

2.2.1 Constitutional Law – U.S. Constitution – Procedural Issues. In a motion to take evidence outside the record pursuant to OAR 661-010-0045(1), and (2)(a) and (c), petitioners’ argument—that two city employees violated petitioners’ rights under the privileges and immunities clause of the Oregon Constitution, and the equal protection clause of the 14th Amendment to the United States Constitution because the employees engaged in the “unequal” application of the applicable standards in processing two similarly situated planned unit development (PUD) projects—fails to demonstrate that the proffered evidence would concern “procedural irregularities not shown in the record and which, if proved, would warrant reversal or remand of the decision” because petitioners do not allege that the final decision maker violated petitioners’ constitutional rights. *Conte v. City of Eugene*, 76 Or LUBA 498 (2017).

2.2.1 Constitutional Law – U.S. Constitution – Procedural Issues. To succeed in a motion to take evidence outside the record and pursuant to OAR 661-010-0045(1), and (2)(a) and (c), regarding an alleged violation of petitioners’ rights under the privileges and immunities clause of the Oregon Constitution, and the equal protection clause of the 14th Amendment to the United States Constitution, the movant must develop a legal theory and a set of factual assertions sufficient to allow LUBA to determine how consideration of the proffered evidence would “affect the outcome of the review proceeding.” *Conte v. City of Eugene*, 76 Or LUBA 498 (2017).

2.2.1 Constitutional Law – U.S. Constitution – Procedural Issues. A petitioner’s constitutional challenge to a city’s denial of a business license fee exemption, in its appeal of a land use permit decision, is premature for two reasons. First, the challenged decision only requires business licenses, without specifying whether exemptions to the business license fee might apply. Second, because the city took the position at LUBA that it intended to deny the business license exemption, and the decision failed to include finding on that issue, the decision must be remanded for response findings. *Bend/Sisters Garden RV Resort, LLC v. City of Sisters*, 72 Or LUBA 200 (2015).

2.2.1 Constitutional Law – U.S. Constitution – Procedural Issues. There is no right under the Due Process clause of the Fourteenth Amendment to cross-examination in quasi-judicial land use hearings in Oregon. *Emmert v. Clackamas County*, 65 Or LUBA 1 (2012).

2.2.1 Constitutional Law – U.S. Constitution – Procedural Issues. Absent citation to any convincing authority, LUBA will not find that the Due Process Clause of the Fourteenth Amendment requires the county to notify petitioner or any other party when an item is submitted into the record. *Emmert v. Clackamas County*, 65 Or LUBA 1 (2012).

2.2.1 Constitutional Law – U.S. Constitution – Procedural Issues. Before considering a petitioner’s constitutional arguments under an assignment of error, LUBA will first consider whether there is a subconstitutional basis for resolving the assignment of error that would make it unnecessary to resolve the constitutional argument. *Families for a Quarry Free Neighborhood v. Lane County*, 64 Or LUBA 297 (2011).

2.2.1 Constitutional Law – U.S. Constitution – Procedural Issues. Even assuming that OAR 661-010-0075(11), which provides that LUBA shall dismiss an appeal of a decision that is not reviewable as a land use decision, unless a motion to transfer to circuit court is filed within 14 days of the date any party or LUBA raises the jurisdictional issue, is inconsistent with ORS 34.102(4)

or the federal due process clause, LUBA lacks authority to reconsider its final opinion to change the disposition of the appeal, in response to a motion to transfer filed after LUBA issued its final opinion dismissing the appeal. Any error that LUBA may commit in issuing the final opinion can only be corrected by appeal to the Court of Appeals. *Maguire v. Clackamas County*, 64 Or LUBA 478 (2011).

2.2.1 Constitutional Law – U.S. Constitution – Procedural Issues. Code procedures that distinguish between “Type II” permit decisions that can be made without an initial hearing, with an opportunity for affected persons to appeal to a *de novo* hearing, and “Type III” permit decisions that require an initial hearing, do not violate the privileges and immunities clause by granting “privileges” to participants of Type III proceedings that are denied Type II participants. *Kane v. City of Beaverton*, 56 Or LUBA 240 (2008).

2.2.1 Constitutional Law – U.S. Constitution – Procedural Issues. Where the local code does not provide procedures or standards governing a specific decision, the local government may, consistent with the federal due process clause, borrow and apply procedures and standards applicable to other types of decisions. *Emami v. City of Lake Oswego*, 52 Or LUBA 18 (2006).

2.2.1 Constitutional Law – U.S. Constitution – Procedural Issues. Where a local government has no procedures governing a particular type of decision, it is consistent with the federal due process clause to adopt a written set of procedures and standards that significantly cabin the local government’s discretion and that offer all participants a reasonable opportunity to present evidence and argument. That such procedures are one-time and temporary in nature, rather than permanent code provisions does not offend the due process clause. *Emami v. City of Lake Oswego*, 52 Or LUBA 18 (2006).

2.2.1 Constitutional Law – U.S. Constitution – Procedural Issues. A city commits no error in proceeding with a decision on an application for a subdivision, and does not violate a subdivision opponent’s due process rights, where a quiet title action is pending to resolve an ownership dispute between the opponent and the subdivision applicant, but the applicant is the record fee owner of the property. *McFall v. City of Sherwood*, 44 Or LUBA 493 (2003).

2.2.1 Constitutional Law – U.S. Constitution – Procedural Issues. A conditional use permit condition of approval that the applicants terminate a special events business that was operated as part of a permitted bed and breakfast inn does not unconstitutionally impose an overbroad or vague limit on the bed and breakfast owners’ constitutionally protected religious activity and speech. *Cookman v. Marion County*, 44 Or LUBA 630 (2003).

2.2.1 Constitutional Law – U.S. Constitution – Procedural Issues. That conditional use permit applicants for approval of a bed and breakfast home occupation may not have been aware that the conditional use permit would be conditioned on the applicants terminating a special events business that the county concluded was not allowed in the county’s EFU zone does not violate the applicants’ rights to due process where they were allowed: (1) to challenge the administrative decision in a quasi-judicial hearing before a hearings officer, (2) to appeal the hearings officer’s decision to the board of county commissioners, (3) to appeal that decision to LUBA, and (4) would

be entitled to seek judicial review of LUBA's decision. *Cookman v. Marion County*, 44 Or LUBA 630 (2003).

2.2.1 Constitutional Law – U.S. Constitution – Procedural Issues. Absent a legal requirement that local governments provide a quasi-judicial UGB amendment process, petitioner fails to establish that it has a constitutionally protected due process interest to a quasi-judicial forum for invoking state and local UGB amendment standards. *Homebuilders Assoc. v. Metro*, 42 Or LUBA 176 (2002).

2.2.1 Constitutional Law – U.S. Constitution – Procedural Issues. Where a city allows one party more time to present oral testimony during a land use hearing than is allowed another party, the unequal allocation of time will not constitute error so long as the city's decision explains the reason for the differentiation, there is an unlimited opportunity to submit written testimony, and the unequal allocation of time does not cause substantial prejudice. *Kane v. City of Beaverton*, 38 Or LUBA 183 (2000).

2.2.1 Constitutional Law – U.S. Constitution – Procedural Issues. An assignment of error fails to raise a justiciable controversy where it merely asks the Board to declare that, in future hypothetical cases where the city applies an allegedly unconstitutional ordinance, LUBA will deny any motions to dismiss arguing that the appeal is not ripe or the petitioner has failed to exhaust administrative remedies. *Lincoln City Ch. of Comm. v. City of Lincoln City*, 36 Or LUBA 399 (1999).

2.2.1 Constitutional Law – U.S. Constitution – Procedural Issues. An enumeration of alleged procedural irregularities, without analysis, does not amount to a reviewable claim of a constitutional violation. *Fechtig v. City of Albany*, 31 Or LUBA 410 (1996).

2.2.1 Constitutional Law – U.S. Constitution – Procedural Issues. Petitioners do not establish the county made a decision in violation of their federal due process right to be heard, on the basis that the county board of commissioners conducted a staff briefing at which it instructed its staff to inform petitioners that it intended to comply with its ordinance provision regarding the conduct of appeal hearings. *Canfield v. Yamhill County*, 31 Or LUBA 25 (1998).

2.2.1 Constitutional Law – U.S. Constitution – Procedural Issues. Where petitioner makes no distinction in his brief between state and federal constitutional issues, LUBA cannot consider his constitutional arguments. *Fence v. Jackson County*, 30 Or LUBA 265 (1995).

2.2.1 Constitutional Law – U.S. Constitution – Procedural Issues. Due process does not require an extension of time to file a local appeal of a land use decision where procedural defects in the notice of decision were unrelated to petitioner's failure to mount a timely challenge to the decision. *Thomas v. Wasco County*, 30 Or LUBA 142 (1995).

2.2.1 Constitutional Law – U.S. Constitution – Procedural Issues. Failure to waive a local appeal fee violates no federal constitutional rights of due process or access to the courts; ORS 215.422(1)(c) does not create a right to a free appeal. *Cummings v. Tillamook County*, 30 Or LUBA 17 (1995).

2.2.1 Constitutional Law – U.S. Constitution – Procedural Issues. Petitioner’s arguments that the local government’s refusal to allow him to cross-examine witnesses, refusal to allow him to present evidence during its final hearing, and failure to explain his procedural rights do not establish he was denied due process of law, where petitioner never requested a right to cross-examine witnesses, does not explain why the evidentiary hearings the local government provided were inadequate, and makes no attempt to identify the procedural rights he believes should have been explained. *Sanchez v. Clatsop County*, 29 Or LUBA 26 (1995).

2.2.1 Constitutional Law – U.S. Constitution – Procedural Issues. A local government may not delegate to any particular group of citizens standardless authority to veto a request for land use approval. Such consent ordinances deny the permit applicant due process and violate the Fourteenth Amendment to the United States Constitution. *Towry v. City of Lincoln City*, 26 Or LUBA 554 (1994).

2.2.1 Constitutional Law – U.S. Constitution – Procedural Issues. A local code provision that imposes different approval procedures for vacation rental dwellings if a specified number of affected property owners object does not constitute a consent ordinance and does not deny the permit applicant due process. *Towry v. City of Lincoln City*, 26 Or LUBA 554 (1994).

2.2.1 Constitutional Law – U.S. Constitution – Procedural Issues. A city’s exercise of its zoning power to regulate vacation rental dwellings to ensure streets are adequate to handle the traffic that such dwellings will generate, and that impacts of such dwellings on the neighborhood will be minimal, is not arbitrary and does not violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution. *Towry v. City of Lincoln City*, 26 Or LUBA 554 (1994).

2.2.1 Constitutional Law – U.S. Constitution – Procedural Issues. Where a challenged ordinance requires discontinuation of a use after expiration of a five-year amortization period, but also allows a property owner to apply for hardship relief if such property owner can substantiate that an investment made exclusively in the nonconforming use cannot be adequately amortized within the five-year period specified by such ordinance, property owners have no basis to contend their property has been taken until they have applied for and been denied the hardship relief. *Cope v. City of Cannon Beach*, 23 Or LUBA 233 (1992).

2.2.1 Constitutional Law – U.S. Constitution – Procedural Issues. There is nothing unconstitutional about providing only published notice of legislative rezoning. *Sabin v. Clackamas County*, 20 Or LUBA 23 (1990).

2.2.1 Constitutional Law – U.S. Constitution – Procedural Issues. Petitioner’s claim that the city erroneously refused to provide a transcript of proceedings before a hearings officer for his appeal of the hearings officer’s decision to the city council will be denied where petitioner (1) identifies no code section requiring the city to provide a transcript, and (2) fails to develop an argument in support of his contention that due process requires that a transcript be provided. *Vestibular Disorders Consult. v. City of Portland*, 19 Or LUBA 94 (1990).

2.2.1 Constitutional Law – U.S. Constitution – Procedural Issues. Although petitioners have a right under the 14th Amendment to the U.S. Constitution to an unbiased decision maker, petitioners have the burden of establishing that the decision maker was incapable of making a decision on the basis of the evidence and argument before him. LUBA will not infer that a decision maker had actual bias solely because he and a party to the proceeding were business associates. *Torgeson v. City of Canby*, 19 Or LUBA 511 (1990).

2.2.1 Constitutional Law – U.S. Constitution – Procedural Issues. When alleging that their rights to due process under the 14th Amendment to the U.S. Constitution were violated because of bias by the local decision maker, petitioners must show that the local decision maker was incapable of making a decision on the basis of the evidence and argument before it. *Eckis v. Linn County*, 19 Or LUBA 15 (1990).