

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

3  
4 ALAN MONTGOMERY,  
5 *Petitioner,*

6  
7 vs.

8  
9 CITY OF DUNES CITY,  
10 *Respondent.*

11  
12 LUBA No. 2008-135

13  
14 FINAL OPINION  
15 AND ORDER

16  
17 Appeal on remand from the Court of Appeals.

18  
19 Bill Kloos, Eugene, represented petitioner.

20  
21 David N. Allen, Newport, represented respondent.

22  
23 HOLSTUN, Board Chair; BASSHAM, Board Member; RYAN, Board Member,  
24 participated in the decision.

25  
26 REMANDED

01/05/2011

27  
28 You are entitled to judicial review of this Order. Judicial review is governed by the  
29 provisions of ORS 197.850.

1 Opinion by Holstun.

2 This appeal is before us on remand from the Court of Appeals. *Montgomery v. City*  
3 *of Dunes City*, 60 Or LUBA 274, *rev'd and remanded* 236 Or App 194, 236 P3d 750 (2010).  
4 This appeal concerns a city decision that denies petitioner's request for preliminary  
5 subdivision approval. In our decision, we remanded the city's decision, sustaining  
6 petitioner's assignments of error in part. However, in doing so, we rejected the part of  
7 petitioner's second assignment of error that challenged city findings concerning the "needed  
8 housing" statutes.

9 ORS 197.307 imposes a number of limitations on local government regulation of  
10 "needed housing," as that term is defined in ORS 197.303. One of those limitations is that  
11 the approval standards that local governments apply to "needed housing" must be "clear and  
12 objective." ORS 197.307(6).<sup>1</sup> The ORS 197.303 definition of "needed housing" is set out  
13 below:

14 "(1) As used in ORS 197.307, until the beginning of the first periodic  
15 review of a local government's acknowledged comprehensive plan,  
16 'needed housing' means housing types determined to meet the need  
17 shown for housing within an urban growth boundary at particular price  
18 ranges and rent levels. On and after the beginning of the first periodic  
19 review of a local government's acknowledged comprehensive plan,  
20 'needed housing' also means:

21 "(a) Housing that includes, but is not limited to, attached and detached  
22 single-family housing and multiple family housing for both owner and  
23 renter occupancy;

24 "(b) Government assisted housing;

25 "(c) Mobile home or manufactured dwelling parks as provided in ORS  
26 197.475 to 197.490; and

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<sup>1</sup> The text of ORS 197.307(6) is set out below:

"Any approval standards, special conditions and the procedures for approval adopted by a local government shall be clear and objective and may not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay."

1           “(d)   Manufactured homes on individual lots planned and zoned for single-  
2           family residential use that are in addition to lots within designated  
3           manufactured dwelling subdivisions.

4           “(2)   Subsection (1)(a) and (d) of this section shall not apply to:

5                   “(a)   A city with a population of less than 2,500.

6                   “(b)   A county with a population of less than 15,000.

7           “\* \* \* \* \*”

8           The city council found that under ORS 197.303(2) it was not subject to the ORS  
9   197.307(6) “clear and objective” standards requirement:

10           “Dunes City has a population of less than 2,500, as projected in the city’s  
11           comprehensive plan \* \* \*, and further verified by 2007 population estimates  
12           from the Population Research Center at Portland State University. Therefore,  
13           per ORS 197.303(2)(a), clear and objective approval standards for needed  
14           housing do not apply; but rather, standards that are discretionary can apply.”  
15           Record 8.

16           We rejected petitioner’s challenge to the city’s interpretation of ORS 197.303(2), relying on  
17           the Court of Appeals’ decision in *Shelter Resources, Inc. v. City of Cannon Beach*, 129 Or  
18           App 433, 879 P2d 1313 (1994). 60 Or LUBA at 294. The Court of Appeals held that its  
19           decision in *Shelter Resources, Inc.* was not controlling. 236 Or App at 205. The Court of  
20           Appeals ultimately reversed and remanded our decision regarding the “needed housing”  
21           statutes, concluding that “ORS 197.303(2)(a) does not except the city from the application of  
22           the ‘clear and objective’ standards required by ORS 197.307(6) when its comprehensive plan  
23           identifies single-family housing as ‘needed housing.’ \* \* \*” *Id.*

24           With the exception of our rejection of petitioner’s challenge to the city’s needed  
25           housing findings, our initial decision in this appeal was not affected by the Court of Appeals’  
26           decision. The city’s decision is remanded for additional proceedings in accordance with the  
27           Court of Appeals’ decision, and the part of our initial decision in this matter that was  
28           unaffected by the Court of Appeals’ decision.