

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON
3

4 THAN EXAMILOTIS and NICOLE EXAMILOTIS,
5 *Petitioners,*
6

7 vs.
8

9 COOS COUNTY,
10 *Respondent,*
11

12 and
13

14 COOS COUNTY STEP COMMISSION,
15 *Intervenor-Respondent.*
16

17 LUBA No. 2006-205
18

19 ORDER

20 The county moves the Board “to remand for reconsideration” the challenged decision.
21 Intervenor filed a response brief that concurs with the county’s motion and requests that the
22 Board “* * * remand the decision * * * to prepare adequate findings that consider and
23 address all issues raised by the petition for review.” Response Brief 3. Petitioners object to
24 the motion.

25 Petitioners’ objection to the motion focuses primarily on ORS 197.830(13)(b) and
26 OAR 661-010-0021.¹ Petitioners correctly point out that a decision may not be withdrawn
27 for reconsideration after the time for filing the record has passed, as it has in this appeal.²

¹ Although petitioners cite ORS 197.830(12)(b), we presume they meant to cite ORS 197.830(13)(b), which provides:

“At any time subsequent to the filing of a notice of intent and prior to the date set for filing the record, or, on appeal of a decision under ORS 197.610 to 197.625, prior to the filing of the respondent’s brief, the local government or state agency may withdraw its decision for purposes of reconsideration. If a local government or state agency withdraws an order for purposes of reconsideration, it shall, within such time as the board may allow, affirm, modify or reverse its decision. * * *”

² OAR 661-010-0021(1) provides:

1 We agree with petitioners that the county may not *withdraw* the decision for reconsideration
2 pursuant to ORS 197.830(13)(b) and OAR 661-010-0021. However, we believe that what
3 the county seeks to do is closer to a “voluntary remand.”

4 Where a petitioner objects to a local government’s motion for voluntary remand, we
5 will grant the motion if the local government asserts that it will address all of the allegations
6 of error set out in the petition for review. *Doob v. Josephine County*, 43 Or LUBA 130, 133
7 (2002). In general, a motion for voluntary remand should expressly state that the respondent
8 will address all issues raised in the petition for review on remand.

9 The county “moves the Board for a remand of the above-referenced case for
10 reconsideration and/or further proceedings.” Although intervenor requests a remand of the
11 decision so that the county may address all of the allegations set forth in the petition for
12 review, it is not clear from the county’s motion that it will in fact address all of the
13 allegations of error in the petition for review on remand. As such, at this point, the county
14 has not provided a sufficient basis for us to remand the decision over petitioners’ objections,
15 and the county’s motion is denied.

16 The county may, within seven days of the date of this order, refile its motion and
17 expressly state that it will address all of the allegations set out in the petition for review on
18 remand.

19 Dated this 9th day of November, 2007.
20
21

22
23
24 _____
25 Melissa M. Ryan
Board Member

“If a local government or state agency, pursuant to ORS 197.830(13)(b), withdraws a
decision for the purposes of reconsideration, it shall file a notice of withdrawal with the
Board on or before the date the record is due. * * *”