

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. It is likely that the Court of Appeals would not require that a land use hearings officer ruling on a request to alter a nonconforming use must apply the legal principle stated in *Parks v. Tillamook Co. Comm./Spliid*, 11 Or App 177, 196-97 (1972), that nonconforming uses are disfavored and subject to strict scrutiny under state law. However, where it does not appear that the *Parks* principle played any role in the hearings officer's decision, the hearings officer's citation to *Parks* provides no basis for reversal or remand. *Meyer v. Jackson County*, 73 Or LUBA 1 (2016).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. A hearings officer's error in identifying 1984 instead of 1962 as the date a composting operation became nonconforming, for purposes of verifying the lawful existence of the proposed nonconforming use, is harmless error, where the hearings officer concluded, based on substantial evidence, that a composting operation did not exist at all on the property until 1990. *Grabhorn v. Washington County*, 73 Or LUBA 27 (2016).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. A hearings officer's error in identifying 1984 instead of 1962 as the date a composting operation became nonconforming did not prejudice the applicant's substantial rights to present evidence regarding the lawful existence of the use prior to the date the use became nonconforming. Any remand to correct the erroneous citation to 1984 would focus on the correct date of nonconformity, 1962, and the applicant had a full opportunity to present evidence that the operation lawfully existed in 1962. *Grabhorn v. Washington County*, 73 Or LUBA 27 (2016).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. LUBA will not consider the parties' arguments about whether a city erred by faulting an applicant for referring to proposed open space as a park, where the accuracy of the applicant's description of the open space was not a basis for the city's denial of the permit application. *J. Conser and Sons, LLC v. City of Millersburg*, 73 Or LUBA 57 (2016).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. The lack of evidentiary support for a finding that a vegetative buffer is superior to a distance buffer at reducing visual incompatibilities is not harmless error, where the only evidence on that point is to the contrary, and under the local government's interpretation of the compatibility standard whether one buffer method is better at reducing or minimizing adverse visual impacts than another method appears to be a legitimate consideration. *Forest Park Neighborhood Assoc. v. Washington County*, 73 Or LUBA 193 (2016).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. A city council's erroneous interpretation that the maximum 180-day period for a temporary use permit must begin on the date the permit is issued is harmless error, and provides no basis for remand, where the applicant never asked that the 180 period begin on a date

after the permit was issued. *Bend/Sisters Garden RV Resort, LLC v. City of Sisters*, 72 Or LUBA 200 (2015).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error.

Where a city council adopts alternative interpretations of a disputed standard that allows building height increases, and approves a proposed building height increase under both interpretations, the city’s decision must be affirmed where the petitioner at LUBA only assigns error to one of the city council’s interpretations. *Preserve the Pearl, LLC v. City of Portland*, 72 Or LUBA 261 (2015).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error.

A hearings officer’s decision to deny verification of an asphalt batch plant does not amount to a decision to approve and verify the “nature and extent” of a previously existing concrete batch plant on the same property, where the hearings officer’s findings that cite evidence regarding the previously existing concrete batch plant are not essential to the decision to deny the application before the hearings officer to verify an asphalt batch plant. *Rogue Advocates v. Jackson County*, 71 Or LUBA 148 (2015).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error.

That a local government may have erroneously found that a natural gas pipeline is not a water-related use provides no basis for reversal or remand, where the county does not rely on that finding in denying the application for permit approval for the pipeline. *Oregon Pipeline Company v. Clatsop County*, 71 Or LUBA 246 (2015).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error.

A notice of decision’s characterization of a decision as legislative when it is actually a quasi-judicial decision does not, in itself, warrant remand so long as the relevant criteria were applied and there were no procedural errors that prejudiced petitioner’s substantial rights. *Warren v. Josephine County*, 67 Or LUBA 74 (2013).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error.

Failure to assign error to the county’s primary finding, pursuant to ORS 197.835(7), that the text amendment is consistent with “specific policies” in the county’s comprehensive plan that are the basis for the amendment, makes it unnecessary to address the petitioner’s challenge to the county’s alternative findings that the amendment is consistent with the statewide planning goals. *Waste Not of Yamhill County v. Yamhill County*, 65 Or LUBA 142 (2012).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error.

Even if the record does not include evidence supporting a county’s declaration that an emergency exists, allowing an ordinance to take effect immediately rather than 90 days later, the lack of evidentiary support for the declaration does not provide a basis to reverse or remand the ordinance, where the only identified consequence is that the ordinance became effective 90 days later instead of on adoption, and in either case the ordinance is effective at the time of LUBA’s review. *Waste Not of Yamhill County v. Yamhill County*, 65 Or LUBA 142 (2012).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. A petitioner’s challenge to alternative findings that a parcel being rezoned was legally created does not provide a basis for reversal or remand, where the petitioner fails to challenge the county’s primary finding that the rezoning standards do not require a finding that the parcel was legally created. *O’Brien v. Lincoln County*, 65 Or LUBA 286 (2012).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. A finding expressing an erroneous understanding of the local decision-maker’s standard of evidentiary review is harmless error at best, where no party identifies any findings addressing the approval criteria or evidence in which the decision-maker applied that erroneous standard of review. *Citizens Against LNG v. Coos County*, 63 Or LUBA 162 (2011).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. Where a county’s decision that land is not suitable for commercial forest use misapplies the test that LUBA determined must be applied in an earlier appeal, but the county also properly applies and adequately explains why the land does not qualify as suitable for commercial forest uses under the correct test, the county’s misapplication of the test does not provide a basis for reversal or remand. *Anderson v. Coos County*, 62 Or LUBA 38 (2010).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. An allegedly erroneous and overbroad code interpretation that all commercial uses allowed in any commercial zone are allowed under the use category “retail and wholesale trade facilities” in an airport overlay zone does not warrant reversal or remand, where the interpretative error, if any, does not undermine the governing body’s principal interpretation that the proposed travel plaza is a “retail and wholesale trade facility.” *Devin Oil Co., Inc. v. Morrow County*, 62 Or LUBA 247 (2010).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. Where a local government approves a cell tower based on the demonstrated coverage needs of a particular cellular provider, a finding suggesting that the tower could also serve the needs of another provider who did not submit evidence of coverage needs is an extraneous finding, and at most harmless error. *Oberdorfer v. Deschutes County*, 62 Or LUBA 296 (2010).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. It is harmless error to rely on new evidence that is accepted after the close of the record regarding water quality impacts of a proposed alteration to a nonconforming use, where the hearings officer also denied the proposed alteration based on fire safety impacts, and the petitioner/applicant does not challenge that basis for denial. *Campers Cove Resort v. Jackson County*, 61 Or LUBA 62 (2010).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. A county’s alleged failure to process a permit application under “Type II” procedures, which provide for a *de novo* hearing on appeal of an administrative decision, does not provide a basis for remand, where the county initially processed the application under “Type I” procedures that provide for a hearing limited to the issues raised in the appeal petition, but in fact the county provided a *de novo* hearing on the appeal not limited to the issues raised in the appeal petition. *Jensen Properties v. Washington County*, 61 Or LUBA 155 (2010).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. A county’s error in quoting and applying superseded code provisions in its decision is harmless error, where the petitioner fails to identify any substantive difference between the superseded and current code standards. *Jensen Properties v. Washington County*, 61 Or LUBA 155 (2010).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. Where a local government provides the decision maker with the original subdivision application narrative but fails to provide the decision maker with the amended application narrative, where the differences between the two narratives are such that LUBA cannot determine whether the local government’s failure to provide the amended application narrative to the decision maker was harmless error, remand is required. *Montgomery v. City of Dunes City*, 60 Or LUBA 274 (2010).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. LUBA will not resolve arguments that a \$660 fee to conduct a hearing on remand is inconsistent with ORS 215.422, where the county notified the petitioner/applicant of the hearing fee but ultimately held the remand hearing without requiring petitioner to pay the fee. Under these circumstances, LUBA’s resolution of the issue would be advisory. *Easterly v. Polk County*, 59 Or LUBA 417 (2009).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. ORS 197.829(2) permits LUBA to interpret a local code provision in the first instance where there is a missing or inadequate governing body interpretation, but does not permit LUBA to supply missing findings of compliance with applicable approval criteria. *Holbrook v. City of Rockaway Beach*, 58 Or LUBA 179 (2009).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. Where LUBA has affirmed a county’s determination to waive certain road improvement standards under a local code provision prohibiting the county from requiring road improvements that are not roughly proportional to the impact of proposed development, any error the county may have made in also granting variances to those road improvement standards under general variance standards is harmless error. *Columbia Riverkeeper v. Clatsop County*, 58 Or LUBA 235 (2009).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. A county’s error in failing to identify which farm practices on nearby lands are excluded

from the significant change/increase analysis because they are part of “hobby farms” and are not intended to generate a profit is harmless error, where the governing body adopted unchallenged planning commission findings that discuss impacts of the proposed mining on farm practices without distinguishing between “hobby farms” and other farms, and conclude that any impacts on farm practices will be insignificant. *Comden v. Coos County*, 56 Or LUBA 214 (2008).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. While a county’s failure to describe accepted farming practices on nearby lands would likely require remand under the ORS 215.296(1) significant change/increase standard or a code provision implementing that standard, such a failure is not necessarily reversible error under a similar code significant change/increase standard that does not implement the statute. Any failure to describe accepted farming practices under the code standard is harmless, where the county adopted unchallenged findings, supported by substantial evidence, that the proposed mining will not significantly affect any farm or forest practices. *Comden v. Coos County*, 56 Or LUBA 214 (2008).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. Even if a local government erred in concluding that noise and air quality standards are “performance standards” rather than approval criteria applicable to a proposed transportation center, that error is harmless where the noise and air quality standards apply only to specified uses, and the specified uses do not include anything resembling the proposed transportation center. *Kane v. City of Beaverton*, 56 Or LUBA 240 (2008).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. Where a subdivision approval standard was waived under Ballot Measure 37 (ORS 197.352), a hearings officer’s findings addressing that standard in approving a subsequent application for subdivision approval could not provide a basis for remand of the subdivision decision, even if those findings were defective in some way. *Pete’s Mtn. Home Owners Assoc. v. Clackamas County*, 55 Or LUBA 287 (2007).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. Where the petitioner raises a number of issues, some directed at a remanded decision that is not before the city, and others at the application that is before the city, and the city prudently adopts findings addressing all issues raised, the findings that address issues regarding an application that is not before the city are surplusage and not binding on the city or parties, and LUBA will not address challenges to those findings. *Brodersen v. City of Ashland*, 55 Or LUBA 350 (2007).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. A hearings officer’s finding that can be read to conclude that a code provision does not apply is not a basis for remand, where the hearings officer adopted a planning director’s decision that clearly applies the code provision and determines that the application complies with it, and petitioners do not challenge the director’s findings. *Citizens for Responsibility v. Lane County*, 54 Or LUBA 1 (2007).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. Remand is necessary where a hearings officer misunderstood the applicant’s argument regarding a critical piece of evidence, that misunderstanding played a significant role in denying the application, and LUBA cannot determine if the hearings officer’s misunderstanding was harmless error. *Wal-Mart Stores, Inc. v. City of Gresham*, 54 Or LUBA 16 (2007).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. An erroneous interpretation that appears in the prefatory section of a hearings officer decision is harmless error, where the hearings officer never applied the interpretation in the body of the decision and there is no indication that the erroneous interpretation made any difference in evaluating the evidence. *Applebee v. Washington County*, 54 Or LUBA 364 (2007).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. A county’s conclusion that OAR 660-010-0010 does not apply to a decision designating forest land as marginal lands under ORS 197.247 (1991) is harmless error, where the decision is supported by an analysis that is based on objective, empirical measurements of forest productivity consistent with the rule’s requirements. *Herring v. Lane County*, 54 Or LUBA 417 (2007).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. An alleged inconsistency between the oral decision by the governing body and the final written decision signed on the governing body’s behalf by the planning director is at most harmless error and is not itself a basis for remand, where the governing body’s decision must be remanded for additional findings in any case, and the decision on remand will supersede the challenged decision, rendering any error moot. *O’Rourke v. Union County*, 54 Or LUBA 614 (2007).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. A county’s erroneous finding that designating forest land as marginal lands under ORS 197.247 (1991) is not subject to OAR 660-006-0010, which governs the inventory of forest lands, is harmless error, where the county’s decision nonetheless complies with the substantive requirements of the rule. *Anderson v. Lane County*, 54 Or LUBA 669 (2007).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. A hearings officer’s statements on matters beyond the application before him are *dicta* and harmless error, where the statements appear to play no role in the decision before the hearings officer, and have no binding or presumptive effect on other decisions. *Chackel Family Trust v. City of Bend*, 53 Or LUBA 385 (2007).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. A hearings officer had authority to modify a prior permit’s condition of approval requiring a perimeter fence, notwithstanding a code provision that prohibits a modification that is a “substitute for an appeal,” where the requested modification is to approve a different

fence location following a court order two years after the permit decision, and thus the modification could not have been the subject of an appeal. *Chackel Family Trust v. City of Bend*, 53 Or LUBA 385 (2007).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error.

Where in adopting a committed exception under OAR 660-004-0028 the local government includes findings addressing some of the standards for adopting a reasons exception under OAR 660-004-0020(2), LUBA will remand to the local government to either delete those findings or explain what relevance they have to the committed exception. *Friends of Linn County v. Linn County*, 53 Or LUBA 420 (2007).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error.

Any error in adopting findings concluding that omission of information in the application can never constitute a “misstatement of fact,” for purposes of determining whether to refer a revocation request to a hearing, is harmless error, where the planning director nonetheless adopted findings addressing whether particular omissions were material misstatements of fact. *Emami v. City of Lake Oswego*, 52 Or LUBA 18 (2006).

28.8.8 LUBA Scope of Review - Grounds for Reversal/Remand - Harmless Error.

Where a hearings officer reopens the evidentiary record to allow parties to present arguments and evidence concerning whether a different adjustment/variance criterion than had been applied before should be applied to an application for a adjustment/variance, and petitioners do not argue that the hearings officer’s actions failed to provide petitioners with an adequate opportunity to present their arguments on the merits concerning which adjustment/variance criterion should apply, petitioners fail to demonstrate that the hearings officer’s action resulted in prejudice to their substantial rights or that any substantive error on the hearings officer’s part was not harmless error. *Bickford v. City of Tigard*, 52 Or LUBA 301 (2006).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error.

A plan amendment provision stating that the applicant for an amendment must state “compelling reasons” why the amendment should be considered at this time, rather than as part of periodic review, is not an approval criterion requiring a particular finding. To the extent a finding is required, where the petitioner does not dispute that the application stated a compelling reason to proceed immediately, the failure to adopt a finding to that effect is harmless error. *Oregon Shores Cons. Coalition v. Lane County*, 52 Or LUBA 471 (2006).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error.

LUBA need not resolve the parties’ legal dispute over whether a condition of subdivision approval requiring construction of a street through a neighboring development is consistent with conditions, covenants and restrictions governing that neighboring development, where only the circuit court has jurisdiction to finally resolve that dispute, and the local government has adequately established an alternative basis to impose the condition regardless of how that legal dispute is resolved. *Butte Conservancy v. City of Gresham*, 52 Or LUBA 550 (2006).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. LUBA will not affirm a decision under the harmless error doctrine or ORS 197.835(11)(b) notwithstanding failure to adopt findings applicable to conditional uses allowed in the zone, based on findings adopted to address similar site review standards, where it is not clear that the zoning district provides for the proposed use at all. *Central Oregon Landwatch v. Deschutes County*, 52 Or LUBA 582 (2006).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. That a city’s decision is based in part on an erroneous interpretation of applicable law provides no basis for remand where its decision is separately based on findings that correctly interpret and apply the applicable law. *Leupold & Stevens, Inc. v. City of Beaverton*, 51 Or LUBA 65 (2006).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. Even if a hearings officer’s assumption that the applicant could legally conduct both an outdoor mass gathering and a smaller gathering during the same three month period is erroneous, any error is harmless and not a basis to reverse or remand the decision, where a proposal for outdoor gatherings was not part of the application, and the hearings officer’s statement was merely *dicta*, not binding on the parties in any way. *Horning v. Washington County*, 51 Or LUBA 303 (2006).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. The fact that a local government could have reached the decision it did without considering and relying on improperly received evidence does not make that error harmless. When a local government relies on evidence not properly before it to render a decision, it violates the parties’ substantial rights. *Wal-Mart Stores, Inc. v. City of Oregon City*, 50 Or LUBA 87 (2005).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. That a county theoretically could have adopted a rezoning decision by resolution as a zoning map “correction” under a code process that would not require written notice to petitioner does not mean that the county’s failure to provide written notice to petitioner as required under the code process it did use was harmless error. *Sullivan v. Polk County*, 49 Or LUBA 543 (2005).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. Where a land use decision expressly incorporates a particular document, that document is incorporated whether or not it is attached to the challenged decision when mailed. That the local government inadvertently attached the wrong document to the decision when mailing it does not have the legal effect of incorporating the attached document, and the act of attaching the wrong document is harmless error. *Grabhorn v. Washington County*, 49 Or LUBA 746 (2005).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. A county’s error in finding that ORS 215.253 imposes an absolute bar on adopting and

applying local land use regulations to farm uses provides no basis for remand of land use decision approving a feedlot, where petitioners identify no existing, applicable local land use regulations that apply to county approval of a feedlot. *Friends of Jefferson County v. Jefferson County*, 48 Or LUBA 107 (2004).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error.

A land use hearings officer's findings that a radio tower proposal would not increase radio frequency interference would provide no basis for remand, even if the findings are inadequate and the findings are not supported by substantial evidence, where the local government's authority to regulate radio frequency interference is preempted by federal law. *Save Our Skyline v. City of Bend*, 48 Or LUBA 192 (2004).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error.

LUBA will not resolve a petitioner's challenge to a county's interpretation of a comprehensive plan policy where, under the facts found by the county and affirmed by LUBA, the plan policy would be applied the same way under either petitioner's or the county's interpretation. Under such circumstances, the interpretative dispute between the parties is merely hypothetical, and the alleged misinterpretation provides no basis for reversal or remand. *Doob v. Josephine County*, 48 Or LUBA 227 (2004).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error.

A local government's failure to adequately identify documents it intends to incorporate by reference as findings, and its adoption of testimony as findings, are not by themselves a basis for reversal or remand. Instead, the attempted incorporation fails and the city may not rely on such documents or testimony to provide "findings" in support of the decision. If the city has adopted other findings that adequately support the decision, the failed incorporation and improper attempt to adopt testimony as findings are harmless error. *Staus v. City of Corvallis*, 48 Or LUBA 254 (2004).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error.

Where a decision cites three reasons for rejecting an alternative building location proposed by a permit opponent, under a code provision authorizing the local government to require alternative building locations to protect scenic views from adjoining properties, potential flaws in two of the three reasons are not a basis for reversal or remand, where the third reason is an independent and sufficient basis to reject the proposed alternative. *Carrigg v. City of Enterprise*, 48 Or LUBA 328 (2004).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error.

A local government's failure to address issues raised regarding whether an enhanced wetland project is consistent with the purpose of the EFU zone is at most harmless error, where petitioners do not explain why the purpose statement is an approval criterion. *Cadwell v. Union County*, 48 Or LUBA 500 (2005).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error.

A city's alleged misinterpretation of a code provision does not provide a basis for reversal or remand, where the only significance petitioner attaches to the misinterpretation relates

to an issue that was not raised below and is therefore beyond LUBA's review. *Comrie v. City of Pendleton*, 47 Or LUBA 38 (2004).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error.

Where a planning commission fails to formally appoint a three-person citizens' advisory committee from the community at large when considering major land use regulation amendment, as required by an applicable citizen involvement comprehensive plan requirement, that failure does not constitute reversible error where the planning commission in fact seeks the advice of four members of the city's design review committee who are citizens of the community. Where no party disputes that the design review committee members are members of the community at large, the planning commission's decision to seek input from the design review committee either constitutes *de facto* compliance with the citizen involvement requirement or renders any failure to formally appoint a citizens advisory committee a procedural error that resulted in no prejudice to the petitioner or other citizens of the community. *Dobson v. City of Newport*, 47 Or LUBA 267 (2004).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error.

Even assuming a county errs in "rounding up" rather than "rounding down" in calculating the number of developable and undeveloped acres under a standard that requires one undeveloped acre for every developed acre, that error provides no basis for reversal or remand, where the result of rounding up is consistent with the purpose of the standard, to ensure that the number of developed acres does not exceed the number of undeveloped acres. *Friends of the Metolius v. Jefferson County*, 46 Or LUBA 509 (2004).

28.8.8 LUBA Scope of Review - Grounds for Reversal/Remand - Harmless Error.

Even if it was error for the city to refer to proposed reconfigurations of existing lots as "tracts," where petitioners identify no reason why the erroneous reference provides a basis for reversal or remand, the reference is at most harmless error and does not provide a basis for reversal or remand. *South v. City of Portland*, 46 Or LUBA 558 (2004).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error.

Even if a finding that an existing sign is illegal is erroneous, that error is harmless and does not provide a basis for remand, where the legality of the existing sign plays no role in approving the sign expansion under the applicable approval criteria. *Cotter v. City of Portland*, 46 Or LUBA 612 (2004).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error.

Any error in a hearings officer's conclusion that the terms of an easement allow a public utility to file a land use application without the property owner's signature is harmless, where the code allows a public utility with condemnation authority to sign land use applications, and there is no dispute that the applicant is a public utility with condemnation powers under applicable statutes. *Cyrus v. Deschutes County*, 46 Or LUBA 703 (2004).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. Where LUBA affirms one of two independent bases for not requiring a subdivision applicant to provide access to an adjoining property owner’s property, petitioner’s challenge to the other basis for the city’s decision can provide no basis for remand and LUBA will not consider the challenge. *McFall v. City of Sherwood*, 46 Or LUBA 735 (2004).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. An erroneous assumption in a supplemental study regarding traffic impacts of development under proposed zoning for purposes of OAR 660-012-0060(2)(d) is harmless error, where the initial traffic study reached the same conclusion of compliance with the rule using the correct assumption, and petitioner offers no reason to believe that remand to correct the erroneous assumption in the supplemental study will alter that ultimate conclusion. *Friends of Marion County v. City of Keizer*, 45 Or LUBA 236 (2003).

28.8.8 LUBA Scope of Review - Grounds for Reversal/Remand - Harmless Error. Even if a city erroneously applied its zoning ordinance standards for lots or parcels to an applicant’s request for a lot line adjustment, that error provides no basis for reversal or remand where the city’s decision to deny the lot line adjustment request was not based on those standards. *Smith v. City of St. Paul*, 45 Or LUBA 281 (2003).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. The lack of evidence supporting findings that the subject property has no physical features that might limit development is not a basis for reversal or remand, where no party contended below that any physical features of the property limit development. *Bruce Packing Company v. City of Silverton*, 45 Or LUBA 334 (2003).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. Remand to adopt specific findings addressing a local criterion requiring that comprehensive plan amendments be “in the public interest and will be of general public benefit” is not warranted where the findings and narrative text of the amendments make it abundantly clear that the local government believes that the amendments are in the public interest and will benefit the public. *City of Woodburn v. Marion County*, 45 Or LUBA 423 (2003).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. LUBA will not affirm a county decision that must otherwise be reversed on an alternative ground that was not considered by the county and for which there is no evidentiary support. *Perkins v. Umatilla County*, 45 Or LUBA 445 (2003).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. A applicant’s failure to submit a farm management plan, as required by the county code, provides no basis for reversal or remand where petitioner’s argument is that the farm management plan is required to compare the income that will be generated by a proposed

hunting preserve with the income that is generated by the commercial farm on the property and LUBA affirms the county's interpretation of the code that relevant approval criteria do not require a comparison of hunting preserve and commercial farm incomes. *Underhill v. Wasco County*, 45 Or LUBA 566 (2003).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. A hearings officer's erroneous finding that land is currently employed for nursery stock production is harmless error, where petitioners do not establish that nursery stock production must precede issuance of a permit that is necessary to construct an accessory greenhouse. *Lorenz v. Deschutes County*, 45 Or LUBA 635 (2003).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. A county's erroneous application of an "adequate herbaceous forage" standard in approving a nonfarm partition is not harmless error, where the county focused preponderantly on that standard and failed to adopt findings addressing the required considerations under the correct standard. *Hanna v. Crook County*, 44 Or LUBA 386 (2003).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. Where five tax lots make up one parcel, a hearings officer's erroneous finding that the tax lots make up two parcels is not a basis for reversal or remand of a permit for a forest dwelling under ORS 215.750(1) if there are a sufficient number of parcels within the 160-acre template to satisfy the approval standard without considering those five tax lots. *Testa v. Clackamas County*, 44 Or LUBA 402 (2003).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. Where LUBA's remand requires the county to resolve an issue regarding three tax lots, but the county on remand accepts evidence on broader issues, the county's error, if any, in confining its final decision to resolving the dispute regarding the three tax lots is harmless, given that the county could have initially chosen to confine the remand proceeding to the basis for LUBA's remand. *CCCOG v. Columbia County*, 44 Or LUBA 438 (2003).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. That certain documents may not have been provided to the planning commission provides no basis for remand, where the planning commission decision was appealed to the city governing body, the governing body adopted the city's final decision and there is no contention that the disputed documents were provided to the city governing body. *Lord v. City of Oregon City*, 43 Or LUBA 361 (2002).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. Where LUBA finds that a local government correctly determined that a particular conditional use approval criterion applies, but LUBA disagrees with the local government's reasons for concluding that the criterion applies, the local government's erroneous reasons for correctly concluding that the criterion applies provide no basis for reversal or remand. *Dundas v. Lincoln County*, 43 Or LUBA 407 (2002).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error.

Where persons other than the resident will participate in a home occupation, but the county cites the wrong zoning code provision that is violated by such participation by nonresidents, LUBA will not remand the decision for the county to address the correct code provision where the decision includes other bases for denial of the application. *Hick v. Marion County*, 43 Or LUBA 483 (2003).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error.

Where LUBA cannot tell if the local government simply weighed conflicting evidence, or instead impermissibly rejected the opponent’s evidence for failure to satisfy a nonexistent burden of proof, the local government’s error in explicitly shifting the burden of proof to the opponents is not harmless. *Stahl v. Tillamook County*, 43 Or LUBA 518 (2003).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error.

Even if evidence is improperly accepted by the local government, remand is not appropriate where petitioners fail to demonstrate that the improperly accepted evidence is potentially relevant to an approval criterion. Evidence regarding development of a neighborhood plan, ownership patterns in the neighborhood, and whether a proposed hotel can meet height limitations is not potentially relevant to a criterion that requires a proposed hotel to be consistent with regard to “building size, height, color, material and form” with other structures in the neighborhood. *Terra v. City of Newport*, 40 Or LUBA 286 (2001).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error.

It is error for a member of a local governing body to announce that he is close friends with the parties and will not participate in the decision on a variance request, but nevertheless later make the motion to approve the written decision and vote on the written decision. However, the error is harmless where the member of the governing body does not participate in the evidentiary hearing or the 4-0 oral vote at the conclusion of the evidentiary hearing to approve the variance. *Reagan v. City of Oregon City*, 39 Or LUBA 672 (2001).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error.

Any error in failing to comply with code provisions for amending the Metro UGB is harmless, where the pertinent code provisions are not based on statute, goal or rule; the provisions have been superseded by new standards that would apply on remand; and it is undisputed that the decision does not violate the new standards. *Citizens Against Irresponsible Growth v. Metro*, 39 Or LUBA 539 (2001).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error.

A county’s inadequate findings of compliance with inapplicable approval criteria are harmless error, and provide no basis to reverse or remand the challenged decision. *Wolverton v. Crook County*, 39 Or LUBA 256 (2000).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error.

Where a permit application omits required information, the omitted information is not contained elsewhere in the record, and the omitted information is necessary to

demonstrate compliance with an applicable approval standard, the failure to provide the required information is not harmless procedural error and provides a basis for reversal or remand. *Hausam v. City of Salem*, 39 Or LUBA 51 (2000).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. A lack of supporting information in an application does not provide a basis for reversal or remand when the missing information is not necessary to determine compliance with a specific approval standard. *Roth v. Jackson County*, 38 Or LUBA 894 (2000).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. It is inconsistent with ORS 215.296(1) to arbitrarily limit the scope of analysis to properties within 500 feet of the subject property, where doing so results in failure to consider substantial evidence in the record of significant impacts from the proposed use to accepted farming practices on lands beyond 500 feet. However, where petitioners fail to challenge a finding that there are no significant impacts within 500 feet, and an extrapolation of that finding to lands beyond 500 feet, the county's error does not provide a basis for reversal or remand. *Wilbur Residents v. Douglas County*, 37 Or LUBA 156 (1999).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. Where a county code provision requires a *de novo* review and a hearings officer's decision includes language that suggests the hearings officer erroneously believed a *de novo* review was not required, there is no basis for reversal or remand where record makes it clear that the hearings officer nevertheless conducted the requisite *de novo* review. *Lawrence v. Clackamas County*, 36 Or LUBA 273 (1999).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. Where a local government decision does not incorporate a new city but erroneously applies LCDC's rules concerning incorporation of new cities in the course of taking an exception to Goal 14, the error is harmless and provides no basis for reversal or remand. *James v. Josephine County*, 35 Or LUBA 493 (1999).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. Where an approval criterion requires compliance with two off-site impact standards and a hearings officer finds that neither impact standard is met, the possibility that the hearings officer's finding concerning one of the impact standards is defective provides no basis for remand where the finding concerning the other impact standard is upheld and is sufficient by itself to support permit denial. *River City Disposal v. City of Portland*, 35 Or LUBA 360 (1998).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. Where the zoning ordinance requirements for giving notice of permit hearings are inconsistent with statutory requirements, the statutory conflict is not rendered harmless error by a zoning code requirement that the county give "any other notice required by law." *Rochlin v. Multnomah County*, 35 Or LUBA 333 (1998).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. Goal 14 does not apply to property within a city's limits, and therefore a city's conclusory finding of compliance with Goal 14 is harmless error. *Larvik v. City of La Grande*, 34 Or LUBA 467 (1998).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. The omission of information required by a local code from a development application is harmless procedural error if the required information is located elsewhere in the record. *Brown v. City of Ontario*, 33 Or LUBA 180 (1997).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. The failure of the notices of the city and county planning commission hearings to include a listing of applicable review criteria from the city and county zoning ordinances and plans is not an error justifying remand where the criteria were listed in the staff report, the parties were provided an opportunity to comment on the staff report at the hearing at which it was presented, the parties were provided almost two weeks to submit written comments on the staff report and petitioners have not demonstrated substantial prejudice. *Concerned Citizens v. Jackson County*, 33 Or LUBA 70 (1997).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. Allegations that the planning director provided allegedly erroneous advice to the planning commission cannot provide a basis for reversal or remand, where there is no indication in the record that the planning commission agreed with the allegedly erroneous advice and the challenged decision is the city council's decision affirming the planning commission decision. *Andrews v. City of Prineville*, 28 Or LUBA 653 (1995).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. The omission of required information from an application constitutes harmless procedural error if the required information is located elsewhere in the record. However, where such information is not located elsewhere in the record and such information is necessary for a determination of compliance with relevant approval standards, such an error is not harmless and warrants reversal or remand of the challenged decision. *Shapiro v. City of Talent*, 28 Or LUBA 542 (1995).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. That a local code's definition of the term "taking" neither accurately nor completely reflects the opinions of appellate courts and LUBA regarding what constitutes a "taking" of private property for public use under the Fifth Amendment to the U.S. Constitution or Article I, section 18, of the Oregon Constitution provides no basis for reversal or remand, where the term "taking" is not used elsewhere in the code. *DLCD v. Josephine County*, 28 Or LUBA 459 (1994).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. A local government determination that an inapplicable code standard is satisfied is harmless error, and provides no basis for reversal or remand. *Gettman v. City of Bay City*, 28 Or LUBA 116 (1994).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. A hearings officer's reliance on a dictionary definition of "in conjunction with" without providing the dictionary definition relied upon is harmless error, where it is apparent from the decision that the hearings officer interpreted the code term to require establishment of a customer/seller or seller/customer relationship between the proposed commercial use and timber and farm uses in the community. *Stroupe v. Clackamas County*, 28 Or LUBA 107 (1994).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. Where an application for subdivision tentative plan approval does not contain information on the location of driveways and easements required by the code, but petitioners fail to establish the missing information is relevant to any applicable approval standard, the error is harmless and does not provide a basis for reversal or remand. *Barrick v. City of Salem*, 27 Or LUBA 417 (1994).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. Where a decision approving a planned development states in one place that it grants detailed development plan approval, but it is clear from the decision and findings as a whole that it grants conceptual development plan approval, the single erroneous reference is a harmless error and provides no basis for reversal or remand. *Davenport v. City of Tigard*, 27 Or LUBA 243 (1994).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. Where the applicability of certain comprehensive plan policies was debated during the local proceedings, and petitioners had opportunities to and did present argument concerning these policies, the local government's failure to list the policies as applicable approval standards, as required by ORS 197.195(3)(c)(C), is harmless and provides no basis for reversal or remand. *Shelter Resources, Inc. v. City of Cannon Beach*, 27 Or LUBA 229 (1994).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. An applicant's failure to include particular information required by the local code on a permit application provides no basis for reversal or remand, unless petitioner explains why the missing information is necessary to determine compliance with specific applicable approval standards. *Wissusik v. Yamhill County*, 27 Or LUBA 94 (1994).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. In order for a petitioner to obtain reversal or remand by LUBA of a challenged decision because information required by the local code is missing from the subject land development application, petitioner must argue that the missing information is not found elsewhere in the record and explain why the missing information is necessary to determine compliance of the proposed development with applicable approval standards. *Murphy Citizens Advisory Comm. v. Josephine County*, 25 Or LUBA 312 (1993).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. Where the date when a challenged ordinance would have become effective without an

emergency clause has passed, any error by the local government in adopting such emergency clause is harmless, and provides no basis for reversal or remand. *City of La Grande v. Union County*, 25 Or LUBA 52 (1993).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. Where county regulations establish different approval standards for major and minor partitions, a county's error in treating an application as being for a minor partition, rather than for a major partition, is not harmless. *Schrock Farms, Inc. v. Linn County*, 24 Or LUBA 58 (1992).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. Where a local government adopted a definition of "contiguous" during the proceedings below, but did not rely on that definition in making the challenged decision, any errors in the substance of the definition, or the procedures by which it was adopted, provide no basis for reversal or remand. *Bouman v. Jackson County*, 23 Or LUBA 628 (1992).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. Unlike a local government, LUBA is specifically required by statute to consider arguments that a local government decision is unconstitutional and to reverse or remand an unconstitutional decision. Therefore, procedural errors a local government may have committed in considering constitutional issues during local proceedings are harmless errors. *Dodd v. Hood River County*, 22 Or LUBA 711 (1992).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. Where an application for a conditional use permit for a mobile home park includes neither a site plan nor other specific information required under the local code, and the site plan and specific information are relevant to determining compliance with applicable approval criteria, their omission is not a harmless procedural error. *Burghardt v. City of Molalla*, 22 Or LUBA 369 (1991).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. Where the challenged decision incorrectly states that certain issues are not relevant to the applicable approval criteria, but also includes findings addressing those issues, there is no basis for reversal or remand of the decision unless petitioners establish that the findings are inadequate to demonstrate compliance with the applicable approval standards. *Schellenberg v. Polk County*, 21 Or LUBA 425 (1991).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. An incorrect finding does not provide a basis for reversal or remand where there is no indication in the challenged decision that the decision maker relied on the incorrect finding in determining compliance with applicable approval criteria. *Reynolds v. Clackamas County*, 21 Or LUBA 412 (1991).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. Where the local decision maker correctly determines that a proposed zone change does not comply with a comprehensive plan policy, his erroneous speculation about what

would satisfy the plan policy provides no basis for reversal or remand. *Reeder v. Clackamas County*, 20 Or LUBA 238 (1990).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. A local government commits harmless error by mischaracterizing and reviewing a "major partition" as though it were a "subdivision," as those terms are defined in the city's code, where petitioner fails to identify any approval criteria which impose different standards on major partitions and subdivisions. *Vestibular Disorders Consult. v. City of Portland*, 19 Or LUBA 94 (1990).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. Findings that address consistency with a policy not yet adopted by the city, but which do not purport to base imposition of a disputed condition on that policy, are surplusage and provide no basis for reversal or remand. *Vestibular Disorders Consult. v. City of Portland*, 19 Or LUBA 94 (1990).

28.8.8 LUBA Scope of Review – Grounds for Reversal/Remand – Harmless Error. Where an existing plaza fully satisfies a code requirement for at least one plaza in excess of five percent of the area of the block, no "adjustment" was required to grant a requested development approval which includes a plaza of less than five percent of the block's area. Because no "adjustment" was required, even if the findings explaining the justification for the "adjustment" are inadequate, they provide no basis for remand. *Corbett/Terwilliger Neigh. Assoc. v. City of Portland*, 19 Or LUBA 1 (1990).