

NATURE OF THE DECISION

Petitioner appeals a hearings officer’s decision approving a conditional use permit and design review permit for a public school district’s administrative office building.

MOTION FOR VOLUNTARY REMAND

The county moves for voluntary remand, stating that it intends to conduct proceedings on remand that will address each of the assignments of error raised in the petition for review.

Petitioner opposes the motion, noting that the first assignment of error argues that the hearings officer erred in concluding that the proposed administrative office building is a “public school” allowed in the applicable zone. According to petitioner, an office building is not permitted in the zone at all, and therefore the county cannot approve it. If petitioner is correct, petitioner argues, then the only appropriate disposition of the decision is reversal, not remand.

Petitioner contends that granting voluntary remand over the petitioner’s objections is appropriate only when the local government demonstrates that remand is capable of providing the petitioner with the relief that the petitioner would otherwise be entitled to from LUBA. *Angel v. City of Portland*, 20 Or LUBA 541, 543 (1991). Petitioner contends that because he seeks to reverse the challenged decision, remand cannot provide him with the relief he would be entitled to from LUBA.

Granting voluntary remand may not be appropriate where it is not clear that on remand the local government will consider arguments that the decision is prohibited as a matter of law. *See Century 21 Properties v. City of Tigard*, 17 Or LUBA 1298, 1307 n 9, *rev'd on other grounds* 99 Or App 435, 783 P2d 13 (1989) (declining to remand where it is not clear that the city intends to address arguments that the decision exceeds the city’s authority and must be reversed). We disagree with petitioner, however, that the mere fact

1 that the petition for review seeks reversal is itself a basis to deny a motion for voluntary
2 remand. *Mulholland v. City of Roseburg*, 24 Or LUBA 240, 242 (1992) (alleging a basis for
3 reversal does not create an absolute right to a ruling on the merits by LUBA where voluntary
4 remand is sought).

5 Here, the county states that on remand it will address “each of the Assignments of
6 Error presented in the Petition for Review.” Motion for Voluntary Remand 1. That
7 necessarily includes the first assignment of error, where petitioners argue that the hearings
8 officer erred in approving a use that is not allowed in the governing zone. We see nothing in
9 the county’s request for voluntary remand suggesting that the county will not fully consider
10 the arguments presented under the first assignment of error, or that the county will not take
11 appropriate action if it concludes that petitioner is correct on that point.

12 The motion for voluntary remand is granted. The county’s decision is remanded.