

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON

3
4 D.A. GREY, LTD,
5 *Petitioner,*

6
7 vs.

8
9 CITY OF TROUTDALE,
10 *Respondent.*

11
12 LUBA No. 2006-159

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14 MULTNOMAH COUNTY,
15 *Petitioner,*

16
17 and

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19 D.A. GREY, LTD,
20 *Intervenor-Petitioner,*

21
22 vs.

23
24 CITY OF TROUTDALE,
25 *Respondent.*

26
27 LUBA No. 2006-163

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29 FINAL OPINION
30 AND ORDER

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32 Appeal from City of Troutdale.

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34 Edward J. Sullivan and Carrie Richter, Portland, filed a petition for review and
35 represented petitioner D.A. Grey. With them on the brief was Garvey Schubert Barer, PC.

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37 Matthew O. Ryan, Assistant County Attorney, Portland, filed a petition for review
38 and represented petitioner Multnomah County. With him on the brief was Agnes Sowle,
39 County Attorney.

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41 Marnie Allen, Troutdale, represented respondent.

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43 BASSHAM, Board Chair; HOLSTUN, Board Member; RYAN, Board Member,
44 participated in the decision.

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REMANDED

11/21/2006

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

1 Bassham, Board Chair.

2 On November 15, 2006, the city filed a request to allow withdrawal of the challenged
3 decision for reconsideration. The request states that the city has discussed with petitioners
4 ways to address the issues raised by both petitioners, and that the proceedings on
5 reconsideration will address the issues raised in both petitions for review. The request
6 further states that neither petitioner objects to the requested withdrawal.

7 OAR 661-010-0021(1) provides that a local government may withdraw a decision for
8 reconsideration if it files a notice of withdrawal with LUBA “on or before the date the record
9 is due.” *See also* ORS 197.830(13)(b) (LUBA may allow withdrawal for reconsideration
10 “prior to the date set for filing the record”). The record has been filed in the present case and
11 both petitioners have submitted petitions for review. Oral argument is scheduled for
12 November 29, 2006. Because the request for withdrawal was filed after the date the record
13 was due, we cannot grant the request for withdrawal. *Bates v. City of Cascade Locks*, 37 Or
14 LUBA 993, 993 (1999).

15 However, the city and petitioners apparently agree to return the decision to the city
16 for further proceedings to address the issues raised in the petitions for review. LUBA may
17 grant a motion for voluntary remand, even over the objection of the petitioner, where the
18 local government agrees to address all the issues raised in the petition for review. *Angel v.*
19 *City of Portland*, 20 Or LUBA 541, 543 (1991). Here, neither petitioner objects to
20 reconsideration by the city. If the city’s request had been styled a motion for voluntary
21 remand instead of a request for withdrawal, we see no reason why that motion would be
22 denied. Accordingly, we treat the city’s request as a motion for voluntary remand, and grant
23 the motion.

24 Oral argument scheduled November 29, 2006 is canceled. The city’s decision is
25 remanded.