

25.10 Local Government Procedures – Necessity for Objections to. A county errs in accepting with the applicant’s final written argument, for purposes of determining whether at least three dwellings existed on surrounding lots or parcels on January 1, 1993, and therefore whether the subject property qualifies for a forest template dwelling under ORS 215.750, an email from a contractor who worked on one of the surrounding dwellings , even where the email is intended to provide context for evidence submitted by opponents, and thereby rebut opponents’ arguments concerning that evidence. Under ORS 197.763(6)(e), new evidence may not be submitted with an applicant’s final written argument and, under ORS 197.763(9), such an email is evidence rather than argument. In addition, opponents are not precluded from raising a county’s admission of new evidence with the applicant’s final written argument as procedural error on appeal to LUBA merely because they failed to object during the local proceedings, where the opportunity to object was provided after the county had already considered evidence, deliberated, and made its oral decision, and where the record was closed and no further testimony was allowed. *Eng v. Wallowa County*, 79 Or LUBA 421 (2019).

25.10 Local Government Procedures – Necessity for Objections to. While the “raise it or waive it” requirement of ORS 197.763(1) and 197.835(3) does not apply to legislative proceedings, where a party has an opportunity to object to a procedural error during a legislative proceeding, the party must do so in order to seek remand based on that error. *McCaffree v. Coos County*, 79 Or LUBA 512 (2019).

25.10 Local Government Procedures – Necessity for Objections to. A party asserting a procedural error must demonstrate that the procedural error was objected to during the proceedings below, if there was an opportunity to lodge an objection. Accordingly, where a dispute may exist regarding whether petitioners objected to the county’s process during the proceedings below, LUBA will allow a motion to take evidence outside the record to consider a document for the limited purpose of allowing petitioners to cite to that document to establish, if the point is disputed in a response brief, that petitioners attempted to lodge objections to the county’s process. *Eng v. Wallowa County*, 79 Or LUBA 1024 (2019).

25.10 Local Government Procedures – Necessity for Objections to. Where a county’s notice described a proposed project as a bed and breakfast inn and campground, but the county only approved the bed and breakfast inn but not the campground, petitioners had an inadequate opportunity to object to the alleged procedural error because they could not know until the county issued its decision that the final decision would approve something different than the proposal that was noticed. *Elenes v. Deschutes County*, 78 Or LUBA 483 (2018).

25.10 Local Government Procedures – Necessity for Objections to. ORS 197.830(3) operates to potentially allow a petitioner a delayed period of time to file a LUBA appeal, but it is not a source of procedural requirements that a local government approved development that differs from the development described in the notice of hearing is not procedural error. *Elenes v. Deschutes County*, 78 Or LUBA 483 (2018).

25.10 Local Government Procedures – Necessity for Objections to. Where a petitioner did not raise the issue in its filed statement of appeal before the hearings officer that street tree planting is required only when a new street is created, a planning commission exceeds its authority by

considering the issue under the local code provisions governing the scope of appeals to the planning commission. *Rockbridge Capital v. City of Eugene*, 75 Or LUBA 364 (2017).

25.10 Local Government Procedures – Necessity for Objections to. A local government’s failure to inquire whether any hearing participants wish to submit a written request for a continued hearing, as required by its local procedural rules, does not provide a basis for remand, where the petitioner’s representative was present at the hearing, had the opportunity to object to the decision-maker’s failure to make the inquiry, but failed to object. *Pliska v. Umatilla County*, 61 Or LUBA 429 (2010).

25.10 Local Government Procedures – Necessity for Objections to. A petitioner’s failure to object to untimely disclosure of a site visit and to request the opportunity to rebut the site visit precludes assigning error to that disclosure, where the disclosure was made 10 days prior to the hearing at which the local government adopted the final decision, and petitioner could have entered an objection at any time during those 10 days or during the final hearing, but did not. *Carrigg v. City of Enterprise*, 48 Or LUBA 328 (2004).

25.10 Local Government Procedures – Necessity for Objections to. Where the petitioner has an opportunity to object to an alleged procedural error in referring a decision to the planning commission, but fails to object, that alleged error cannot be assigned as a reason for reversal or remand. *Nelson v. Curry County*, 47 Or LUBA 196 (2004).

25.10 Local Government Procedures – Necessity for Objections to. Any right that a party may have to rebut new evidence under *Fasano* or ORS 197.763(6)(b) requires that the party contemporaneously assert that right of rebuttal at the time the new evidence is submitted, so that the local government can rule on the merits of the request and allow an appropriate opportunity for rebuttal where such an opportunity is warranted. *Frewing v. City of Tigard*, 47 Or LUBA 331 (2004).

25.10 Local Government Procedures – Necessity for Objections to. A party may not wait until the local government concludes an evidentiary hearing, closes the record, deliberates and adopts its oral decision, and convenes a final hearing to review the written decision, before objecting to an alleged procedural error in failing to respond to that party’s non-specific request to continue the evidentiary hearing. Such an objection is untimely. *Doty v. Jackson County*, 43 Or LUBA 34 (2002).

25.10 Local Government Procedures – Necessity for Objections to. Where the applicants were aware that the local government’s schedule failed to include time for the submission of written legal arguments as provided for by ORS 197.763(6)(e) and the applicants informed the local government that if they had objections to the process, they would “file” objections with the county counsel, the county could assume that the applicants waived their right to submit final written arguments, when the applicants failed to file objections. *Wild Rose Ranch Enterprises v. Benton County*, 37 Or LUBA 368 (1999).

25.10 Local Government Procedures – Necessity for Objections to. Where a decision maker discloses the existence but not the substance of *ex parte* communications at the beginning of the

public hearing, and despite being given an opportunity to do so petitioner fails to object to the inadequacy of the decision maker's disclosure, petitioner has waived the right to raise the decision maker's inadequate disclosure of *ex parte* communications before LUBA as a basis for reversal or remand of the challenged decision. *Mulford v. Town of Lakeview*, 36 Or LUBA 715 (1999).

25.10 Local Government Procedures – Necessity for Objections to. Where a revised site plan is introduced after the close of the record, and evidence exists that petitioner was aware of the addition but did not object below, that procedural error does not justify reversal or remand by LUBA. *Brown v. City of Portland*, 33 Or LUBA 700 (1997).

25.10 Local Government Procedures – Necessity for Objections to. Where a party has the opportunity to object to a procedural error before the local government, but fails to do so, that error cannot be assigned as grounds for reversal or remand of the local government's decision in an appeal to LUBA. *Wicks-Snodgrass v. City of Reedsport*, 32 Or LUBA 292 (1997).

25.10 Local Government Procedures – Necessity for Objections to. Where a party has the opportunity to object to a procedural error before a local government, but fails to do so, that error cannot be assigned as grounds for reversal or remand of the local government decision in an appeal to LUBA. *Skrepetos v. Jackson County*, 29 Or LUBA 193 (1995).

25.10 Local Government Procedures – Necessity for Objections to. Where members of a local decision making body disclose, at the beginning of the initial evidentiary hearing, that they made site visits to the subject property, and petitioners fail to object to the adequacy of that disclosure, insufficiency of the disclosure cannot be assigned as grounds for reversal or remand. *Wicks v. City of Reedsport*, 29 Or LUBA 8 (1995).

25.10 Local Government Procedures – Necessity for Objections to. A petitioner may not assert his own *ex parte* contacts with the decision maker as a basis for reversal or remand, where the contacts were disclosed and petitioner did not object to the adequacy or completeness of the disclosure. *Jones v. Lane County*, 28 Or LUBA 193 (1994).

25.10 Local Government Procedures – Necessity for Objections to. Where (1) a local decision maker makes a procedural error in allowing new evidence to be submitted during an on-the-record review; (2) petitioners object to receipt of that new evidence; and (3) the local decision maker does not provide petitioners with an opportunity to rebut the new evidence; LUBA will remand the challenged decision for the local decision maker to provide the required opportunity for rebuttal. *Tucker v. Douglas County*, 28 Or LUBA 134 (1994).

25.10 Local Government Procedures – Necessity for Objections to. Where a party has the opportunity to object to a procedural error before the local government, but fails to do so, that error cannot be assigned as grounds for reversal or remand of a local government decision in an appeal to LUBA. *Woodstock Neigh. Assoc. v. City of Portland*, 28 Or LUBA 146 (1994).

25.10 Local Government Procedures – Necessity for Objections to. Where petitioner had an opportunity during the local proceedings to object to the completeness of a hearings officer's disclosure of *ex parte* contacts, but failed to do so, petitioner's motion for an evidentiary hearing

at LUBA to present evidence concerning those *ex parte* contacts will be denied. *Jones v. Lane County*, 27 Or LUBA 654 (1994).

25.10 Local Government Procedures – Necessity for Objections to. ORS 197.763(1) and 197.835(2) do not supersede LUBA’s prior rulings that where a party has an opportunity locally to object to a *procedural* error, at any stage of the local government proceedings, but fails to do so, that error cannot be assigned as grounds for reversal or remand of the local government’s decision in an appeal to LUBA. *Mazeski v. Wasco County*, 26 Or LUBA 226 (1993).

25.10 Local Government Procedures – Necessity for Objections to. Where petitioners reasonably relied on a local code provision and hearing notice stating the governing body’s review is limited to the evidentiary record before the planning commission, and were unaware that materials not in the planning commission record were placed before the governing body, petitioners do not waive their right to assert this error before LUBA by failing to object to it below. *Mazeski v. Wasco County*, 26 Or LUBA 226 (1993).

25.10 Local Government Procedures – Necessity for Objections to. Where petitioner failed to object to the board of commissioners concerning the county’s failure to comply with the procedural requirements of ORS 197.763 in the notice of, and announcement at, a planning commission hearing, petitioner cannot assign those errors as a basis for reversing or remanding the county’s decision. *Murphy Citizens Advisory Comm. v. Josephine County*, 25 Or LUBA 312 (1993).

25.10 Local Government Procedures – Necessity for Objections to. If petitioners were present at a local government meeting when an alleged procedural error occurred, petitioners must enter an objection in order to preserve their right to raise that procedural error in an appeal to LUBA, even where the local evidentiary record had previously been closed and there was no scheduled opportunity for public input at the meeting in question. *Horizon Construction, Inc. v. City of Newberg*, 23 Or LUBA 159 (1992).

25.10 Local Government Procedures – Necessity for Objections to. A petitioner may not assert the occurrence of his own *ex parte* contacts with the decision maker as a basis for reversal or remand, where the contacts were disclosed and petitioner did not object to the adequacy or completeness of the disclosure of such *ex parte* contacts. *Toth v. Curry County*, 22 Or LUBA 488 (1991).

25.10 Local Government Procedures – Necessity for Objections to. If petitioners were present at a local government meeting when an alleged procedural error occurred, petitioners must make their objections known to the decision making body below in order to assign the procedural error as a basis for reversal or remand by LUBA. *Schellenberg v. Polk County*, 21 Or LUBA 425 (1991).

25.10 Local Government Procedures – Necessity for Objections to. Where a party has the opportunity to object to a *procedural* error before the local government, but fails to do so, that error cannot be assigned as a basis for reversal or remand of the local government’s decision in an appeal to LUBA. *Torgeson v. City of Canby*, 19 Or LUBA 511 (1990).