

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 MOLLY JACOBSEN and DANA JACOBSEN,
5 *Petitioners,*

6
7 vs.

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9 CITY OF WINSTON,
10 *Respondent,*

11 and

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13 DON JENKINS and JOELL JENKINS,
14 *Intervenors-Respondents.*

15
16 LUBA No. 2006-060

17
18 ORDER

19
20 **MOTION FOR VOLUNTARY REMAND**

21 The challenged decision is the city’s decision approving site design review for a 31
22 vehicle recreational vehicle park on a 3.5-acre property. On April 15, 2008, the appeal was
23 suspended at the request of the parties, until any of the parties requested that the appeal be
24 reactivated.¹ On May 21, 2010, petitioners requested that the appeal be reactivated. The city
25 subsequently moved for a voluntary remand. Although intervenors-respondents do not
26 object to the motion for voluntary remand, petitioners do object.

27 Generally, LUBA will grant a motion for voluntary remand over a petitioner’s
28 objection where the local government demonstrates that all allegations of error in the petition
29 for review will be addressed on remand. *Angel v. City of Portland*, 20 Or LUBA 541, 543
30 (1991). In this case, however, the petition for review has not been filed. In *Verizon*
31 *Wireless, LLC v. City of Elgin*, __ Or LUBA __ (LUBA No. 2009-095, September 30, 2009),

¹ When the appeal was suspended, there were over 20 pleadings filed ranging from record objections, to motions to take evidence outside of the record, to a “motion to determine jurisdiction.”

1 we granted a motion for voluntary remand over the petitioner’s objection, where the city
2 stated that the proceedings on remand “will address all allegations of error Petitioner intends
3 to submit on appeal.” We explained in *Verizon* that even if we denied the motion as
4 premature, the likely result would be that petitioner would file the petition for review, the
5 city would file another motion for voluntary remand and agree to address all issues on
6 remand, and LUBA would grant the subsequent motion for voluntary remand. Based on the
7 city’s statement in *Verizon* that the remand proceedings would address all allegations of error
8 in the challenged decision that would be brought by the petitioner, we distinguished that case
9 from *Grabhorn v. Washington County*, 48 Or LUBA 657, 659 (2005). *Grabhorn* involved an
10 appeal of a hearings officer’s decision where the county moved for a voluntary remand but
11 agreed only to address one potential assignment of error by correcting on remand a single
12 procedural error, and did not offer to address on remand any other errors that the petitioner
13 intended to allege in the petition for review. We denied the county’s motion for voluntary
14 remand in *Grabhorn*.

15 Petitioners, however, object to the motion for voluntary remand because they believe
16 that the city is not operating in good faith. Petitioners’ arguments that attempt to
17 demonstrate that the city is not acting in good faith are difficult follow and mostly have
18 nothing to do with the challenged decision. We generally take local governments’ word that
19 they will address all issues on remand and that the motion is not motivated by improper
20 reason. *Doob v. Josephine County*, 43 Or LUBA 130, 133-34 (2002). In the present case,
21 the city’s motion for voluntary remand requests a voluntary remand “to more expeditiously
22 resolve the disputed decision.” Motion for Voluntary Remand 1-2. The city’s motion does
23 not, however, explicitly state that it will address all of petitioners’ issues regarding the
24 challenged decision on remand. Without such an explicit statement to that effect, we cannot
25 at this point grant the motion for voluntary remand.

1 The city may, within fourteen days of the date of this order, refile its motion and
2 expressly state that if it readopts the challenged decision it will address all allegations of
3 error regarding the challenged decision that petitioners would have included in the petition
4 for review. If the city does so, we will likely grant the motion for voluntary remand.² If the
5 city does not file another motion for voluntary remand, we will issue an order reactivating
6 the appeal and proceed to address the previously submitted motions, if necessary.

7 The city's motion for voluntary remand is denied.

8 Dated this 22nd day of July, 2010.

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Melissa M. Ryan
Board Member

² Petitioners also offer to agree to a voluntary remand based on certain conditions. A petitioner, however, may not dictate the terms of a voluntary remand. *Grabhorn v. Washington County*, 50 Or LUBA 510, 512 (2005).