

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

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4                                   JAMES MACFARLANE  
5                                   and DIANA MACFARLANE,  
6                                   *Petitioners,*

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8                                   vs.

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10                                  CLACKAMAS COUNTY,  
11                                  *Respondent.*

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13                                  LUBA No. 2014-036

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15                                  ORDER ON REQUEST TO TRANSFER ISSUES

16                    In the notice of intent to appeal, and again in the petition for review,  
17 petitioners request that if LUBA concludes that it lacks authority to review  
18 petitioners’ assignment of error that seeks reversal or remand of the county’s  
19 decision based on the doctrine of equitable estoppel, LUBA should transfer that  
20 “issue” to circuit court.

21                    In a final opinion and order dated August 5, 2014, LUBA affirmed the  
22 county’s decision. The final opinion and order denied petitioners’ third  
23 assignment of error, which sought reversal or remand based on equitable  
24 estoppel. We denied the third assignment of error, after concluding that LUBA  
25 lacks statutory authority to reverse or remand a decision based on estoppel or  
26 other equitable principles.

27                    However, our decision did not address petitioners’ contingent request to  
28 transfer the “issue” of equitable estoppel to circuit court. We now deny the  
29 request. In *Rookard v. Lane County*, 41 Or LUBA 14, 17 (2001), *aff’d* 179 Or  
30 App 551, 42 P3d 949 (2002), we explained that under ORS 34.102(4) and OAR  
31 661-010-0075(11), LUBA has authority to transfer to circuit court only the

1 appeal of a decision that LUBA concludes is not a land use decisions or limited  
2 land use decision subject to LUBA’s jurisdiction, and that we have no authority  
3 to transfer to circuit court discrete “issues” raised in an appeal of a land use  
4 decision or limited land use decision, while retaining jurisdiction and review  
5 authority over the remainder of the decision.<sup>1</sup> Petitioners offer no basis to  
6 reach a different conclusion.

7 Petitioners’ request to transfer the issue of equitable estoppel that is  
8 raised in the petition for review is denied.

9 Dated this 7<sup>th</sup> day of August, 2014.

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Tod A. Bassham  
Board Member

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<sup>1</sup> ORS 34.102(4) provides, in relevant part:

“A notice of intent to appeal filed with the Land Use Board of Appeals pursuant to ORS 197.830 and requesting review of a decision of a municipal corporation made in the transaction of municipal corporation business that is not reviewable as a land use decision or limited land use decision as defined in ORS 197.015 shall be transferred to the circuit court and treated as a petition for writ of review. \* \* \*