

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

3
4 CHARLES COSTANZO,
5 *Petitioner,*

6
7 vs.

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9 CITY OF GRANTS PASS,
10 *Respondent,*

11
12 and

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14 GREGORY WRIGHT, DORIS GENE WRIGHT,
15 RANDY HAGERMAN and MAX HULL,
16 *Intervenors-Respondent.*

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18 LUBA No. 2000-172

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20 FINAL OPINION
21 AND ORDER

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23 Appeal from City of Grants Pass.

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25 Charles Costanzo, Grants Pass, filed the petition for review.

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27 Ulys Stapleton, Grants Pass, represented respondent.

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29 Duane Wm. Schultz, Grants Pass, represented intervenors-respondent.

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31 BRIGGS, Board Chair; BASSHAM, Board Member; HOLSTUN, Board Member,
32 participated in the decision.

33
34 REMANDED

03/06/2001

35
36 You are entitled to judicial review of this Order. Judicial review is governed by the
37 provisions of ORS 197.850.

38

NATURE OF THE DECISION

Petitioner challenges a city decision approving an application for tentative approval of a 36-lot subdivision.

MOTION TO INTERVENE

Gregory Wright, Doris Gene Wright, Randy Hagerman and Max Hull (intervenors-respondent), the applicants below, move to intervene on the side of respondent. There is no opposition to the motion, and it is allowed.

MOTION FOR VOLUNTARY REMAND

The petition for review was filed on December 7, 2000. After two extensions of time to file the response briefs, respondent and intervenors-respondent (respondents) now move for a voluntary remand to consider the arguments raised in the petition for review. In their motion, respondents assert:

“Respondent hereby certifies that it will conduct a public Remand Hearing, which Hearing will be limited to the Parties to this Appeal and all issues raised [in the] Petition for Review.” Respondents’ Motion for Voluntary Remand 1.

Petitioner opposes the motion for two reasons. First, petitioner contends that the city had the opportunity to consider the issues raised in the petition for review during the initial proceedings below, and the city failed to adequately address them. Petitioner also expresses doubt that the city will in fact address the issues identified in the petition for review, and opines that the main reason respondents seek a remand is to prolong the process so that petitioner cannot afford to proceed with his appeals.

The appropriate inquiry in determining whether to grant a motion for voluntary remand over the objection of a petitioner is set out in *Angel v. City of Portland*, 20 Or LUBA 541, 543 (1991), as follows:

“The legislature has clearly expressed an intent that appeals of land use decisions be thoroughly and expeditiously determined by the Board. ORS

1 197.805 and [197.835(11)(a)]. Granting a local government request for
2 [voluntary] remand of an appealed decision, over petitioner’s objection, is
3 consistent with this policy of expeditious and complete review only if the
4 local government demonstrates that the proceedings on remand will be
5 capable of providing the petitioner with everything he would be entitled to
6 from this Board. If the local government’s request for remand of its decision
7 does not demonstrate that *all* of the allegations of error made by petitioner in
8 the petition for review will be addressed on remand, it is inappropriate to
9 remand the decision over petitioner’s objections.” (Emphasis in original;
10 citations and footnote omitted.)

11 As *Angel* makes clear, remand is appropriate when the petition for review has
12 identified as error something the local government believes it cannot defend at LUBA. It
13 does not serve the goal of timely resolution of land use disputes to force the city to defend a
14 position it believes cannot survive the Board’s review. *Smith v. Douglas County*, 33 Or
15 LUBA 682, 684 (1997); *Mulholland v. City of Roseburg*, 24 Or LUBA 240, 243 (1992).

16 Here, the city has stated that it will address all of the issues raised in the petition for
17 review, and petitioner has not demonstrated that he will not receive “everything he would be
18 entitled to from [LUBA].” *Angel*, 20 Or LUBA at 543. Petitioner’s allegations of improper
19 motives on respondents’ part fail to show that petitioner’s arguments set out in his petition
20 for review will not receive adequate consideration by the city on remand. *Hastings Bulb*
21 *Growers, Inc. v. Curry County*, 25 Or LUBA 558, 562 (1993).¹ Therefore, we believe it is
22 appropriate to grant respondents’ motion.

23 The city’s decision is remanded.

¹As prevailing party in this appeal, petitioner may file a cost bill to recover his filing fee and his deposit for costs.