

25.6.4 Local Government Procedures – Hearings – Site Visits. LUBA will affirm a governing body’s interpretation of a code provision requiring notice to all parties to a land use proceeding that the members of the governing body intend to conduct a site visit “with any party or his representative,” as requiring notice only when the members of the governing body expect to conduct the site visit with a party, and not to require notice where a safety escort is unexpectedly provided during the site visit. *Stop the Dump Coalition v. Yamhill County*, 72 Or LUBA 341 (2015).

25.6.4 Local Government Procedures – Hearings – Site Visits. A site visit is not in itself an *ex parte* contact subject to ORS 227.180(3) or ORS 215.422(3), unless it involves communication between a decision maker and a party or other interested person. *Carrigg v. City of Enterprise*, 48 Or LUBA 328 (2004).

25.6.4 Local Government Procedures – Hearings – Site Visits. The case law requirement that a decision maker disclose information gained from a site visit and offer an opportunity to rebut that information serves a similar purpose to the statutory requirements regarding *ex parte* contacts: to ensure that land use decisions are based on information received during the public process, and not based on information received outside the public process. *Carrigg v. City of Enterprise*, 48 Or LUBA 328 (2004).

25.6.4 Local Government Procedures – Hearings – Site Visits. A petitioner’s failure to object to untimely disclosure of a site visit and to request the opportunity to rebut the site visit precludes assigning error to that disclosure, where the disclosure was made ten days prior to the hearing at which the local government adopted the final decision, and petitioner could have entered an objection at any time during that ten days or during the final hearing, but did not. *Carrigg v. City of Enterprise*, 48 Or LUBA 328 (2004).

25.6.4 Local Government Procedures - Hearings - Site Visits. Where a party is present at a rezoning hearing where a county commissioner discloses that he and a county planner made a site visit to the subject property, and that party testifies after the disclosure without objecting to the site visit, the planner’s attendance at the site visit or the adequacy of the county commissioner’s disclosure of the site visit, that party waives his right to assign error based on the site visit in an appeal at LUBA. *Mattson v. Clackamas County*, 46 Or LUBA 552 (2004).

25.6.4 Local Government Procedures – Hearings – Site Visits. An opportunity to rebut undisclosed evidence obtained on a site visit is not required when that evidence is not the sole basis for a finding, but merely provides a context for integrating other evidence into findings. *Sanders v. Yamhill County*, 34 Or LUBA 69 (1998).

25.6.4 Local Government Procedures – Hearings – Site Visits. Where members of a local decision making body disclose, at the beginning of the initial evidentiary hearing, that they made site visits to the subject property, and petitioners fail to object to the adequacy of that disclosure, insufficiency of the disclosure cannot be assigned as grounds for reversal or remand. *Wicks v. City of Reedsport*, 29 Or LUBA 8 (1995).

25.6.4 Local Government Procedures – Hearings – Site Visits. Where the local governing body is the final decision maker, after a *de novo* review of a planning commission decision, failure of members of the planning commission to disclose the substance of observations made during a site visit provides no basis for reversal or remand. *Wicks v. City of Reedsport*, 29 Or LUBA 8 (1995).

25.6.4 Local Government Procedures – Hearings – Site Visits. Where the local decision maker conducted a site view, but failed to place on the record the substance of its site observations and failed to provide the parties any opportunity to rebut the evidence obtained from the site view, the decision maker committed procedural errors that prejudiced petitioners' substantial rights. *McNamara v. Union County*, 28 Or LUBA 396 (1994).

25.6.4 Local Government Procedures – Hearings – Site Visits. Where a hearings officer improperly conducted a site visit without providing prior notice and an opportunity for rebuttal, a governing body decision that relies on findings of the hearings officer based on that improper site visit is subject to reversal or remand. *Wilson Park Neigh. Assoc. v. City of Portland*, 24 Or LUBA 98 (1992).

25.6.4 Local Government Procedures – Hearings – Site Visits. That a hearings officer committed procedural error by conducting a site visit without providing prior notice to the parties, disclosing his observations and providing an opportunity to rebut such observations, does not prejudice petitioners' substantial rights where the final decision on the subject application was made by the governing body, after a *de novo* review. *Wilson Park Neigh. Assoc. v. City of Portland*, 23 Or LUBA 708 (1992).

25.6.4 Local Government Procedures – Hearings – Site Visits. A hearings officer commits error in conducting a site visit after the public hearing in the local proceeding is closed and without prior notice to the parties of the site visit or an opportunity for the parties to rebut observations that were made during the site visit and relied upon in the decision. *Waker Assoc., Inc. v. Clackamas County*, 22 Or LUBA 233 (1991).

25.6.4 Local Government Procedures – Hearings – Site Visits. Where a hearings officer conducts a site visit without giving notice to the parties or providing an opportunity to attend, and states in the decision that his observations during the site visit influenced his analysis of previously submitted evidence, the observations constitute evidence the parties were entitled to know about and to have an opportunity to rebut. *Waker Associates, Inc. v. Clackamas County*, 21 Or LUBA 588 (1991).

25.6.4 Local Government Procedures – Hearings – Site Visits. The right to rebut evidence placed before the local decision maker in a quasi-judicial land use proceeding extends to requiring disclosure of and opportunity to rebut the substance of ex parte communications to and personal site observations by the local decision maker. *Angel v. City of Portland*, 21 Or LUBA 1 (1991).

25.6.4 Local Government Procedures – Hearings – Site Visits. If a decision which relies on evidence from site observations by local decision makers is appealed to LUBA and challenged on substantial evidence grounds, LUBA will review the evidentiary support for that decision, including evidence from such site observations and rebuttal evidence, to determine whether it would be reasonable to rely upon it. *Angel v. City of Portland*, 21 Or LUBA 1 (1991).