1.2.1 Administrative Law – Denials – Generally. When the county is entitled to deference under ORS 197.829(1), the decision can be reversed only if the interpretation is inconsistent with the express language, purpose or policy underlying the relevant code language. Under a non-deferential standard of review petitioner must demonstrate that the commissioners' interpretation is reversible. *Oregon Coast Alliance v. Curry County*, 78 Or LUBA 81 (2018).

1.2.1 Administrative Law – Denials – Generally. When LUBA has affirmed at least one valid basis for denial the Board typically does not address challenges directed at other, alternate, bases for denial. Such an action would result in rendering what are essentially advisory adjudications, which is not consistent with the statutory mandate that LUBA's review should be conducted pursuant to sound principles of judicial review. ORS 197.805. *Yamhill Creek Solar, LLC v. Yamhill County*, 78 Or LUBA 245 (2018).

1.2.1 Administrative Law – Denials – Generally. A local government in denying an application for permit approval is not obligated to give the applicant a detailed roadmap that guarantees permit approval. However, under *Commonwealth Properties v. Washington County*, 35 Or App 387, 400, 582 P2d 1384 (1978), a local government must give the permit applicant some minimal idea of changes that might lead to permit approval. *J. Conser and Sons, LLC v. City of Millersburg*, 73 Or LUBA 57 (2016).

1.2.1 Administrative Law – Denials – Generally. Where the evidence is extremely one-sided in favor of a permit applicant challenging a county decision denying its application for permit approval for a natural gas pipeline on the basis that other uses allowed in the zone would be limited, it is possible to conclude that the permit applicant challenging the denial on evidentiary grounds carried its burden as a matter of law, as it must when challenging a permit denial on evidentiary grounds. But where that evidence is somewhat equivocal about whether some uses would be limited and does not address whether other uses would be limited, the evidentiary record is insufficient to demonstrate that the permit applicant carried its burden as a matter of law. *Oregon Pipeline Company v. Clatsop County*, 71 Or LUBA 246 (2015).

1.2.1 Administrative Law – Denials – Generally. LUBA typically affirms a decision denying an application for land use approval as long as there is one valid basis for denial, notwithstanding other invalid bases for denial. However, LUBA will remand a county governing body's decision that reverses a planning commission approval of a conditional use, where the only valid basis for denial is a correctable findings and evidentiary deficiency, and the governing body's choice to reverse the planning commission decision rather than remand was based on the governing body's erroneous conclusion that the proposed conditional use is prohibited as a matter of law. In that circumstance, LUBA will remand the decision for the governing body to consider whether the planning commission decision should be remanded rather than reversed. *Hood River Valley PRD v. Hood River County*, 67 Or LUBA 314 (2013).

1.2.1 Administrative Law – Denials – Generally. Where the local government denies an application based on its conclusion that an applicant did not provide sufficient information, and the applicant submitted detailed information and studies regarding impacts to water quality, water flow, land stability and erosion, the findings are inadequate where they do not explain why the information that was submitted was not "sufficient." *Tidewater Contractors v. Curry County*, 65

Or LUBA 424 (2012).

1.2.1 Administrative Law – Denials – Generally. In considering an application for a three-parcel partition, the failure of an existing intersection that is not adjacent to the property to satisfy local zoning ordinance standards that apply to the design and construction of a new road or intersection does not provide a basis for the county to deny an application for a partition, where no new roads or intersections are proposed as part of the partition. *Pelz v. Clackamas County*, 59 Or LUBA 219 (2009).

1.2.1 Administrative Law – Denials – Generally. Where a local government denies an application based on one approval criterion, and LUBA remands the decision in part for the local government to consider whether additional approval standards apply, it is possible that in determining that additional approval standards apply the local government could identify additional bases for denial under the additional criteria, even if such additional bases for denial were not cited in the original decision. *Easterly v. Polk County*, 59 Or LUBA 417 (2009).

1.2.1 Administrative Law – Denials – Generally. 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).

1.2.1 Administrative Law – Denials – Generally. A hearings officer does not err in concluding that even though a 1975 partition created a unit of land, that unit of land is not a "legal lot" as that term is defined in the county's code, where that unit of land did not conform to the applicable lot dimension standards when it was created. *Hogrefe v. Lane County*, 54 Or LUBA 514 (2007).

1.2.1 Administrative Law – Denials – Generally. Absent local code provisions that prohibit re-submittal of denied land use applications, nothing prohibits an applicant from re-submitting, or the local government from accepting, a previously denied application supported by the same or additional evidence. *Gordon v. Polk County*, 50 Or LUBA 502 (2005).

1.2.1 Administrative Law – Denials – Generally. Assuming, without deciding, that an applicant's misrepresentation of a material fact in a discretionary permit proceeding would allow a local government to deny subsequent administrative permits necessary to carry out the earlier permit approval, the record supporting denial must establish that the applicant indeed misrepresented a material fact. *Safeway, Inc. v. City of North Bend*, 47 Or LUBA 489 (2004).

1.2.1 Administrative Law – Denials – Generally. Where a city attorney denies four applications for "billboards" on the grounds that "billboards" are not among the types of signs allowed under the city's sign ordinance, it is reasonably clear that the basis for denial is the fact that the applicant proposed a type of sign not allowed by the city's code. The city's *post-hoc* explanation that the basis for denial was actually the size of the proposed signs is not credible, where the challenged decision contains no hint that size was a consideration. *West Coast Media v. City of Gladstone*, 44 Or LUBA 503 (2003).

1.2.1 Administrative Law – Denials – Generally. LUBA will remand a city decision denying a partition application where it is not clear what documents make up the local decision and the documents that are identified as containing the final land use decision do not set out the city's rationale for denying the application. *Martin v. City of Dunes City*, 43 Or LUBA 354 (2002).

1.2.1 Administrative Law – Denials – Generally. A city's decision violates ORS 227.173(1) where the city relies on "factors" or "considerations" that are unconnected to approval standards established in its land use regulations to deny a permit application. *Ashley Manor Care Centers v. City of Grants Pass*, 38 Or LUBA 308 (2000).

1.2.1 Administrative Law – Denials – Generally. Evidence that industrial uses are occurring on industrially zoned property within two miles of the subject property is insufficient to demonstrate, as a matter of law, that a proposed excavation business located in a rural residential zone complies with a requirement that the use "will not interfere with existing uses on nearby land or with other used permitted in the zone in which the property is located." *Munn v. Clackamas County*, 37 Or LUBA 621 (2000).

1.2.1 Administrative Law – Denials – Generally. In determining whether a denial is supported by substantial evidence, LUBA considers all relevant evidence, including that which supports and that which detracts from the county's decision. *Evenson v. Jackson County*, 36 Or LUBA 251 (1999).

1.2.1 Administrative Law – Denials – Generally. To successfully challenge the evidentiary basis for denial, it is not sufficient for petitioner to show there is evidence in the record to support his position; petitioner must show the evidence is such that a reasonable trier of fact could only decide in his favor. Where the record contains credible, conflicting evidence, petitioner has not sustained his burden to show, as a matter of law, that the trier of fact should only have believed petitioner's evidence. *Evenson v. Jackson County*, 36 Or LUBA 251 (1999).

1.2.1 Administrative Law – Denials – Generally. Typically only one adequate basis for denial of a land use permit is required to sustain the decision on appeal to LUBA. However, where the approval criteria provide that a setback exception can be granted if any one of several alternative criteria are met and LUBA rejects the hearings officer's findings of noncompliance with two of those alternative criteria, a remand is appropriate. *Parsley v. Jackson County*, 34 Or LUBA 540 (1998).

1.2.1 Administrative Law – Denials – Generally. While it is the applicants' burden to demonstrate compliance with relevant approval criteria, if a local government determines an approval criterion is not satisfied, it must adopt findings explaining why it believes the applicants failed to meet this burden. *Neuman v. Benton County*, 29 Or LUBA 172 (1995).

1.2.1 Administrative Law – Denials – Generally. Local government denial of proposed partitions because the ability of the school district to provide the level of school services required by certain plan policies has not been established does not constitute the imposition of a development moratorium prohibited by ORS 195.110(8). *Beck v. City of Happy Valley*, 27 Or LUBA 631 (1994).