 13 uses. *Mintz v. City of Beaverton*, 67 Or LUBA 374 (2013).

**30.4 Zoning Ordinances – Interpretation.** Where a rezoning standard originated in a city/county agreement but was later adopted as part of the city's comprehensive plan and land use regulations, the city's interpretation of that rezoning standard is entitled to deference under ORS 197.829(1) and *Siporen v. City of Medford*, 349 Or 247, 243 P3d 776 (2010). *Mintz v. City of Beaverton*, 67 Or LUBA 374 (2013).

**30.4 Zoning Ordinances – Interpretation.** Where the county zoning that applied to recently annexed territory inside a city's urban growth boundary provided that dwellings were allowed only if the property "was designated for residential use by the city," and the city took the position in its brief that the property was not designated for residential use, LUBA will assume that the city is correct where (1) petitioners do not argue in their petition for review that property was designated for residential use and (2) petitioners fail to respond to the city's argument in its brief. *Knaupp v. City of Forest Grove*, 67 Or LUBA 398 (2013).

**30.4 Zoning Ordinances – Interpretation.** A petitioner fails to establish that a city erroneously interpreted a county "ten percent/10,000 square foot" limitation on commercial development in a mixed-use zone to apply to individual development proposals rather than the larger comprehensive plan areas when a large number of small developments might be proposed where there is textual support for both the city's and petitioner's interpretation. *Mintz v. City of Beaverton*, 66 Or LUBA 118 (2012).

**30.4 Zoning Ordinances – Interpretation.** Unless presented with some evidence to the contrary, a city decision maker could reasonably assume that proposed residential development will generate negligible air and noise pollution. *Rosenzweig v. City of McMinnville*, 66 Or LUBA 164 (2012).

**30.4 Zoning Ordinances – Interpretation.** Under *State v. Gaines*, 346 Or 160, 171-72, 206 P3d 1042 (2009), LUBA is free to consider any legislative history it considers useful and where the available legislative history is completely consistent with the city's interpretation and completely inconsistent with petitioner's interpretation, the legislative history is useful in resolving the different interpretations. *Cassidy v. City of Glendale*, 66 Or LUBA 314 (2012).

**30.4 Zoning Ordinances – Interpretation.** Where the mandatory Goals and Policies section of a comprehensive plan call for multi-family housing to be located in the city's residential zones and the Goals and Policies say nothing about locating multi-family housing in the city's commercial zone, amending the zoning ordinance to delete multi-family housing as a permitted use in the city's commercial zone is not inconsistent with the comprehensive plan. *Cassidy v. City of Glendale*, 66 Or LUBA 314 (2012).

**30.4 Zoning Ordinances – Interpretation.** LUBA will affirm a city council's interpretation of a standard requiring that the proposed road vacation be in the public interest, to the effect that "public interest" can include benefits flowing from development facilitated by the road vacation, not limited to the road vacation itself, where nothing in the text suggests limits on what considerations inform whether the vacation is in the public interest. *Conte v. City of Eugene*, 66 Or LUBA 334 (2012).

**30.4 Zoning Ordinances – Interpretation.** LUBA will affirm a planning director's interpretation that site design review standards do not apply to a proposed landfill expansion because the expansion was authorized in a 1980 decision that pre-dated the site design review standards, where nothing in the code compels application of the site design review standards to an already authorized landfill expansion. *McPhillips Farm Inc. v. Yamhill County*, 66 Or LUBA 355 (2012).

**30.4 Zoning Ordinances – Interpretation.** Where applicable overlay zone regulations do not specify how they apply to a site that is located partially within the overlay zone and partially outside the overlay zone, and the overlay zones can be applied in more than one plausible way in that circumstance, the overlay zone regulations are ambiguous and a building permit that applies those overlay zone regulations that is appealed to LUBA does not qualify for either of the exceptions to LUBA's review jurisdiction set out at ORS 197.015(10)(b)(A) and (B) for ministerial decisions that do not require interpretation or are subject to clear and objective standards. *Richmond Neighbors v. City of Portland*, 66 Or LUBA 464 (2012).

**30.4 Zoning Ordinances – Interpretation.** A county code section that provides general standards for "adjustments" does not provide additional standards for a property line adjustment, where the relevant text and context indicates that "adjustment" as used in that code section means an adjustment or variance to a minimum lot size or similar standard, not a property line adjustment that requires no variance. *Louks v. Jackson County*, 65 Or LUBA 58 (2012).

**30.4 Zoning Ordinances – Interpretation.** A city planning commission's interpretation of a code provision that requires "adequate screening" as requiring screening of a 75 foot-tall cell tower to a reasonable extent and its conclusion that screening the bottom two thirds of a 75-foot-tall tower is sufficient to provide "adequate screening" are correct, given the inherently subjective nature of a criterion that requires "adequate screening." *Northgreen Property LLC v. City of Eugene*, 65 Or LUBA 83 (2012).

**30.4 Zoning Ordinances – Interpretation.** Where a proposed cell tower meets the objective standards set out in the city's code for telecommunications towers and where the tower will be screened from view while still allowing the tower to function as intended, LUBA will uphold a city's conclusion that the proposed cell tower is "reasonably compatible and harmonious" with the neighborhood, particularly given the inherently subjective nature of the criterion. *Northgreen Property LLC v. City of Eugene*, 65 Or LUBA 83 (2012).

**30.4 Zoning Ordinances – Interpretation.** That the county initially adopted a problematic interpretation of the criteria for applying a limited use overlay zone to limit uses allowed on land for which a reasons exception is taken does not provide a basis for reversal or remand, where the county adopted an alternative interpretation that is consistent with the text of the zone change criteria. *Devin Oil Co. v. Morrow County*, 65 Or LUBA 104 (2012).

**30.4 Zoning Ordinances – Interpretation.** LUBA will affirm a governing body's interpretation of a code standard allowing imposition of a limited use overlay zone if "it is required to limit the uses permitted in the proposed zone" by the reasons exception rule at OAR chapter 660, division 4, to employ the overlay zone to limit uses to ensure consistency with Statewide Planning Goal 12 (Transportation), and the need to take an exception to Goal 12, even though the county took reasons exceptions only to other statewide planning goals, where the county's interpretation is not inconsistent with the express language, purpose or underlying policy of the code standard. *Devin Oil Co. v. Morrow County*, 65 Or LUBA 104 (2012).

**30.4 Zoning Ordinances – Interpretation.** LUBA will affirm a governing body's interpretation of a local code provision to require only consideration of current adequacy of transportation facilities, notwithstanding local traffic analysis guidelines that require analysis of impacts from future planned uses, where the county interprets the guidelines to be non-mandatory, and that interpretation is not inconsistent with the express language, purpose or policy of the relevant local provisions. *Devin Oil Co. v. Morrow County*, 65 Or LUBA 104 (2012).

**30.4 Zoning Ordinances – Interpretation.** Where a zoning standard that requires that structures "be compatible with adjacent developments and surrounding land uses" without specifying whether the referenced adjacent developments and surrounding land uses are limited to *existing* developments and uses, a city council's interpretation that the zoning standard is limited to existing developments and uses is not reversible under ORS 197.829(1) and *Siporen v. City of Medford*, 349 Or 247, 259, 243 P3d 776 (2010). *Johnson v. City of Gladstone*, 65 Or LUBA 225 (2012).

**30.4 Zoning Ordinances – Interpretation.** Where a zoning ordinance allows "Government Services" uses if they are not "specifically listed" uses in other zoning districts, a city council is within its interpretive discretion under *Siporen v. City of Medford*, 349 Or 247, 259, 243 P3d 776

(2010), when it concludes that a VA outpatient clinic is allowable as a Government Services use, notwithstanding that "Medical Health Facilities" are allowed in some city zones. Because the VA outpatient clinic would offer a variety of services some of which are not offered by the typical private and public clinics that would be allowed as "Medical Health Facilities," the VA outpatient clinic is not a "specifically listed" use in any zoning district. *Randazzo v. City of Eugene*, 65 Or LUBA 272 (2012).

**30.4 Zoning Ordinances – Interpretation.** Where a zoning ordinance would allow a VA outpatient clinic use as "Government Services" uses only if the use is not "specifically listed" uses in other zoning districts, and the zoning ordinance authorizes "Medical Health Facilities" in other zoning districts, the critical question is whether authorizing "Medical Health Facilities" in those other zones is sufficient to "specifically list" the proposed VA outpatient clinic use. In resolving that question, the maxim of statutory construction in ORS 174.020 that calls for selection of a particular provision over a more general provision where they conflict is of no particular assistance. *Randazzo v. City of Eugene*, 65 Or LUBA 272 (2012).

**30.4 Zoning Ordinances – Interpretation.** A governing body's interpretation of a code provision allowing rezoning when "zoning previously adopted for the area was in error" to focus on the parcel to be rezoned rather than the surrounding area is consistent with the text of the provision, and will be affirmed. *O'Brien v. Lincoln County*, 65 Or LUBA 286 (2012).

**30.4 Zoning Ordinances – Interpretation.** The zoning designation of property that is shown on the official zoning map is the valid zoning designation for the property. *Housing Authority of Jackson County v. City of Medford*, 65 Or LUBA 295 (2012).

**30.4 Zoning Ordinances – Interpretation.** LUBA will not defer to an interpretation of a zoning ordinance that appears only in a city's reply brief and is inconsistent with an implied interpretation that is included in the city council's decision on appeal. *Oregon Coast Alliance v. City of Dunes City*, 65 Or LUBA 358 (2012).

**30.4 Zoning Ordinances – Interpretation.** Where a city council interprets a comprehensive plan policy to require that a new voluntary, educational septic system maintenance program "will improve upon" its existing mandatory, regulatory septic system maintenance program and the evidence shows that the existing program has improved septic system maintenance, a city council decision to repeal the existing program before the new program is developed and adopted is inconsistent with the comprehensive plan policy. *Oregon Coast Alliance v. City of Dunes City*, 65 Or LUBA 358 (2012).

**30.4 Zoning Ordinances – Interpretation.** A comprehensive plan policy that requires a city to "adopt a program to improve maintenance of septic systems for the benefit of all residents" does not specify how the program will improve septic system maintenance and therefore does not necessarily require that a city septic system maintenance system must be mandatory and regulatory, as opposed to voluntary and educational, so long as the program will improve maintenance of septic systems. *Oregon Coast Alliance v. City of Dunes City*, 65 Or LUBA 358 (2012).

**30.4 Zoning Ordinances – Interpretation.** Although there is no general legal requirement that all legislative land use decisions must be supported by findings, where the scope and meaning of at least some applicable comprehensive plan policies are unclear, it is highly unlikely that a decision to replace an existing mandatory, regulatory program to improve septic system maintenance with a voluntary, educational program to achieve the same goal will be defensible on appeal without adequate findings. *Oregon Coast Alliance v. City of Dunes City*, 65 Or LUBA 358 (2012).

**30.4 Zoning Ordinances – Interpretation.** Where a permit extension may be granted based on a finding that the failure to complete the proposal within the original term of the permit was "for reasons which the applicant was not responsible," a board of county commissioners is within its discretion to interpret that standard to be met if a prudent developer would have delayed construction based on a funding shortfall. The county is also within its interpretive discretion not to require that the applicant explain why it could not have altered its decision to fund the project with donations or why it could not have reallocated other resources to construct the proposal. *Bard v. Lane County*, 63 Or LUBA 1 (2011).

**30.4 Zoning Ordinances – Interpretation.** LUBA will affirm a governing body's interpretation of a "public need and public benefit" standard not to require a weighing of the positive against the negative impacts of proposed mining, and instead to require only that there is a public need for and benefit from the additional supply of aggregate, where that interpretation is consistent with the express language of the code provision. *Setniker v. Polk County*, 63 Or LUBA 38 (2011).

**30.4 Zoning Ordinances – Interpretation.** A governing body's interpretation that a code phrase "passive use recreational facilities," part of a wetland protection zone that generally prohibits development in wetland setback areas, includes trails and similar recreational facilities, and does not include developed recreational facilities such as an in-ground concrete swimming pool, is consistent with the text and context of the code provision. *Bundy v. City of West Linn*, 63 Or LUBA 113 (2011).

**30.4 Zoning Ordinances – Interpretation.** A governing body does not err in concluding that an in-ground concrete swimming pool is a "structure" as that term is defined in the city code, because it has a "fixed connection" to the ground. *Bundy v. City of West Linn*, 63 Or LUBA 113 (2011).

**30.4 Zoning Ordinances – Interpretation.** Where a land use regulation prohibits a county from approving a permit for land if the land has been "developed in violation of" the county land use regulation, a planning commission does not misconstrue the land use regulation in requiring that there be an adjudicated violation regarding the land rather than mere allegations of an existing violation or evidence of a violation. *Green v. Douglas County*, 63 Or LUBA 200 (2011).

**30.4 Zoning Ordinances – Interpretation.** A city setback reduction criterion requires the city to find that views of the ocean across a currently vacant lot will not be any more "obstructed" with a proposed front yard setback reduction than they would be without that setback reduction. Where it is the construction of the portion of the house that meets all setback requirements that almost entirely obstructs the view of the ocean, a city interpretation that any *de minimis* impact the proposed front yard setback might have on impaired view of the ocean that will remain through

the small side yard does not amount to an "obstruction" is within the city's interpretive discretion under ORS 197.829(1). *Burton v. City of Cannon Beach*, 63 Or LUBA 300 (2011).

**30.4 Zoning Ordinances – Interpretation.** Where a property is to be developed with a commercial or industrial use, the internal driveway on that property that connects the commercial or industrial buildings to the nearest public right-of--way is properly viewed as part of the commercial or industrial use, whether that driveway is labeled as "accessory" to the business or an integral part of the use itself. *Wilson v. Washington County*, 63 Or LUBA 314 (2011).

**30.4 Zoning Ordinances – Interpretation.** A destination resort approval standard requiring that "adverse effects on surrounding lands are to be avoided first and minimized if avoidance is not possible" clearly gives priority to avoiding adverse affects. Remand is necessary where the applicant demonstrated and the county considered only whether adverse effects of the destination resort on an adjoining wildlife refuge can be minimized, and the county failed to consider whether adverse effects can be avoided. *Oregon Coast Alliance v. Curry County*, 63 Or LUBA 324 (2011).

**30.4 Zoning Ordinances – Interpretation.** Where a breeding kennel arguably qualifies as animal husbandry, and animal husbandry is a farm use, a local government interpretation that the breeding kennel qualifies as a farm use is not inconsistent with the express language, purpose and policy of the land use regulation. *Siegert v. Crook County*, 63 Or LUBA 379 (2011).

**30.4 Zoning Ordinances – Interpretation.** A local government's interpretation of a local code provision that allows a multi-use path to be constructed in a riparian corridor area if it is "necessary to maintain a functional trail system" is not inconsistent with the express language of any relevant plan or local code provision where a comprehensive plan map depicts a multi-use path within the riparian corridor area, even though the map labels the trail as "conceptual." *League of Women Voters v. City of Corvallis*, 63 Or LUBA 432 (2011).

**30.4 Zoning Ordinances – Interpretation.** A local government errs in denying an application for a use expressly allowed as a conditional use in the applicable zone on the grounds that the proposed conditional use is inconsistent with the purpose of the zone, where no code provision makes the zone purpose statement an applicable approval criterion, and the zone purpose statement includes no language suggesting that the purpose statement functions as a mandatory approval criterion for conditional uses allowed in the zone. *Buel-McIntire v. City of Yachats*, 63 Or LUBA 452 (2011).

**30.4 Zoning Ordinances – Interpretation.** LUBA will reject a city council's interpretation of a code provision allowing a property owner to site a recreational vehicle (RV) on the property for "temporary living purposes" to require that the RV be accessory to or in conjunction with a permanent dwelling on the property, where nothing in the applicable code provision expressly or impliedly requires a dwelling, and the city has expressly required, in other inapplicable code provisions, that an RV be an accessory use to or be in conjunction with a dwelling. *Buel-McIntire v. City of Yachats*, 63 Or LUBA 452 (2011).

**30.4 Zoning Ordinances – Interpretation.** While a local government has latitude to identify applicable standards and criteria in its comprehensive plan and land use regulations, under ORS 227.173(1) the "standards and criteria" must already exist in the plan and ordinance, and the local

government cannot manufacture standards and criteria to apply to approve or deny a permit application. *Buel-McIntire v. City of Yachats*, 63 Or LUBA 452 (2011).

**30.4 Zoning Ordinances – Interpretation.** LUBA will affirm a hearings officer's determination that a short-term vacation rental operated using a dwelling on a forest-zoned parcel is a commercial "visitor accommodation" use not permitted in the forest zone rather than a residential use permitted in the zone, where the county's code distinguishes between residential tenancies arranged on a month-to-month basis or longer and commercial "visitor accommodations" with a tenancy less than 30 days. *Davis v. Jackson County*, 63 Or LUBA 486 (2011).

**30.4 Zoning Ordinances – Interpretation.** A group home for recovering addicts is not rendered something other than a group home simply because the applicant also plans to allow "birthday parties, student graduations, open houses, small luncheons and other similar activities," where the hearing official explains that those activities are consistent with a group care home use and "not out of character" with activities that are common in single family dwellings occupied by a larger family. *Phillips v. Lane County*, 62 Or LUBA 92 (2010).

**30.4 Zoning Ordinances – Interpretation.** Where a development code allows single-family dwelling outright, but requires special use approval for group care home and prohibits special use approval if the proposed use would have "significant adverse impacts," a hearings official does not erroneously interpret that code requirement to require that any impacts of the proposed special use must be "significantly greater or different than that of a single-family residence of the same size." *Phillips v. Lane County*, 62 Or LUBA 92 (2010).

**30.4 Zoning Ordinances – Interpretation.** A code provision requiring the "continuation" of existing streets in adjoining subdivisions is not properly interpreted to require that connections be made to internal roads in the adjoining subdivision, where such a connection would have to cross existing platted residential lots. *Burness v. Douglas County*, 62 Or LUBA 182 (2010).

**30.4 Zoning Ordinances – Interpretation.** Under *Flying J. Inc. v. Marion County*, 49 Or LUBA 28, 36-37, *aff'd*, 201 Or App 99, 117 P3d 1027 (2005), where the text of an ordinance that adopts zoning designation amendments expresses a clear intent that the prior zoning for a parcel be retained but the map attached to the ordinance shows a change in zoning, that conflict is resolved in favor of the text. *Turner v. Jackson County*, 62 Or LUBA 199 (2010).

**30.4 Zoning Ordinances – Interpretation.** Where one sentence of a zoning ordinance provides that "any dispute" concerning the zoning of property is to be resolved by reference to the official zoning map, but that sentence appears immediately after a sentence that states that initial zoning boundary determinations are to be made based on maps generated by the local government's GIS system, those sentences should be read together to require that any disputes that arise based on the GIS maps or facts that arise after the zoning ordinance was adopted be resolved in favor of the official zoning map. But those sentences of the zoning ordinance do not require that a text/map conflict in the enacting zoning ordinance itself be resolved in favor of the official zoning map, where it is clear the new zoning shown for a property on the official zoning map was a mistake, and the text of the enacting ordinance clearly states that the zoning of the property was not changed by the ordinance. *Turner v. Jackson County*, 62 Or LUBA 199 (2010).

**30.4 Zoning Ordinances – Interpretation.** The inference described in *Sarti v. City of Lake Oswego*, 20 Or LUBA 387, *rev'd*, 106 Or App 594, 809 P2d 701 (1991)—that provision for a specific listed use in one zone precludes that use from being authorized in a different zone under a broader use category—has no role in reviewing local government code interpretations under ORS 197.829(1), where the proper question is whether the interpretation is consistent with the text and context of the code language. *Devin Oil Co., Inc. v. Morrow County*, 62 Or LUBA 247 (2010).

**30.4 Zoning Ordinances – Interpretation.** LUBA will affirm a governing body's interpretation of the use category "retail and wholesale trade facilities" to include a travel plaza that sells fuel, convenience items and food to travelers, where the proposed use fits within the plain and ordinary meaning of the use category's broad terms, and nothing in the text or context narrows the scope of the use category. *Devin Oil Co., Inc. v. Morrow County*, 62 Or LUBA 247 (2010).

**30.4 Zoning Ordinances – Interpretation.** An allegedly erroneous and overbroad code interpretation that all commercial uses allowed in any commercial zone are allowed under the use category "retail and wholesale trade facilities" in an airport overlay zone does not warrant reversal or remand, where the interpretative error, if any, does not undermine the governing body's principal interpretation that the proposed travel plaza is a "retail and wholesale trade facility." *Devin Oil Co., Inc. v. Morrow County*, 62 Or LUBA 247 (2010).

**30.4 Zoning Ordinances – Interpretation.** LUBA will reverse under ORS 197.829(1) a governing body's interpretation that a Limited Use overlay zone is applied to limit uses in exception areas only when the applicant requests it, and that instead conditions of approval can be applied to limit uses, when (1) the Limited Use overlay zone is expressly intended for that purpose, (2) nothing in the code suggests an alternative mechanism to limit uses or authorizes attaching conditions of approval to limit uses in exception areas, and (3) under the county's interpretation and the criteria that govern designation of the overlay zone there are no circumstances under which the overlay zone could be applied. *Devin Oil Co., Inc. v. Morrow County*, 62 Or LUBA 247 (2010).

**30.4 Zoning Ordinances – Interpretation.** Under *McKay Creek Valley Assoc. v. Washington County*, 24 Or LUBA 187 (1992), where an approval criterion requires a determination that property is a legal or lawfully created parcel, the relevant question is whether any local government approvals required at the time were obtained, not whether the local government correctly applied the applicable approval criteria to create the property. *Brodersen v. City of Ashland*, 62 Or LUBA 329 (2010).

**30.4 Zoning Ordinances – Interpretation.** Under *Maxwell v. Lane County*, 178 Or App 210, 35 P3d 1128 (2001), where the applicable criteria expressly or implicitly require a determination that a unit of land proposed for development is a legal or lawfully created "parcel" under code definitions that set out several ways to create a "parcel," the relevant question is whether the unit of land was in fact created in one of the ways set out in the definition, not whether substantive or procedural errors might have been made in the process of creating the parcel. *Brodersen v. City of Ashland*, 62 Or LUBA 329 (2010).

**30.4 Zoning Ordinances – Interpretation.** Under a code provision defining a lot or parcel as (1) a unit of land created by partition or subdivision, or (2) a unit of land under single ownership, which complies with all applicable laws at the time the lot or parcel was created, the phrase "complies with all applicable laws" modifies the immediately preceding phrase, units of land created by means other than partition or subdivision, and does not require a determination that a parcel created by partition complies with all applicable laws at the time it was created. *Brodersen v. City of Ashland*, 62 Or LUBA 329 (2010).

**30.4 Zoning Ordinances – Interpretation.** Under a code provision requiring that the applicant for development within a riparian area demonstrate that "reasonable steps" have been taken to reduce adverse impact on the environment, it is not a "reasonable step" to require the applicant to forego constructing a short driveway connecting to the adjacent public right-of-way and instead require obtaining lengthy driveway easements over several adjoining properties to connect the subject property to a different, non-adjacent public street. *Brodersen v. City of Ashland*, 62 Or LUBA 329 (2010).

**30.4 Zoning Ordinances – Interpretation.** A code criterion intended to protect against adverse environmental impacts within a floodplain corridor does not require the applicant for a driveway within the corridor to address alleged traffic safety and vision clearance conflicts with users of nearby driveways. *Brodersen v. City of Ashland*, 62 Or LUBA 329 (2010).

**30.4 Zoning Ordinances – Interpretation.** It is not error for a city to rely in part on an existing pathway that does not meet city standards for new pathways to satisfy a land use regulation connectivity requirement, where other proposed pathways meet city standards and, viewed collectively, are themselves sufficient to satisfy the connectivity requirement. *Walker v. City of Sandy*, 62 Or LUBA 358 (2010).

**30.4 Zoning Ordinances – Interpretation.** It is not error for a city to rely in part on a road extension that is planned for an unspecified date in the future to satisfy a land use regulation connectivity requirement, where other proposed pathways, viewed collectively, are themselves sufficient to satisfy the connectivity requirement. *Walker v. City of Sandy*, 62 Or LUBA 358 (2010).

**30.4 Zoning Ordinances – Interpretation.** It is not error for a city to rely in part on a proposed pathway that will be closed to the general public during school hours to satisfy a land use regulation connectivity requirement, where other proposed pathways are open to the general public during school hours and, viewed collectively, are themselves sufficient to satisfy the connectivity requirement. *Walker v. City of Sandy*, 62 Or LUBA 358 (2010).

**30.4 Zoning Ordinances – Interpretation.** A landslide hazard regulation that requires that development be located on the "safest part of the site," without providing any guidance on how to measure safety or how small that part might be, could be interpreted to require that development be located on the safest square inch of the site. In that circumstance the regulation would either be unworkable or potentially run afoul of the ORS 227.173(1) requirement that approval or denial of permits be governed by "standards," if applicants were expected to find a way to make the regulation workable. *Gravatt v. City of Portland*, 62 Or LUBA 382 (2011).

**30.4 Zoning Ordinances – Interpretation.** A landslide hazard regulation need not be interpreted to require an unqualified search for the "safest part of the site" where another part of the regulation only requires that an applicant demonstrate that development will be located where the "risk of landslide affecting the site" is "reasonably limited." *Gravatt v. City of Portland*, 62 Or LUBA 382 (2011).

**30.4 Zoning Ordinances – Interpretation.** Where the zoning ordinance definition of "noise-sensitive uses" is ambiguous and could be interpreted to include the entire parcel where the use is located or more narrowly to include only the use's structure, and there is some contextual support for limiting the use to the structure, LUBA will defer to the local government's decision to adopt the more narrow interpretation. *Hoffman v. Deschutes County*, 61 Or LUBA 173 (2010).

**30.4 Zoning Ordinances – Interpretation.** Where one section of a zoning ordinance permits the city engineer to approve more than one driveway access to lots and parcels "subject to access requirements," and another section of the zoning ordinance setting out the city's access requirements generally prohibits direct access to arterials where a lot or parcel already has access to a lower category roadway, a city correctly denies the request for the direct arterial access. In that case the two sections of the zoning ordinance do not conflict; the contingent authority to grant more than one driveway is simply limited by the section setting out access requirements. *Athletic Club of Bend, Inc. v. City of Bend*, 61 Or LUBA 349 (2010).

**30.4 Zoning Ordinances – Interpretation.** A land use regulation design standard that authorizes a county to "require design and public dedication of streets or roads to ensure the development and continuance of a convenient roadway network" may not be sufficiently broad to authorize a county to require extensive off-site road improvements, but it could be interpreted to authorize a county to require that the partition include an internal road system that connects with any roads on adjoining properties. *MEK Properties, LLC v. Coos County*, 61 Or LUBA 360 (2010).

**30.4 Zoning Ordinances – Interpretation.** A code standard allowing modifications to a conditional use permit that are not "materially inconsistent with the conditions of the original approval" does not preclude all modifications that are inconsistent in some way with the original conditions of approval, only modifications that "materially" or "significantly" conflict with the original conditions of approval. *Connecting Eugene v. City of Eugene*, 61 Or LUBA 439 (2010).

**30.4 Zoning Ordinances – Interpretation.** The hearings officer correctly interprets a code standard allowing modifications to a conditional use permit that result in "insignificant changes" in the physical appearance of development, use of the site, or impact on surrounding properties to be concerned with modifications that change the proposed development, not a modification to a deadline to complete the development as originally approved. *Connecting Eugene v. City of Eugene*, 61 Or LUBA 439 (2010).

**30.4 Zoning Ordinances – Interpretation.** The more deferential standard of review set out at ORS 197.829(1) applies to interpretations by local government governing bodies. The deferential standard of review set out at ORS 197.829(1) does not apply to interpretations by other local decision makers, such as hearings officers, and LUBA reviews such interpretations under ORS

197.835(9)(a)(D) to determine whether the hearings officer "[i]mproperly construed the applicable law." *Waverly Landing Condo. Owners' Assoc. v. City of Portland*, 61 Or LUBA 448 (2010).

**30.4 Zoning Ordinances – Interpretation.** A petitioner's argument that portions of a proposed sewer pump station and related improvements that were approved as a use that is permitted outright would qualify as a "utility corridor" and therefore require conditional use approval provides no basis for reversal or remand, where petitioner only offers a focused argument regarding the pressure sewer line component of the approved facility and such pressure sewer lines are expressly excluded from the definition of "utility corridor" because they are to be located wholly within street rights-of-way. *Waverly Landing Condo. Owners' Assoc. v. City of Portland*, 61 Or LUBA 448 (2010).

**30.4 Zoning Ordinances – Interpretation.** Just because a proposed sewer pump station can be viewed as part of a larger "regional" sewer system, it does not necessarily follow that the sewer pump station itself must also be viewed as a "regional level" facility for purposes of determining whether the sewer pump station is accurately characterized as a "basic utility" (a local facility) or a "utility corridor" (a "regional level" facility). *Waverly Landing Condo. Owners' Assoc. v. City of Portland*, 61 Or LUBA 448 (2010).

**30.4 Zoning Ordinances – Interpretation.** A county's concerns that the roads that will be needed to provide access to the parcels that will be created by a series of partitions are not sufficient to authorize the county to condition final partition plat approval on the applicant agreeing to construct those roads and provide financial guarantees to construct those road, where the county code distinguishes between partitioners and subdividers and requires that subdividers construct or guarantee construction of roads prior to final plat approval. *Sperber v. Coos County*, 60 Or LUBA 44 (2009).

**30.4 Zoning Ordinances – Interpretation.** A local government's interpretation of its ordinance is not "inconsistent" with the language of the ordinance, within the meaning of ORS 197.829(1)(a), if the interpretation is plausible, given the interpretive principles that ordinarily apply to the construction of ordinances under the rules of *PGE v. Bureau of Labor and Industries*, 317 Or 606, 859 P2d 1143 (1993). *Scovel v. City of Astoria*, 60 Or LUBA 371 (2010).

**30.4 Zoning Ordinances – Interpretation.** In determining whether a local government's interpretation of local land use law is inconsistent with the "express language" of the local land use law, LUBA and the appellate courts apply the statutory construction principles in ORS 174.010, which preclude interpretations that insert or delete words. *Scovel v. City of Astoria*, 60 Or LUBA 371 (2010).

**30.4 Zoning Ordinances – Interpretation.** A local government's interpretation of its own land use laws to allow the planning commission complete discretion to grant an unlimited number of one-year permit approval extensions will not be affirmed under ORS 197.829(1), where the local government's interpretation adds language that is not present in the local land use law, and the interpretation defeats the purpose of the local land use law, which is to limit the life of a permit decision that is not acted on. *Scovel v. City of Astoria*, 60 Or LUBA 371 (2010).

**30.4 Zoning Ordinances – Interpretation.** Where petitioners assign error to a local government construction of applicable local land use law, the question for LUBA is whether the local government's interpretation must be sustained under ORS 197.829(1), not whether petitioners' interpretation is sustainable or a better interpretation than the local government's interpretation. *Siporen v. City of Medford*, 59 Or LUBA 78 (2009).

**30.4 Zoning Ordinances – Interpretation.** A local governing body's interpretation of its land use regulations to limit the scope of review of a site plan and architectural review committee is inconsistent with the text of the land use regulations where the governing body ignores and fails to give effect to land use regulation text that is inconsistent with its interpretation. *Siporen v. City of Medford*, 59 Or LUBA 78 (2009).

**30.4 Zoning Ordinances – Interpretation.** A local government's interpretation of its land use regulations to limit application of (1) its land use regulation's requirement for preparation of a transportation impact analysis and (2) its minimum level of service standard to zone change decisions and certain planned unit development decisions cannot be sustained, where the text of the relevant land use regulation sections is inconsistent with that interpretation. *Siporen v. City of Medford*, 59 Or LUBA 78 (2009).

**30.4 Zoning Ordinances – Interpretation.** Under ORS 197.829(1), *Clark v. Jackson County*, 313 Or 508, 836 P2d 710 (1992), and *Church v. Grant County*, 187 Or App 518, 69 P3d 759 (2003), a local government's interpretation and LUBA's review of that interpretation are guided by the principles articulated in *PGE v. Bureau of Labor and Industries*, 317 Or 606, 859 P2d 1143 (1993). Where the local government's interpretation finds almost no support in the relevant text of the land use regulation and comprehensive plan, LUBA will not defer to that interpretation. *Siporen v. City of Medford*, 59 Or LUBA 78 (2009).

**30.4 Zoning Ordinances – Interpretation.** In considering an application for a three-parcel partition, the failure of an existing intersection that is not adjacent to the property to satisfy local zoning ordinance standards that apply to the design and construction of a new road or intersection does not provide a basis for the county to deny an application for a partition, where no new roads or intersections are proposed as part of the partition. *Pelz v. Clackamas County*, 59 Or LUBA 219 (2009).

**30.4 Zoning Ordinances – Interpretation.** Where a code provision prohibits development approval for property that is not in full compliance with all code requirements and prior approvals, unless the approval results in the property coming into full compliance, a hearings officer does not err in interpreting the code to require the applicant to apply for all permits and approvals necessary to correct all code or permit violations as part of the development application, and to reject as insufficient the applicant's willingness to seek future permit approvals. *Reeder v. Multnomah County*, 59 Or LUBA 240 (2009).

**30.4 Zoning Ordinances – Interpretation.** Where a zoning ordinance provision requires that a local government identify the "local need for a different land use" that approval of a proposed a plan amendment will fulfill, the local government does not err in identifying the local need as a

need for trucking businesses in a variety of locations throughout the county, including rural communities. *Kinnett v. Douglas County*, 59 Or LUBA 293 (2009).

**30.4 Zoning Ordinances – Interpretation.** Where a county zoning ordinance limits lots and parcels to "one principal use," a county's interpretation of its code to allow more than one kind of industrial use to constitute "one principal use" of a parcel, so long as all those industrial uses are all airport related industrial uses, is not reversible under ORS 197.829(1). *Brockman v. Columbia County*, 59 Or LUBA 302 (2009).

**30.4 Zoning Ordinances – Interpretation.** In applying a destination resort approval standard that requires that destination resorts employ mitigation measures to ensure "no net loss of wildlife," a county may allow an applicant to utilize data developed in approval of a nearby destination resort that utilized seven indicator species to estimate the nature and extent of the damage that must be fully mitigated. A reasonable person would rely on such data unless opposing data is submitted to show the analysis that relies on indicator species missed or inadequately addressed some aspect of the wildlife resource. *Gould v. Deschutes County*, 59 Or LUBA 435 (2009).

**30.4 Zoning Ordinances – Interpretation.** Where a destination resort approval standard requires that destination resorts employ mitigation measures to ensure "no net loss of wildlife," an assignment of error that a county erred by applying that standard to allow one species to be replaced by another provides no basis for reversal or remand, where the applicant's approach to demonstrating compliance with the "no net loss of wildlife" standard does not in fact propose to replace existing species with other species and proposes to fully mitigate all expected damage to wildlife habitat. *Gould v. Deschutes County*, 59 Or LUBA 435 (2009).

**30.4 Zoning Ordinances – Interpretation.** In applying a destination resort approval standard that requires that destination resorts employ mitigation measures to ensure "no net loss of wildlife," a county does not err by focusing on wildlife habitat rather than the wildlife itself. In developing a destination resort, wildlife itself is generally not purposefully harmed; the harm is caused through destruction or damage to the wildlife habitat. *Gould v. Deschutes County*, 59 Or LUBA 435 (2009).

**30.4 Zoning Ordinances – Interpretation.** A street connectivity standard that requires that development must "include street connections to any streets that abut, are adjacent to, or terminate at the development site" is not correctly interpreted to allow a development proposal that would extend an abutting street a short distance into the development and then terminate the street without connecting it to an adjoining street. *Konrady v. City of Eugene*, 59 Or LUBA 466 (2009).

**30.4 Zoning Ordinances – Interpretation.** A hearings official does not err by finding that a street connectivity standard that requires that development street systems not create "excessive travel lengths" is violated by a subdivision proposal that will result in eleven existing residents and the residents of three of the proposed lots having to drive one quarter of a mile out of direction to make certain trips. While the hearings official likely could have adopted a more permissive reading of the standard, it was not error to adopt the strict interpretation that the hearings official adopted. *Konrady v. City of Eugene*, 59 Or LUBA 466 (2009).

**30.4 Zoning Ordinances – Interpretation.** LUBA will reverse a county governing body's code interpretation that a conditional use allowed in an Acreage Residential zone that generates any amount of dust leaving the property must be denied because it is not in harmony with the purpose of the zone to buffer urban uses from farm uses, where the zone allows a number of dust-generating uses as permitted and conditional uses in the zone, including farm use, and under the county's interpretation few if any of those uses could ever be approved in the zone. *Davis v. Polk County*, 58 Or LUBA 1 (2008).

**30.4 Zoning Ordinances – Interpretation.** LUBA will remand a decision determining that a conditional use is inconsistent with one of seven purposes of the underlying zone, where it is not clear whether the county must address each of the seven purposes and determine whether the proposed use is, on balance consistent with those purposes, or whether inconsistency with a single zone purpose is sufficient to deny the application, and the county's decision does not address the issue. *Davis v. Polk County*, 58 Or LUBA 1 (2008).

**30.4 Zoning Ordinances – Interpretation.** Where a city code standard requires that a city find that vacating a public right-of-way is in the "public interest," and the city finds that the vacation results in practically no loss of transportation facilities and greater development flexibility for surrounding properties, the city's finding is sufficient to demonstrate compliance with the "public interest" standard, and the city is not required to consider the possible secondary effects of building a new basketball arena on the surrounding properties. *Bowers v. City of Eugene*, 58 Or LUBA 51 (2008).

**30.4 Zoning Ordinances – Interpretation.** A code purpose statement is not a mandatory planning directive where nothing in the wording or the context of the purpose statement suggests that it is. *SEIU v. City of Happy Valley*, 58 Or LUBA 261 (2009).

**30.4 Zoning Ordinances – Interpretation.** LUBA will affirm a governing body's interpretation of a code provision that authorizes uses in a zone that are similar to listed uses, to allow a proposed use that is similar to a listed use, even if the proposed use is specifically listed in another zone, where the governing body's interpretation gives independent effect to that code provision and is consistent with its text and context. *Western Land & Cattle, Inc. v. Umatilla County*, 58 Or LUBA 295 (2009).

**30.4 Zoning Ordinances – Interpretation.** Where a county's code includes not one but two separate provisions authorizing uses that are not listed as permitted uses in that zone, or listed anywhere as a permitted use in any zone, if the use is "similar to" uses permitted in the zone, it is clear that the county is not concerned with maintaining bright lines between use categories, and the county does not err in approving a "truck stop" as a similar use to an "automobile service station," even though the applicable zone does not list truck stops as a permitted use while other zones in the county do. *Western Land & Cattle, Inc. v. Umatilla County*, 58 Or LUBA 295 (2009).

**30.4 Zoning Ordinances – Interpretation.** A county does not err in concluding that the county's noise ordinance is not a conditional use approval standard for a personal use airport, where the noise ordinance is not part of the county's zoning regulations, the noise ordinance functions as a performance standard rather than an approval standard, and the noise ordinance includes an

exclusion for noises generated by approved conditional uses. *Johnson v. Marion County*, 58 Or LUBA 459 (2009).

**30.4 Zoning Ordinances – Interpretation.** Absent code language to the contrary, a county does not err in finding that regulations governing a particular zoning district apply only to land located within that district, and not to uses proposed on land adjacent to the district. *Crockett v. Curry County*, 58 Or LUBA 520 (2009).

**30.4 Zoning Ordinances – Interpretation.** LUBA will affirm a governing body's interpretation of a code provision requiring that a proposed use that is "inconsistent" with the transportation plan must be processed as a plan amendment, to require only that the county determine whether the proposed use is in conflict with any transportation plan policy, and not to require that the county find that the proposed use is specifically authorized by the transportation plan. *Crockett v. Curry County*, 58 Or LUBA 520 (2009).

**30.4 Zoning Ordinances – Interpretation.** LUBA will affirm a governing body's interpretation of a code provision allowing second-floor residential use of a commercial building if "accessory to an active commercial use," to permit residential use by persons who are not owners or employees of the commercial use, where the code defines an accessory use as one that is "incidental and subordinate," rather than related to or associated with. *VanSpeybroeck v. Tillamook County*, 56 Or LUBA 184 (2008).

**30.4 Zoning Ordinances – Interpretation.** Where the relevant code provisions impose smaller building size limits on outright permitted commercial uses than conditionally permitted commercial uses, LUBA will affirm a governing body's interpretation that a 4,353-square-foot structure housing both outright permitted and conditionally permitted commercial uses is not subject to the 4,000-square-foot limit on outright permitted commercial uses. *VanSpeybroeck v. Tillamook County*, 56 Or LUBA 184 (2008).

**30.4 Zoning Ordinances – Interpretation.** A county does not err in interpreting a standard that requires a finding that property have landscape features "whose preservation requires planned development rather than conventional lot-by-lot development" to require a comparison between planned development and conventional lot-by-lot development, instead of a comparison between proposed planned development and the existing development on the property. *Saddle Butte Residents' Association v. Douglas County*, 56 Or LUBA 269 (2008).

**30.4 Zoning Ordinances – Interpretation.** A county does not err in interpreting a planned development standard requiring that at least 50 percent of the development be open space "retained for common use by owners and residents of the development" to refer to both commonly owned open space and privately owned open space. *Saddle Butte Residents' Association v. Douglas County*, 56 Or LUBA 269 (2008).

**30.4 Zoning Ordinances – Interpretation.** The purpose of a zoning limitation that commercial development in a specified area should consist of "retail that is small in scale" could be to limit floor space area and it could also be to require that commercial uses have "a small or local market area." *Loprinzi's Gym v. City of Portland*, 56 Or LUBA 358 (2008).

**30.4 Zoning Ordinances – Interpretation.** Where zoning ordinance commentary states that the purpose of a zoning ordinance limitation is to encourage "a local scale of retail," and encourage businesses that are "local serving rather than providing a regional draw," a city does not err in finding that the purpose of a zoning regulation that limits commercial uses to 10,000 square feet is to encourage locally oriented businesses rather than businesses of any particular size. *Loprinzi's Gym v. City of Portland*, 56 Or LUBA 358 (2008).

**30.4 Zoning Ordinances – Interpretation.** Findings in support of an adjustment to a 10,000-square-foot maximum floor space limit to allow a 33,000-square-foot health club are inadequate to demonstrate that granting the adjustment will "equally or better" meet the purpose of the adjusted regulation, where the purpose of the adjusted regulation is to assure the resulting business is "locally serving" and the findings offer no working explanation of what the city thinks "locally serving" means and the findings do not address the "equally or better" requirement at all. *Loprinzi's Gym v. City of Portland*, 56 Or LUBA 358 (2008).

**30.4 Zoning Ordinances – Interpretation.** A local government errs in denying a PUD on the basis that the proposal did not meet the provisions of the purpose statement for the PUD ordinance where the decision does not mention the purpose statement provisions and it is not clear that the purpose statement is a mandatory approval criterion. *Bridge Street Partners v. City of Lafayette*, 56 Or LUBA 387 (2008).

**30.4 Zoning Ordinances – Interpretation.** A zoning ordinance provision that simply says duplexes and triplexes may be allowed through a Type I (nondiscretionary) procedure if certain specified nondiscretionary standards are met is not properly interpreted to render inapplicable other apparently applicable nondiscretionary approval criteria. *Tallman v. City of Bend*, 56 Or LUBA 398 (2008).

**30.4 Zoning Ordinances – Interpretation.** A checklist prepared by a city's planning department to identify which criteria apply when approving a duplex or triplex does not render apparently applicable zoning criteria that are not identified on the checklist inapplicable to an application for approval of a duplex. It is the zoning ordinance that determines which standards apply, not the checklist. *Tallman v. City of Bend*, 56 Or LUBA 398 (2008).

**30.4 Zoning Ordinances – Interpretation.** A city is not required to interpret traditional variance language ("practical difficulty or unnecessary hardship") in accordance with the traditional strict meaning of that language, particularly when that language is not used as part of the city's variance code but instead was borrowed from the variance context to be used as a test for expanding nonconforming uses. *Azore Enterprises, LLC v. City of Hillsboro*, 56 Or LUBA 422 (2008).

**30.4 Zoning Ordinances – Interpretation.** A regional government code provision that requires local government comprehensive plans to include a legal requirement that property be annexed before the property is allowed to urbanize has no bearing on whether a local government may annex property before completing legally required concept planning for the annexed area. *Graser-Lindsey v. City of Oregon City*, 56 Or LUBA 504 (2008).

**30.4 Zoning Ordinances – Interpretation.** A city comprehensive plan policy that a concept plan should be adopted to guide zoning does not require that the concept plan be adopted before the property that will be the subject of that concept plan can be annexed. *Graser-Lindsey v. City of Oregon City*, 56 Or LUBA 504 (2008).

**30.4 Zoning Ordinances – Interpretation.** A city does not err by interpreting a code requirement that "adequacy and availability of public facilities and services" be "considered" as a "factor" in reviewing annexation proposals to allow it to defer needed public facility planning to an ongoing but incomplete concept planning process where: (1) annexation, in and of itself, authorizes no additional urban development of the annexed property, (2) no urban development of the annexed property could be allowed under the zoning that will remain in place following annexation, (3) no urban development would be allowed until the concept plan is adopted to allow urbanization of the annexed area, and (4) the concept plan will be required to address the public facilities and services that will be needed for urbanization of the annexed area. *Graser-Lindsey v. City of Oregon City*, 56 Or LUBA 504 (2008).

**30.4 Zoning Ordinances – Interpretation.** Where the section of the zoning ordinance governing adjustments includes a purpose statement followed by adjustment approval criteria and a separate zoning section specifically states that the specified approval criteria for land use reviews establish "the bounds for the issues that must be addressed by the applicant," a city is not obligated to adopt findings to explain why a requested adjustment is consistent with the adjustment chapter purpose statement. *Pearman v. City of Portland*, 56 Or LUBA 570 (2008).

**30.4 Zoning Ordinances – Interpretation.** In applying an adjustment criterion that requires the city to find "granting the adjustment will equally or better meet the purpose of the regulation to be modified," a city does not err in finding that criterion is met where the purpose of the criterion recognizes that off-street parking may not be needed where property is in close proximity to transit and the property for which an adjustment to off-street parking requirements is requested is located in close proximity to three transit streets with frequent service and a bikeway and Flexcar locations. *Pearman v. City of Portland*, 56 Or LUBA 570 (2008).

**30.4 Zoning Ordinances – Interpretation.** LUBA will affirm a governing body's interpretation that a code provision requiring that private wells be shown to meet certain bacteriological quality standards does not also require a showing of sufficient quantity, where the code provision does not mention water quantity and other code standards appear to govern water quantity. *Gardener v. Marion County*, 56 Or LUBA 583 (2008).

**30.4 Zoning Ordinances – Interpretation.** Where a hearings official interprets a street connectivity standard to include a balancing test where the city would determine whether wetland values should take "precedence over the connectivity standards" or whether "it is more appropriate to meet the connectivity standards than to preserve wetlands," but the street connectivity standards themselves provide no textual support for that interpretation, LUBA will remand for a correct interpretation and application of the street connectivity standards. *GloryBee Foods, Inc. v. City of Eugene*, 56 Or LUBA 729 (2008).

**30.4 Zoning Ordinances – Interpretation.** Where a text and context analysis does not clearly answer an interpretive question, under *PGE v. Bureau of Labor and Industries*, 317 Or 606, 859 P2d 1143 (1993), it is appropriate to consider legislative history and maxims of statutory construction. Where there is no legislative history or relevant maxim of statutory construction, and the interpretive question therefore turns on which of several dictionary meanings of the term "preclude" should apply, LUBA will remand for the hearings officer to select the appropriate dictionary definition, considering other parts of the ambiguous zoning ordinance standard and other relevant context. *GloryBee Foods, Inc. v. City of Eugene*, 56 Or LUBA 729 (2008).

**30.4 Zoning Ordinances – Interpretation.** Where a city's decision explains how its zoning ordinance assigns floor area ratios to properties and that the past, present or future use of property does not affect a property's assigned floor area ratio, a petitioner's argument that property that will shortly be developed as a park should not have any floor area ratio provides no basis for reversal or remand. *Trinkaus v. City of Portland*, 56 Or LUBA 771 (2008).

**30.4 Zoning Ordinances – Interpretation.** LUBA will affirm a city council interpretation that allowing family and social guests to stay in two recreational vehicles parked on a lot adjoining the property owner's dwelling does not constitute a "recreational vehicle park" as that term is defined in the code, because it is not open to the "general public." *Fessler v. City of Fossil*, 55 Or LUBA 1 (2007).

**30.4 Zoning Ordinances – Interpretation.** Specific code provisions that require imposition of a surface mining overlay zone on property within one-half mile of the mining site, which are intended to protect the site from adverse uses, control over general code provisions requiring that owners of property being rezoned sign the application. The purpose of the overlay zone would be frustrated if nearby property owners could effectively veto a mining operation by refusing to sign the application. *Walker v. Deschutes County*, 55 Or LUBA 93 (2007).

**30.4 Zoning Ordinances – Interpretation.** LUBA will affirm a city council's interpretation of a planned unit development standard authorizing septic tanks for individual lots where it is "impractical" to connect the development to the city sewer system, to govern only circumstances requiring permanent septic tank installations, not temporary septic tanks to be used until the city system is upgraded, followed by mandatory connection to the city system. *Coquille Citizens for Resp. Growth v. City of Coquille*, 55 Or LUBA 155 (2007).

**30.4 Zoning Ordinances – Interpretation.** LUBA will reject a hearings officer's interpretation of local declaratory ruling provisions to permit the planning director to "initiate" a declaratory ruling application by joining an application improperly filed by a third party, where the text and context of the declaratory ruling provisions state that the planning director may only "initiate" an application by "filing an application" accompanied by the required information. *Cushman v. City of Bend*, 55 Or LUBA 234 (2007).

**30.4 Zoning Ordinances – Interpretation.** Where a local code requires the applicant for a declaratory ruling to carry the initial and ultimate burden of proof and persuasion regarding the question submitted, a hearings officer errs in allowing the applicant to simply demonstrate that there is an interpretative dispute and leave it to third parties to take positions on that dispute and

provide the only information to resolve that dispute. *Cushman v. City of Bend*, 55 Or LUBA 234 (2007).

**30.4 Zoning Ordinances – Interpretation.** A code provision allowing a "property owner" to request a declaratory ruling related "to the use of the owner's property" does not permit a neighborhood association to request a declaratory ruling related to the use of property that the association does not own. *Cushman v. City of Bend*, 55 Or LUBA 234 (2007).

**30.4 Zoning Ordinances – Interpretation.** Remand is necessary where entitlement to initiate a declaratory ruling request rests on whether the applicant is the "permit holder," use of the subject property was arguably authorized by a number of different permits, and the hearings officer rejected a neighborhood's association's claim to be a "permit holder" without determining which permits are at issue and which persons hold those permits. *Cushman v. City of Bend*, 55 Or LUBA 234 (2007).

**30.4 Zoning Ordinances – Interpretation.** Where a city code requires that one of two different methods for determining the top of the bank be applied, depending on which of two specified site conditions are found, the choice of method for determining the top of the bank is governed by the corresponding site condition, notwithstanding that the resulting top of the bank is discontinuous. The city errs in determining the location of the top of the bank based not on one of the two specified methods, but rather on the city's preference for a continuous setback. *Kingsley v. City of Portland*, 55 Or LUBA 256 (2007).

**30.4 Zoning Ordinances – Interpretation.** A county zoning code requirement that groundwater impacts be considered in approving subdivisions in "rural areas identified by the Oregon Water Resources Department in coordination with the County as having declining groundwater levels" is not properly interpreted to be limited to areas that the Oregon Water Resources Department has designated as a "critical groundwater area." More informal identifications of declining groundwater areas could suffice to implicate the zoning requirement. *Pete's Mtn. Home Owners Assoc. v. Clackamas County*, 55 Or LUBA 287 (2007).

**30.4 Zoning Ordinances – Interpretation.** In applying a land use regulation standard that only requires a service provider certification or letter, a decision maker is not obligated to ensure that every representation in a service provider's certification or letter is correct or supported by substantial evidence. *Pete's Mtn. Home Owners Assoc. v. Clackamas County*, 55 Or LUBA 287 (2007).

**30.4 Zoning Ordinances – Interpretation.** A hearings officer's finding that a land use regulation that applies to "areas with potential for forest or brush fires" does not apply to a proposed development because it is not located in a "fire hazard area" does not misinterpret the land use regulation where there is no reason to believe the hearings officer assigned different meanings to the phrases "fire hazard area" and "areas with potential for forest or brush fires." *Pete's Mtn. Home Owners Assoc. v. Clackamas County*, 55 Or LUBA 287 (2007).

**30.4 Zoning Ordinances – Interpretation.** A city council interpretation of the code term "access" to include a driveway is not inconsistent with the text, context, purpose or policy of that term. *Brodersen v. City of Ashland*, 55 Or LUBA 350 (2007).

**30.4 Zoning Ordinances – Interpretation.** LUBA will affirm a county's determination that the Agriculture-A zone adopted in 1971 was not an "exclusive farm use" zone subject to the limitations of ORS 215.203 (1971), for purposes of determining whether proposed dwellings under a Ballot Measure 37 waiver must be "in conjunction with farm use," where the 1971 ordinance included a separate "exclusive farm use" zone that permitted only the uses allowed under ORS 215.203 (1971), the Agriculture-A zone in contrast permitted a large number of nonfarm uses that bore no relationship to the uses allowed in the statute, and the obvious inference is that the county did not intend the Agriculture-A zone to implement ORS 215.203 (1971). *Reeves v. Yamhill County*, 55 Or LUBA 452 (2007).

**30.4 Zoning Ordinances – Interpretation.** A city's argument that certain historic preservation permit compatibility review criteria are mere considerations will be rejected where the argument is presented for the first time in the city's brief on appeal, the city's decision does not treat the criteria as mere considerations and the criteria appear in a section of the development code entitled "Review Criteria." *Burgess v. City of Corvallis*, 55 Or LUBA 482 (2008).

**30.4 Zoning Ordinances – Interpretation.** Petitioners' argument that a city erred by failing to find that proposed alterations to a historic building are necessary to ensure its continued use will be rejected on appeal, where the local code merely says some alterations will be necessary to ensure continued use of historic resources and other provisions of the code expressly set out the criteria that the city must address in its findings. *Burgess v. City of Corvallis*, 55 Or LUBA 482 (2008).

**30.4 Zoning Ordinances – Interpretation.** A city council erroneously concludes that it need not consider U.S. Secretary of Interior Standards in resolving ambiguities in its historic preservation code provisions where those code provisions were adopted to implement the Secretary of Interior Standards. In that circumstance, the Secretary of Interior Standards provide relevant context in the statutory interpretation template that is required by *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610-11, 859 P2d 1143 (1993). *Burgess v. City of Corvallis*, 55 Or LUBA 482 (2008).

**30.4 Zoning Ordinances – Interpretation.** A city cannot rely on the fact that nearby non-historic buildings have canopies in approving new canopies for a historic building, where the relevant approval standard requires that the proposed canopies more closely approximate the original historic design or style of the historic building or be compatible with the historic building or district. However, so long as the city applies the relevant approval standard, it does not commit error by also finding that nearby non-historic buildings have canopies. *Burgess v. City of Corvallis*, 55 Or LUBA 482 (2008).

**30.4 Zoning Ordinances – Interpretation.** LUBA will affirm a city council interpretation of a code provision providing minimum performance standards for "streets" to include unsignalized intersections. *Vista Construction LLC v. City of Grants Pass*, 55 Or LUBA 590 (2008).

**30.4 Zoning Ordinances – Interpretation.** Petitioner fails to demonstrate that the city erred in evaluating the performance of an intersection by measuring delays associated with each directional approach rather than the entire intersection, particularly when petitioner's own expert used the same method to evaluate intersection performance. *Vista Construction LLC v. City of Grants Pass*, 55 Or LUBA 590 (2008).

**30.4 Zoning Ordinances – Interpretation.** Absent a local regulation that requires otherwise, it is permissible to locate an accessory parking lot on land that is zoned differently than the land on which the primary use the parking lot serves is located. *Wal-Mart Stores, Inc. v. City of Gresham*, 54 Or LUBA 16 (2007).

**30.4 Zoning Ordinances – Interpretation.** Where a county's zoning code allows it to approve uses that are not "specified in" the zoning code as temporary uses, it may be possible for the county to approve a meteorological tower as a temporary use, even though the zoning code lists "energy facilities" as a conditional use and the zoning code defines "energy facilities" to include meteorological towers. But where the county's decision does not explain why the wind measurement device is not "specified in" the zoning code unless it is separately and specifically listed, the decision must be remanded to provide the missing explanation. *Womble v. Wasco County*, 54 Or LUBA 68 (2007).

**30.4 Zoning Ordinances – Interpretation.** Where a county's zoning code allows it to approve uses that are not "so recurrent as to require specific or general regulations to control them" as temporary uses, a county decision approving a meteorological tower as a temporary use will be remanded where the zoning code in fact includes general regulations for meteorological towers, the county applies those general regulations in its decision, and the county's decision makes no attempt to explain the apparent inconsistency. *Womble v. Wasco County*, 54 Or LUBA 68 (2007).

**30.4 Zoning Ordinances – Interpretation.** Where subdivision approval criteria require consideration of competing goals or factors, such as contributing to orderly development and preserving natural features, it is permissible and even necessary to conduct a weighing or balancing process between development and preservation of natural features. *Broken Top Community Assoc. v. Deschutes County*, 54 Or LUBA 84 (2007).

**30.4 Zoning Ordinances – Interpretation.** A subdivision approval standard requiring preservation of natural features that is written to apply to circumstances where there have been no previous efforts to identify natural features plays a more limited role where the subdivision application is preceded by two final, binding land use decisions that have already largely determined which natural features will be preserved and which will be lost to development. *Broken Top Community Assoc. v. Deschutes County*, 54 Or LUBA 84 (2007).

**30.4 Zoning Ordinances – Interpretation.** Where a zoning ordinance allows "roadside stands," that sell "agricultural produce," a land use hearings officer correctly applies the *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610-12, 859 P2d 1143 (1993), template and the county zoning ordinance by applying dictionary definitions of "agricultural" and "produce" to conclude that a roadside stand may not include an espresso cart. The hearings officer correctly concluded from

those definitions that while coffee beans are agricultural produce, espresso coffee drinks are not. *Collver v. Lane County*, 54 Or LUBA 147 (2007).

**30.4 Zoning Ordinances – Interpretation.** A hearings officer's interpretation of the phrase "mechanical means" as applying to technology using light emitting diodes in electronic signs is correct. *Lamar Advertising Company v. City of Eugene*, 54 Or LUBA 295 (2007).

**30.4 Zoning Ordinances – Interpretation.** Where a zoning ordinance has chapters for individual zones that list some uses that are "permitted" and list other uses that require conditional use approval, and in a separate chapter lists uses that are "permitted in all zones," those uses are permitted without a conditional use permit. *Skyliner Summit at Broken Top v. City of Bend*, 54 Or LUBA 316 (2007).

**30.4 Zoning Ordinances – Interpretation.** Where a zoning district requires conditional use approval for structures that are more than 30 feet tall, absent a separate zoning provision that calls for a different conclusion, a 70-foot cellular tower would require conditional use approval. But where a separate chapter of the zoning code both authorizes cellular towers in all zones as a "permitted" use and expressly provides that such towers may exceed the height limits otherwise imposed by the zoning ordinance, a cellular tower does not require conditional use approval. *Skyliner Summit at Broken Top v. City of Bend*, 54 Or LUBA 316 (2007).

**30.4 Zoning Ordinances – Interpretation.** An equipment shed may or may not be allowed as part of a utility, where the zoning ordinance defines a "building," in part, as a "structure" and allows utilities in all zones but prohibits such utilities from including a "building." Because the zoning ordinance distinguishes between "structures" and "accessory structures," the issue becomes whether the equipment shed qualifies as an "accessory structure" and whether the prohibition is limited to "structures" and does not extend to "accessory structures." *Skyliner Summit at Broken Top v. City of Bend*, 54 Or LUBA 316 (2007).

**30.4 Zoning Ordinances – Interpretation.** Where a zoning ordinance defines the term "use" to encompass the "purpose for which land * * * is * * * intended," the "use" includes a new roadway that must be constructed to provide access to the use. *Skyliner Summit at Broken Top v. City of Bend*, 54 Or LUBA 316 (2007).

**30.4 Zoning Ordinances – Interpretation.** A hearings officer's findings that a proposed cellular tower complies with a siting standard that requires the tower to minimize its effect on scenic values are adequate, where the findings note the developed nature of the butte where the cellular tower would be located and demonstrate that the hearings officer was persuaded that the standard was met by the applicant's proposal to shorten the tower from 100 feet to 70 feet and to offer alternative designs that would make the tower look more like its surroundings. *Skyliner Summit at Broken Top v. City of Bend*, 54 Or LUBA 316 (2007).

**30.4 Zoning Ordinances – Interpretation.** LUBA's standard of review of county counsel's interpretation of a local zoning code provision is whether that interpretation is correct. *Love v. Klamath County*, 54 Or LUBA 410 (2007).

**30.4 Zoning Ordinances – Interpretation.** A county's interpretation of a local code provision as allowing the construction and use of a motorcycle track without review is incorrect where that provision requires site plan review for development of land, the code defines "development" broadly to include making a physical change in the land, and evidence in the record indicates that a bulldozer was used to develop a large portion of the land with a track and jumps. *Love v. Klamath County*, 54 Or LUBA 410 (2007).

**30.4 Zoning Ordinances – Interpretation.** Where a conditional use approval criterion requires that a proposed conditional use be consistent with the operating characteristics of the base zone, a city interpretation of that criterion to allow the city to deny a proposed conditional use simply because it is a nonresidential use, where the base zone allows many nonresidential uses as conditional uses in the base zone, is erroneous. *Caster v. City of Silverton*, 54 Or LUBA 441 (2007).

**30.4 Zoning Ordinances – Interpretation.** LUBA will affirm a governing body's interpretation that the use category of "truck sales, service, storage and maintenance" includes dispensing of fuel to trucks, notwithstanding that the code includes a different use category of "truck stop" that expressly permits dispensing fuel, where other context indicates that the county intended truck "service" to include dispensing fuel. *Western Express v. Umatilla County*, 54 Or LUBA 571 (2007).

**30.4 Zoning Ordinances – Interpretation.** Where a local code includes specific conditional use standards for a particular use category that is a permitted use in some zones and a conditional use in other zones, LUBA will affirm the local government's interpretation that the conditional use standards do not apply to that use if it is proposed in a zone where it is a permitted use. *Western Express v. Umatilla County*, 54 Or LUBA 571 (2007).

**30.4 Zoning Ordinances – Interpretation.** LUBA will reject a local government's interpretation of an ordinance recital stating that "[a]t such time as a development agreement is executed" the comprehensive plan "will be amended" to provide an exception to access spacing standards described in the ordinance to mean that the access spacing exception applies to proposed development notwithstanding the absence of an executed development agreement. *Western Express v. Umatilla County*, 54 Or LUBA 571 (2007).

**30.4 Zoning Ordinances – Interpretation.** 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).

**30.4 Zoning Ordinances – Interpretation.** 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).

**30.4 Zoning Ordinances – Interpretation.** When a conditional use permit (CUP) has a conditional of approval that the CUP "will become invalid" if specified actions are not taken before

a specified deadline or an extension of the deadline is not granted, and the applicant neither completes the specified actions nor seeks an extension, the local government may not grant an extension of the CUP after the time for receiving an extension has expired and the CUP is rendered invalid. *Michaels v. Douglas County*, 53 Or LUBA 16 (2006).

**30.4 Zoning Ordinances – Interpretation.** A governing body's interpretation of a code provision defining the study area for an aggregate mine, to exclude haul roads used to transport finished aggregate material off-site, is consistent with the text of the code provision and is not reversible under ORS 197.829(1). *Rickreall Community Water Assoc. v. Polk County*, 53 Or LUBA 76 (2006).

**30.4 Zoning Ordinances – Interpretation.** A city's mistake in codifying an ordinance in a manner that makes it unclear whether commercial uses are optional or mandatory in a mixed-use zone is immaterial, where the ordinance language that was not codified unambiguously makes commercial uses in the applicable zone optional rather than mandatory. *Lubischer v. City of Hillsboro*, 53 Or LUBA 143 (2006).

**30.4 Zoning Ordinances – Interpretation.** A section of the city's zoning code regarding employment opportunities that is phrased in terms of "goals and objectives" rather than "requirements" is not an approval criterion. *Lubischer v. City of Hillsboro*, 53 Or LUBA 143 (2006).

**30.4 Zoning Ordinances – Interpretation.** Any inconsistency between the allowed uses in a zoning district and the purpose of the underlying zone cannot be challenged in an appeal of a development approval. Such a challenge is an impermissible collateral attack on the ordinance that adopted the zoning district. *Toler v. City of Cave Junction*, 53 Or LUBA 158 (2006).

**30.4 Zoning Ordinances – Interpretation.** A county does not err by interpreting a development code approval criterion that requires that proposed uses must be shown to be compatible with surrounding uses to require consideration of only the existing surrounding uses and not potential future uses. *Clark v. Coos County*, 53 Or LUBA 325 (2007).

**30.4 Zoning Ordinances – Interpretation.** 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).

**30.4 Zoning Ordinances – Interpretation.** A permit approval standard that requires that proposed uses be shown to be compatible with surrounding uses is subjective. Each of a county's findings concerning individual factors that lead the county to find a proposed use is compatible with surrounding uses need not be sufficient to support the county's ultimate conclusion. The county's

findings are viewed as a whole and the county is entitled to select the factors that it wishes to emphasize. *Clark v. Coos County*, 53 Or LUBA 325 (2007).

**30.4 Zoning Ordinances – Interpretation.** In determining whether a proposed cell tower is compatible with surrounding uses, a county does not err by taking into account the number of surrounding residences and the residential density. *Clark v. Coos County*, 53 Or LUBA 325 (2007).

**30.4 Zoning Ordinances – Interpretation.** In applying a compatibility standard, a county may take into consideration the effect that existing trees will have in screening views of a proposed cell tower from adjoining properties, notwithstanding that there are no trees on the cell tower property itself and few trees to the west and north of the property. *Clark v. Coos County*, 53 Or LUBA 325 (2007).

**30.4 Zoning Ordinances – Interpretation.** In applying a compatibility standard, a county does not err by taking into account the screening that will be produced by a condition that requires the applicant for a cell tower to plant vegetation and trees, even though the vegetation and trees will not completely screen the tower for many years, if ever. *Clark v. Coos County*, 53 Or LUBA 325 (2007).

**30.4 Zoning Ordinances – Interpretation.** In applying a compatibility standard, a county does not err by taking into account the effect that requiring a cell tower to be painted green may have in visually blending the tower with nearby trees, even though painting the tower green will have little or no effect on blocked views of a nearby bay. *Clark v. Coos County*, 53 Or LUBA 325 (2007).

**30.4 Zoning Ordinances – Interpretation.** In applying a compatibility standard a county does not err by failing to consider whether subdivision covenants, conditions and restrictions prohibit cell towers, where (1) it is not possible to determine if the covenants, conditions and restrictions were adopted to achieve compatibility, (2) there is a dispute about whether the covenants, conditions and restrictions apply, and (3) the county is not the body with jurisdiction to determine whether the covenants, conditions and restrictions apply. *Clark v. Coos County*, 53 Or LUBA 325 (2007).

**30.4 Zoning Ordinances – Interpretation.** In applying a compatibility standard, a county does not err in failing to consider evidence about the impact the proposed use may have on property values, where the evidence is conflicting and the development code does not list impact on property values as a mandatory consideration in applying the compatibility standard. *Clark v. Coos County*, 53 Or LUBA 325 (2007).

**30.4 Zoning Ordinances – Interpretation.** An undefined and subjective "public benefit" criterion need not be interpreted in conjunction with a tower sharing criterion to require that a tower applicant demonstrate a current market need for a tower, as opposed to a future market need. *Belluschi v. City of Portland*, 53 Or LUBA 455 (2007).

**30.4 Zoning Ordinances – Interpretation.** A broadcast tower approval criterion that requires a decision maker to determine whether identified "public benefits outweigh any impacts which

cannot be mitigated" is subjective. In assessing a findings and evidentiary challenge to a decision maker's weighing of public benefits, the question is whether that weighing is (1) inadequately explained (necessitating a remand for additional findings) or (2) unreasonable (and therefore not supported by substantial evidence). *Belluschi v. City of Portland*, 53 Or LUBA 455 (2007).

**30.4 Zoning Ordinances – Interpretation.** A broadcast tower approval criterion that limits total emission levels is not implicated by a request to remove a prior condition of approval to allow an existing tower to remain in place, where no additional emitting antenna are to be added to the tower by the request and all existing antenna were subject to the total emission limit criterion when they were placed on the tower. *Belluschi v. City of Portland*, 53 Or LUBA 455 (2007).

**30.4 Zoning Ordinances – Interpretation.** Where a city's zoning ordinance allows damaged nonconforming structures to be restored, the city does not err in interpreting its zoning ordinance not to allow a damaged nonconforming carport to be entirely removed and replaced with a taller bulkier carport that occupies the same footprint as the old carport. *Hatton v. City of Eugene*, 53 Or LUBA 583 (2007).

**30.4 Zoning Ordinances – Interpretation.** Purpose statements that set out objectives to be achieved and state that those objectives are to be achieved by other provisions in that chapter are not mandatory approval criteria. *Burlison v. Marion County*, 52 Or LUBA 216 (2006).

**30.4 Zoning Ordinances – Interpretation.** A hearings officer's interpretation of a code standard requiring that proposed grading not cause erosion to any greater extent than would occur in the "absence of development" to mean in the "absence of *proposed* development," not prior development activities that predated the grading permit application, is reasonable and will be affirmed. *Angius v. Washington County*, 52 Or LUBA 222 (2006).

**30.4 Zoning Ordinances – Interpretation.** A county grading permit standard stating that grading activities "shall also occur pursuant to" the standards of the local sanitary sewer agency does not incorporate those standards into the code or require that the county determine whether the grading permit complies with the agency's standards. *Angius v. Washington County*, 52 Or LUBA 222 (2006).

**30.4 Zoning Ordinances – Interpretation.** LUBA will affirm a hearings officer's interpretation of a code provision requiring that the applicant submit a letter from the service provider, to require only that the letter be submitted, not that it be free of error, where nothing in the text or context suggests that the county is supposed to second-guess the service provider's assessment. *Angius v. Washington County*, 52 Or LUBA 222 (2006).

**30.4 Zoning Ordinances – Interpretation.** As a general rule there is no reason why a local government could not interpret an "orderly development" land division criterion to impose a more stringent standard than Oregon Department of Transportation's standard that the performance of failing intersections not be worsened by a proposal. However, where such an interpretation appears to be inconsistent with other city criteria and those apparent inconsistencies are not addressed in the decision maker's findings, LUBA will reject the interpretation as incorrect. *Wal-Mart Stores, Inc. v. City of Bend*, 52 Or LUBA 261 (2006).

**30.4 Zoning Ordinances – Interpretation.** Where a local code provision is expressly directed at building permits and a hearing officer finds that the provision does not apply to a request for subdivision approval, and petitioners do not assign error to those findings, petitioners' assignment of error that the hearings officer should have applied the provision in approving the subdivision will be denied. *Bickford v. City of Tigard*, 52 Or LUBA 301 (2006).

**30.4 Zoning Ordinances – Interpretation.** Where a zoning ordinance limits residential development on "weak foundation soils," but does not define that term, the city's interpretation of that term to include soils that the National Resource Conservation Service rates as having "severe" limitations but not to include soils rated as having "moderate" or "slight" limitations is not reversible under ORS 197.829(1). *Jebousek v. City of Newport*, 52 Or LUBA 435 (2006).

**30.4 Zoning Ordinances – Interpretation.** Where a zoning ordinance requires a "site specific investigation by a registered geologist or engineer," and the local government finds that a preliminary site evaluation prepared by a geologist was sufficient to constitute the required site specific investigation, a petitioner's objection that the preliminary site evaluation is insufficient will be rejected, where petitioner fails to challenge the city's findings that explain why the city viewed the preliminary site evaluation as sufficient. *Jebousek v. City of Newport*, 52 Or LUBA 435 (2006).

**30.4 Zoning Ordinances – Interpretation.** Where a zoning map amendment criterion requires the applicant to demonstrate that the uses allowed in the new zone would not "materially and/or adversely affect the character of the neighborhood," selection of too small an area for analysis could frustrate the purpose of the criterion. However, where petitioners do not show that the area selected was too small and the city's findings explain that the residential to commercial rezoning is in an area that is already a mixed commercial and residential area, petitioners do not demonstrate a basis for remand. *Cornelius First v. City of Cornelius*, 52 Or LUBA 486 (2006).

**30.4 Zoning Ordinances – Interpretation.** That a base commercial zone does not provide for residential uses does not mean that an overlay zone that allows residential uses is necessarily inconsistent with the base zone. Absent some textual or contextual basis to conclude otherwise, LUBA will affirm a governing body's interpretation that the overlay zone may authorize additional uses not authorized in the base zone. *Concerned Homeowners v. City of Creswell*, 52 Or LUBA 620 (2006).

**30.4 Zoning Ordinances – Interpretation.** Whether language in a purpose statement of a land use regulation functions as an approval criterion or imposes additional affirmative duties on the local government in approving or denying proposed development depends on the text and context of that language. A prohibition in a recreational commercial zone purpose statement on "traditional residential uses" unless such uses are "necessary to support the primary recreationally-oriented uses" imposes an affirmative obligation on the local government in approving residential development in the zone. *Concerned Homeowners v. City of Creswell*, 52 Or LUBA 620 (2006).

**30.4 Zoning Ordinances – Interpretation.** LUBA will affirm a governing body's code interpretation that harmonizes and gives effect to two conflicting provisions, where the only other

interpretation proffered would nullify an entire code chapter. *Concerned Homeowners v. City of Creswell*, 52 Or LUBA 620 (2006).

**30.4 Zoning Ordinances – Interpretation.** A hearings officer does not err in interpreting a code provision that allows the "preparation of land for cultivation" that is a "customarily accepted agricultural activity" without a permit in agricultural zones to require the landowner to demonstrate that a proposal to cover an existing landfill with 100,000 cubic yards of soil not only involves "preparation of land for cultivation" but is also a "customarily accepted agricultural activity." *Ehler v. Washington County*, 52 Or LUBA 663 (2006).

**30.4 Zoning Ordinances – Interpretation.** LUBA will defer to a city council interpretation of a code provision allowing flag lots where a "public street cannot be provided" to allow flag lots where *code-compliant* public streets cannot be provided. Because a non-compliant public street would almost always be theoretically possible, any other interpretation would essentially prohibit flag lots. *Cutsforth v. City of Albany*, 51 OR LUBA 56 (2006).

**30.4 Zoning Ordinances – Interpretation.** A city does not err in interpreting a code provision requiring that a subdivision plat provide access "that will allow its development in accordance" with the code to not require that the applicant provide additional access to a parcel that is already developed consistent with applicable zoning. The code does not require the applicant to provide access to allow for potential redevelopment of developed parcels. *Cutsforth v. City of Albany*, 51 OR LUBA 56 (2006).

**30.4 Zoning Ordinances – Interpretation.** Where the code defines "amphitheater" to include "fixed, permanent or temporary seating," a phrase that clearly refers to physical objects such as chairs or benches, a hearings officer errs in interpreting "temporary seating" to include bare ground on which people may sit or spread a blanket. *Horning v. Washington County*, 51 Or LUBA 303 (2006).

**30.4 Zoning Ordinances – Interpretation.** LUBA will affirm a hearings officer's interpretation that tents are temporary "structures" for purposes of applying fire safety siting standards to a campground, where the code defines "structure" broadly in a manner that is not limited to permanent structures, and the code clearly subjects campgrounds to fire safety siting standards. *Horning v. Washington County*, 51 Or LUBA 303 (2006).

**30.4 Zoning Ordinances – Interpretation.** A zoning ordinance purpose statement that provides that the "regulations" in a special zoning district are intended to protect the special development pattern in the district is not itself an approval standard that must be applied in approving a partition. The adopted regulations are the approval standards that must be applied and the city is not required to directly consider whether the proposed partition would protect the special development pattern. *McKnight v. City of Portland*, 51 Or LUBA 394 (2006).

**30.4 Zoning Ordinances – Interpretation.** LUBA will affirm a hearings officer's interpretation of a code provision requiring calculation of groundwater availability based on a study area including the "average size of lots and parcels within one-quarter mile" of the subject property to include the entirety of all lots or parcels that are at least partially within one-quarter mile of the

property. A hearing officer's refusal to interpret the code to require that the study area be limited to just those portions of lots or parcels within a one-quarter-mile radius is not erroneous, where the county staff manual for more detailed groundwater studies requires consideration of the entirety of lots or parcels that are bisected by a one-quarter-mile radius, and it is reasonably clear that both types of studies consider the same area. *Upright v. Marion County*, 51 Or LUBA 415 (2006).

**30.4 Zoning Ordinances – Interpretation.** Where the purpose of a groundwater study area is to accurately assess the risk to groundwater from residential development, an interpretation that more accurately represents the existing and potential residential development conditions in the area is more consistent with the purpose and underlying policy of the study than a contrary but textually plausible interpretation that considers undevelopable portions of lots as being developable and hence overstates potential development pressures. *Upright v. Marion County*, 51 Or LUBA 415 (2006).

**30.4 Zoning Ordinances – Interpretation.** A standard requiring a finding that the uses allowed by the proposed zoning "can be served through the orderly extension of key urban facilities and services" does not require evaluation of all theoretically possible uses allowed in the new zone. A city does not err in interpreting such a standard as being satisfied by evidence that uses likely to be developed under the new zone, given the property's size and other constraints, can be served by key urban facilities and services. *Bothman v. City of Eugene*, 51 Or LUBA 426 (2006).

**30.4 Zoning Ordinances – Interpretation.** A city does not err in assuming that two developed lots that are part of a five-lot tract will not be redeveloped when rezoned, for purposes of a rezoning standard requiring that uses allowed in the proposed zoning can be served by urban services, including transportation facilities, where the applicant does not propose redevelopment and the code requires a similar evaluation when property is redeveloped. *Bothman v. City of Eugene*, 51 Or LUBA 426 (2006).

**30.4 Zoning Ordinances – Interpretation.** LUBA will affirm a governing body's interpretation that only a portion of a coastal shorelands zone is designated as "suitable for water-dependent uses" and therefore subject to a policy that limits non-water-dependent development, where the zone refers to a comprehensive map that depicts only a portion of the zone as being "especially suited for water-dependent uses" and read in context it is clear that the policy is not intended to apply throughout the zone. *Oregon Shores Cons. Coalition v. Coos County*, 51 Or LUBA 500 (2006).

**30.4 Zoning Ordinances – Interpretation.** Where it is possible to interpret a development code provision to require consideration of more facilities and services than a similar comprehensive plan policy and to require that those facilities and services be already available at the time of annexation, but a local government implicitly interprets the development code policy simply to implement the comprehensive plan policy and to be coextensive with the plan policy, LUBA will defer to that interpretation where there are other development code provisions that support that limited interpretation. *Friends of Bull Mountain v. City of Tigard*, 51 Or LUBA 759 (2006).

**30.4 Zoning Ordinances – Interpretation.** A code standard allowing an increased or reduced setback for cellular towers based on considerations such as topography, etc., that increase or reduce

off-site impacts need not be interpreted to include an implicit "no net increase" in off-site impacts standard. *Tollefson v. Jackson County*, 51 Or LUBA 790 (2006).

**30.4 Zoning Ordinances – Interpretation.** A hearings officer errs in interpreting a code standard that allows a reduced setback for cellular towers based on listed considerations that increase or reduce off-site impacts, to allow a reduced setback as long as the applicant has minimized off-site impacts "to the extent possible" given the dimensional constraints of the property, where considerations such as the shape of the property and whether the applicant has minimized off-site impacts to the extent possible are not among the permissible considerations. *Tollefson v. Jackson County*, 51 Or LUBA 790 (2006).

**30.4 Zoning Ordinances – Interpretation.** A code standard requiring site design review where "proposed development" involves "projects with multiple principal structures on one tract" does not apply to a proposal for a cellular tower on a parcel already developed with a dwelling, because the application does not propose more than one principal structure. *Tollefson v. Jackson County*, 51 Or LUBA 790 (2006).

**30.4 Zoning Ordinances – Interpretation.** LUBA will affirm a governing body's interpretation that retaining walls that prevent erosion of a bluff on a public park are accessory to park uses, notwithstanding that the walls also serve to protect adjoining private property. *Moreland v. City of Depoe Bay*, 50 Or LUBA 44 (2005).

**30.4 Zoning Ordinances – Interpretation.** Where a code provision prohibiting removal of "riparian vegetation" plausibly could be interpreted either to apply throughout the zone or only within a defined "zone of riparian vegetation," LUBA will affirm a governing body's interpretation that the code provision applies only within the zone of riparian vegetation. *Moreland v. City of Depoe Bay*, 50 Or LUBA 44 (2005).

**30.4 Zoning Ordinances – Interpretation.** A local government does not err by interpreting a local "need" standard to impose a much less rigorous standard than the need standard that was included in prior version of Goal 2 for approval of a reasons exception. *Wetherell v. Douglas County*, 50 Or LUBA 275 (2005).

**30.4 Zoning Ordinances – Interpretation.** That a code provision prohibiting application of urban residential zones outside urban growth boundaries is outdated may be a compelling argument for amending the code provision, but it is not a sufficient reason for the local government to ignore it. *Oregon Shores Cons. Coalition v. Coos County*, 50 Or LUBA 444 (2005).

**30.4 Zoning Ordinances – Interpretation.** LUBA will affirm a governing body's interpretation allowing residential units within a "recreational planned unit development," notwithstanding that "residential uses" are prohibited in the underlying zone, where the zone nonetheless allows a recreational planned unit development, and the code definition of that term includes residential units as a core component. *Oregon Shores Cons. Coalition v. Coos County*, 49 Or LUBA 1 (2005).

**30.4 Zoning Ordinances – Interpretation.** A code standard requiring that the local government apply the more restrictive standard when two or more conflicting standards apply does not govern

circumstances where it is unclear which of two standards applies. In such circumstances, the local government must interpret its code to determine which of the standards governs the proposed use. *Oregon Shores Cons. Coalition v. Coos County*, 49 Or LUBA 1 (2005).

**30.4 Zoning Ordinances – Interpretation.** Where both possible interpretations of a code density standard equally conflict with other code provisions, the choice of which interpretation to adopt is up to the local government. *Oregon Shores Cons. Coalition v. Coos County*, 49 Or LUBA 1 (2005).

**30.4 Zoning Ordinances – Interpretation.** Where a local code requires that the zoning map be amended to an "appropriate designation" of the city when an area is annexed, and the city adopts county zoning for the annexed area but does not explain how county zoning satisfies the code requirement, remand is appropriate for the city to adopt findings or an interpretation demonstrating that the county zoning is consistent with the code requirement. *Hammons v. City of Happy Valley*, 49 Or LUBA 38 (2005).

**30.4 Zoning Ordinances – Interpretation. A** challenge to the adequacy of findings will be sustained where the decision maker fails to explain why a code provision that prohibits development unless a developer makes transportation improvements necessary to maintain a particular level of service applies only at the time of a zone change and not to a site plan and architectural review application. *Wal-Mart Stores, Inc. v. City of Medford*, 49 Or LUBA 52 (2005).

**30.4 Zoning Ordinances – Interpretation.** Petitioner's arguments do not provide a basis for remand where petitioner fails to challenge a county's interpretation that a criterion that the "land must have adequate carrying capacity to support the densities and types of uses allowed by the proposed plan and zone designations" is satisfied where the land has adequate carrying capacity for uses and densities authorized by the challenged decision, rather than for all possible uses allowed in the zone. *Doob v. Josephine County*, 49 Or LUBA 113 (2005).

**30.4 Zoning Ordinances – Interpretation.** A general code standard requiring streets to be improved with curbs and other facilities "if required" is not properly interpreted to require curbs for a private street, where the specific standards governing private streets do not require curbs. *Paterson v. City of Bend*, 49 Or LUBA 160 (2005).

**30.4 Zoning Ordinances – Interpretation.** A rezoning criterion requiring that the site be "suitable" for the proposed medium-density residential zone requires an assumption that the property will develop with the multi-family dwelling units allowed in the proposed zone, but does not necessarily require the local government to speculate as to the particular quality or density of actual development. *Kingsley v. City of Sutherlin*, 49 Or LUBA 242 (2005).

**30.4 Zoning Ordinances – Interpretation. Where** a city's Master Plan Development District simply allows the uses that are permitted in certain other districts, the city erroneously interprets its code to allow those uses without the minimum lot size, minimum lot width, limit on building coverage, front or rear setback requirements or building height or any other standards or regulations that are applied to those uses in the other zoning districts. Those limitations from the other zoning districts apply unless the city applies the Master Plan Development District provision

that allows the city to apply alternative standards in certain circumstances. *Oregon Shores Cons. Coalition v. City of Brookings*, 49 Or LUBA 273 (2005).

**30.4 Zoning Ordinances – Interpretation. A** city land use regulation requirement that a master plan of development demonstrate that transportation facilities are "adequate," does not require any particular level of internal or external roadway connectivity. *Oregon Shores Cons. Coalition v. City of Brookings*, 49 Or LUBA 273 (2005).

**30.4 Zoning Ordinances – Interpretation.** A local government is within its discretion under ORS 197.829(1) to interpret a planned unit development regulation requiring protection of "public safety" on sites with natural hazards "through clustering of development" on that portion of the site suitable for development as not requiring consideration of off-site impacts of proposed development. *Dinges v. City of Oregon City*, 49 Or LUBA 376 (2005).

**30.4 Zoning Ordinances – Interpretation.** Where the text of a particular zoning district that allows permitted uses to be reviewed as conditional uses seems to call for a focus on the characteristics of the use itself, but the conditional use chapter of the zoning ordinance expressly provides that conditional uses may require special consideration due to unique site characteristics, the city does not err in interpreting the zoning district text to allow it to consider whether unique site characteristics justify treating the permitted use as a conditional use. *Wal-Mart Stores, Inc. v. City of Central Point*, 49 Or LUBA 472 (2005).

**30.4 Zoning Ordinances – Interpretation.** A county errs in interpreting a rezoning code provision requiring that "[o]ther lands in the county" are unavailable or not as well-suited as the subject property to limit the inquiry to lands outside UGBs, where nothing in the text or context so limits the inquiry, and context directs the county to locate uses allowed under the proposed zone within UGBs. *Friends of Yamhill County v. Yamhill County*, 49 Or LUBA 529 (2005).

**30.4 Zoning Ordinances – Interpretation.** Where an interpretation of an ambiguous code standard that bars variances in some circumstances is needed to explain why the local government believes that standard did not bar an approved variance, and the appealed decision does not include either an express or implied interpretation of the code standard, remand is required. *Doyle v. Coos County*, 49 Or LUBA 574 (2005).

**30.4 Zoning Ordinances – Interpretation.** Although LUBA is authorized to interpret ambiguous local land use legislation in the first instance if the local government fails to adopt a needed interpretation, where interpreting the land use legislation in a way that would be consistent with the local government's decision is problematic, LUBA will not attempt to interpret the legislation in the first instance. *Doyle v. Coos County*, 49 Or LUBA 574 (2005).

**30.4 Zoning Ordinances – Interpretation.** If a local government wishes to interpret and apply traditional variance standards differently than those standards have traditionally been interpreted and applied, it must articulate an interpretation of those standards that is sufficient for review. *Doyle v. Coos County*, 49 Or LUBA 574 (2005).

**30.4 Zoning Ordinances – Interpretation.** Where code language limiting "gross square footage" is ambiguous and, based on text and context, could plausibly limit either "footprint" or "gross floor area," a governing body's choice between two equally plausible meanings is within its discretion under ORS 197.829(1) and *Church v. Grant County*, 187 Or App 518, 524, 69 P3d 759 (2003). *Bemis v. City of Ashland*, 48 Or LUBA 42 (2004).

**30.4 Zoning Ordinances – Interpretation.** A city code provision that requires a conditional use permit applicant to show that there is a substantial reason for siting the proposed use where it is conditionally allowed, as opposed to another zone where it is permitted outright, does not require that the permit applicant consider zones in other jurisdictions. *Save Our Skyline v. City of Bend*, 48 Or LUBA 192 (2004).

**30.4 Zoning Ordinances – Interpretation.** Radio towers over 200 feet tall are allowed in exclusive farm use zones under ORS 215.283(2)(m) or ORS 215.438. Neither of those statutes requires that such radio towers must be allowed outright. *Save Our Skyline v. City of Bend*, 48 Or LUBA 192 (2004).

**30.4 Zoning Ordinances – Interpretation.** Although there is language in the Oregon Supreme Court's decision in *Brentmar v. Jackson County*, 321 Or 481, 496, 900 P2d 1030 (1995), that suggests otherwise, the public utility facilities authorized by ORS 215.283(1)(d) are not allowed "as of right," in the exclusive farm use zone, as that term is generally used in zoning parlance. The Supreme Court used that term as a shorthand description for uses that are not subject to additional county regulation rather than as a description of a use that is not subject to discretionary review, as shown by the fact that ORS 215.283(1)(d) itself subjects public facilities in exclusive farm use zones to discretionary review. *Save Our Skyline v. City of Bend*, 48 Or LUBA 192 (2004).

**30.4 Zoning Ordinances – Interpretation.** An applicant is not obligated to disaggregate a coordinated and related application for radio towers that was presented in that way at the city's request, simply because it might allow part of that proposal to be approved at a different site in a different zone that allows some parts of the proposal outright. *Save Our Skyline v. City of Bend*, 48 Or LUBA 192 (2004).

**30.4 Zoning Ordinances – Interpretation.** A subdivision approval standard that requires a subdivision street layout must "best balance needs for economy, safety, efficiency and environmental compatibility" does not require that one or more alternative street layouts necessarily must be evaluated in all cases. *Doob v. City of Grants Pass*, 48 Or LUBA 245 (2004).

**30.4 Zoning Ordinances – Interpretation.** Where it is not clear from the comprehensive plan map whether the plan designation governing the subject property is a base or an overlay plan designation, LUBA will affirm a governing body's interpretation that the plan designation is an overlay designation, where the comprehensive plan text does not list or describe the designation as a base plan designation. *Staus v. City of Corvallis*, 48 Or LUBA 254 (2004).

**30.4 Zoning Ordinances – Interpretation.** Code language that prohibits a city from requiring design changes that are "materially different from customary development in the area" is not properly interpreted to mandate that the city impose a roof height that is customary within the area,

or prohibit the city from approving a roof height that is not customary. *Carrigg v. City of Enterprise*, 48 Or LUBA 328 (2004).

**30.4 Zoning Ordinances – Interpretation.** A hearings officer errs in concluding that a commercial zone implements the medium density residential plan designation, simply because some commercial uses are allowed in some residential zones. *Knutson Family LLC v. City of Eugene*, 48 Or LUBA 399 (2005).

**30.4 Zoning Ordinances – Interpretation.** Given the significant regulatory distinctions between "single family dwellings" and "tourist rental cabins" allowed in a rural zone, a county may approve proposed cabins that will be owner-occupied part of the year under the densities allowed for "tourist rental cabins" only if their use for something other than "tourist rental cabins" is *de minimis*. *Friends of the Metolius v. Jefferson County*, 48 Or LUBA 466 (2005).

**30.4 Zoning Ordinances – Interpretation.** Owner-occupancy for 120 days per year is not a *de minimis* use of a dwelling, consistent with the status of dwellings as "tourist rental cabins." *Friends of the Metolius v. Jefferson County*, 48 Or LUBA 466 (2005).

**30.4 Zoning Ordinances – Interpretation.** LUBA will reject an argument that a code limitation on "buildable area" regulates only the interior, habitable space of a dwelling, where the local government has previously interpreted the code provision to regulate uninhabited structures such as garages or sheds, and the context and legislative history of the provision indicates that it is intended to limit the area of a lot or parcel covered by structures, not the area of interior or habitable space. *Friends of the Metolius v. Jefferson County*, 48 Or LUBA 466 (2005).

**30.4 Zoning Ordinances – Interpretation.** An interpretation that some decks but not others are regulated under a code provision limiting the "building area" of a lot or parcel is inconsistent with the text and purpose of the provision, where the relevant terms do not distinguish between types of decks and the apparent purpose of the provision is to limit the area of a lot or parcel covered by structures. *Friends of the Metolius v. Jefferson County*, 48 Or LUBA 466 (2005).

**30.4 Zoning Ordinances – Interpretation.** A governing body's interpretation that it has authority to modify a condition of preliminary subdivision plat approval under a code standard allowing "minor changes" to an unrecorded subdivision plat is not reversible under ORS 197.829(1). *Cove at Brookings Homeowners Assoc. v. City of Brookings*, 47 Or LUBA 1 (2004).

**30.4 Zoning Ordinances – Interpretation.** A land use regulation requiring a city to consider all related applications in one proceeding does not require the applicant to submit all applications necessary for development at the same time, or prevent the city from approving those applications before it, notwithstanding that further applications may be necessary. *Nielson v. City of Stayton*, 47 Or LUBA 52 (2004).

**30.4 Zoning Ordinances – Interpretation.** A hearings officer errs in determining that an internal logging road is not a "road" because of its poor condition and infrequent use, where the code definition of "road" does not assign significance to the road's condition or frequency of use. *McAlister v. Jackson County*, 47 Or LUBA 125 (2004).

**30.4 Zoning Ordinances – Interpretation.** Where a hearings officer misinterprets the code term "road," but does not address either the applicant's proposed interpretation that a logging track can be a "road" or a contrary planning staff interpretation that only platted rights-of-way or legally described easements are "roads," LUBA will remand the decision to the hearings officer to reconsider what constitutes a "road." *McAlister v. Jackson County*, 47 Or LUBA 125 (2004).

**30.4 Zoning Ordinances – Interpretation.** Where a conditional use approval criterion requires a finding that the proposed conditional use will have minimal adverse impacts "compared to the impact of development that is permitted outright," a county decision that interprets that criterion to be met by a proposed commercial recreational park, because an otherwise identical publicly owned recreational park could be approved as a use permitted outright, is not reversible under ORS 197.829(1). *Gumtow-Farrior v. Crook County*, 47 Or LUBA 186 (2004).

**30.4 Zoning Ordinances – Interpretation.** Findings that rely on code drainage requirements to avoid impacts on adjacent farming are adequate to demonstrate compliance with a code standard requiring no significant impact on farming, where the only issue raised regarding impacts on adjacent farming involved drainage. *Nelson v. Curry County*, 47 Or LUBA 196 (2004).

**30.4 Zoning Ordinances – Interpretation.** A code standard requiring that stormwater be directed away from adjacent farmlands and "into the existing storm drainage system" does not require the applicant to redirect stormwater into a different drainage basin than the one historically serving the subject property. *Nelson v. Curry County*, 47 Or LUBA 196 (2004).

**30.4 Zoning Ordinances – Interpretation.** A governing body's interpretation of a design review criterion requiring that the "bulk and scale" of a proposed retail supercenter be "compatible" with surrounding buildings as necessitating a comparison of the size of the proposed buildings and surrounding buildings—and not just visual compatibility—is consistent with the text of the criterion and not reversible under ORS 197.829(1)(a). *Wal-Mart Stores, Inc. v. Hood River County*, 47 Or LUBA 256 (2004).

**30.4 Zoning Ordinances – Interpretation.** There is no intrinsic reason why a regulatory concern to ensure compatibility of size between proposed and existing development must be expressed as zoning standards rather than as site design review standards. *Wal-Mart Stores, Inc. v. Hood River County*, 47 Or LUBA 256 (2004).

**30.4 Zoning Ordinances – Interpretation.** A city's interpretation that a code definition of "Construction Sales and Services," allowing retail sale of "materials used in construction, maintenance and repair/remodel of buildings," does not limit the materials sold to any particular subset of "repair/remodel" materials is not inconsistent with the express language, purpose or underlying policy of the code definition. *Heilman v. City of Corvallis*, 47 Or LUBA 305 (2004).

**30.4 Zoning Ordinances – Interpretation.** Unless required by local standards, a city is not required to ensure that development permitted outright under existing plan and zoning standards will not cause transportation facilities to fall below operational thresholds during the relevant planning period. *Heilman v. City of Corvallis*, 47 Or LUBA 305 (2004).

**30.4 Zoning Ordinances – Interpretation.** A city code that requires planned development proposals to preserve trees "to the greatest degree possible" does not require that the applicant fundamentally change the nature of the application to maximize tree preservation. *Frewing v. City of Tigard*, 47 Or LUBA 331 (2004).

**30.4 Zoning Ordinances – Interpretation.** A city may not interpret a code exception for tree cutting permits to exempt a subdivision from a separate local code requirement for a tree protection plan, where the exemption for tree cutting permits has nothing to do with the separate tree protection plan requirement. *Frewing v. City of Tigard*, 47 Or LUBA 331 (2004).

**30.4 Zoning Ordinances – Interpretation.** A city does not err by interpreting a code requirement that 20 percent of the site for a planned development be landscaped to allow an applicant to include areas of the site that will be included in common open space and left in their natural state. *Frewing v. City of Tigard*, 47 Or LUBA 331 (2004).

**30.4 Zoning Ordinances – Interpretation.** When viewed alone, the word "within" in a code provision that requires that dwellings must be within a template area to be counted is ambiguous, because it could mean the dwelling must be at least partially within or it could mean the dwelling must be entirely within. However, where a related provision specifies that "all or part of" a parcel must be within the template, the failure to include the "all or part of" modifier provides contextual support for interpreting the provision without the modifier as requiring that the entire dwelling must be within the template area. *Worman v. Multnomah County*, 47 Or LUBA 410 (2004).

**30.4 Zoning Ordinances – Interpretation.** LUBA's assumption that an ambiguous code provision should be interpreted in one way in a prior LUBA appeal where the correctness of that interpretation was not at issue is of extremely limited precedential value in a subsequent appeal where the correctness of that interpretation is at issue. *Worman v. Multnomah County*, 47 Or LUBA 410 (2004).

**30.4 Zoning Ordinances – Interpretation.** An ambiguous county code provision that allows lands that were incorrectly identified as agricultural or forest land under Goals 3 and 4 to be rezoned for rural residential use is correctly interpreted to require that an applicant show that a particular property is neither agricultural land nor forest land because land will frequently qualify as both agricultural and forest land and the Land Conservation and Development Commission's rules allow such lands to be zoned for either for exclusive farm use or for forest use. *Rutigliano v. Jackson County*, 47 Or LUBA 470 (2004).

**30.4 Zoning Ordinances – Interpretation.** A county does not err in interpreting its code provision to require that it compute the average cubic foot per year production capability based on the percentage of different soil types on the property. *Rutigliano v. Jackson County*, 47 Or LUBA 470 (2004).

**30.4 Zoning Ordinances – Interpretation.** A city does not exceed its discretion under ORS 197.829(1) in interpreting a code provision requiring that development not be contrary to

applicable comprehensive plan policies to allow a balancing of competing comprehensive plan policies. *Chin v. City of Corvallis*, 46 Or LUBA 1 (2003).

**30.4 Zoning Ordinances – Interpretation.** Where a county has not yet adopted land division regulations that apply to minor partitions, a minor partition nevertheless requires prior county approval of a variance under the zoning ordinance where one of the parcels created by the minor partition does not comply with the minimum parcel size that is required under the zoning ordinance. *DeBoer v. Jackson County*, 46 Or LUBA 24 (2003).

**30.4 Zoning Ordinances – Interpretation.** A city council's conclusion that a tennis facility is accessory to residential use of a property is inconsistent with the text and context of its code, where the code defines an accessory use as uses incidental and subordinate to the primary use, and a city interpretation relies on the seasonal and nonprofit characteristics of the tennis facility and ignores other characteristics that demonstrate that the tennis facility is of much greater scale and intensity than the residential uses located on the property. *McCormick v. City of Baker City*, 46 Or LUBA 50 (2003).

**30.4 Zoning Ordinances – Interpretation.** That a city sign code adopts the Oregon Motorist Information Act (OMIA) by reference may indicate that the city intends to allow at least some OMIA-permitted signs within the city, but does not necessarily indicate that all OMIA-permitted signs are allowed in the city, much less that OMIA-permitted signs are allowed outright without further city regulation. *Media Art v. City of Tigard*, 46 Or LUBA 61 (2003).

**30.4 Zoning Ordinances – Interpretation.** Where a sign code provision stating that state sign permit holders need not seek separate city approval can be read either to (1) allow such signs outright within the city, or (2) allow such signs only if otherwise permitted by the sign code, and either interpretation is consistent with the text and context of the provision, the city's choice between interpretations is not reversible under ORS 197.829(1)(a). *Media Art v. City of Tigard*, 46 Or LUBA 61 (2003).

**30.4 Zoning Ordinances – Interpretation.** Where the purpose of a sign code includes preventing sign clutter and minimizing distractions for motorists, a sign code interpretation that results in smaller and lower signs along public highways than would result under other interpretations is consistent with the code's purpose and underlying policy, for purposes of ORS 197.829(1)(b) and (c). *Media Art v. City of Tigard*, 46 Or LUBA 61 (2003).

**30.4 Zoning Ordinances – Interpretation.** A broad and poorly defined sign code prohibition on "billboards" does not necessarily require inquiry into the content of signs or allow content-based distinctions where, as interpreted by the city, the code allows or prohibits all signs, including "billboards," based on specific standards that do not require inquiry into the content of proposed signs. *Media Art v. City of Tigard*, 46 Or LUBA 61 (2003).

**30.4 Zoning Ordinances – Interpretation.** A poorly defined code prohibition on "billboards" is not unconstitutionally overbroad when, read in context, it is subject to a narrowing construction that clarifies the meaning of "billboard" and the precise scope of the prohibition. *Media Art v. City of Tigard*, 46 Or LUBA 61 (2003).

**30.4 Zoning Ordinances – Interpretation.** A poorly defined code prohibition on "billboards" is not unconstitutionally vague where, as interpreted and read in context, the sign code provides definite and objective standards governing all signs, including billboards, and does not grant the city "unbridled discretion" to approve or deny proposed signs. *Media Art v. City of Tigard*, 46 Or LUBA 61 (2003).

**30.4 Zoning Ordinances – Interpretation.** A use determination adopted pursuant to ORS 227.160(2)(b) may include a description of the procedures the city anticipates will be used to consider an application for that use. *Boly v. City of Portland*, 46 Or LUBA 197 (2004).

**30.4 Zoning Ordinances – Interpretation.** A planning commission incorrectly interprets a code standard prohibiting "construction" on slopes greater than 30 percent to limit only construction of a building within a building envelope, and not to include a steep driveway and retaining walls, where the plain meaning of "construction" is not limited to buildings, the text and context do not suggest that the governing body intended to limit its regulatory effect to building envelopes, and the proposed driveway and retaining walls implicate the same regulatory concerns regarding erosion and visual scarring underlying the code standard as would construction of a building. *McCulloh v. City of Jacksonville*, 46 Or LUBA 267 (2004).

**30.4 Zoning Ordinances – Interpretation.** Where a local code defines "dwelling unit" to include "sanitation" facilities, a septic system that will serve only one dwelling is part of the dwelling, and may not be sited in any zone where the dwelling itself could not be located. *Hodge Oregon Properties, LLC v. Lincoln County*, 46 Or LUBA 290 (2004).

**30.4 Zoning Ordinances – Interpretation.** A local code requirement that a house could only be allowed in a floodplain if "no alternative exists on the subject property which would allow the structure to be placed outside of the flood plain," does not require that an applicant reconfigure the proposed house or reduce the size of its footprint to locate the house outside the floodplain. *Bonnett v. Deschutes County*, 46 Or LUBA 318 (2004).

**30.4 Zoning Ordinances – Interpretation.** A local code requirement that allows additional improvements to roads that already encroach into a 50-foot stream setback if those improvements do not "encroach into the setback any more than the existing * * * roadway," is correctly interpreted to allow improvements to a roadway that is located entirely with the 50-foot setback so long as the roadway is not enlarged on the side of the road that faces the stream, where petitioner identifies no textual or contextual support for interpreting the code to require protection of a narrow strip of land on the landward side of the roadway or any policy or purpose that would be furthered by interpreting the code in that manner. *Willhite v. Clackamas County*, 46 Or LUBA 340 (2004).

**30.4 Zoning Ordinances – Interpretation.** A local code provision that requires that at least 75 percent of a 50-foot setback area must "be preserved with native vegetation" is correctly interpreted to require preservation of whatever native vegetation is already located within 75 percent of the setback area rather than requiring that native vegetation be planted in 75 percent of a setback area where there is no existing native vegetation. *Willhite v. Clackamas County*, 46 Or LUBA 340 (2004).

**30.4 Zoning Ordinances – Interpretation.** A local code provision that requires that at least 75 percent of a 50-foot setback area from a stream must "be preserved with native vegetation" is correctly interpreted to require protection of 75 percent of whatever area there is between a roadway and a stream, where the roadway encroaches into the 50-foot setback area. *Willhite v. Clackamas County*, 46 Or LUBA 340 (2004).

**30.4 Zoning Ordinances – Interpretation.** Where the local code requires that any "features explicitly included" in a subdivision application must comply with applicable development standards, a city errs in declining to consider whether existing houses and a proposed shared driveway easement shown on a subdivision application comply with applicable development standards. *McKeown v. City of Eugene*, 46 Or LUBA 494 (2004).

**30.4 Zoning Ordinances – Interpretation.** Where the definition of "lot width" in a local code is written with regularly shaped lots in mind, and city's interpretation and application of that definition to an irregularly shaped lot produces a lot width that is no stranger than the lot width that is produced by petitioner's interpretation and application of that definition, LUBA will defer to the city's interpretation. *McKeown v. City of Eugene*, 46 Or LUBA 494 (2004).

**30.4 Zoning Ordinances – Interpretation.** A county's interpretation that cabins used more than half the year for residential use by owner-occupants and less than half the year for rental to tourists qualify as "tourist rental cabins" is inconsistent with the code definition of that term, where rental to tourists is the key definitional element, the code applies important regulatory distinctions to tourist uses and residential uses, and nothing in the text or context of the code suggests that more than *de minimis* residential use of the cabins is compatible with their status as tourist rental cabins. *Friends of the Metolius v. Jefferson County*, 46 Or LUBA 509 (2004).

**30.4 Zoning Ordinances – Interpretation.** Where a code definition of "tourist rental cabins" can plausibly be read to allow separate ownership of buildings and land on property, and legislative history in the record supports that interpretation, a county's interpretation that the cabins and underlying land need not be in common ownership is consistent with that definition and not reversible under ORS 197.829(1). *Friends of the Metolius v. Jefferson County*, 46 Or LUBA 509 (2004).

**30.4 Zoning Ordinances – Interpretation.** Where the challenged decision does not explain why the area of large covered porches attached to approved dwellings was not included in calculating the maximum "buildable area," and relevant code definitions suggest that such accessory structures are part of "buildings," remand is necessary to interpret the code and determine whether such structures should be included in calculating the buildable area. *Friends of the Metolius v. Jefferson County*, 46 Or LUBA 509 (2004).

**30.4 Zoning Ordinances – Interpretation.** Where a county code defines "owner" to be the "legal owners(s) of record as shown on the tax rolls of the County," an interpretation that the fee simple owners are not owners because the value of the fee ownership is minimal in comparison to the value of the easement that crosses that property is not sustainable. *Baker v. Washington County*, 46 Or LUBA 591 (2004).

**30.4 Zoning Ordinances – Interpretation.** Where an Institute of Transportation Engineer's manual states that an average trip generation rate for discount superstores should only be used if the square footage of the proposed store falls within the square footage range of the stores that were used to produce the average trip generation rate, a city correctly rejects an applicant's use of the average trip generation rate for a proposed store that falls outside that square footage range. *Wal-Mart Stores, Inc. v. City of Hillsboro*, 46 Or LUBA 680 (2004).

**30.4 Zoning Ordinances – Interpretation.** A city does not err in refusing to speculate about who might ultimately prevail in a quiet title action in considering whether to approve a subdivision and whether to require provision of access to the disputed property in approving the subdivision. The city may assume that the record owner of the disputed property owns the property. *McFall v. City of Sherwood*, 46 Or LUBA 735 (2004).

**30.4 Zoning Ordinances – Interpretation.** LUBA will defer to a city council interpretation of its zoning ordinance as not requiring a separate zoning amendment application where city zoning is applied to property inside the city's urban growth boundary as part of the annexation process. *Barton v. City of Lebanon*, 45 Or LUBA 214 (2003).

**30.4 Zoning Ordinances – Interpretation.** Although ORS 197.829(2) authorizes LUBA to interpret city zoning ordinances, where the city fails to do so and both petitioner and respondent present possible interpretations in their briefs that are plausible but both interpretations have problems, LUBA will remand the decision to the city so that it may address the interpretive issue in the first instance. *Renaissance Development v. City of Lake Oswego*, 45 Or LUBA 312 (2003).

**30.4 Zoning Ordinances – Interpretation.** In considering whether a local government interpretation of a local provision is consistent with the express language of the provision under ORS 197.829(1), LUBA may consider the context of the provision. *Bruce Packing Company v. City of Silverton*, 45 Or LUBA 334 (2003).

**30.4 Zoning Ordinances – Interpretation.** An interpretation of a local code provision to allow an offsite parking lot in conjunction with a commercial use in a residential zone where such commercial uses are prohibited is not reversible under ORS 197.829(1), where the context of the code provision includes regulations governing the residential zone that expressly allow a public parking area for use by persons patronizing a particular building or establishment. *Bruce Packing Company v. City of Silverton*, 45 Or LUBA 334 (2003).

**30.4 Zoning Ordinances – Interpretation.** A hearings officer does not err in evaluating the adequacy of the "approach" to an intersection, rather than individual turning movements in the intersection, where the applicable code provisions do not specify a particular method for evaluating intersection adequacy, and that method is consistent with the highway capacity manual and county highways standards cited by the code provisions. *Noble v. Clackamas County*, 45 Or LUBA 366 (2003).

**30.4 Zoning Ordinances – Interpretation.** A hearings officer's interpretation of a local code to conclude that a "wholesale nursery" is properly viewed as an "agricultural use" is consistent with

the text of the code's definition of "agricultural use," where the term is expressly defined to include "horticultural use." *Lorenz v. Deschutes County*, 45 Or LUBA 635 (2003).

**30.4 Zoning Ordinances – Interpretation.** Where petitioners' assignment of error is based on the erroneous assumption that a code standard that prohibits home occupations that are "objectionable due to [emissions]" prohibits *any* discernable emissions, and petitioners do not challenge city findings that the emissions that can be expected from a proposed home occupation will not be objectionable, the assignment of error provides no basis for reversal or remand. *Roe v. City of Union*, 45 Or LUBA 660 (2003).

**30.4 Zoning Ordinances – Interpretation.** Where a zoning ordinance provision authorizes the city to permit uses that are "of the same general type as [permitted] uses," a city commits no error in failing to apply that same provision in the opposite way to *prohibit* uses that are of the same general type as prohibited uses. *Roe v. City of Union*, 45 Or LUBA 660 (2003).

**30.4 Zoning Ordinances – Interpretation.** Where a zoning ordinance requirement that a site have 150 feet of frontage could apply in a number of different ways to a site with multiple road frontages, and the local government's findings are inadequate to explain why the city applied that requirement in the way that it did, LUBA will remand for the city to interpret the zoning ordinance requirement in the first instance. *Miles v. City of Florence*, 44 Or LUBA 411 (2003).

**30.4 Zoning Ordinances – Interpretation.** A prerequisite for application of the deferential standard of review under ORS 197.829(1) is, at a minimum, a written decision or document adopted by the governing body that contains an express or implicit interpretation of a local provision that is adequate for review. A city attorney's interpretation of a local provision is not entitled to deference under that standard, even assuming that the city council informally directed the city attorney to apply that interpretation in denying the challenged building permits. *West Coast Media v. City of Gladstone*, 44 Or LUBA 503 (2003).

**30.4 Zoning Ordinances – Interpretation.** A prerequisite for application of the deferential standard of review under ORS 197.829(1) is, at a minimum, a written decision or document adopted by the governing body that contains an express or implicit interpretation of a local provision that is adequate for review. A city attorney's interpretation of a local provision is not entitled to deference under that standard, even assuming that the city council informally directed the city attorney to apply that interpretation in denying the challenged building permits. *West Coast Media v. City of Gladstone*, 44 Or LUBA 503 (2003).

**30.4 Zoning Ordinances – Interpretation.** A code provision stating that the planning director "may" issue a clarification of ambiguous code language through a process requiring a hearing is permissive and does not require the director to provide a hearing in evaluating a particular development proposal that happens to involve ambiguous code language. *Holtz v. City of Portland*, 44 Or LUBA 595 (2003).

**30.4 Zoning Ordinances – Interpretation.** Two code height limitations are not "at the same level" and "in conflict" for purposes of a code provision that requires the city to apply the most restrictive limitation when standards at the same level are in conflict, where one height limitation

is a generally applicable standard and the other is a specific alternative to the general height standard. *Holtz v. City of Portland*, 44 Or LUBA 595 (2003).

**30.4 Zoning Ordinances – Interpretation.** Although a code provision that prohibits approval of a conditional use permit in circumstances where there are existing violations of county ordinances does not dictate that a condition of approval be included with a conditional use permit that the conditional use permit may be revoked if those violations recur in the future, it is within the county's discretion to interpret that code provision to permit it to impose such a condition. *Cookman v. Marion County*, 44 Or LUBA 630 (2003).

**30.4 Zoning Ordinances – Interpretation.** ORS 215.185 and ORS 197.825(3)(a) do not provide the exclusive procedures by which a county may enforce its zoning ordinance to require that property owners stop using their property in a way that the county believes violates its zoning ordinance. *Cookman v. Marion County*, 44 Or LUBA 630 (2003).

**30.4 Zoning Ordinances – Interpretation.** A county EFU zone limit on farm recreational uses that requires that such uses "be subordinate to the commercial agricultural operation in scope, scale and impact, and shall contribute 'added value' to the commercial agricultural farm operation" does not necessarily prohibit a farm recreational use that generates more income than the commercial agricultural operation on the property. *Underhill v. Wasco County*, 43 Or LUBA 277 (2002).

**30.4 Zoning Ordinances – Interpretation.** A code provision that allows certain uses in a zone "provided that the use promotes the purpose of the zone" is, on its face, a mandatory approval criterion. A city interpretation that fails to give any meaning to that language, and effectively reads it out of the code, is inconsistent with the express language of the code and is not entitled to deference under ORS 197.829(1). *Crowley v. City of Bandon*, 43 Or LUBA 79 (2002).

**30.4 Zoning Ordinances – Interpretation.** A local government is within its discretion under ORS 197.829(1) to interpret a standard requiring that "other lands in the county" be unavailable for the uses allowed under proposed rezoning to be satisfied by examining lands in the vicinity of the subject property, and not to require consideration of all lands throughout the entire county. *Friends of Yamhill County v. Yamhill County*, 43 Or LUBA 97 (2002).

**30.4 Zoning Ordinances – Interpretation.** A city is within its discretion under ORS 197.829(1) in interpreting the term "bankful stage" to be equivalent to "top of the bank," where the pertinent code language was modeled on a Metro ordinance that expressly equates the two terms. Such an interpretation is not rendered erroneous simply because the unusual topographic facts of a case may make locating the "bankful stage" at the "top of the bank" mean that a portion of the subject property is undevelopable. *Starks Landing, Inc. v. City of Rivergrove*, 43 Or LUBA 237 (2002).

**30.4 Zoning Ordinances – Interpretation.** A governing body's interpretation of a code provision that fails to provide any independent meaning to a key term and that effectively eliminates that term from any function in the code is not entitled to deference under ORS 197.829(1). *Church v. Grant County*, 43 Or LUBA 291 (2002).

**30.4 Zoning Ordinances – Interpretation.** A city governing body's interpretation of a variance criterion, which requires variances to "conform to the comprehensive plan," to be satisfied where a requested lot depth variance does not violate any identified comprehensive plan policy will be sustained on appeal, where no identified comprehensive plan policies expressly discourage or encourage lot depth variances. *Lord v. City of Oregon City*, 43 Or LUBA 361 (2002).

**30.4 Zoning Ordinances – Interpretation.** A reasonable person could interpret the term "lodge" in the phrase "lodges and grange halls" to refer to more than a fraternal meeting place, and to include a commercial lodging facility like an inn or resort hotel, where both senses are within the dictionary definition of the term, and other code provisions the county separately provide for a "fraternal meeting place" and a "hotel, motel or lodge." *Baker v. Lane County*, 43 Or LUBA 493 (2003).

**30.4 Zoning Ordinances – Interpretation.** A code interpretation to the effect that the county need not consider lesser height variances if the proposed additional height poses no conflicts with views is inconsistent with code language that (1) requires consideration of lesser or no variances, and (2) contains no exception for variances that do not pose conflicts with views. *Stahl v. Tillamook County*, 43 Or LUBA 518 (2003).

**30.4 Zoning Ordinances – Interpretation.** A code interpretation that limits the scope of alternative height variances that must be considered to those that provide the applicant with the same 35-foot height limitation allowed in a different regulatory zone is an impermissible amendment in the guise of interpretation, where the interpretation changes a rigorous alternatives analysis into a pro forma exercise and eliminates a regulatory distinction between zoning districts. *Stahl v. Tillamook County*, 43 Or LUBA 518 (2003).

**30.4 Zoning Ordinances – Interpretation.** Where a city's plan and zoning ordinance provisions provide that development within 500 feet of transit stops "should" be pedestrian-oriented and encourage "pedestrian and transit-friendly development criteria," the city's interpretation that those provisions do not require that only pedestrian-oriented uses may be permitted within 500 feet of a transit stop or promoted within the applicable zoning district is entitled to deference. *Barman v. City of Cornelius*, 42 Or LUBA 548 (2002).

**30.4 Zoning Ordinances – Interpretation.** A city is within its discretion to interpret a zoning ordinance that encourages uses that complement and support existing uses and discourages "auto dependent commercial uses" as not constituting an outright prohibition of auto-dependent uses such as an automobile service station, as long as the automobile service station will be clustered near existing complementary uses such as a shopping center and a fast-food restaurant. *Barman v. City of Cornelius*, 42 Or LUBA 548 (2002).

**30.4 Zoning Ordinances – Interpretation.** A city is within its discretion to interpret a comprehensive plan provision requiring establishment of a master plan prior to allowing development within a commercial district as being satisfied by the design review process where the city code defines "master plan" as a plan created through the land use review process governing design review and conditional use review, and the city does not have an independent process for establishing a master plan. *Barman v. City of Cornelius*, 42 Or LUBA 548 (2002).

**30.4 Zoning Ordinances – Interpretation.** A city's interpretation of a "public interest" standard for street vacations, that the standard is met when the record shows that potential future development in the area will not require the retention of the street, is not reversible under ORS 197.829(1). *Confederated Tribes v. City of Coos Bay*, 42 Or LUBA 385 (2002).

**30.4 Zoning Ordinances – Interpretation.** The deferential standard of appellate review of interpretations of local land use laws that is required under ORS 197.829(1) does not apply where the decision maker is not the local legislative body and does not apply to local government interpretations of state land use law. *Jordan v. Columbia County*, 42 Or LUBA 341 (2002).

**30.4 Zoning Ordinances – Interpretation.** Absent some indication that a parks master plan controls inconsistent zoning ordinance provisions, a city does not err in applying the one-third-mile parks service area specified in the zoning code over the "1/4 to 1/2-mile" area specified in the parks master plan. *Carver v. City of Salem*, 42 Or LUBA 305 (2002).

**30.4 Zoning Ordinances – Interpretation.** A code provision limiting dwelling density to "one dwelling per 38 acres" in a big game overlay zone is meaningless unless given a frame of reference. An interpretation that the required frame of reference is the entire 640-acre section in which the proposed dwelling is located, rather than the area of the section subject to the overlay zone, is not reversible under ORS 197.829(1)(a) to (c), where related code provisions refer to the dwelling density in relation to the "section," and the county's interpretation is not inconsistent with the purpose of and policy underlying the overlay zone. *Matiaco v. Columbia County*, 42 Or LUBA 277 (2002).

**30.4 Zoning Ordinances – Interpretation.** A code provision limiting the planning director's interpretative powers, and prohibiting interpretations of the zoning ordinance that find a use not listed in the zone is "substantially similar" to a listed use, does not necessarily limit the board of commissioners' interpretative powers. To the extent it may, the commissioners' interpretation that the proposed use *is* a listed use is consistent with the code prohibition. *Yeager v. Benton County*, 42 Or LUBA 72 (2002).

**30.4 Zoning Ordinances – Interpretation.** A proposed communication tower may be subject to code provisions governing "transmission and receiving towers," even though it is county-owned and thus also arguably falls within a broad category of "municipal uses" allowed in the zone. Where a regulatory scheme lists as permitted uses in a zone both a general category of uses and a specific category of uses, with different sets of requirements, and the proposed use fits within the specific category, the specific category and its requirements apply exclusively. *Luedtke v. Clackamas County*, 41 Or LUBA 493 (2002).

**30.4 Zoning Ordinances – Interpretation.** LUBA will decline to interpret a local provision in the first instance, to determine whether a proposed radio communication tower is a "radio and television transmission and receiving" tower and therefore subject to a special setback, where viewed in context the meaning and apparent purpose of the provision is subject to considerable doubt. *Luedtke v. Clackamas County*, 41 Or LUBA 493 (2002).

**30.4 Zoning Ordinances – Interpretation.** It is within a city governing body's discretion under ORS 197.829(1) to interpret a code provision requiring that the transportation system be capable of safely supporting the proposed use, considering eight factors including "level of service," as not requiring that affected intersections maintain an acceptable level of service at all times. *Friends of Collins View v. City of Portland*, 41 Or LUBA 261 (2002).

**30.4 Zoning Ordinances – Interpretation.** A zoning ordinance provision that expresses a preference for nonstructural over structural solutions to erosion and flooding problems does not apply to an application for recreational vehicle park expansion that proposes erosion or flooding measures, at least where the proposal does not make structural erosion or flood control measures likely or inevitable. *Willhoft v. City of Gold Beach*, 41 Or LUBA 130 (2001).

**30.4 Zoning Ordinances – Interpretation.** Remand is necessary where a code provision allows a single-family dwelling as a permitted use in a scenic protection zone "provided the use promotes the purpose of the zone," but the local government's decision neither determines that the proposed dwelling promotes the purpose of the zone nor explains why that requirement does not apply. *Crowley v. City of Bandon*, 41 Or LUBA 87 (2001).

**30.4 Zoning Ordinances – Interpretation.** The terms and not the title of a code provision setting forth certain exceptions to prohibited activities in riparian areas control the scope of the exceptions in that provision. LUBA will affirm a hearings officer's interpretation to that effect where the text and context of the provision indicate that the provision applies more broadly than its title suggests. *Tylka v. Clackamas County*, 41 Or LUBA 53 (2001).

**30.4 Zoning Ordinances – Interpretation.** LUBA will affirm as reasonable and correct a hearings officer's interpretation of code provisions requiring that a proposed recycling facility be served by an adequate transportation system, to allow the facility notwithstanding some impacts on nearby failing intersections, so long as imposed conditions are sufficient to ensure that those impacts are *de minimis*. *K.B. Recycling, Inc. v. Clackamas County*, 41 Or LUBA 29 (2001).

**30.4 Zoning Ordinances – Interpretation.** A development code provision that prohibits consideration of a permit application where a federal or state law violation exists on the property does not apply where a permit opponent alleges federal or state law violations but there is no final adjudication by a court or state or federal agency finding that such violations exist. Such a code provision does not require a local government to independently consider such allegations or make its own findings concerning the alleged violations. *Farrell v. Jackson County*, 41 Or LUBA 1 (2001).

**30.4 Zoning Ordinances – Interpretation.** It is within a city council's discretion under ORS 197.829(1) to interpret its code to limit design review of historic landmarks to historic design review criteria, where the code's design review provisions state that historic landmarks are exempt from design review and are instead subject to historic design review. *Pearl District Neigh. Assoc. v. City of Portland*, 40 Or LUBA 436 (2001).

**30.4 Zoning Ordinances – Interpretation.** An apparent conflict between a city's current code, as interpreted, and a set of uncodified ordinances and guidelines that reflect superseded code

language provides no basis to reverse the city's code interpretation. *Pearl District Neigh. Assoc. v. City of Portland*, 40 Or LUBA 436 (2001).

**30.4 Zoning Ordinances – Interpretation.** It is within a city council's discretion under ORS 197.829(1) to interpret a code provision that requires the "transportation structure" to be "adequate," as not requiring separate quantified empirical analysis with respect to separate components of the transportation system, such as parking. Under that interpretation, it is permissible for the city to rely on the ready availability of transit, bicycle and pedestrian transportation, and evidence that development allowed under rezoning can satisfy previously established off-street parking requirements, to conclude that the transportation structure is adequate with respect to parking. *Wakelin v. City of Portland*, 40 Or LUBA 401 (2001).

**30.4 Zoning Ordinances – Interpretation.** Code provisions protecting historic structures that are described in the county's inventory as significant, important or contributing to the significance of the overall resource are not properly interpreted to protect an accessory structure on the subject property that is not mentioned in the county's inventory. *Paulson v. Washington County*, 40 Or LUBA 345 (2001).

**30.4 Zoning Ordinances – Interpretation.** A code provision allowing a historic resource to be relocated if it is on land that is "needed to accommodate" a planned transportation project is not properly interpreted in context to require the county to determine if an alternative alignment would not require relocation, where a related code provision prohibits the county from considering alternative alignments. *Paulson v. Washington County*, 40 Or LUBA 345 (2001).

**30.4 Zoning Ordinances – Interpretation.** A code standard requiring that expansion of existing structures be supported by the "same improvements" is not reasonably interpreted to allow expansion only where the original *unimproved* septic system supports the structure. The standard is more reasonably read to allow expansion supported by an upgraded septic system, as long as it is not a different septic system. *Weaver v. Linn County*, 40 Or LUBA 203 (2001).

**30.4 Zoning Ordinances – Interpretation.** Where a generally worded purpose statement in a city's comprehensive plan provides that a zoning designation is intended to confine strip commercial development to its existing locations, but does not expressly provide that the zoning designation may be applied only to those locations, the local government's interpretation of the purpose statement to allow the zoning designation to be applied to other locations so long as it does not result in strip commercial development is not clearly wrong. *Neighbors for Livability v. City of Beaverton*, 40 Or LUBA 52 (2001).

**30.4 Zoning Ordinances – Interpretation.** Where the first and second steps of a four-step PUD approval process each yield decisions that are not final or binding in any respect, neither the local government's decision granting first-step approval nor its decision granting second-step approval is a final land use decision subject to LUBA's jurisdiction. *Neighbors for Sensible Dev. v. City of Sweet Home*, 40 Or LUBA 21 (2001).

**30.4 Zoning Ordinances – Interpretation.** Where the first step of a three-step planned unit development (PUD) approval process yields a decision that is final and binding in certain respects,

the local government's decision granting such approval is a final land use decision subject to LUBA's jurisdiction. *Neighbors for Sensible Dev. v. City of Sweet Home*, 39 Or LUBA 766 (2001).

**30.4 Zoning Ordinances – Interpretation.** A city's failure to respond to issues raised below regarding whether the "street frontage" of a flag lot is the same as its "front building line" provides no basis for remand, where it is clear under the city's land division ordinance that "street frontage" and "front building line" are not the same. *Webb v. City of Bandon*, 39 Or LUBA 584 (2001).

**30.4 Zoning Ordinances – Interpretation.** Where a zoning ordinance fire protection standard expressly applies only to new dwellings, the county does not err in approving a cellular phone tower without applying the fire protection standard. *Pereira v. Columbia County*, 39 Or LUBA 575 (2001).

**30.4 Zoning Ordinances – Interpretation.** Under *McKay Creek Valley Assoc. v. Washington County*, 118 Or App 543, 848 P2d 624 (1993), the county need not inquire into the legality of parcels subject to a rezoning application, where the applicable rezoning criteria do not expressly require a "lawfully created parcel" or a "legal parcel," or impose a similar requirement of legality. *Maxwell v. Lane County*, 39 Or LUBA 556 (2001).

**30.4 Zoning Ordinances – Interpretation.** It is within a local governing body's discretion under *Clark v. Jackson County*, 313 Or 508, 836 P2d 710 (1992), to interpret "public building or use," as it is used in its zoning ordinance, to include the lease of office space to a state agency for a "public office" where public use is defined as "[a]ny building or property publicly owned or operated * * *." *Harvey v. City of Baker City*, 39 Or LUBA 515 (2001).

**30.4 Zoning Ordinances – Interpretation.** Where a city code requires that a lot line adjustment may be approved only if adequate public facilities are available to serve the resulting parcels and the proposal is compatible with the comprehensive plan, the city errs in interpreting the code to limit its consideration to the lot line adjustment itself and not the uses proposed on the adjusted lots. *Mountain West Investment v. City of Silverton*, 39 Or LUBA 507 (2001).

**30.4 Zoning Ordinances – Interpretation.** Where the local zoning regulation provides for conditional use review for fields used in "organized sports" or "other facilities that draw spectators," conditional use review is not required to allow a graded area within a park to be reserved for occasional use for children's soccer practice. *Kent v. City of Portland*, 39 Or LUBA 455 (2001).

**30.4 Zoning Ordinances – Interpretation.** A city council does not commit reversible error by imposing a condition that requires that a parking lot for a home occupation be accessed from an alley, notwithstanding that the zoning ordinance defines "alley" as a street that provides secondary access to property. *Latta v. City of Joseph*, 39 Or LUBA 318 (2001).

**30.4 Zoning Ordinances – Interpretation.** Where an approval criterion contains two subsections with similar or overlapping requirements, but the local government's findings do not address one of the subsections or interpret the criterion to the effect that findings of compliance with both

subsections are unnecessary, remand is appropriate to address the omitted subsection or adopt an interpretation justifying the omission. *Chilla v. City of North Bend*, 39 Or LUBA 121 (2000).

**30.4 Zoning Ordinances – Interpretation.** Where a local government fails to interpret a local provision, and the purpose of the provision is unclear and subject to numerous interpretations, LUBA will decline to interpret the provision in the first instance and remand the decision to the local government. *OTCNA v. City of Cornelius*, 39 Or LUBA 62 (2000).

**30.4 Zoning Ordinances – Interpretation.** A city may demonstrate compliance with a zoning change criterion that requires that the identified public need will be best served by rezoning the proposed site by showing that other sites, individually or as a group, are inferior to the proposed site. *Hubenthal v. City of Woodburn*, 39 Or LUBA 20 (2000).

**30.4 Zoning Ordinances – Interpretation.** When a local ordinance creates an exemption from additional approval criteria for uses permitted in the underlying zone, and the ordinance distinguishes between permitted uses and uses subject to administrative review, it is incorrect to determine that wineries, which are uses subject to administrative review, are permitted uses in the exclusive farm use zone, and thus not subject to the additional approval criteria. *Roth v. Jackson County*, 38 Or LUBA 894 (2000).

**30.4 Zoning Ordinances – Interpretation.** A local government's interpretation that "commercial timberland properties" only refers to properties "operated by or for the benefit of commercial timber operations," and does not include property operated by individuals, is clearly wrong. *Fessler v. Yamhill County*, 38 Or LUBA 844 (2000).

**30.4 Zoning Ordinances – Interpretation.** Siting requirements for forest template dwellings that require that impacts and fire risks be "minimized" govern *where* a proposed dwelling should be sited rather than *whether* a dwelling should be approved. *Fessler v. Yamhill County*, 38 Or LUBA 844 (2000).

**30.4 Zoning Ordinances – Interpretation.** A code provision requiring consideration of traffic impacts on facilities that "serve" property can be read to allow approval notwithstanding *de minimis* impacts on distant transportation facilities that are operating at an unsatisfactory level of service, but only tangentially "serve" the property. *Anderson v. City of Medford*, 38 Or LUBA 792 (2000).

**30.4 Zoning Ordinances – Interpretation.** Where a city code provision allows conditional use approval of a building that exceeds a mandatory height limit provided the increased building height "does not adversely affect the ocean * * * views" of neighboring structures, the city's interpretation of that provision to mean that the part of the building exceeding the height limit may not block any part of a neighboring property's view of ocean water from any perspective within the neighboring property is not clearly wrong. *Rivera v. City of Bandon*, 38 Or LUBA 736 (2000).

**30.4 Zoning Ordinances – Interpretation.** Where comprehensive plan and zoning ordinance provisions require preservation of "County Road 804" as established by a circuit court decision adopting an official survey of the road, the scope of the survey determines the parts of County

Road 804 subject to that protection. That the survey shows no private property boundaries within a certain subdivision crossed by the road is a strong indication the circuit court decision did not intend to establish anything with respect to that subdivision. *Oregon Shores Cons. Coalition v. Lincoln County*, 38 Or LUBA 699 (2000).

**30.4 Zoning Ordinances – Interpretation.** The impracticability standard of the Metro Code (MC) for locational amendments to the Urban Growth Boundary (UGB) performs a limited version of the functional role that Goal 14, factor 6, and Goal 2, Part II(c)(2), play in the context of more comprehensive UGB amendments: ensuring that agricultural land is included in the UGB only when nonagricultural lands cannot reasonably accommodate the proposed use. Because the MC must be consistent with Goals 2 and 14, the decision is not entitled to deference under ORS 197.829(1). *Malinowski Farm v. Metro*, 38 Or LUBA 633 (2000).

**30.4 Zoning Ordinances – Interpretation.** "Practicable" has two distinct connotations: (1) technical possibility; and (2) prudential balancing of costs and other relevant considerations. An alternative is impracticable where it is either technically infeasible or, based on all relevant considerations, including consideration of cost, it would not be a feasible alternative. *Malinowski Farm v. Metro*, 38 Or LUBA 633 (2000).

**30.4 Zoning Ordinances – Interpretation.** An identification of a need for additional lands under Goal 14, factors 1 and 2, is to be an essential predicate for application of the ORS 197.298 priorities. Where a proposed urban growth boundary amendment is not based upon a demonstration of need, but rather upon locational considerations, ORS 197.298 is not applicable. *Malinowski Farm v. Metro*, 38 Or LUBA 633 (2000).

**30.4 Zoning Ordinances – Interpretation.** A city council's interpretation of code "compatibility" and "livability" standards as requiring that it consider whether a permit proposal for a 24-hour adult video business would result in increased potential for criminal activity and in increased vacancies in nearby offices is not impermissibly vague and is within the city's interpretive discretion under ORS 197.829(1) and *Clark v. Jackson County*, 313 Or 508, 836 P2d 710 (1992). *Oregon Entertainment Corp. v. City of Beaverton*, 38 Or LUBA 440 (2000).

**30.4 Zoning Ordinances – Interpretation.** Where a city code does not define its requirement for "substantial construction" before the term of a conditional use permit expires, the city errs in interpreting the code "substantial construction" requirement as being met by securing all required permits, based on a definition of "substantial construction" in the code of another jurisdiction. *Willhoft v. City of Gold Beach*, 38 Or LUBA 375 (2000).

**30.4 Zoning Ordinances – Interpretation.** Where a code provides that a conditional use permit becomes void after one year unless the planning commission extends that term not to exceed an additional one year, the planning commission erroneously interprets and applies that code limitation to allow it to accept a request for extension after the one-year anniversary of the conditional use permit and to extend the conditional use permit beyond the two-year anniversary of the conditional use permit. *Willhoft v. City of Gold Beach*, 38 Or LUBA 375 (2000).

**30.4 Zoning Ordinances – Interpretation.** A city's interpretation of a "no adverse effect" standard to permit some adverse impacts on adjacent properties, so long as the impacts do not affect the uses on those properties, is not clearly wrong. *Kane v. City of Beaverton*, 38 Or LUBA 183 (2000).

**30.4 Zoning Ordinances – Interpretation.** In considering whether a proposed privately owned, university-related hotel qualifies under a zoning code provision authorizing uses "customarily associated with major universities," a city does not err in considering examples of university-related hotels that have different ownership and operating relationships than the proposed university-related hotel. *Schwerdt v. City of Corvallis*, 38 Or LUBA 174 (2000).

**30.4 Zoning Ordinances – Interpretation.** LUBA will reject a hearings officer's interpretation that a code standard imposing a riparian buffer zone within a "setback area" does not apply unless a structure is proposed, where a broader interpretation to apply the buffer zone in other circumstances is equally plausible and more consistent with the identified purpose of the code standard. *Tylka v. Clackamas County*, 37 Or LUBA 922 (2000).

**30.4 Zoning Ordinances – Interpretation.** LUBA will remand for the county to determine to what extent a code standard imposing a riparian buffer prohibits the removal of native vegetation and whether a proposal for a recreational vehicle camp site within the buffer violates that standard because maintenance of the site requires removal of certain small trees and some native vegetation. *Tylka v. Clackamas County*, 37 Or LUBA 922 (2000).

**30.4 Zoning Ordinances – Interpretation.** Where a local land use regulation requires that a permit application be consistent with any relevant neighborhood plan, neighborhood plan policies which are described in the neighborhood plan as having the force of law are at least potentially relevant approval criteria for the permit. *Hatfield v. City of Portland*, 37 Or LUBA 664 (2000).

**30.4 Zoning Ordinances – Interpretation.** Where a zoning ordinance standard requires consideration of residential appearance and function of an area in approving a bed and breakfast facility, a hearings officer does not err by addressing traffic and activity impacts of the proposal under the "function" prong of the standard rather than as part of the "appearance" prong. *Hatfield v. City of Portland*, 37 Or LUBA 664 (2000).

**30.4 Zoning Ordinances – Interpretation.** Where a zoning ordinance standard requires consideration of residential appearance and function of an "area" in approving a bed and breakfast facility, and a hearings officer's selection of a two-block area for analysis is based on assumed walking distance to cars parked off-site and is no less plausible than petitioner's rationale for selecting a larger area for analysis, the hearings officer does not misconstrue the applicable law. *Hatfield v. City of Portland*, 37 Or LUBA 664 (2000).

**30.4 Zoning Ordinances – Interpretation.** A county governing body's interpretation that a zoning ordinance requirement that "activities" specified in a farm management plan be implemented did not require that each and every task for which a cost estimate was provided in the farm management plan for each year be implemented is not "clearly wrong," and, therefore, is

not reversible under ORS 197.829(1) and *Clark v. Jackson County*, 313 Or 508, 836 P2d 710 (1992). *Rochlin v. Multnomah County*, 37 Or LUBA 237 (1999).

**30.4 Zoning Ordinances – Interpretation.** LUBA will affirm a local governing body's interpretation of its land use regulation where petitioners express disagreement with the interpretation but do not explain why the interpretation is inconsistent with the text of the regulation or otherwise legally incorrect. *Freedom v. City of Ashland*, 37 Or LUBA 123 (1999).

**30.4 Zoning Ordinances – Interpretation.** A county governing body does not exceed its interpretive discretion in interpreting a zoning ordinance provision that allows development of lots of record notwithstanding the lot's failure to meet lot area, width and depth requirements as not also excusing the zoning requirement that lots that are less than five acres in size be served by a public or community water system. *Columbia Hills Development Co. v. Columbia County*, 36 Or LUBA 691 (1999).

**30.4 Zoning Ordinances – Interpretation.** A county governing body does not exceed its interpretive discretion in interpreting a zoning ordinance provision that delegates responsibility to the planning director to interpret the zoning ordinance as not preventing the governing body from interpreting the comprehensive plan in the first instance following an appeal of a planning director decision to the planning commission and the county governing body. *Columbia Hills Development Co. v. Columbia County*, 36 Or LUBA 691 (1999).

**30.4 Zoning Ordinances – Interpretation.** A city planner's determination that residential youth treatment facilities constitute "household living" foreclosed considering such facilities as "group living" because "group living" is defined by the city code to exclude those facilities that fit the "household living" definition. *Buckman Community Assoc. v. City of Portland*, 36 Or LUBA 630 (1999).

**30.4 Zoning Ordinances – Interpretation.** Using a dictionary to define "guardianship," a provision not defined in the city code, is neither arbitrary nor capricious because it is consistent with both the legislative intent and the documents explaining the city's overall intent in adopting the amendments. *Buckman Community Assoc. v. City of Portland*, 36 Or LUBA 630 (1999).

**30.4 Zoning Ordinances – Interpretation.** The city correctly determined that an adolescent residential treatment facility is "household living" and thus an allowed use in a residential zone, when the city's code defines "household living" to include persons related by guardianship, and the residents of the facility are under the legal guardianship of the operator of the facility. *Buckman Community Assoc. v. City of Portland*, 36 Or LUBA 630 (1999).

**30.4 Zoning Ordinances – Interpretation.** A county acts within the discretion afforded by ORS 197.829(1) and *Clark v. Jackson County*, 313 Or 508, 515, 836 P2d 710 (1992), where the zoning ordinance requires a finding that utilities and services likely to be needed by the "anticipated uses" are available, the county limits allowed uses on the property to the applicant's proposed use, and the county interprets the term "anticipated uses" to consist solely of the proposed use. A reasonable person could construe the term "anticipated uses" to denote something less than the range of uses allowed in the zone. *City of Newberg v. Yamhill County*, 36 Or LUBA 473 (1999).

**30.4 Zoning Ordinances – Interpretation.** Where a code provision authorizing permit revocation is expressly limited to Type II discretionary permits, the code provision does not authorize revocation of Type I ministerial permits. *Woods v. Grant County*, 36 Or LUBA 456 (1999).

**30.4 Zoning Ordinances – Interpretation.** A code provision authorizing the county to institute "appropriate proceedings to prevent, enjoin * * * abate, or remove the unlawful location, construction, maintenance, repair, alteration or use" of unlawfully constructed structures is sufficient to authorize the county to institute proceedings to revoke a ministerial zoning permit where the structure actually constructed under the zoning permit is inconsistent with the site plan that was approved by the zoning permit. *Woods v. Grant County*, 36 Or LUBA 456 (1999).

**30.4 Zoning Ordinances – Interpretation.** Where a code permit revocation provision provides that the hearings officer "may grant a reasonable time for rectification" it does not *require* that the hearings officer do so, and a hearings officer decision revoking a zoning permit without granting time for rectification does not violate that code provision. *Woods v. Grant County*, 36 Or LUBA 456 (1999).

**30.4 Zoning Ordinances – Interpretation.** Where the first clause of a local code provision requires that design review comply with a set of criteria used to rezone property and the second clause requires that design review also comply with those criteria addressed at the time the subject property was rezoned, a hearings officer's interpretation limiting design review to the subset of criteria addressed at the time the property was rezoned fails to give effect to the first clause of the code provision, and is therefore not reasonable and correct. *Blazer Construction, Inc. v. City of Eugene*, 36 Or LUBA 391 (1999).

**30.4 Zoning Ordinances – Interpretation.** LUBA will not reject a substantial evidence challenge based on a code informational requirement, where the challenged decision does not interpret the code requirement as being purely informational, but, to the contrary, appears to require that the information submitted under the code provision be the kind of information a reasonable person would rely on. *Baughman v. City of Portland*, 36 Or LUBA 353 (1999).

**30.4 Zoning Ordinances – Interpretation.** Where a city interprets its zoning ordinance as requiring that a "recycling center" have the "primary purpose" of extracting recyclables from a waste stream, but not requiring that any particular percentage of the waste stream will be recycled, the city's conclusion that a proposed facility is a "recycling center" is supported by substantial evidence, notwithstanding the absence of evidence quantifying the percentage of recyclables in the waste stream. *Sequoia Park Condo. Assoc. v. City of Beaverton*, 36 Or LUBA 317 (1999).

**30.4 Zoning Ordinances – Interpretation.** That a proposed use meets the definition of a "materials recovery facility" at OAR 340-093-0030(57) is neither relevant nor controlling in determining whether the local government correctly categorized the proposed use as a "recycling center" under its development ordinance, where the development ordinance was not adopted to implement the rule. *Sequoia Park Condo. Assoc. v. City of Beaverton*, 36 Or LUBA 317 (1999).

**30.4 Zoning Ordinances – Interpretation.** LUBA will affirm as not clearly wrong an interpretation that commercial uses not otherwise listed as allowed uses in a university district are allowed when they are uses "customarily associated" with universities and thus fall within the definition of a use expressly allowed in the district. *Brome v. City of Corvallis*, 36 Or LUBA 225 (1999).

**30.4 Zoning Ordinances – Interpretation.** Where a local code does not dictate how rear and front lot lines are to be identified, a city council is within its interpretive discretion under ORS 197.829 in requiring that building orientation be considered. *Barnard Perkins Corp. v. City of Rivergrove*, 36 Or LUBA 218 (1999).

**30.4 Zoning Ordinances – Interpretation.** Where a zoning ordinance requires that a proposed use must "satisfy the goals and policies of the Comprehensive Plan which apply to the proposed use," the county must, as a threshold matter, determine which plan goals and policies apply to the use. *Cotter v. Clackamas County*, 36 Or LUBA 172 (1999).

**30.4 Zoning Ordinances – Interpretation.** After the county has identified the applicable comprehensive plan goals and policies to which a proposal must conform under local ordinance, a finding that the proposal is incompatible with particular goals and provisions will not necessarily be fatal where the zoning ordinance only requires that the proposal satisfy the plan goals and policies on balance. *Cotter v. Clackamas County*, 36 Or LUBA 172 (1999).

**30.4 Zoning Ordinances – Interpretation.** An interpretation of a zoning ordinance that shifts the burden of demonstrating compliance with minimum lot size approval standards to opponents of the application is erroneous. *Wood v. Crook County*, 36 Or LUBA 143 (1999).

**30.4 Zoning Ordinances – Interpretation.** Exercise of LUBA's authority under ORS 197.829(2) to interpret local land use law in the first instance is not appropriate where the relevant code provision prohibiting reduction of acreage available for farm use could refer to reduction (1) of acreage on adjacent lands or (2) of acreage on the subject property that is available for use in conjunction with farm uses on adjacent lands. Where both interpretations are plausible and it is disputed factually whether the relevant lands could be used in conjunction with adjacent lands, a remand to the county to render its interpretation in the first instance is appropriate. *DLCD v. Jackson County*, 36 Or LUBA 88 (1999).

**30.4 Zoning Ordinances – Interpretation.** Where a code provision requires an applicant for expansion of a golf course on EFU-zoned land to demonstrate that alternative urban sites are not available and an applicant applies to expand an existing golf course, a hearings officer's interpretation of the provision as limiting the requisite alternative site analysis to locations where the existing golf course can expand is reasonable and correct. *DLCD v. Jackson County*, 36 Or LUBA 88 (1999).

**30.4 Zoning Ordinances – Interpretation.** Where a local ordinance definition of "housekeeping unit" requires a sharing of domestic tasks and management of household affairs, an assisted-care dwelling may qualify as a housekeeping unit notwithstanding that a resident caregiver will perform

many of the domestic tasks and management of household affairs. *Neels v. Clackamas County*, 36 Or LUBA 54 (1999).

**30.4 Zoning Ordinances – Interpretation.** A county code "stability" standard that does not implement the statutory nonfarm use "stability" standard is not subject to case law interpreting the statutory "stability" standard, but such a code "stability" standard necessarily connotes a temporal period and a scope of causative impact for analysis. However, a county's interpretation of the local "stability" standard as focusing on short-term effects and direct impacts rather than long-term and cumulative impacts is not clearly wrong and therefore must be affirmed by LUBA. *Ray v. Douglas County*, 36 Or LUBA 45 (1999).

**30.4 Zoning Ordinances – Interpretation.** Where provisions allowing enforcement of the city's ordinance only specifically authorize judicial remedies, the city's interpretation of the enforcement provisions as allowing the city to conduct quasi-judicial proceedings to determine nonconforming use status is inconsistent with the terms of that provision and not entitled to deference under *Goose Hollow Foothills League v. City of Portland*, 117 Or App 211, 843 P2d 992 (1992), or ORS 197.829(1). *Dept. of Transportation v. City of Mosier*, 35 Or LUBA 701 (1999).

**30.4 Zoning Ordinances – Interpretation.** A proposal to site a drug and alcohol recovery facility within a single-family dwelling in a residential zone must be permitted when the relevant code provision permits outright those activities that are conducted in buildings "designed or used for the occupancy of one family" and the proposed recovery facility is to be located in such a structure. *Recovery House VI v. City of Eugene*, 35 Or LUBA 419 (1999).

**30.4 Zoning Ordinances – Interpretation.** Where the zoning ordinance allows a variance from its standards when those standards create a hardship due to one or more defined conditions, a hearing officer errs in requiring the applicant to demonstrate hardship in addition to those stated in the defined conditions. *Kelley v. Clackamas County*, 35 Or LUBA 215 (1998).

**30.4 Zoning Ordinances – Interpretation.** It is reasonable and correct to interpret a code provision requiring that "vehicle to be repaired shall be located within an enclosed building" to require that repaired vehicles remain within an enclosed building until they are removed from the property. *Gibbons v. Clackamas County*, 35 Or LUBA 210 (1998).

**30.4 Zoning Ordinances – Interpretation.** It is reasonable and correct to consider vehicles used to pick up and drop off customers who have vehicles waiting to be repaired as "vehicles associated with" an auto repair home occupation. *Gibbons v. Clackamas County*, 35 Or LUBA 210 (1998).

**30.4 Zoning Ordinances – Interpretation.** A city council's interpretation of its zoning ordinance as requiring conditional use approval for a towing yard as an "other industrial use" will be sustained where towing yards are not listed as an outright permitted use and the zoning code does not allow uses that are similar to outright permitted uses as permitted uses. *Williamson v. City of Arlington*, 35 Or LUBA 90 (1998).

**30.4 Zoning Ordinances – Interpretation.** A city may impose a condition requiring annual review of a conditional use approval under a general code provision allowing conditions of

approval the city council determines are necessary "to avoid a detrimental impact." *Williamson v. City of Arlington*, 35 Or LUBA 90 (1998).

**30.4 Zoning Ordinances – Interpretation.** A city does not err in regulating conditional uses differently from uses permitted outright even if a particular conditional use is similar to a use permitted outright. *Williamson v. City of Arlington*, 35 Or LUBA 90 (1998).

**30.4 Zoning Ordinances – Interpretation.** A city council interpretation of the term "flood" as being limited to the "base flood" or 100-year flood must be sustained by LUBA where the stated objectives and introductory language of the zoning code are consistent with the narrow interpretation. *Visher v. City of Cannon Beach*, 35 Or LUBA 74 (1998).

**30.4 Zoning Ordinances – Interpretation.** Requiring that a street be connected to allow through traffic does not inevitably mean the street will cease to function as a local street, where there are identified measures that can be used to discourage non-local traffic. *Hannah v. City of Eugene*, 35 Or LUBA 1 (1998).

**30.4 Zoning Ordinances – Interpretation.** Where a sentence in a decision can be read to adopt an improperly narrow interpretation of a code, but when that sentence is read in context with the rest of the decision it is clear that the improper interpretation was not adopted, LUBA will assume the improper interpretation was not intended. *Hannah v. City of Eugene*, 35 Or LUBA 1 (1998).

**30.4 Zoning Ordinances – Interpretation.** Where a local government does not expressly interpret a code provision, but adopts findings that are sufficiently detailed to demonstrate that it interprets the provision to require evaluation of the subject property rather than surrounding properties, LUBA will defer to that interpretation. *Rouse v. Tillamook County*, 34 Or LUBA 530 (1998).

**30.4 Zoning Ordinances – Interpretation.** Where a local code requires that sewer facilities be "available" as a condition of approval for annexation, the local government's interpretation of the "available" criterion as being met where extension of sewer services is feasible within the current planning period is not clearly wrong. *Northwest Aggregates Co. v. City of Scappoose*, 34 Or LUBA 498 (1998).

**30.4 Zoning Ordinances – Interpretation.** Where petitioner's home occupation includes the movement and storage of vehicles on the subject property, that activity is external evidence of the business for purposes of a local ordinance based on ORS 215.448 that limits allowable external evidence of a home occupation, even though such activity is incidental to the primary business activity. *Sheldon Fire & Rescue, Inc. v. Washington County*, 34 Or LUBA 474 (1998).

**30.4 Zoning Ordinances – Interpretation.** Where a local ordinance limits external evidence of a home occupation to one small sign, a hearings officer may reasonably interpret the ordinance to mean that the storage and movement of vehicles on the subject property is external evidence of the business, and therefore prohibited. *Sheldon Fire & Rescue, Inc. v. Washington County*, 34 Or LUBA 474 (1998).

**30.4 Zoning Ordinances – Interpretation.** Where a code requires that the final subdivision and PUD plans be in "substantial conformance" with the preliminary approval and the city interprets the "substantial conformance" requirement by analogizing to the distinction drawn in the code between "major" subdivision/PUD amendments, which must be approved quasi-judicially, and "minor" amendments, which may be approved administratively, the city's interpretation will be upheld. *Rochlin v. City of Portland*, 34 Or LUBA 379 (1998).

**30.4 Zoning Ordinances – Interpretation.** A code requirement that each lot in a subdivision be approved with provisions for sewage disposal is reasonably interpreted as not applying to lots that are not to be developed. *Rochlin v. City of Portland*, 34 Or LUBA 379 (1998).

**30.4 Zoning Ordinances – Interpretation.** Where a petitioner at LUBA challenges an interpretation that first appeared in the challenged decision, petitioner need not have raised an issue concerning that interpretation during the local proceedings. *Tenly Properties Corp. v. Washington County*, 34 Or LUBA 352 (1998).

**30.4 Zoning Ordinances – Interpretation.** A code provision that imposes different standards depending on how many "functions" the street supports is ambiguous. A county interpretation that equates "function" with the number of units that use the street for "access" rather than the number of units that "border" the street is a plausible interpretation. *Tenly Properties Corp. v. Washington County*, 34 Or LUBA 352 (1998).

**30.4 Zoning Ordinances – Interpretation.** Where a local government fails to adopt a needed interpretation of a land use ordinance, LUBA may interpret the ordinance on appeal. LUBA will do so where the facts are undisputed, a pure question of law is presented and the parties adequately address the interpretive issue in their briefs. *Tylka v. Clackamas County*, 34 Or LUBA 14 (1998).

**30.4 Zoning Ordinances – Interpretation.** Where the purpose of a local provision is unclear and subject to numerous interpretations, LUBA will decline to interpret the provision in the first instance. *Bradbury v. City of Bandon*, 33 Or LUBA 664 (1997).

**30.4 Zoning Ordinances – Interpretation.** A county may regulate or define uses allowed under ORS 215.283(2) as long as it does not define those uses more expansively than permitted by state law. *R/C Pilots Association v. Marion County*, 33 Or LUBA 532 (1997).

**30.4 Zoning Ordinances – Interpretation.** A county may interpret its local codification of nonfarm uses allowed in EFU zones more restrictively than state law requires. Such a more restrictive interpretation is not contrary to ORS 215.283(2)(d) and will be affirmed by LUBA where it is not so inconsistent with the zoning ordinance as to be clearly wrong. *R/C Pilots Association v. Marion County*, 33 Or LUBA 532 (1997).

**30.4 Zoning Ordinances – Interpretation.** A hearings officer's finding that other residentially zoned property "may not be developable" does not factually justify the conclusion that "there are no non-agricultural lands" with priority for development. *Alliance for Responsible Land Use v. Deschutes County*, 33 Or LUBA 12 (1997).

**30.4 Zoning Ordinances – Interpretation.** A county's findings are inadequate where an applicable criterion for a zone change requires a finding that the need will be best served by changing the classification of the property in question as compared with other available property, and the county's findings do not provide any express comparison of the subject property to other available property. *Alliance for Responsible Land Use v. Deschutes County*, 33 Or LUBA 12 (1997).

**30.4 Zoning Ordinances – Interpretation.** LUBA will defer under ORS 197.829(1) to a local government's interpretation of conditional use permit criteria even when that interpretation is at odds with LUBA's own interpretation of identical statutory criteria governing an application for a nonfarm dwelling. *Ray v. Douglas County*, 32 Or LUBA 388 (1997).

**30.4 Zoning Ordinances – Interpretation.** A code approval standard that requires "a clear picture of the existing land use pattern" in a specified area is not satisfied by general findings about zoning and details about some of the properties in the area. *Ray v. Douglas County*, 32 Or LUBA 388 (1997).

**30.4 Zoning Ordinances – Interpretation.** Where a conditional use is proposed on EFU land, the compatibility of the proposed use with uses on adjacent properties is necessary to ensuring the stability of existing uses, but it does not alone ensure stability. *Ray v. Douglas County*, 32 Or LUBA 388 (1997).

**30.4 Zoning Ordinances – Interpretation.** In reviewing a hearings officer's decision, where LUBA is unable to fathom the meaning of a local ordinance and no interpretation is provided by the hearings officer, LUBA will give the county the opportunity to interpret the code in the first instance. *Jackson County Citizens League v. Jackson County*, 32 Or LUBA 212 (1996).

**30.4 Zoning Ordinances – Interpretation.** In making a zoning classification determination, the city properly relied on the definition and review procedures set forth in ORS 227.160(2) and ORS 227.175(11), and was not required to follow the local procedural requirements for a Type I review. *North Portland Citizens v. City of Portland*, 32 Or LUBA 70 (1996).

**30.4 Zoning Ordinances – Interpretation.** LUBA will affirm the city planning bureau's determination that a proposed probation/parole office is an office use, permitted of right in a General Commercial zone, where that determination is reasonable and correct. *North Portland Citizens v. City of Portland*, 32 Or LUBA 70 (1996).

**30.4 Zoning Ordinances – Interpretation.** Provisions of a zoning ordinance should be interpreted in a manner which gives meaning to all parts of the ordinance. *Fechtig v. City of Albany*, 31 Or LUBA 410 (1996).

**30.4 Zoning Ordinances – Interpretation.** 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).

**30.4 Zoning Ordinances – Interpretation.** When a residential use is established on the subject property and the existing residence may be expanded without a variance, a requested height variance is not necessary under any colorable interpretation of the standard "necessary to accommodate a use or accessory use on the parcel which can be reasonably expected to occur within the zone or vicinity." *DeBardelaben v. Tillamook County*, 31 Or LUBA 131 (1996).

**30.4 Zoning Ordinances – Interpretation.** Development that has not occurred and that will be governed by the limitations of the applicable zone cannot be used to justify a variance on the basis that the property owner seeking the variance will otherwise be precluded from the enjoyment of substantial property rights enjoyed by the majority of landowners in the vicinity. *DeBardelaben v. Tillamook County*, 31 Or LUBA 131 (1996).

**30.4 Zoning Ordinances – Interpretation.** When a house already exists on the subject property, the fact it cannot be enlarged in precisely the manner desired by the property owner does not render the property incapable of reasonable economic use without a variance. *DeBardelaben v. Tillamook County*, 31 Or LUBA 131 (1996).

**30.4 Zoning Ordinances – Interpretation.** The county's interpretation of the "incapable of reasonable economic use" variance standard to mean "incapable of the property's highest and best use under its zoning and of an intensity of use consistent with other similarly situated properties" is clearly wrong. *DeBardelaben v. Tillamook County*, 31 Or LUBA 131 (1996).

**30.4 Zoning Ordinances – Interpretation.** The informal adoption by a statement in a quasi-judicial decision of a definition of the term "firearms training facility," which term is found in both a state administrative rule and the county's zoning ordinance, does not constitute the amendment of an acknowledged land use regulation. *J.C. Reeves Corp. v. Washington County*, 31 Or LUBA 115 (1996).

**30.4 Zoning Ordinances – Interpretation.** A zoning ordinance provision that states land use districts may "float" within the boundaries of a proposed planned development can be interpreted to mean that such districts may be dissolved and totally reconfigured, with densities reallocated. *Huntzicker v. Washington County*, 30 Or LUBA 397 (1996).

**30.4 Zoning Ordinances – Interpretation.** ORS 197.829(3) permits LUBA, in cases where a local government fails to interpret adequately a provision of its land use regulations, to make its own determination of whether the local government decision is correct. *Thompson v. City of St. Helens*, 30 Or LUBA 339 (1996).

**30.4 Zoning Ordinances – Interpretation.** LUBA cannot defer to a local government's interpretation of its own ordinance when it cannot discern what the interpretation is, and will not exercise its discretion under ORS 197.829(2) to interpret a county provision in the first instance where the purpose of the provision is unclear and subject to numerous interpretations. *Thomas v. Wasco County*, 30 Or LUBA 302 (1996).

**30.4 Zoning Ordinances – Interpretation.** A county may interpret a zoning ordinance to regulate the establishment of nonforest dwellings more stringently than is required under ORS 215.750. *Dilworth v. Clackamas County*, 30 Or LUBA 279 (1996).

**30.4 Zoning Ordinances – Interpretation.** It is within the county's interpretive discretion to find that a code provision protecting agricultural land for farm use conflicts with a plan policy that certain land is not suitable for agricultural production and is committed to residential development. *Reeves v. Yamhill County*, 30 Or LUBA 135 (1995).

**30.4 Zoning Ordinances – Interpretation.** ORS 197.829(2) permits LUBA to determine whether a local government decision is correct, even when local government fails to interpret adequately a provision of its comprehensive plan or land use regulations. *East Lancaster Neigh. Assoc. v. City of Salem*, 30 Or LUBA 147 (1995).

**30.4 Zoning Ordinances – Interpretation.** The city correctly determined that city, rather than county, zoning applies to a proposed development pursuant to an urban fringe management agreement between the city and the county where there was no evidence that the city violated the procedures established in the agreement with respect to the proposed development. *Friends of Neabeack Hill v. City of Philomath*, 30 Or LUBA 46 (1995).

**30.4 Zoning Ordinances – Interpretation.** When petitioners fail to satisfy the county's jurisdictional appeal provision requiring local appellants to state the basis of their standing, the county is not at liberty to take notice of petitioners' standing or to excuse their failure satisfy the requirement as "harmless error." *Tipton v. Coos County*, 29 Or LUBA 474 (1995).

**30.4 Zoning Ordinances – Interpretation.** When a county zoning ordinance provision states that a local appeal will be dismissed if the requirements of the provision are not satisfied, the provision is jurisdictional. An appellant's failure to satisfy a jurisdictional requirement results in dismissal of the appeal. *Tipton v. Coos County*, 29 Or LUBA 474 (1995).

**30.4 Zoning Ordinances – Interpretation.** Where petitioners contend the governing body failed to follow procedures arguably required by the local code for making the challenged legislative land use decision, LUBA must defer to the governing body's interpretation of the code and cannot interpret the code provisions in the first instance. *Central Eastside Industrial Council v. Portland*, 29 Or LUBA 429 (1995).

**30.4 Zoning Ordinances – Interpretation.** Where the city's zoning code allows private households in the commercial-service/professional zone so long as the private households meet the development standards of a multifamily zone, LUBA will affirm the city's interpretation that private households includes a multiplex dwelling. *Stevens v. City of Medford*, 29 Or LUBA 422 (1995).

**30.4 Zoning Ordinances – Interpretation.** Where the city's zoning code provides that some permitted uses are subject to special use restrictions, LUBA will affirm the city's interpretation that the existence of special use restrictions does not convert a permitted use into an unpermitted use. *Stevens v. City of Medford*, 29 Or LUBA 422 (1995).

**30.4 Zoning Ordinances – Interpretation.** Where petitioner appealed a planning director determination that a solid waste transfer station is an outright permitted use in a particular zone, the city was neither required nor authorized to expand the scope of the local appeal hearing to include consideration of whether a solid waste transfer station is also an appropriate use in that zone. *Pend-Air Citizen's Comm. v. City of Pendleton*, 29 Or LUBA 362 (1995).

**30.4 Zoning Ordinances – Interpretation.** LUBA will defer to a local governing body's interpretation of Standard Industrial Code Manual provisions incorporated into the local government's own zoning ordinance, unless that interpretation is contrary to the express words, purpose or policy of the local enactment or to a state statute, statewide planning goal or administrative rule that the local enactment implements. *Pend-Air Citizen's Comm. v. City of Pendleton*, 29 Or LUBA 362 (1995).

**30.4 Zoning Ordinances – Interpretation.** Evidence that a solid waste transfer station may conflict with neighboring residential uses is not relevant to the issue of whether a solid waste transfer station is an outright permitted use in a particular zone. *Pend-Air Citizen's Comm. v. City of Pendleton*, 29 Or LUBA 362 (1995).

**30.4 Zoning Ordinances – Interpretation.** Code demolition permit pre-application requirements that the owner of historic property "endeavor to prepare an economically feasible plan" for preservation and "solicit purchase offers" must be interpreted in light of other code demolition permit provisions which clearly leave the decision to sell or not sell the historic property up to the property owner. *Save Amazon Coalition v. City of Eugene*, 29 Or LUBA 335 (1995).

**30.4 Zoning Ordinances – Interpretation.** Where the local code specifically requires the application of a historic landmark designation to be consistent with comprehensive plan historic preservation policies, but does not indicate any plan policies are applicable to decisions on permits for demolition of property subject to the historic landmark designation, the local governing body is not clearly wrong in interpreting the plan and code to provide that no plan policies are applicable to its review of such a demolition permit application. *Save Amazon Coalition v. City of Eugene*, 29 Or LUBA 238 (1995).

**30.4 Zoning Ordinances – Interpretation.** LUBA will defer to the local governing body's interpretation that under its code provisions governing permits for the demolition of historic properties, the planning director's determination regarding compliance with pre-application requirements is not reviewable by the historic review board or appealable to the governing body. *Save Amazon Coalition v. City of Eugene*, 29 Or LUBA 238 (1995).

**30.4 Zoning Ordinances – Interpretation.** A local governing body acts within its interpretive discretion in interpreting a code conditional use permit standard regarding feasibility of meeting "projected increased demand" for school facilities to refer to current demand, plus demand from other developments that have received final approval and the demand created by the proposed development, and not to include demand from future permitted development of residentially zoned land. *Burghardt v. City of Molalla*, 29 Or LUBA 223 (1995).

**30.4 Zoning Ordinances – Interpretation.** Where a local code requires a "recreation/open space area" as part of a mobile home park, it is reasonable for the local government to interpret "recreation/open space area" to include wetlands. *Burghardt v. City of Molalla*, 29 Or LUBA 223 (1995).

**30.4 Zoning Ordinances – Interpretation.** Where determining whether a notice of intent to appeal was timely filed under ORS 197.830(3) depends on determining which code notice of hearing provision applied to the local proceeding, and LUBA can infer from the challenged decision which notice provision the local governing body believes governs the local proceeding and agrees with that interpretation, even without the deference required by *Clark*, LUBA is not required to remand the decision for the governing body to make its interpretation explicit. *Orenco Neighborhood v. City of Hillsboro*, 29 Or LUBA 186 (1995).

**30.4 Zoning Ordinances – Interpretation.** Where an ordinance amends the text of a zoning ordinance by adding a temporary overlay district, identifies a map showing where the overlay district applies an "attachment to" the zoning map and does not purport to amend the section of the zoning ordinance under which the zoning map is adopted, it is reasonable and correct to interpret a code notice of hearing provision governing amendments to the text of the zoning ordinance, rather than another provision governing amendments to the "zoning map," as applicable. *Orenco Neighborhood v. City of Hillsboro*, 29 Or LUBA 186 (1995).

**30.4 Zoning Ordinances – Interpretation.** A local government may interpret relevant code provisions to require that either (1) the required appeal fee, or (2) a fee waiver previously approved by the planning director, be included in a local appeal when it is filed. In such circumstance, it is a local appellant's responsibility to obtain approval of a fee waiver request prior to submitting an appeal. *Ramsey v. City of Portland*, 29 Or LUBA 139 (1995).

**30.4 Zoning Ordinances – Interpretation.** Where a code contains both a provision governing the expiration of quasi-judicial land use approvals generally and a provision specifically governing the expiration of planned development approvals, the local governing body is within its discretion under ORS 197.829 and *Clark* in interpreting the code to mean the expiration of planned development approvals is governed *only* by the specific code provision. *ONRC v. City of Oregon City*, 29 Or LUBA 90 (1995).

**30.4 Zoning Ordinances – Interpretation.** Where the code provides "if no extensions are granted, the authorization shall expire," the local governing body is within its discretion under ORS 197.829 and *Clark* in interpreting this provision to mean that if an extension is requested prior to the expiration of the approval period, the approval does not expire while local government review of the extension request is pending. *ONRC v. City of Oregon City*, 29 Or LUBA 90 (1995).

**30.4 Zoning Ordinances – Interpretation.** If a code includes provisions for extending planned development approvals and for requesting changes in approved final development plans, the local governing body is within its discretion under ORS 197.829 and *Clark* in interpreting these provisions together to mean if a change in an approved final development plan is requested before the original approval expires, the approval does not expire while the modification application is

being processed, and a separate extension application is not necessary. *ONRC v. City of Oregon City*, 29 Or LUBA 90 (1995).

**30.4 Zoning Ordinances – Interpretation.** A code provision requiring that certain applications for changes to an approved planned development (PD) final development plan "shall be processed in the same manner as for a new PD" must be interpreted consistently with ORS 227.178(3) to mean that any standard which would be applicable to a new application for PD approval is applicable to such applications for changes to approved PDs. *ONRC v. City of Oregon City*, 29 Or LUBA 90 (1995).

**30.4 Zoning Ordinances – Interpretation.** Stacking enough lumber to build a house around a mobile home located in a mobile home and recreational vehicle park is not properly viewed as an accessory use to the use of the mobile home as a dwelling. *Sanchez v. Clatsop County*, 29 Or LUBA 26 (1995).

**30.4 Zoning Ordinances – Interpretation.** Without a demonstration that the interpretation of a local code provision in the challenged decision is significantly different from a previously established local government interpretation of that provision, petitioners fail to establish the local government erred by announcing the disputed interpretation for the first time in its final decision. *Wicks v. City of Reedsport*, 29 Or LUBA 8 (1995).

**30.4 Zoning Ordinances – Interpretation.** A local governing body acts within its interpretive authority in construing a code provision stating local street design and construction cost provisions apply "unless otherwise approved in the tentative development plan," as allowing the local government to waive those local street standards when granting tentative subdivision plan approval. *Andrews v. City of Prineville*, 28 Or LUBA 653 (1995).

**30.4 Zoning Ordinances – Interpretation.** A code conditional use standard requiring reasonable compatibility with, and no more than minimal impact on, "appropriate development" of surrounding properties authorizes the local government to consider a proposed conditional use's compatibility with, and impact on, future development of vacant properties. *Horizon Construction, Inc. v. City of Newberg*, 28 Or LUBA 632 (1995).

**30.4 Zoning Ordinances – Interpretation.** A local governing body may interpret a code requirement that "[b]efore granting any appeal, [the governing body] shall make findings of fact, setting forth wherein the planning commission's findings were in error," to allow the governing body to substitute its judgment for that of the planning commission on questions of fact or law, and to find the planning commission erred because it relied on different evidence or reached a different conclusion than did the governing body. *Horizon Construction, Inc. v. City of Newberg*, 28 Or LUBA 632 (1995).

**30.4 Zoning Ordinances – Interpretation.** Where the challenged decision was adopted by a decision maker other than the local governing body, and the decision fails to contain an interpretation of relevant code provisions, LUBA may interpret the local code. *Beveled Edge Machines, Inc. v. City of Dallas*, 28 Or LUBA 790 (1995).

**30.4 Zoning Ordinances – Interpretation.** Where individual guidelines made applicable by an overlay zone are expressed in nonmandatory terms, a governing body is well within its interpretive discretion in determining compliance with such guidelines is not required, even where the code provides that overlay zone provisions supersede provisions of the base zone. *Champion v. City of Portland*, 28 Or LUBA 618 (1995).

**30.4 Zoning Ordinances – Interpretation.** There can be no possible rational dispute that an adjustment changing the number of parking spaces required for a proposed development does not violate a code prohibition against adjustments that are "exception[s] to the procedural steps of a procedure or to change assigned procedures." *Champion v. City of Portland*, 28 Or LUBA 618 (1995).

**30.4 Zoning Ordinances – Interpretation.** Where a local government's zoning ordinance establishes a process for administrative actions to determine the existence of nonconforming uses, and another local ordinance gives a compliance hearings officer jurisdiction over complaints regarding violations of the zoning ordinance, it is reasonable and correct to interpret these ordinances to require that the existence of a nonconforming use be determined through an administrative action, not raised as a defense in a compliance proceeding. *Watson v. Clackamas County*, 28 Or LUBA 602 (1995).

**30.4 Zoning Ordinances – Interpretation.** In reviewing a decision adopted by the local governing body, LUBA must review the governing body's interpretation of local code provisions and may not interpret the local code in the first instance, unless there is "no possible rational dispute" regarding the correct interpretation of the local code. *Foster v. Coos County*, 28 Or LUBA 609 (1995).

**30.4 Zoning Ordinances – Interpretation.** The question of whether the governing body erroneously accepted a local appeal turns on the interpretation of relevant provisions of the city's code. Because LUBA may not interpret the local code in the first instance when reviewing a decision by a governing body, the decision must be remanded for such an interpretation. *Shapiro v. City of Talent*, 28 Or LUBA 542 (1995).

**30.4 Zoning Ordinances – Interpretation.** A hearings officer's interpretation of the local code is incorrect where the hearings officer determines a private easement that will be generally used by members of the public and occupants of a proposed subdivision, is not an "area to be dedicated for new roads" to serve the proposed subdivision. *Ellison v. Clackamas County*, 28 Or LUBA 521 (1995).

**30.4 Zoning Ordinances – Interpretation.** Where the challenged decision was made by the hearings officer and petitioners contend a zoning district purpose statement is a mandatory standard applicable to proposed development, LUBA may determine, in the first instance, whether the provision is an approval applicable to the proposal. *Ellison v. Clackamas County*, 28 Or LUBA 521 (1995).

**30.4 Zoning Ordinances – Interpretation.** Where a code zoning district purpose statement is aspirational only, it is reasonable and correct to determine the purpose statement is not a mandatory

approval standard applicable to the proposed development. *Ellison v. Clackamas County*, 28 Or LUBA 521 (1995).

**30.4 Zoning Ordinances – Interpretation.** A local government acts within its interpretational discretion in construing local code provisions that treat "contiguous" parcels in "common ownership" as a single unit of land as not including parcels in common ownership which meet only at a common corner and share no common sides. *Tognoli v. Crook County*, 28 Or LUBA 527 (1995).

**30.4 Zoning Ordinances – Interpretation.** In the absence of something in the local code to the contrary, if a use satisfies the code definition of motel, it may be treated as a motel for purposes of determining whether such use falls within an exemption applicable to motels, and it does not matter that the use may also satisfy the code definition of a condominium. *Kaady v. City of Cannon Beach*, 28 Or LUBA 509 (1995).

**30.4 Zoning Ordinances – Interpretation.** To determine whether a use is a motel under the local code, a local government does not err in examining the original prospectus for the use. *Kaady v. City of Cannon Beach*, 28 Or LUBA 509 (1995).

**30.4 Zoning Ordinances – Interpretation.** Where a local code requires that a second farm dwelling be shown "conclusively" to be "necessary for the operation of the commercial farm," but does not define the term necessary, it is appropriate to use the dictionary definition of the term "necessary." *Louks v. Jackson County*, 28 Or LUBA 501 (1995).

**30.4 Zoning Ordinances – Interpretation.** Where a local code requires that a second farm dwelling be shown to be "necessary," absent a definition to the contrary or contrary legislative history, the term "necessary" has the same meaning in the Goal 3 context that it has in the Goal 4 context. *Louks v. Jackson County*, 28 Or LUBA 501 (1995).

**30.4 Zoning Ordinances – Interpretation.** It is unreasonable for a local hearings officer to interpret a code provision prohibiting "unit enlargements or expansions" of existing mobile home parks unless they are "made to conform substantially with all requirements for new construction" as inherently inapplicable to any proposed alteration of a nonconforming mobile home park, because such an interpretation would make this code provision a nullity. *Tylka v. Clackamas County*, 28 Or LUBA 417 (1994).

**30.4 Zoning Ordinances – Interpretation.** Where a code standard for determining nonconforming use status requires that the use "would have been allowed" under the zoning applicable when the use became nonconforming, it is reasonable and correct to interpret the code standard to require that at the time the use became nonconforming, it complied with an applicable code provision prohibiting objectionable off-site impacts. *Spathas v. City of Portland*, 28 Or LUBA 351 (1994).

**30.4 Zoning Ordinances – Interpretation.** Where the city code established no process or procedure for city determinations of compliance with a provision prohibiting permitted uses from having objectionable off-site impacts, the city cannot interpret a code nonconforming use standard

to require that a city determination of compliance with the impacts provision was obtained *before* the use became nonconforming. *Spathas v. City of Portland*, 28 Or LUBA 351 (1994).

**30.4 Zoning Ordinances – Interpretation.** LUBA will defer to a local government's interpretation that the term "development" used in the local code does not include zone changes. *Neuman v. City of Albany*, 28 Or LUBA 337 (1994).

**30.4 Zoning Ordinances – Interpretation.** Determining whether the local code allows a proposed wastewater treatment facility as part of, or incidental to, the uses that it serves, or whether it requires the proposed wastewater treatment facility to be regulated as a separate use, requires interpretation and judgment. Therefore, the exception to LUBA's jurisdiction provided by ORS 197.015(10)(b)(A) does not apply. *Knee Deep Cattle Company v. Lane County*, 28 Or LUBA 288 (1994).

**30.4 Zoning Ordinances – Interpretation.** Where the local code provides for discretionary review of certain development applications by the planning director, and also provides a process for the planning director to refer questions concerning code interpretation to the governing body, the code does not divest the planning director of authority to interpret the code in carrying out his duties. *Knee Deep Cattle Company v. Lane County*, 28 Or LUBA 288 (1994).

**30.4 Zoning Ordinances – Interpretation.** Where the local code defines the term "feedlot" to involve animals that are prepared for shipment to "market," it is neither reasonable nor correct to interpret "market" to mean only the "final" market to which the animals are shipped. *Derry v. Douglas County*, 28 Or LUBA 212 (1994).

**30.4 Zoning Ordinances – Interpretation.** A hearings officer's interpretation of a conditional use permit for a "tourist park" as not allowing placement of mobile homes within the approved "tourist park," as that term is defined by the local code, is reasonable and correct. *Jones v. Lane County*, 28 Or LUBA 193 (1994).

**30.4 Zoning Ordinances – Interpretation.** A local government's interpretation of a code "compatibility" standard as not requiring consideration of "view impacts" is not "clearly wrong" and will be sustained by LUBA. *Mazeski v. Wasco County*, 28 Or LUBA 159 (1994).

**30.4 Zoning Ordinances – Interpretation.** A county governing body may interpret a code conditional use standard requiring that a proposed use have minimal adverse impacts compared to the impacts of development "permitted outright" as inapplicable in a zoning district that lists no outright permitted uses. *Mazeski v. Wasco County*, 28 Or LUBA 178 (1994).

**30.4 Zoning Ordinances – Interpretation.** Where local conditional use approval standards do not specifically refer to impacts on property values, but rather to compatibility with "uses" and "land use patterns" and changes in "accepted farm or forest practices" or their cost, a local governing body is within its discretion under ORS 197.829 in interpreting such standards not to require consideration of a proposed conditional use's impact on property values. *Tucker v. Douglas County*, 28 Or LUBA 134 (1994).

**30.4 Zoning Ordinances – Interpretation.** If a city council decision approving a subdivision does not explain how the city interprets relevant comprehensive plan and code provisions to allow a 40-foot street right-of-way, the decision must be remanded for the city council to interpret the local provisions in the first instance. *Woodstock Neigh. Assoc. v. City of Portland*, 28 Or LUBA 146 (1994).

**30.4 Zoning Ordinances – Interpretation.** A county governing body's interpretation that an otherwise applicable code permit standard requiring "Class I-IV soils [to] be preserved and maintained for farm use" is not applicable to land for which an exception to Statewide Planning Goal 3 (Agricultural Lands) has been adopted as part of the acknowledged county comprehensive plan, is not "clearly wrong," and is within the governing body's discretion under ORS 197.829. *Reeves v. Yamhill County*, 28 Or LUBA 123 (1994).

**30.4 Zoning Ordinances – Interpretation.** In reviewing a local government hearings officer's interpretation of a land use regulation, LUBA determines whether the interpretation is reasonable and correct. The deference to a local governing body interpretation required by ORS 197.829 does not apply to interpretations by hearings officers. *Stroupe v. Clackamas County*, 28 Or LUBA 107 (1994).

**30.4 Zoning Ordinances – Interpretation.** A county does not err by interpreting a local code provision allowing "commercial or processing activities that are in conjunction with timber and farm uses," in a rural residential zone, in the same way the Oregon Supreme Court has interpreted similar language in the exclusive farm use zoning statutes. *Stroupe v. Clackamas County*, 28 Or LUBA 107 (1994).

**30.4 Zoning Ordinances – Interpretation.** A hearings officer's reliance on a dictionary definition of "in conjunction with" without providing the dictionary definition relied upon is harmless error, where it is apparent from the decision that the hearings officer interpreted the code term to require establishment of a customer/seller or seller/customer relationship between the proposed commercial use and timber and farm uses in the community. *Stroupe v. Clackamas County*, 28 Or LUBA 107 (1994).

**30.4 Zoning Ordinances – Interpretation.** A hearings officer correctly construes a local code provision allowing "commercial or processing activities that are in conjunction with timber and farm uses" in the relevant rural area to require that a landscaping business' sales and purchases be primarily to customers and from suppliers that constitute timber or farm uses in the relevant rural area. *Stroupe v. Clackamas County*, 28 Or LUBA 107 (1994).

**30.4 Zoning Ordinances – Interpretation.** Where a particular activity is allowed as a conditional use, and is subject to criteria specifically and solely applicable to such activity, the governing body acts within its interpretive discretion under ORS 197.829 in determining such activity is not also subject to criteria generally applicable to conditional uses in the zone. *Cole v. Columbia County*, 28 Or LUBA 62 (1994).

**30.4 Zoning Ordinances – Interpretation.** Where one of the local government's critical findings depends on the scope of the term "houseboat," and the term is not defined in the local code or in

the challenged decision, the decision must be remanded for the local government to supply the needed explanation of the scope of the term. *Cole v. Columbia County*, 28 Or LUBA 62 (1994).

**30.4 Zoning Ordinances – Interpretation.** Even if a local code provision requiring that six percent of the gross area of a proposed subdivision be dedicated for open space is properly interpreted as a minimum rather than a maximum requirement, a decision requiring dedication of much more than six percent of the gross area of a proposed subdivision must be remanded so that the local government may adopt findings explaining that interpretation and showing the "rough proportionality" requirement of *Dolan v. City of Tigard* is satisfied. *Davis v. City of Bandon*, 28 Or LUBA 38 (1994).

**30.4 Zoning Ordinances – Interpretation.** A city council acts within its interpretive authority under ORS 197.829 in applying a code provision as a mandatory approval standard, notwithstanding its use of the word "should." So long as the city makes it clear that it does interpret the code provision as a mandatory approval standard, it need not explain why in its decision. *Davis v. City of Bandon*, 28 Or LUBA 38 (1994).

**30.4 Zoning Ordinances – Interpretation.** If a local government is presented with a plan or land use regulation provision that must be interpreted, and there is a reasonable interpretation that is *consistent* with the "state statute, land use goal or rule the comprehensive plan provision or land use regulation implements," that interpretation may not be rejected by the local government in favor of an interpretation that is *inconsistent* with those statutes, goals or rules. *Historical Development Advocates v. City of Portland*, 27 Or LUBA 617 (1994).

**30.4 Zoning Ordinances – Interpretation.** Where nothing in its comprehensive plan or code requires that a particular level of service be maintained at affected street intersections at all times, the local government's interpretation of its plan and code as allowing short traffic system failures for infrequent, large, special events is not clearly wrong, and LUBA will defer to it. *Heine v. City of Portland*, 27 Or LUBA 571 (1994).

**30.4 Zoning Ordinances – Interpretation.** Where ORS 215.416(3) and (11) require a county to provide an opportunity for a local appeal of a design review decision made by the planning director without a hearing, the county cannot interpret a code provision requiring that "final design review approval" has been granted to be satisfied when a local appeal of the planning director's design review approval decision is pending. *McKenzie v. Multnomah County*, 27 Or LUBA 523 (1994).

**30.4 Zoning Ordinances – Interpretation.** Where the code provides a conditional use permit does not expire if "substantial construction" has occurred, and that "substantial construction" means 10 percent of the total project value has been expended for construction authorized under a development permit, the local government erred by counting expenditures for a culvert and fill creek crossing that were made when the permits issued authorized only a bridge crossing. *McKenzie v. Multnomah County*, 27 Or LUBA 523 (1994).

**30.4 Zoning Ordinances – Interpretation.** Where a local government's interpretation of the term "motel," as defined by local ordinance, to include a particular development is not contrary to the

express words, policy or purpose of that ordinance, LUBA will defer to the local government's interpretation. *Kaady v. City of Cannon Beach*, 27 Or LUBA 464 (1994).

**30.4 Zoning Ordinances – Interpretation.** ORS 197.307(5)(d) expresses an alternative standard that is satisfied if the exterior materials of a manufactured home *either* (1) are similar those commonly used on dwellings in the community, *or* (2) are comparable to those used on surrounding dwellings. Because local governments cannot adopt standards more restrictive than those set out in ORS 197.307(5), a city cannot interpret a local regulation implementing ORS 197.307(5)(d) as allowing it to require, in a particular instance, that a manufactured home *must* satisfy the second alternative. *Brewster v. City of Keizer*, 27 Or LUBA 432 (1994).

**30.4 Zoning Ordinances – Interpretation.** Where the local code's definition of "northern lot line" is ambiguous and recognizes there can be more than one northern lot line on any given piece of property, and the challenged decision determining compliance with solar access setback requirements simply contains a conclusory statement that a flag lot has only one northern lot line, LUBA will remand the decision for adoption of interpretive findings. *Sullivan v. City of Ashland*, 27 Or LUBA 411 (1994).

**30.4 Zoning Ordinances – Interpretation.** A city correctly interprets code provisions for formal interpretations of its zoning code as allowing it to interpret a chapter not included in those identified in the "short title" of the zoning code, where the disputed chapter is substantively part of the zoning code and the record shows omission of the chapter was not intended. *Salem-Keizer School Dist. 24-J v. City of Salem*, 27 Or LUBA 351 (1994).

**30.4 Zoning Ordinances – Interpretation.** Where the applicability of local comprehensive plan or land use regulation provisions is ambiguous, the local government is entitled to considerable deference in determining their applicability. *Salem-Keizer School Dist. 24-J v. City of Salem*, 27 Or LUBA 351 (1994).

**30.4 Zoning Ordinances – Interpretation.** A local government interpretation of its comprehensive plan and zoning code, that approval of a school at a particular site requires compliance with a plan policy concerning schools, is not so wrong as to be reversible under ORS 197.829, notwithstanding that the relevant zoning district lists schools as a permitted use at the subject site. *Salem-Keizer School Dist. 24-J v. City of Salem*, 27 Or LUBA 351 (1994).

**30.4 Zoning Ordinances – Interpretation.** It is reasonable to expect that a local government, in applying subjective comprehensive plan and code provisions, will include interpretive findings in its final decision. The parties to such local proceedings should know to include arguments concerning proper interpretation of such provisions in their presentations. *Salem-Keizer School Dist. 24-J v. City of Salem*, 27 Or LUBA 351 (1994).

**30.4 Zoning Ordinances – Interpretation.** Where a local code provision does not explicitly state the requirements listed thereunder for a complete development application are "jurisdictional," the local government's interpretation of the code provision as imposing procedural rather than jurisdictional requirements is not inconsistent with the express words, purpose or policy of the

code and, therefore, must be affirmed. *BCT Partnership v. City of Portland*, 27 Or LUBA 278 (1994).

**30.4 Zoning Ordinances – Interpretation.** A local government acts within the interpretive discretion afforded by ORS 197.829 in finding a code requirement for a statement of the nature of the applicant's interest in the subject property is satisfied where the application states the applicant is the "future property owner" and there is evidence in the record that the applicant has acquired or will acquire the property. *BCT Partnership v. City of Portland*, 27 Or LUBA 278 (1994).

**30.4 Zoning Ordinances – Interpretation.** Where consistency with the city's "short term parking strategy" is a code requirement, a city cannot determine its "short term parking strategy" is something that *underlies* various provisions of its plan and code and cannot announce that strategy for the first time in a decision on a permit application. This violates the requirement of ORS 227.173(1) that permit standards and criteria *themselves* must be set out in the city's development ordinances. *BCT Partnership v. City of Portland*, 27 Or LUBA 278 (1994).

**30.4 Zoning Ordinances – Interpretation.** Where a local government relies on conditions to ensure that use of an approved parking structure is limited to "short term parking," as required by its code, any interpretations of code provisions necessary to support its determination that the code limitation to "short term parking" is satisfied must be set out in the challenged decision or supporting findings, not in the local government's brief. *BCT Partnership v. City of Portland*, 27 Or LUBA 278 (1994).

**30.4 Zoning Ordinances – Interpretation.** Although the substance of particular objections by neighbors may lead to a conclusion that one or more local code adjustment criteria are violated, the *fact* that one or more neighbors object has no legal significance. *Edwards v. City of Portland*, 27 Or LUBA 262 (1994).

**30.4 Zoning Ordinances – Interpretation.** Petitioners' allegations that an applicant cannot simultaneously seek the benefit of two separate local code provisions allowing deviations from code height and setback requirements provide no basis for reversal or remand, where nothing in the code precludes seeking approval under both provisions. *Edwards v. City of Portland*, 27 Or LUBA 262 (1994).

**30.4 Zoning Ordinances – Interpretation.** A local government is within its interpretive discretion in counting an access driveway separated by a median into two one-way driveways as two access points, for purposes of satisfying the number of access points required by the local code. *Davenport v. City of Tigard*, 27 Or LUBA 243 (1994).

**30.4 Zoning Ordinances – Interpretation.** That other inapplicable sections of the local code permit one-way driveways with a minimum 15-foot pavement width provides no basis for allowing 15-foot wide paved driveways where the applicable code section unambiguously requires a 24-foot pavement width. Such an interpretation is clearly wrong, and exceeds the local government's interpretive discretion. *Davenport v. City of Tigard*, 27 Or LUBA 243 (1994).

**30.4 Zoning Ordinances – Interpretation.** Under ORS 197.829(4), if a comprehensive plan provision or land use regulation is clearly designed to implement a statewide planning goal or goals, a local government may not interpret such a plan provision or land use regulation in a manner inconsistent with the goals it implements. *DLCD v. City of Donald*, 27 Or LUBA 208 (1994).

**30.4 Zoning Ordinances – Interpretation.** Where a Transitional Timber zone provides that uses of land "not specifically mentioned" in that zone are prohibited, and the principal uses permitted outright in the zone are resource and resource-related uses, not commercial uses, LUBA will defer to the local government's interpretation that the zone does not allow parking, storage and maintenance of a commercial truck. *Watson v. Clackamas County*, 27 Or LUBA 164 (1994).

**30.4 Zoning Ordinances – Interpretation.** Where a code provision requires that effects on an area's "appearance and function" be determined based specifically on factors set out in that provision, a local government may interpret the code provision to be satisfied by a determination based solely on those factors, even if the code also provides that words have their "normal dictionary meaning," and the dictionary definitions of "appearance" and "function" suggest additional factors are relevant. *Wilson Park Neigh. Assoc. v. City of Portland*, 27 Or LUBA 106 (1994).

**30.4 Zoning Ordinances – Interpretation.** Where the local code provides that nonconforming use rights are lost if the site of a nonconforming use is "vacant" for two continuous years, and also provides that words used in the code have their normal dictionary meaning, the local government may interpret "vacant" to mean "free from activity" consistent with the nonconforming use rights, but cannot embellish that definition by adding a requirement for the absence of "a bona fide effort to provide goods and services for profit." *Rhine v. City of Portland*, 27 Or LUBA 86 (1994).

**30.4 Zoning Ordinances – Interpretation.** LUBA will defer to local government decisions giving different interpretations to the same language appearing in different sections of its code, where there are related code provisions that provide some justification for the different construction of such identical code language. *Zippel v. Josephine County*, 27 Or LUBA 11 (1994).

**30.4 Zoning Ordinances – Interpretation.** LUBA is not required to remand a decision for a local government interpretation of its code, where the interpretive issue raised by petitioner is so untenable that LUBA can reject it without an authoritative determination by the local decision maker. *Towry v. City of Lincoln City*, 26 Or LUBA 554 (1994).

**30.4 Zoning Ordinances – Interpretation.** A local government interpretation of its sign ordinance that regardless of whether a sign is an awning, fascia or other sign type, it is subject to certain measurement requirements, is not contrary to the express words, policy or context of the ordinance, and LUBA will defer to it. *Heath Northwest, Inc. v. City of Portland*, 26 Or LUBA 535 (1994).

**30.4 Zoning Ordinances – Interpretation.** 1993 Oregon Laws, chapter 792, section 43, codifies *Clark v. Jackson County*, 313 Or 508, 836 P2d 710 (1992), with the exception that LUBA is not required to defer to a local government's interpretation of its regulations if that interpretation is

contrary to a state statute, statewide planning goal or administrative rule which the regulations implement. *Testa v. Clackamas County*, 26 Or LUBA 357 (1994).

**30.4 Zoning Ordinances – Interpretation.** A local government's interpretation of its code provisions on farm dwellings is within the interpretive discretion afforded local governments by *Clark v. Jackson County* and 1993 Oregon Laws, chapter 792, section 43, so long as its interpretation does not provide less protection to EFU-zoned land than what ORS 215.283(1)(f) and OAR 660-05-030(4) provide. *Testa v. Clackamas County*, 26 Or LUBA 357 (1994).

**30.4 Zoning Ordinances – Interpretation.** Under Oregon Laws 1993, chapter 792, section 43(4), LUBA is not required to affirm a local government's interpretation of its own code provision if that interpretation is "contrary to a state statute, land use goal or [administrative] rule that the [code provision] implements." *Pacific Rivers Council, Inc. v. Lane County*, 26 Or LUBA 323 (1993).

**30.4 Zoning Ordinances – Interpretation.** Where the challenged decision does not identify the characteristics of a proposed "soil remediation" use, or compare those characteristics with those of the listed, permitted uses in the applicable zone, the findings are inadequate to demonstrate the proposed "soil remediation" use is similar to the listed, permitted uses in the applicable zone. *Murphy Citizens Advisory Comm. v. Josephine County*, 26 Or LUBA 181 (1993).

**30.4 Zoning Ordinances – Interpretation.** It is impermissible for a local government to amend a land use ordinance or comprehensive plan provision in the guise of interpreting either. *Murphy Citizens Advisory Comm. v. Josephine County*, 26 Or LUBA 181 (1993).

**30.4 Zoning Ordinances – Interpretation.** Where the local code defines an accessory use or structure as one which is subordinate to and serves a principal structure or principal use, a local government is within its interpretive discretion under *Clark v. Jackson County*, 313 Or 508, 836 P2d 710 (1992), to require that the principal use or structure exist before an accessory structure or use may be approved. *McPeek v. Coos County*, 26 Or LUBA 165 (1993).

**30.4 Zoning Ordinances – Interpretation.** Where petitioners raised an issue below concerning whether a particular code provision is an applicable approval standard, and the challenged decision contains no interpretation explaining that code provision is either inapplicable or satisfied, LUBA must remand the challenged decision. *Hixson v. Josephine County*, 26 Or LUBA 159 (1993).

**30.4 Zoning Ordinances – Interpretation.** A local government cannot simply conclude its failure to list shopping centers as a permitted or conditional use in any existing zoning district creates an ambiguity and, on that basis, determine it will allow shopping centers as a conditional use in a particular zoning district. Such an action constitutes improperly amending the zoning ordinance in the guise of interpreting it. *Loud v. City of Cottage Grove*, 26 Or LUBA 152 (1993).

**30.4 Zoning Ordinances – Interpretation.** A local government decision that a shopping center may be allowed in a particular zone under code "similar use" provisions must (1) express an interpretation of the "similar use" provisions that is adequate for LUBA review, (2) actually apply the interpretation adopted, and (3) explain how the decision is consistent with that interpretation. *Loud v. City of Cottage Grove*, 26 Or LUBA 152 (1993).

**30.4 Zoning Ordinances – Interpretation.** Where petitioners contend certain information required by the local code "prior to the approval of subdivisions" must be in the record at the time of tentative plat approval, and the challenged tentative plat approval decision does not interpret the local code with regard to *at what stage* of the subdivision approval process the required information must be submitted to the county, LUBA must remand the decision for the local government to interpret its code in the first instance. *Cummings v. Tillamook County*, 26 OR LUBA 139 (1993).

**30.4 Zoning Ordinances – Interpretation.** Where allowing a proposed commercial use in an industrial zone requires a finding that the proposed use is incompatible with the existing commercial area, the relevant inquiry is whether the proposed use is compatible with development in the existing commercial area, not whether it is consistent with the commercial zone or uses allowed in that zone. *O'Neal v. Deschutes County*, 26 Or LUBA 126 (1993).

**30.4 Zoning Ordinances – Interpretation.** Where a local code imposes limitations on "shopping complexes," a local government approving a commercial use may not simply conclude that that those limitations do not apply, where the issue of the applicability of the shopping complex limitations is raised during local proceedings. *O'Neal v. Deschutes County*, 26 Or LUBA 126 (1993).

**30.4 Zoning Ordinances – Interpretation.** A local government may interpret a local subdivision approval standard requiring that each lot have "an adequate quantity and quality of water to support the proposed use of the land" as not requiring consideration of the impacts of providing water to the subdivision lots on the water supplies of adjacent properties. *Perry v. Yamhill County*, 26 Or LUBA 73 (1993).

**30.4 Zoning Ordinances – Interpretation.** Local code provisions which simply allow increased density for controlled income and rent housing do not eliminate the requirement that such housing comply with other requirements of the local code. *Langford v. City of Eugene*, 26 Or LUBA 60 (1993).

**30.4 Zoning Ordinances – Interpretation.** Where LUBA remands a local government decision for an interpretation of ambiguous code provisions, and no appeal is taken from LUBA's determination concerning the code's ambiguity, petitioner is barred from arguing before LUBA that the disputed code provision is unambiguous, in an appeal from the local decision on remand. *McGowan v. City of Eugene*, 26 Or LUBA 9 (1993).

**30.4 Zoning Ordinances – Interpretation.** LUBA will defer to a local government's interpretation of a code requirement, that a PUD tentative plan covering a portion of property under single ownership be accompanied by a statement proving the entire property can be developed and used in accord with code standards, as requiring that the PUD not render the remainder of the property undevelopable. *McGowan v. City of Eugene*, 26 Or LUBA 9 (1993).

**30.4 Zoning Ordinances – Interpretation.** A local government may interpret its code requirement for a "description" of the subject property showing "access" not to require a final legal

determination concerning the existence of access adequate to serve the proposed use, where the subject property is served by a disputed easement. Only the circuit court can provide a final legal determination concerning the nature and scope of a disputed easement. *Mohler v. Josephine County*, 26 Or LUBA 1 (1993).

**30.4 Zoning Ordinances – Interpretation.** That a proposed paintball game park could be allowed as a "private recreation use" in a commercial zone does not mean it cannot be allowed as a "park" in an EFU zone. *Spiering v. Yamhill County*, 25 Or LUBA 695 (1993).

**30.4 Zoning Ordinances – Interpretation.** A local government's interpretation of "park," as used in a provision of its zoning ordinance, need not be consistent with a definition of "park areas" in a separate ordinance establishing administrative regulations for the use of parks owned or controlled by the local government. *Spiering v. Yamhill County*, 25 Or LUBA 695 (1993).

**30.4 Zoning Ordinances – Interpretation.** Where a local code requires certain nonresidential conditional uses in an EFU zone to be "a principal use of the property," it is within a local government's discretion to interpret this phrase to apply only to the portion of the property on which the conditional use will be located, and to require that the proposed use be more than a strictly personal use of the property owner. *Spiering v. Yamhill County*, 25 Or LUBA 695 (1993).

**30.4 Zoning Ordinances – Interpretation.** Where a church is proposed to be located in an EFU zone, and a county code provision requires that there be "no other feasible location" for the proposed use that satisfies a code standard requiring that certain nonfarm uses in the EFU zone be located on land "generally unsuitable" for farm use, the county may interpret the code provision to require that there be no other feasible location for the propose church *in the EFU zone* that is generally unsuitable for agricultural production. *Simmons v. Marion County*, 25 Or LUBA 647 (1993).

**30.4 Zoning Ordinances – Interpretation.** Where a county code provision requires that there be no other "feasible location" for a proposed church, and the challenged decision establishes that there is a present need for the proposed church, the county is within its discretion to interpret "feasible location" not to include sites that are not currently available for sale. *Simmons v. Marion County*, 25 Or LUBA 647 (1993).

**30.4 Zoning Ordinances – Interpretation.** Notwithstanding that LUBA may prefer a different interpretation of local code provisions, where the local decision maker's interpretation of the local code is not internally inconsistent and not clearly wrong, LUBA will defer to it. *DLCD v. Crook County*, 25 Or LUBA 625 (1993).

**30.4 Zoning Ordinances – Interpretation.** Where the challenged decision contains an interpretation of the local code that a particular standard is inapplicable to the proposed development, and that interpretation is not clearly contrary to the express words, policy or context of the local code, LUBA will defer to that interpretation. *Choban v. Washington County*, 25 Or LUBA 572 (1993).

**30.4 Zoning Ordinances – Interpretation.** An interpretation of local code provisions, that the local appeal time runs from the date the decision is mailed to parties, is not clearly wrong, and LUBA will defer to it. *Choban v. Washington County*, 25 Or LUBA 572 (1993).

**30.4 Zoning Ordinances – Interpretation.** Where a code approval standard for home occupations in a resource zone requires that a home occupation be "situated upon generally unsuitable land for the production of farm and forest products," the local government may interpret the standard to require that the entire property on which the home occupation is proposed to be located be "generally unsuitable." *Smith v. Clackamas County*, 25 Or LUBA 568 (1993).

**30.4 Zoning Ordinances – Interpretation.** Where the challenged decision includes contradictory findings regarding compliance with an applicable local code approval standard, LUBA cannot interpret the standard itself, but rather must remand the decision to the local government to interpret the standard in the first instance. *Larson v. Wallowa County*, 25 Or LUBA 537 (1993).

**30.4 Zoning Ordinances – Interpretation.** Where the local code states that "failure to comply with this subsection shall be a jurisdictional defect," and a local appellant fails to establish compliance with that subsection, the local government is free to interpret its code to require dismissal of the local appeal, and LUBA will defer to that interpretation. *DLCD v. Wasco County*, 25 Or LUBA 529 (1993).

**30.4 Zoning Ordinances – Interpretation.** Where a local code does not either specifically prohibit or allow the filing of appeals and appeal fees by facsimile, it is not "clearly wrong" for the local government to determine that a local appeal is not properly filed under the local code where both appeal fees and the appeal document itself are filed by facsimile. *DLCD v. Wasco County*, 25 Or LUBA 529 (1993).

**30.4 Zoning Ordinances – Interpretation.** A county may reasonably interpret the term "existing commercial farm enterprises" in a code provision establishing a minimum lot size standard for farm dwellings, as not including property that is not presently operated as part of a commercial farm operation. *Giesy v. Benton County*, 25 Or LUBA 493 (1993).

**30.4 Zoning Ordinances – Interpretation.** Where the county code requires the "farm unit" on which a farm dwelling is proposed to be located to be consistent with the size of existing commercial farm enterprises in the area, and also recognizes that commercial farms may be composed of several separate management units, it is reasonable for the county to interpret "farm unit" to include all land that is part of a farm operation, including land in different locations. *Giesy v. Benton County*, 25 Or LUBA 493 (1993).

**30.4 Zoning Ordinances – Interpretation.** Where a farm dwelling approval standard in a local code requires a county to consider the median size of commercial farms in a specific area, as reported by certain government agencies or "other similar source," it is within the county's discretion to interpret the "other similar source" provision to allow it to consider relevant evidence from the county planning department, county assessor's office or other reliable sources. *Giesy v. Benton County*, 25 Or LUBA 493 (1993).

**30.4 Zoning Ordinances – Interpretation.** A local government determination that occasionally staying on the subject property in a travel trailer is not residential use of the property for purposes of determining whether a nonconforming residential use has been "discontinued," is not a clearly wrong interpretation of the code, and LUBA will defer to it. *Cemper v. Clackamas County*, 25 Or LUBA 486 (1993).

**30.4 Zoning Ordinances – Interpretation.** Where a code chapter prohibiting vegetation disturbance in certain areas allows activities authorized by a land use decision made before the effective date of the chapter, the local government may interpret the code to allow activities authorized under a newly amended PUD development plan, if those *same* activities where authorized under an original PUD development plan approved prior to the effective date of the code chapter. *Gage v. City of Portland*, 25 Or LUBA 449 (1993).

**30.4 Zoning Ordinances – Interpretation.** Where a local code requires that home occupations occupy no more than 1000 square feet of an accessory building, an interpretation of that provision as excluding portions of the accessory building used to access the part of the accessory building used for the home occupation makes full use of the local government's interpretative discretion. *Weuster v. Clackamas County*, 25 Or LUBA 425 (1993).

**30.4 Zoning Ordinances – Interpretation.** Where the local code defines "traveler's accommodations" to include an establishment rented to travelers for a fee, on a daily or weekly basis, and the local government interprets that code definition as not excluding cabins that are occupied by owners for less than 36 days per year, such an interpretation is not clearly contrary to the local code, and LUBA will defer to it. *Friends of the Metolius v. Jefferson County*, 25 Or LUBA 411 (1993).

**30.4 Zoning Ordinances – Interpretation.** A permit approval condition that amendments to the approved master plan must be approved by the planning department is not inconsistent with, and does not eliminate, the right established by the local code to appeal a decision by the planning director on such an administrative action to the planning commission. *Frankton Neigh. Assoc. v. Hood River County*, 25 Or LUBA 386 (1993).

**30.4 Zoning Ordinances – Interpretation.** A local code provision requiring that "consideration * * * be given to [certain specified] factors" does not establish mandatory approval standards for local government decisions, but rather merely lists "factors" which the local government must consider. *Frankton Neigh. Assoc. v. Hood River County*, 25 Or LUBA 386 (1993).

**30.4 Zoning Ordinances – Interpretation.** Where the local code expresses an intent not to duplicate state mobile home park approval standards, LUBA will defer to the local government's interpretation that the state approval standard in ORS 446.100(1)(a) is not part of the "applicable Oregon Law," which the code requires to be considered in making permit decisions. *Frankton Neigh. Assoc. v. Hood River County*, 25 Or LUBA 386 (1993).

**30.4 Zoning Ordinances – Interpretation.** That a local government may have, in the past, erroneously interpreted its ordinances as not requiring a public hearing, does not require that the local government perpetuate that error. *McInnis v. City of Portland*, 25 Or LUBA 376 (1993).

**30.4 Zoning Ordinances – Interpretation.** Where a code provision governing notice of decisions on a certain type of land use action does not expressly provide it applies only to a decision by the planning director, LUBA will defer to a local government's interpretation that the code provision also applies to a decision by the hearings officer on appeal from a decision by the planning director. *Reusser v. Washington County*, 25 Or LUBA 252 (1993).

**30.4 Zoning Ordinances – Interpretation.** Where one code provision requires a local government's notice of decision to identify the local appeal fee, and another provision states that failure to pay the proper local appeal fee prior to expiration of the period for filing an appeal constitutes a "jurisdictional" defect, the local government may interpret the two code provisions together to mean that the period for filing an appeal does not begin to run until the required notice of decision, identifying the proper appeal fee, is provided to the appealing party. *Reusser v. Washington County*, 25 Or LUBA 252 (1993).

**30.4 Zoning Ordinances – Interpretation.** Where a local code allows approval of a rural planned development (RPD) "in conjunction with" a land division, and establishes comprehensive standards for RPDs, including standards for lot line adjustments in an approved RPD, the local government's interpretation of a code provision allowing revisions to an approved land division as giving it authority to approve lot line adjustments in an approved RPD which are not otherwise allowable under the RPD provisions, is clearly wrong. *Reusser v. Washington County*, 25 Or LUBA 252 (1993).

**30.4 Zoning Ordinances – Interpretation.** Local code requirements that floodplain alterations for a driveway be in the public interest and meet some public need or public convenience are satisfied by determinations that (1) there is a public need for, and public interest in, the provision of housing; (2) the subject property is zoned for residential use; and (3) there is a need for, and a public interest in, the provision of access to the property to enable residential use. *Clarke v. City of Hillsboro*, 25 Or LUBA 195 (1993).

**30.4 Zoning Ordinances – Interpretation.** Where the local code requires that the subject property be reasonably suited for the "use proposed," a local government does not err by determining the suitability of the entire parcel for the proposed use and not just the site of the proposed residence. *Clarke v. City of Hillsboro*, 25 Or LUBA 195 (1993).

**30.4 Zoning Ordinances – Interpretation.** LUBA is limited to considering the interpretations of ambiguous code language that are adopted by the decision-making body and may not consider interpretations that are not adopted by the decision maker, even if the offered interpretation is reasonable. *Miller v. Washington County*, 25 Or LUBA 169 (1993).

**30.4 Zoning Ordinances – Interpretation.** A local government interpretation of a local code provision which prohibits direct access to major collectors by commercial, industrial and institutional uses with more than 150 feet of frontage as not applying to proposed residential subdivisions with more than 150 feet of frontage is reasonable. *Miller v. Washington County*, 25 Or LUBA 169 (1993).

**30.4 Zoning Ordinances – Interpretation.** Under a local code standard requiring that arterial streets not "penetrate identifiable neighborhoods," LUBA will defer to the local government's determination of what constitutes an identifiable neighborhood, unless the local government's determination is clearly wrong. *Mannenbach v. City of Dallas*, 25 Or LUBA 136 (1993).

**30.4 Zoning Ordinances – Interpretation.** Where a local government determines a use does not fit neatly into any of the available definitional categories in its code, but provides a reasonable explanation for categorizing the use according to its primary use, LUBA will defer to that interpretation. *Glisan Street Assoc., Ltd. v. City of Portland*, 25 Or LUBA 116 (1993).

**30.4 Zoning Ordinances – Interpretation.** Where a local government correctly determines that a parking lot is a nonconforming use, and was not automatically made an approved conditional use under applicable code provisions, it commits no error in failing to apply plan and code provisions that would apply to expansion of the parking lot if it were correctly viewed as a conditional use. *Glisan Street Assoc., Ltd. v. City of Portland*, 25 Or LUBA 116 (1993).

**30.4 Zoning Ordinances – Interpretation.** Where the local code includes an exception to the term "wetland" for wetlands created by "human activity as part of an approved development project," and there is no dispute that the subject wetland was created with the knowledge and consent of the local government, it is clearly wrong for the local government to fail to consider whether the wetland is within the local code exception. *Annett v. Clackamas County*, 25 Or LUBA 111 (1993).

**30.4 Zoning Ordinances – Interpretation.** A local government's interpretation that a local code standard requiring a determination concerning the adequacy of schools "existing or planned for the area" is satisfied by findings that there is unspent money in a school district's budget, is an interpretation of the local code that is "clearly wrong." *Burghardt v. City of Molalla*, 25 Or LUBA 43 (1993).

**30.4 Zoning Ordinances – Interpretation.** A local government may interpret the term "processing of aggregate," as used in an industrial zoning district of its code, to include asphalt plants, even though the code language was adopted at a time when LUBA had interpreted similar language in the EFU statute not to include asphalt plants. *O'Mara v. Douglas County*, 25 Or LUBA 25 (1993).

**30.4 Zoning Ordinances – Interpretation.** A local government is within its interpretive discretion in interpreting the term "development" as including farming, where the code defines the term broadly and includes a nonexclusive list of examples of development that includes "site alteration such as * * * grading * * * or clearing." *Trumper v. Washington County*, 24 Or LUBA 552 (1993).

**30.4 Zoning Ordinances – Interpretation.** Where a local government interprets its own enactments in a way that is inconsistent with the express terms of a local provision, and there is at least one plausible interpretation of the disputed provision that is consistent with its express terms, LUBA will not defer to the local government's interpretation. *McGowan v. City of Eugene*, 24 Or LUBA 540 (1993).

**30.4 Zoning Ordinances – Interpretation.** A requirement in a local code that development be "consistent" with comprehensive plan policies and standards, is a general requirement that does not transform otherwise nonmandatory plan standards into approval standards. *McGowan v. City of Eugene*, 24 Or LUBA 540 (1993).

**30.4 Zoning Ordinances – Interpretation.** Local ordinances governing when a local decision becomes final are effective only to the extent they do not conflict with state statutes. *A Storage Place v. City of Tualatin*, 24 Or LUBA 637 (1993).

**30.4 Zoning Ordinances – Interpretation.** Where LUBA must determine whether an ambiguous code provision (*i.e.*, one that is capable of more than one sustainable interpretation) is applicable to a challenged decision, and the challenged decision does not contain a reviewable interpretation of that provision, LUBA must remand the decision for the local government to interpret the provision in the first instance. *Terra v. City of Newport*, 24 Or LUBA 438 (1993).

**30.4 Zoning Ordinances – Interpretation.** Where petitioners contend a local government erred in failing to apply a code provision to the challenged decision, and the decision contains no interpretation of that code provision, but the code language unambiguously establishes that the provision in question is not applicable to the challenged decision, LUBA is not required to remand the decision so the local government can interpret its code in the first instance. *Terra v. City of Newport*, 24 Or LUBA 438 (1993).

**30.4 Zoning Ordinances – Interpretation.** Where under certain provisions of a local enactment, consideration of the geologic stability of the subject site would be relevant to the conditional use permit approval process, but other code provisions create a separate geologic hazard review process that may be initiated at any time prior to or in conjunction with filing an application for *any* required local permit, LUBA will defer to the local government's interpretation that it is not required to address geologic stability as part of the conditional use permit process. *Terra v. City of Newport*, 24 Or LUBA 438 (1993).

**30.4 Zoning Ordinances – Interpretation.** Where a local government determines an application for a home occupation on a parcel adjoining another parcel on which an earlier application for the same home occupation was denied, is an application for a "substantially similar" use, LUBA will defer to that interpretation of the local code requirement that an application may not be "substantially similar" to a previously denied application. *Roozenboom v. Clackamas County*, 24 Or LUBA 433 (1993).

**30.4 Zoning Ordinances – Interpretation.** Where a code provision is capable of more than one rational interpretation, and the code provision was adopted to implement an LCDC administrative rule, consideration of the context and purpose of the administrative rule is relevant in determining the meaning of the code provision. *Heceta Water District v. Lane County*, 24 Or LUBA 402 (1993).

**30.4 Zoning Ordinances – Interpretation.** Where a county code does not allow new dwellings as a permitted use in a particular zone, but allows "maintenance, repair or replacement of existing

dwellings" as a permitted use in that zone, lawfully established existing dwellings are not nonconforming uses in that zone. *Heceta Water District v. Lane County*, 24 Or LUBA 402 (1993).

**30.4 Zoning Ordinances – Interpretation.** LUBA may not interpret a local code in the first instance, but rather must review a local government's interpretation of its code. However, a local government interpretation of its code must be adequate for LUBA's review and may not consist of a mere conclusory statement. *DLCD v. Crook County*, 24 Or LUBA 393 (1993).

**30.4 Zoning Ordinances – Interpretation.** In the absence of a statutory policy pertaining to forestlands that, like the statutory policy concerning EFU land, requires the preservation of forestland in large blocks, LUBA cannot require that a local government interpret and apply its nonforest use "generally unsuitable" land approval standard in the same manner as the similarly worded statutory standard pertaining to nonfarm uses on EFU land. *DLCD v. Coos County*, 24 Or LUBA 349 (1992).

**30.4 Zoning Ordinances – Interpretation.** Where a local code requires a proposed nonforest dwelling site to be on land generally unsuitable for forest uses, that standard can be interpreted to mean either that the proposed nonforest dwelling site itself, or that the entire forest parcel, must be generally unsuitable for forest uses. LUBA will defer to the local government's choice between those permissible interpretations. *DLCD v. Coos County*, 24 Or LUBA 349 (1992).

**30.4 Zoning Ordinances – Interpretation.** LUBA is required to defer to a local government's interpretation of its zoning ordinance, so long as the proffered interpretation is not "clearly contrary to the enacted language," or "inconsistent with express language of the ordinance or its apparent purpose or policy." *Tylka v. Clackamas County*, 24 Or LUBA 296 (1992).

**30.4 Zoning Ordinances – Interpretation.** Where a local code identifies RV camping facilities as one type of service recreational facility, and certain zones specifically list RV camping facilities as a conditional use, whereas other zones list only service recreational facilities in general, the other zones simply allow a broader range of service recreational facilities, including RV camping facilities. *Tylka v. Clackamas County*, 24 Or LUBA 296 (1992).

**30.4 Zoning Ordinances – Interpretation.** The code provision that was in effect when the application for a variance was filed, and which states a variance "shall become void after the expiration of one (1) year if no substantial construction has taken place," must be interpreted and applied when the local government determines whether a previously approved variance remains valid. *Todd v. Columbia County*, 24 Or LUBA 289 (1992).

**30.4 Zoning Ordinances – Interpretation.** Where a local code provision states that tree protection is a proper Justification for approval of a proposed setback reduction, the local government's interpretation that the provision allows it to approve a setback reduction to protect a particular tree, even though the setback reduction will result in the destruction of another tree, is not clearly contrary to the express terms of the code and LUBA will defer to the interpretation. *Barker v. City of Cannon Beach*, 24 Or LUBA 221 (1992).

**30.4 Zoning Ordinances – Interpretation.** Where a local code requires that one of several considerations must be "achieved" to approve a setback reduction request, and there are adequate findings that one of those considerations is achieved, it provides no basis for reversal or remand that other considerations may not also be achieved. *Barker v. City of Cannon Beach*, 24 Or LUBA 221 (1992).

**30.4 Zoning Ordinances – Interpretation.** Where abutting property is already developed and there is no pending development application for abutting property, a local code requirement that a proposed setback reduction not substantially reduce the privacy "which is or will be enjoyed" by abutting property owners is satisfied by an analysis of the current uses, activities and characteristics of developed abutting property. *Barker v. City of Cannon Beach*, 24 Or LUBA 221 (1992).

**30.4 Zoning Ordinances – Interpretation.** Where a local code requires that a stream corridor and buffer zone be established prior to development of property, once the corridor and buffer zone are established by the local government as part of a minor partition decision, it is unnecessary for the local government to reexamine those boundaries in order to issue building and tree cutting permits for parcels created by the partition. *Forest Highlands Neigh. Assoc. v. City of Lake Oswego*, 24 Or LUBA 215 (1992).

**30.4 Zoning Ordinances – Interpretation.** Where a parcel was created by deed, at a time when the local government interpreted its partitioning regulations to be inapplicable to parcels created in that manner, the local government may subsequently determine that a permit application complies with a code requirement that a proposed use be on a "parcel," without reexamining the applicability of its partitioning regulations when the parcel was created. *McKay Creek Valley Assoc. v. Washington County*, 24 Or LUBA 187 (1992).

**30.4 Zoning Ordinances – Interpretation.** LUBA will defer to a local government's interpretation of its code so long as the proffered interpretation is not "clearly contrary to the enacted language," or "inconsistent with express language of the ordinance or its apparent purpose or policy." An interpretation of a local code provision to require that in order to be recognized as separately developable, a parcel must have been in separate ownership on a particular date, is not "clearly contrary" to the terms of, or "inconsistent with the express language" or "apparent purpose or policy" of, the code provision. *Kishpaugh v. Clackamas County*, 24 Or LUBA 164 (1992).

**30.4 Zoning Ordinances – Interpretation.** Where the local code provides that a conditional use permit expires one year after it is approved, unless construction occurs demonstrating the CUP has been "used," and where the code also prohibits the local government from issuing building or other permits required for construction until appeals have been "completed," the running of the one year period for "using" a conditional use permit is tolled during those periods of time when a building or other permit necessary to "use" the conditional use permit cannot properly be issued due to an appeal. *Weeks v. City of Tillamook*, 24 Or LUBA 155 (1992).

**30.4 Zoning Ordinances – Interpretation.** Where the local code provides that a land use permit "shall be valid for * * * one year after the date of approval," it is not inconsistent with the language, purpose or policy of the code to interpret the one-year period during which a permit remains valid

to exclude time when the permittee is prevented from carrying out the permit due to a stop work order issued by the local government. *Schob v. Deschutes County*, 24 Or LUBA 147 (1992).

**30.4 Zoning Ordinances – Interpretation.** In applying a zone change criterion requiring that there be an error in "the zoning adopted for the area," the appropriate focus is on the time and circumstances under which the existing zoning of the area was applied. *Recht v. City of Depoe Bay*, 24 Or LUBA 129 (1992).

**30.4 Zoning Ordinances – Interpretation.** That different zoning may provide additional flexibility in developing property provides no basis for finding there was an error in applying the existing zoning to the property. *Recht v. City of Depoe Bay*, 24 Or LUBA 129 (1992).

**30.4 Zoning Ordinances – Interpretation.** Where a local government interprets a code requirement that all functions associated with a proposed use take place "within the building" proposed to house the use to be satisfied, where a covered play area will be part of the total "floor area" of such building, its interpretation of the code is not inconsistent with the code's express language, purpose or policy and, therefore, must be affirmed. *Wilson Park Neigh. Assoc. v. City of Portland*, 24 Or LUBA 98 (1992).

**30.4 Zoning Ordinances – Interpretation.** In the absence of a connection between a local code requirement that a "letter of intent" to share tower space be recorded and another code requirement concerning "substantial construction," the failure to record a "letter of intent" does not mean that construction actually completed pursuant to building permits may not be considered in determining whether the "substantial construction" requirement is met. *Columbia River Television v. Multnomah County*, 24 Or LUBA 82 (1992).

**30.4 Zoning Ordinances – Interpretation.** In the absence of a code requirement to the contrary, a provision in a local code authorizing the development of a parcel to proceed to completion so long as "substantial construction" occurs within a certain period of time does not require the application of a traditional vested rights analysis. *Columbia River Television v. Multnomah County*, 24 Or LUBA 82 (1992).

**30.4 Zoning Ordinances – Interpretation.** Where a local code allows recycling and other incidental uses, LUBA will defer to a local government interpretation of the code as allowing a recycling facility that accepts waste material including both solid waste and recyclable material, where approximately 70 percent of the material accepted will be recycled and approximately 30 percent will be disposed of at a landfill. *Linebarger v. City of The Dalles*, 24 Or LUBA 91 (1992).

**30.4 Zoning Ordinances – Interpretation.** A local code or plan provision prohibiting uses in certain areas of a jurisdiction, where those uses would otherwise be permissible under the base zoning district, does not create an implied authorization for the prohibited uses in areas of the jurisdiction not covered by the prohibition. *Goose Hollow Foothills League v. City of Portland*, 24 Or LUBA 69 (1992).

**30.4 Zoning Ordinances – Interpretation.** The existence of overlapping prohibitions in a local code does not provide a sufficient basis for creating an exception to one of the overlapping

prohibitions that has no basis in the language of the code. *Goose Hollow Foothills League v. City of Portland*, 24 Or LUBA 69 (1992).

**30.4 Zoning Ordinances – Interpretation.** Where a code provides that changes having significant impacts are major PUD amendments, and lists categories of changes that *might* result in significant impacts, whether a proposed amendment falls within a category on the list is not in itself determinative of whether the amendment is major. Because the categories are not independent bases for identifying a major amendment, a determination that a proposed PUD amendment is not major need not be supported by findings addressing each category. *Gage v. City of Portland*, 24 Or LUBA 47 (1992).

**30.4 Zoning Ordinances – Interpretation.** A code provision requiring the existence of legal access is satisfied by an existing access easement, notwithstanding that portions of the existing driveway are located outside the easement. *Mercer v. Josephine County*, 23 Or LUBA 608 (1992).

**30.4 Zoning Ordinances – Interpretation.** Where the purposes of a county's commercial zones are to provide for retail-oriented needs in areas characterized by good transportation services, and such needs and services are not identified with a particular proposed golf course, the county's interpretation of its own ordinance that the golf course is not a commercial use is not inconsistent with express language of the local ordinance or the ordinance's apparent purpose or policy and will be affirmed. *West v. Clackamas County*, 23 Or LUBA 558 (1992).

**30.4 Zoning Ordinances – Interpretation.** Where a county code contains a general PUD provision stating that individual lot size in PUDs is unrestricted, but is subsequently amended to include a prohibition against "flexible lot size developments" in a particular zone, the code is correctly interpreted to prohibit PUDs which would create individual lots smaller than the minimum lot size required by that particular zone. *Niedermeyer v. Clackamas County*, 23 Or LUBA 380 (1992).

**30.4 Zoning Ordinances – Interpretation.** Where the local code provides that a conflict between the requirements of a base zone and an overlay zone are to be resolved in favor of the overlay zone, that a base zone permits a particular industrial use outright does not prohibit the local government from denying such a use on the basis of the requirements of the overlay zone. *Seger v. City of Portland*, 23 Or LUBA 334 (1992).

**30.4 Zoning Ordinances – Interpretation.** A city decision which approves an application by a county for an RV campground, but limits the approval to "a 'public' campground and to the applicant, a public entity," satisfies the city code definition of "public use" as a "use owned or operated by a public, governmental or nonprofit organization * * *." *Hydes v. City of John Day*, 23 Or LUBA 313 (1992).

**30.4 Zoning Ordinances – Interpretation.** A local zoning map amendment standard requiring that there be a "need for the particular uses allowed by the requested zone, considering the importance of such uses to the citizenry or the economy of the area," requires that the local government adequately identify and justify the area selected for the required analysis. *Friedman v. Yamhill County*, 23 Or LUBA 306 (1992).

**30.4 Zoning Ordinances – Interpretation.** A local zoning map amendment standard requiring that there be a "need for the particular uses allowed by the requested zone," is not satisfied by findings that there is a need for rural housing on 2.5-acre lots where there is no attempt to explain why the rural housing need cannot be satisfied on vacant rural land zoned to allow rural residential development with 1- and 5-acre minimum lot sizes. *Friedman v. Yamhill County*, 23 Or LUBA 306 (1992).

**30.4 Zoning Ordinances – Interpretation.** A local zoning map amendment standard requiring that there be a "need for the particular uses allowed by the requested zone, considering the importance of such uses to the citizenry or the economy of the area," is not met where the findings simply assume the importance of rural housing to the citizenry or economy of the area. *Friedman v. Yamhill County*, 23 Or LUBA 306 (1992).

**30.4 Zoning Ordinances – Interpretation.** A local zoning map amendment standard requiring demonstration of a need to rezone property for rural residential development is not satisfied where the record shows a significant amount of vacant property currently zoned to allow such rural residential development. The local government may not assume such land is not "available" for rural residential development simply because it is not currently listed for sale. *Friedman v. Yamhill County*, 23 Or LUBA 306 (1992).

**30.4 Zoning Ordinances – Interpretation.** In the absence of specific plan or code provisions to the contrary, a local code provision providing that single family dwellings are permitted uses in a "Recreational Residential" zone permits the short-term rental of such dwellings. *Brogoitti v. Wallowa County*, 23 Or LUBA 247 (1992).

**30.4 Zoning Ordinances – Interpretation.** Where a code zone change approval standard requires there be a "demand" for the "uses listed in the proposed zone at the proposed location," and the code also requires consideration of "the public interest" in allowing the zone change and the "availability of other appropriate[ly] zoned property," the desire of an individual property owner for a particular use on a particular parcel is not sufficient, in and of itself, to constitute a "demand." *DLCD v. Clatsop County*, 23 Or LUBA 173 (1992).

**30.4 Zoning Ordinances – Interpretation.** Where local code provisions governing appeals state the governing body may "affirm, reverse or modify in whole or in part, any decision * * * of the planning commission," the code does *not* limit the governing body's scope of review to issues raised in the notice of appeal of a planning commission decision. *Horizon Construction, Inc. v. City of Newberg*, 23 Or LUBA 159 (1992).

**30.4 Zoning Ordinances – Interpretation.** A local code jurisdictional requirement that the local appeal document, which under the code includes the required appeal fee, be "signed" but which does not state *where* such signature must be located, is satisfied by the local appellant's signature on his personal check submitted as the filing fee. *Breivogel v. Washington County*, 23 Or LUBA 143 (1992).

**30.4 Zoning Ordinances – Interpretation.** A local code provision that requires the planning commission to conduct a site review of certain proposed developments, but which establishes no separate procedure for site review, does not prevent a city council decision approving a conditional use permit for the proposed development from being a final land use decision appealable to LUBA, even though the planning commission never conducted such site review. *Citizens for Resp. Growth v. City of Seaside*, 23 Or LUBA 100 (1992).

**30.4 Zoning Ordinances – Interpretation.** A code approval standard requiring that a farm dwelling be located on a parcel "planted in perennials capable of producing upon harvest, an average of at least 10,000 dollars in gross annual income" does not require that the *site* be capable of producing the required income, but rather that the *perennials planted* on the site be capable of producing, upon harvest, the required income. *McKay Creek Valley Assoc. v. Washington County*, 23 Or LUBA 85 (1992).

**30.4 Zoning Ordinances – Interpretation.** Where a code standard requires a determination that there is a demonstrated need for a proposed golf course "which outweighs the need for, or benefits of, the existing or potential farm or forest use," the county correctly applied that standard by determining even though there is a need for more golf courses in the county, the value of the property for farmland outweighs that need. *Barber v. Marion County*, 23 Or LUBA 71 (1992).

**30.4 Zoning Ordinances – Interpretation.** Where a local government elects to limit the length of cul-de-sac streets, it may also establish how the length of such streets is to be measured. However, where no particular method of measuring the length of cul-de-sac streets is specified in its land use regulations, the local government must determine length applying the regulations as they are written and applying the plain and ordinary meaning of the operative term "length." *Sully v. City of Ashland*, 23 Or LUBA 25 (1992).

**30.4 Zoning Ordinances – Interpretation.** Under applicable city land use regulation definitions and general understanding the length of a cul-de-sac street is measured to the end of whatever turnaround is provided; not to the point at which the right-of-way widens to accommodate the turnaround. *Sully v. City of Ashland*, 23 Or LUBA 25 (1992).

**30.4 Zoning Ordinances – Interpretation.** Where a code standard requires that a certain "overall residential density" be maintained in sensitive big game habitat areas, but does not provide how "overall residential density" is to be determined, the standard is reasonably interpreted to require that the specified residential density be maintained on the property that is the subject of the development application. *Sterling Mine Properties v. Jackson County*, 23 Or LUBA 18 (1992).

**30.4 Zoning Ordinances – Interpretation.** Where the local code employs the terms "necessary for and accessory to," as a standard for farm dwellings in a mixed farm/forest zone, and where that standard appears to have been adopted to comply with Goal 4, it is appropriate to interpret the ordinance standard in a manner consistent with the interpretation of those terms in the context of Goal 4. *Tipperman v. Union County*, 22 Or LUBA 775 (1992).

**30.4 Zoning Ordinances – Interpretation.** Where a local government interprets the phrase "necessary for and accessory to" in the local code as requiring only a showing that a proposed

dwelling is convenient to the continuation of the resource use of the property, such interpretation is incorrect. *Tipperman v. Union County*, 22 Or LUBA 775 (1992).

**30.4 Zoning Ordinances – Interpretation.** A subdivision ordinance standard requiring that cut and fill slopes not exceed one foot vertically to two feet horizontally "unless physical conditions demonstrate the propriety of other standards" allows two means of compliance. The local government may find either that the 2-to-1 slope limit will be met, or that physical conditions make a different slope standard proper. *Southwood Homeowners Assoc. v. City of Philomath*, 22 Or LUBA 742 (1992).

**30.4 Zoning Ordinances – Interpretation.** Where a conditional use permit approval standard in an EFU zone requires that there be "no other feasible location for the proposed use," the term "feasible location" does not mean "ideal location," but rather a location which is capable of being used for the proposed use. *Simmons v. Marion County*, 22 Or LUBA 759 (1992).

**30.4 Zoning Ordinances – Interpretation.** Where a conditional use permit approval standard in an EFU zone requires that there be "no other feasible location for the proposed use," the price of land at an alternative site is not justification for finding that site infeasible, in the absence of evidence that the price is unreasonable for a site for the proposed use. *Simmons v. Marion County*, 22 Or LUBA 759 (1992).

**30.4 Zoning Ordinances – Interpretation.** Even though a county decision suggests it interprets its zoning ordinance to limit forest dwellings to those necessary for and accessory to commercial forest management, such a narrow interpretation provides no basis for reversal or remand where the county also found the proposed dwelling is not necessary for and accessory to other forest uses argued by petitioners. *Dodd v. Hood River County*, 22 Or LUBA 711 (1992).

**30.4 Zoning Ordinances – Interpretation.** A forest zoning district purpose and intent section providing that the zone is for forest related uses and "other compatible uses," does not allow approval of a use solely upon a showing the use will be compatible with forest uses, where subsequent sections of the zoning district identify allowable uses and establish standards for their approval. *Dodd v. Hood River County*, 22 Or LUBA 711 (1992).

**30.4 Zoning Ordinances – Interpretation.** A local code criterion requiring that a request for land use approval be in the "public interest" does not require that the local government determine whether denial of the request would constitute a taking of private property without just compensation in violation of Article I, section 18, of the Oregon Constitution or the Fifth Amendment to the U.S. Constitution. *Dodd v. Hood River County*, 22 Or LUBA 711 (1992).

**30.4 Zoning Ordinances – Interpretation.** ORS 215.296(1), and identical local code provisions, require that a county consider the impacts of a proposed nonfarm use on *all* "surrounding lands devoted to farm or forest use," whether that use is commercial or noncommercial. *Schellenberg v. Polk County*, 22 Or LUBA 673 (1992).

**30.4 Zoning Ordinances – Interpretation.** Where a proposed residential detoxification facility will take blood pressure and body temperature of potential admittees, but will refuse to admit

anyone in need of medical attention and will not provide any medication or medical treatment on site, a local government's determination that the proposed facility will provide "primarily" health care is erroneous as a matter of law. *Harmony House, Inc. v. City of Salem*, 22 Or LUBA 629 (1992).

**30.4 Zoning Ordinances – Interpretation.** Where the local code explicitly provides that antennae are usually required to be above roof level, and the only function a tower serves is to elevate antennae sufficiently above roof level so they may receive and transmit signals in conjunction with ground-based processing equipment, the tower falls within the code exemption from building height requirements for "appurtenances usually required to be placed above the roof level." *Greenlees v. Yamhill County*, 22 Or LUBA 604 (1992).

**30.4 Zoning Ordinances – Interpretation.** A comprehensive plan standard establishing a minimum building site requirement of one acre is not inconsistent with plan and code requirements that subdivision lots in a zoning district allowing development at a density of one unit per five acres be clustered to provide not less than 30 percent common open space. Such a plan standard simply sets a minimum area requirement for each clustered lot. *Reed v. Clatsop County*, 22 Or LUBA 548 (1992).

**30.4 Zoning Ordinances – Interpretation.** A local code definition of common open space as space to be "used, maintained and enjoyed by the owners and occupants of the individual building units" does not require that for all common open space the owners and occupants have physical access to "use" such common open space. *Reed v. Clatsop County*, 22 Or LUBA 548 (1992).

**30.4 Zoning Ordinances – Interpretation.** Absent zoning ordinance provisions to the contrary, a PUD preliminary master plan approval is a "development permit" and where the zoning ordinance requires that an environmental assessment "be filed prior to the issuance of any development permit," it is error to approve a PUD preliminary master plan prior to the filing of the required environmental assessment. *Gerl v. City of Lincoln City*, 22 Or LUBA 512 (1992).

**30.4 Zoning Ordinances – Interpretation.** Where the local code defines public facilities to include public schools, and contains a standard requiring that conditional uses be timely considering the adequacy of public facilities, the local government must determine that at the time the proposed development will occur public schools will be adequate to serve the proposed development. *Burghardt v. City of Molalla*, 22 Or LUBA 369 (1991).

**30.4 Zoning Ordinances – Interpretation.** Where the local code establishes specific requirements for applications for mobile home parks, and also requires that the site plan for a proposed conditional use include information specifically required by the code for the proposed use, a conditional use permit application for a mobile home park must also include the information required for applications for mobile home parks. *Burghardt v. City of Molalla*, 22 Or LUBA 369 (1991).

**30.4 Zoning Ordinances – Interpretation.** An acknowledged zoning ordinance provision concerning division of EFU-zoned farm parcels providing that "evaluation shall include the subject property and commercial agricultural enterprises located in the same zone within one-half mile of

the subject property" is properly interpreted as identifying the *minimum* area to be evaluated, and areas beyond a one-half-mile radius may have to be evaluated to establish the nature of the existing commercial agricultural enterprise in the area. *Still v. Marion County*, 22 Or LUBA 331 (1991).

**30.4 Zoning Ordinances – Interpretation.** Where the local code establishes a "two-step" process for approving PUDs which requires that (1) preliminary development plan approval be granted only if the PUD will fulfill all applicable code requirements, and (2) final development plan approval be granted if the final plan complies with the preliminary plan and any conditions imposed thereon, the local government has created a PUD master plan approval process which governs all further aspects of the PUD development process. *Gilson v. City of Portland*, 22 Or LUBA 343 (1991).

**30.4 Zoning Ordinances – Interpretation.** A local code provision establishing general approval criteria for nonlegislative zone changes does not apply to changes in overlay zone boundaries which are controlled by comprehensive plan inventory maps identifying the location and physical characteristics of certain types of resource areas. *Gray v. Clatsop County*, 22 Or LUBA 270 (1991).

**30.4 Zoning Ordinances – Interpretation.** Where there appear to be conflicting code provisions such that a code approval criterion has the effect of nullifying another code provision which specifically allows a use subject to that approval criterion, the local government should first consider whether the code standard is sufficiently ambiguous that it can be interpreted in a manner that avoids the conflict. If the code can be interpreted to avoid the conflict, that interpretation should be adopted. *Waker Assoc., Inc. v. Clackamas County*, 22 Or LUBA 233 (1991).

**30.4 Zoning Ordinances – Interpretation.** Whether the provisions of a zoning ordinance "purpose" section are approval criteria for individual land use decisions depends on the wording of the specific provisions and their context. *Tylka v. Clackamas County*, 22 Or LUBA 166 (1991).

**30.4 Zoning Ordinances – Interpretation.** Whether a proposed sewage treatment facility will produce odors is a relevant consideration in determining compliance with a local conditional use permit standard requiring findings that the "location, size, design, and operation are compatible with and will not adversely affect the livability or appropriate development of abutting properties in the surrounding neighborhood." *Sitsler v. City of Mill City*, 22 Or LUBA 125 (1991).

**30.4 Zoning Ordinances – Interpretation.** Where the local code does not contain a specific purpose statement for a zoning district, determining a proposed conditional use is similar to, and produces no significant impacts different from those produced by, uses permitted outright in the zoning district is a correct means of determining compliance with a code requirement that a conditional use be in harmony with the purpose and intent of the zoning district. *Brandt v. Marion County*, 22 Or LUBA 74 (1991).

**30.4 Zoning Ordinances – Interpretation.** A proposed subdivision's effect on groundwater availability in the area is relevant to determining compliance with a local code standard requiring that a proposal not have more than a "minimal adverse effect on livability, value and appropriate development of the area." *Kirkpatrick v. Jackson County*, 22 Or LUBA 3 (1991).

**30.4 Zoning Ordinances – Interpretation.** Whether a proposed bridge will cause waters to exceed a water overflow easement is a relevant consideration under a local code standard requiring that a proposal not have more than a "minimal adverse impact on livability, value and appropriate development of the area." *Kirkpatrick v. Jackson County*, 22 Or LUBA 3 (1991).

**30.4 Zoning Ordinances – Interpretation.** Petitioner's argument that an approved residential care facility is really a correctional facility provides no basis for remand where the code definition of residential care facility appears to be broad enough to include correctional facilities, (2) the local government found the proposal satisfies the code definition of residential care facility, and (3) petitioner does not challenge the local government's findings. *Wentland v. City of Portland*, 22 Or LUBA 15 (1991).

**30.4 Zoning Ordinances – Interpretation.** ORS 197.763(3)(b) does not require a local government to list related code provisions as "applicable criteria" in its notice of a quasi-judicial land use hearing in order to be able to consider them in interpreting the central code provisions at issue consistently with such related code provisions. *Ward v. City of Lake Oswego*, 21 Or LUBA 470 (1991).

**30.4 Zoning Ordinances – Interpretation.** Where language used in a local ordinance corresponds to language used in a state statute or statewide planning goal, it is appropriate to interpret those ordinance provisions consistently with available authority for interpreting the relevant statute or goals. *Tice v. Josephine County*, 21 Or LUBA 371 (1991).

**30.4 Zoning Ordinances – Interpretation.** A local code provision that allows "outdoor recreation activities" on forest-zoned lands, and the identical provision used in former Goal 4 (Forest Lands), are not correctly interpreted to include a motorcycle racetrack. *Tice v. Josephine County*, 21 Or LUBA 371 (1991).

**30.4 Zoning Ordinances – Interpretation.** Where a zoning ordinance definition of "motel" is broad enough to include transient housing available only to groups using a convention center, the city may properly consider such transient housing as motel units available to satisfy temporary housing demand. *Hay v. City of Cannon Beach*, 21 Or LUBA 364 (1991).

**30.4 Zoning Ordinances – Interpretation.** Local government interpretation of code to provide that parcels zoned for motel use are "available" for such use even though presently developed with single family houses, on the basis of incentive to redevelop such property due to higher financial return associated with motel use, is not wrong as a matter of law. *Hay v. City of Cannon Beach*, 21 Or LUBA 364 (1991).

**30.4 Zoning Ordinances – Interpretation.** Under a code provision requiring there be a demand for a use at the proposed location, even if a demand for the use is identified, there is no demand for the use at the proposed location if there are other appropriately zoned parcels on which the use may be built. *Hay v. City of Cannon Beach*, 21 Or LUBA 364 (1991).

**30.4 Zoning Ordinances – Interpretation.** Where a "commercial kennel" is defined in a local code as including "boarding" and "breeding" of dogs, such "commercial kennel" does not include

a facility where up to 50 dogs are given three months of intensive training to protect their masters, and the boarding provided is incidental to such training. *Greuner v. Lane County*, 21 Or LUBA 329 (1991).

**30.4 Zoning Ordinances – Interpretation.** Where a code standard provides that the standard applies "to the establishment, maintenance, and operation of" the proposed use, a local government must determine whether the standard is met prior to granting the requested discretionary permits. *Simonson v. Marion County*, 21 Or LUBA 313 (1991).

**30.4 Zoning Ordinances – Interpretation.** A local code provision allowing a "resident" of a dwelling to conduct a home occupation does not require that such "resident" also be the owner of the dwelling in which the home occupation is to be conducted. *Tarbell v. Jefferson County*, 21 Or LUBA 294 (1991).

**30.4 Zoning Ordinances – Interpretation.** A city code provision (1) requiring that certain "development * * * shall provide open space * * * approved by the city," (2) establishing a prioritized list of types of open space, and (3) providing an option to provide fees in lieu of open space, grants the city, not the developer, the option to require dedication of open space rather than a fee in lieu. *Oswego Properties, Inc. v. City of Lake Oswego*, 21 Or LUBA 137 (1991).

**30.4 Zoning Ordinances – Interpretation.** A city code provision (1) requiring that certain "development * * * shall provide open space * * * approved by the city," (2) establishing a prioritized list of types of open space, and (3) providing an option to provide fees in lieu of open space, but failing to provide standards for determining whether to require open space or fees in lieu, violates the requirement of ORS 227.173(1) that permit decisions be governed by standards in the city's code. *Oswego Properties, Inc. v. City of Lake Oswego*, 21 Or LUBA 137 (1991).

**30.4 Zoning Ordinances – Interpretation.** City code provisions defining open space broadly, listing "distinctive natural areas" as first priority open space and requiring that development preserve areas for open space are properly interpreted as violated by a proposal to locate a building foundation immediately next to a specimen tree designated as a "distinctive natural area." Under such provisions, a "distinctive natural area" is not limited to the tree itself, and the code provides sufficient standards to guide the city's decision making under ORS 227.173(1). *Oswego Properties, Inc. v. City of Lake Oswego*, 21 Or LUBA 137 (1991).

**30.4 Zoning Ordinances – Interpretation.** A city code provision (1) requiring that certain "development * * * shall provide open space * * * approved by the city," and (2) establishing a prioritized list of types of open space, concluding with "other" open space, does not violate the requirement of ORS 227.173(1) that permit decisions be governed by standards in the city's code. *Oswego Properties, Inc. v. City of Lake Oswego*, 21 Or LUBA 137 (1991).

**30.4 Zoning Ordinances – Interpretation.** A code requirement that newly created forest parcels be "large enough to permit efficient management for the production of wood fiber or other forest uses," does not require that the division be "necessary" to carry out the proposed forestry uses. *DLCD v. Curry County*, 21 Or LUBA 130 (1991).

**30.4 Zoning Ordinances – Interpretation.** A code requirement that an applicant for an "extraordinary exception" for a boathouse demonstrate "an extraordinary and unreasonable hardship which can be relieved only by allowing the intensification of use" is a stringent standard traditionally applied to requests for variances. *Boldt v. Clackamas County*, 21 Or LUBA 40 (1991).

**30.4 Zoning Ordinances – Interpretation.** That a request for approval of an extraordinary exception involves intensification of an existing use rather than a new use is unimportant where the same standards govern both new uses and intensification of existing uses. *Boldt v. Clackamas County*, 21 Or LUBA 40 (1991).

**30.4 Zoning Ordinances – Interpretation.** Where existing code and comprehensive plan provisions impose a higher approval standard than the local government believes is appropriate, the appropriate course is to amend the plan and code. *Boldt v. Clackamas County*, 21 Or LUBA 40 (1991).

**30.4 Zoning Ordinances – Interpretation.** Where the language employed in the purpose statement of a code PUD chapter evidences only what the local government intends the consequences of application of the specific provisions of that PUD chapter to be, the purpose statement does not establish independent approval standards for individual PUD applications. *White v. City of Oregon City*, 20 Or LUBA 470 (1991).

**30.4 Zoning Ordinances – Interpretation.** If the local code states that certain provisions are applicable where the governing body assumes jurisdiction, on its own motion, to review a decision of a lower body, those provisions do not apply to appeals of such decisions initiated by persons other than the governing body. *Adams v. Jackson County*, 20 Or LUBA 398 (1991).

**30.4 Zoning Ordinances – Interpretation.** A particular use could be both a commercial use and an institutional use where the applicable plan and land use regulations do not define "commercial use" and "institutional use" as mutually exclusive use categories. *Sarti v. City of Lake Oswego*, 20 Or LUBA 387 (1991).

**30.4 Zoning Ordinances – Interpretation.** Plan policies that discourage, but do not preclude, location of commercial uses in residential areas, do not demonstrate that the "institutional uses" allowed in residential zoning districts cannot include "commercial uses." *Sarti v. City of Lake Oswego*, 20 Or LUBA 387 (1991).

**30.4 Zoning Ordinances – Interpretation.** Where a zoning ordinance specifically lists a use as allowed in one zoning district and fails to specifically list that use in a second zoning district, but includes in the list of permitted uses in the second zoning district a more open ended category of uses, there is an "inference" that the use specifically allowed in the first zoning district is not also allowed in the second zoning district under the open ended use category. *Sarti v. City of Lake Oswego*, 20 Or LUBA 387 (1991).

**30.4 Zoning Ordinances – Interpretation.** A local government's categorization of dance schools in its commercial zones as "Services - Amusement," while other types of schools are categorized as "Services - Educational," provides some indication that the local government does not view

such schools as "private educational facilities" allowable in its residential zones. *Sarti v. City of Lake Oswego*, 20 Or LUBA 387 (1991).

**30.4 Zoning Ordinances – Interpretation.** "Educational facilities" and other similar terms in zoning ordinances generally are not interpreted to include facilities providing instruction in "arts, crafts or sports." *Sarti v. City of Lake Oswego*, 20 Or LUBA 387 (1991).

**30.4 Zoning Ordinances – Interpretation.** Where a local code (1) fails to provide a definition of "educational facilities" allowable in residential districts, (2) gives no indication that an expansive meaning is intended, and (3) explicitly provides for private dance schools in commercial zoning districts, the local government's interpretation of "educational facilities" as including private dance schools is incorrect. *Sarti v. City of Lake Oswego*, 20 Or LUBA 387 (1991).

**30.4 Zoning Ordinances – Interpretation.** Where the code requires certain flood standards to be applied when the county receives "an application for a use or development," and the flood standards authorize the county to deny or require redesign of a proposed development, the flood standards are applicable to approval of the initial development application. *Komning v. Grant County*, 20 Or LUBA 355 (1990).

**30.4 Zoning Ordinances – Interpretation.** Where a local code lists the undefined term "commercial riding" as a use which may be conditionally permitted in a zoning district, and the general approval standards for conditional uses require that they "not significantly impact [adjoining] uses," the potential impacts of a proposed use are relevant only to compliance with the conditional use approval standard, not to determining whether the proposed use constitutes "commercial riding." *Kittleson v. Lane County*, 20 Or LUBA 286 (1990).

**30.4 Zoning Ordinances – Interpretation.** Local code provisions which regulate "public" airports, and state that "private landing strips * * * may still be subject to applicable regulations," are inapplicable to private airports, but recognize that there may be *other* requirements that apply to private airports. *Wissusik v. Yamhill County*, 20 Or LUBA 246 (1990).

**30.4 Zoning Ordinances – Interpretation.** Where the code requires a proposed conditional use "be reasonably compatible with and have minimal impact on the livability * * * of abutting properties and the surrounding neighborhood," open space which can be considered a part of the neighborhood livability protected by the code is limited to officially designated open space and de facto open space that is incidental to appropriate development of property in the neighborhood. *Benjamin v. City of Ashland*, 20 Or LUBA 265 (1990).

**30.4 Zoning Ordinances – Interpretation.** ALUO 18.104.040(B) requires the city to demonstrate that the *proposed* "development will be reasonably compatible with and have minimal impact on the livability * * * of abutting properties and the surrounding neighborhood." It does not require the city to consider whether alternative proposals or designs will be *more* compatible with or have *less* impact on the surrounding neighborhood. *Benjamin v. City of Ashland*, 20 Or LUBA 265 (1990).

**30.4 Zoning Ordinances – Interpretation.** Where the local code states that required determinations regarding the compatibility and impacts of proposed developments are to be based on *consideration* of certain listed factors, the factors are not themselves approval standards, and no one factor is conclusive. *Thormahlen v. City of Ashland*, 20 Or LUBA 218 (1990).

**30.4 Zoning Ordinances – Interpretation.** A city may establish compliance with a code provision which specifically requires a determination of a public need before additional land may be annexed by adopting findings demonstrating that a determination of public need to annex the subject property is supported by relevant plan provisions and explaining why other relevant plan policies not supportive of such a determination may be disregarded. *Neuenschwander v. City of Ashland*, 20 Or LUBA 144 (1990).

**30.4 Zoning Ordinances – Interpretation.** In determining whether the local government has correctly interpreted and applied the term "open space" in making the appealed decision, LUBA will apply the definitions of that term contained in the local government's comprehensive plan and zoning ordinance. *Schryver v. City of Hillsboro*, 20 Or LUBA 90 (1990).

**30.4 Zoning Ordinances – Interpretation.** Where the county code imposes a general unsuitability requirement similar to ORS 215.213(3)(d) (1977) on the approval of nonforest dwellings in a forest zone, the county did not err in finding this requirement unmet where limitations on the subject parcel's capacity for the production of forest products could be overcome if the parcel is managed in conjunction with other land and there is other land managed for forest production reasonably close to the subject parcel. *Sabin v. Clackamas County*, 20 Or LUBA 23 (1990).

**30.4 Zoning Ordinances – Interpretation.** Where the local code states that a person may appeal to the planning commission from "a decision" made pursuant to the code by the planning director, *all* decisions made by the planning director, whether ministerial or discretionary, are appealable to the planning commission. *Komning v. Grant County*, 20 Or LUBA 481 (1990).

**30.4 Zoning Ordinances – Interpretation.** Where the comprehensive plan is defined as including the plan policy document, plan map, zoning map and zoning and subdivision ordinances, as well as a number of other documents, a local code provision requiring that individual land use decisions comply with the comprehensive plan is not correctly interpreted as requiring compliance with only the zoning map and zoning and subdivision ordinances. *Von Lubken v. Hood River County*, 19 Or LUBA 404 (1990).

**30.4 Zoning Ordinances – Interpretation.** Where the applicable local code imposes no explicit requirement that the local government find a proposed golf course site to be superior to other available properties or find that there would be fewer impacts on farming practices associated with developing the proposed site as compared with other possible sites, the county did not err by failing to conduct an exhaustive alternative sites analysis. *Von Lubken v. Hood River County*, 19 Or LUBA 404 (1990).

**30.4 Zoning Ordinances – Interpretation.** Where a county's land development ordinance provides for adoption of resolutions of intent to rezone and makes such resolutions binding

commitments that the county will grant rezoning when conditions stated in such resolutions of intent to rezone are met, a resolution of intent to rezone is a final appealable decision. *Headley v. Jackson County*, 19 Or LUBA 109 (1990).

**30.4 Zoning Ordinances – Interpretation.** Notwithstanding an ordinance provision that a resolution of intent to rezone will be void if the applicant fails to meet any condition included in the resolution, the resolution is not void where LUBA remands, pursuant to a stipulation by the parties, a subsequent decision approving a required site plan, where the resolution of intent to rezone imposes no time limit for approval of the site plan. *Headley v. Jackson County*, 19 Or LUBA 109 (1990).

**30.4 Zoning Ordinances – Interpretation.** Compliance with a criterion that "adequate sewer [and] water * * * services will be provided" to serve a proposed destination resort requires identification of an available method for providing adequate sewage disposal and domestic water service to the proposed development that is reasonably certain to comply with applicable standards and produce the desired result. *Foland v. Jackson County*, 18 Or LUBA 731 (1990).

**30.4 Zoning Ordinances – Interpretation.** Where a local Greenway ordinance requires that the city "*provide* public access to and along the river to the maximum extent possible," the city must determine (1) its decision will provide access to the river at the location of the development, or (2) its decision will provide access to the maximum extent in view of the uses allowable at the location and the characteristics of the site. *O'Brien v. City of West Linn*, 18 Or LUBA 665 (1990).

**30.4 Zoning Ordinances – Interpretation.** County interpretation of a code "minimum" lot size standard requiring that the lot size be based on the needs of the use to impose a requirement that a golf course in an EFU zone include only the number of acres needed for the golf course is a correct interpretation of the code. *Douglas v. Multnomah County*, 18 Or LUBA 607 (1990).