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

ALLEN D. FECHTIG,)
)
Petitioner,) LUBA No. 92-205
)
vs.) FINAL OPINION
) AND ORDER
CITY OF ALBANY,)
)
Respondent.)

Appeal from City of Albany.

Allen D. Fechtig, Albany, represented himself.

James V. Delapoer, Albany, represented respondent.

HOLSTUN, Referee; SHERTON, Chief Referee; KELLINGTON,
Referee, participated in the decision.

REMANDED 02/23/93

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

1 Opinion by Holstun.

2 Petitioner alleges a total of ten assignments of error.
3 In those assignments of error, petitioner alleges the fill
4 permit challenged in this proceeding violates a number of
5 city comprehensive plan and development code provisions and
6 Statewide Planning Goal 7 (Areas Subject to Natural
7 Disasters and Hazards). Petitioner's sixth assignment of
8 error alleges the city failed to subject the disputed fill
9 permit to site plan review, as required by the Albany
10 Development Code.

11 Respondent concedes petitioner's sixth assignment of
12 error. Respondent moves to remand the challenged decision
13 so the city can conduct the required site plan review.
14 Respondent further contends that this review "will provide a
15 [forum] for addressing comprehensive plan and development
16 code issues in connection with the application * * *."
17 During oral argument on the Motion for Remand, respondent
18 clarified that while it does not at this time concede
19 petitioner's nine remaining assignments of error, it will
20 address the arguments presented in those remaining
21 assignments of error in its proceedings on remand.

22 We explained in Angel v. City of Portland, 20 Or LUBA
23 541, 543 (1991):

24 " * * * If the local government's request for
25 remand of its decision does not demonstrate that
26 all of the allegations of error made by petitioner
27 in the petition for review will be addressed on
28 remand, it is inappropriate to remand the decision

1 over petitioner's objections." (Emphasis in
2 original; footnote and citation omitted.)

3 In view of the city's concession regarding the sixth
4 assignment of error and its representation that it will
5 address on remand the issues petitioner raises in his
6 remaining assignments of error, remand is appropriate.

7 Although petitioner questions whether in the
8 circumstances presented in this case he will receive a fair
9 hearing on remand, we cannot conclude he will be denied a
10 fair hearing. Furthermore, because some of petitioner's
11 remaining assignments of error may raise development code
12 and comprehensive plan interpretational issues, remand is
13 particularly appropriate in view of the Court of Appeals'
14 decision in Weeks v. City of Tillamook, 117 Or App 449, ___
15 P2d ___ (1992) (local government, not LUBA, must exercise
16 initial responsibility for rendering any required
17 interpretations of local legislation). We remand so that
18 the city may have the initial opportunity to address
19 petitioner's issues.

20 The city's decision is remanded.

21