

25.2 Local Government Procedures – Authority to Act. Neither the filing of an injunctive and declaratory action in circuit court seeking to require that uses which are in violation of applicable land use regulations be removed and that a site be restored to its former state, nor an appeal to the Court of Appeals of the circuit court’s denial of such relief divests a local government of authority to process land use applications which seek approval of the challenged uses. *Bishop v. Deschutes County*, 79 Or LUBA 380 (2019).

25.2 Local Government Procedures – Authority to Act. Where a city code provides that a property owner must, as a condition of permit or partition approval, either provide the improvements or pay into an improvement fund if a street adjoining property without direct access to the street does not have standard full-width improvements, and petitioner argues that the code provision is not applicable to his proposed property partition, LUBA will sustain, in part, petitioner’s challenge upon remand from the Court of Appeals, where the arguments on appeal have evolved and it is apparent that remand is necessary for the hearings officer to adopt findings regarding LUBA’s underlying conclusion that the hearings officer was correct in concluding that the condition requiring a waiver of remonstrance against a street or stormwater facility improvement was justified under *Clark v. City of Albany*, 31 Or LUBA 375, 380, *aff’d*, 144 Or App 192, 924 P2d 877 (1966), and did not constitute a taking. *Hill v. City of Portland*, 78 Or LUBA 334 (2018).

25.2 Local Government Procedures – Authority to Act. The statute of limitations in ORS 131.125(8)(c) is inapplicable to a county’s separate land use enforcement proceeding procedures pursuant to a county code that does not contain any time limitation for enforcement actions for violations of the county’s land use code, because the county has authority over land use code enforcement matters independent from any statutorily derived authority in ORS Title 14 pursuant to county charter, and because ORS 153.030(4) expressly provides that “[n]othing in this chapter affects the ability of any other political subdivision of this state to provide for the administrative enforcement of the charter, ordinances, rules and regulations of the political subdivision, including enforcement through imposition of monetary penalties.” *A Walk on the Wild Side v. Washington County*, 78 Or LUBA 356 (2018).

25.2 Local Government Procedures – Authority to Act. While a local government may not generally be required to expand the scope of remand to include new issues that could not have been raised during the initial proceedings, where on remand a new issue is raised regarding the continuing jurisdiction of the local government to process the underlying zone change application, the local government has an obligation to address the jurisdictional issue. *Setniker v. Polk County*, 75 Or LUBA 1 (2017).

25.2 Local Government Procedures – Authority to Act. Where a property owner whose property is subject to a rezoning application withdraws consent to the zone change, that withdrawal of consent may be effective to deprive a county of jurisdiction to proceed on the zone change application, even if it is possible that a circuit court will ultimately determine that the nonconsenting property owner is contractually obligated to support the zone change by contracts entered into by their predecessor-in-interest. *Setniker v. Polk County*, 75 Or LUBA 1 (2017).

25.2 Local Government Procedures – Authority to Act. *Standard Insurance Co. v. Washington County*, 17 Or LUBA 647 (1989), holds that a local government lacks jurisdiction to modify a decision that is currently on appeal to LUBA or the Court of Appeals. However, *Standard Insurance Co.* does not prohibit a local government from *commencing* local proceedings to modify a condition of approval of a decision that is on appeal to LUBA, as long as the final decision adopting the modification is issued after all appeals of the original decision have been concluded. *Foland v. Jackson County*, 70 Or LUBA 247 (2014).

25.2 Local Government Procedures – Authority to Act. Where a county code requires that the application be deemed denied on a tie vote, unless the planning commission members present at the hearing vote to reschedule the deliberation, but the planning commission does not vote to reschedule the deliberation until a subsequent hearing which does not include all of the same members present at the initial hearing, the planning commission may have committed procedural error. However, absent code language to the contrary, that procedural error does not deprive the planning commission of jurisdiction or authority to conduct a second vote on the application. *McLaughlin v. Douglas County*, 70 Or LUBA 314 (2014).

25.2 Local Government Procedures – Authority to Act. When LUBA remands a land use decision, absent some authority to the contrary the decision becomes ineffective, and remains ineffective unless and until the local government takes action on remand to re-adopt the decision or otherwise render the decision or portions of it effective. *Willamette Oaks LLC v. City of Eugene*, 68 Or LUBA 162 (2013).

25.2 Local Government Procedures – Authority to Act. Even if a local government lacks authority under its code to modify the location of a driveway allowed under a previous permit approval, and can only modify express conditions of permit approval, petitioner does not demonstrate error where the permit included an express condition of approval limiting the use to that proposed by the applicant, including the location of the driveway, and thus modifying the location is a modification of the condition of approval. *Brodersen v. City of Ashland*, 62 Or LUBA 329 (2010).

25.2 Local Government Procedures – Authority to Act. In the limited circumstance in which an applicant has withdrawn an application that led to a decision that is pending before LUBA, a local government could, consistent with *Standard Insurance Co. v. Washington County*, 17 Or LUBA 647, 660, *rev'd on other grounds*, 97 Or App 687, 776 P2d 1315 (1989), adopt a new land use decision that revokes the decision that has been appealed to and is pending before LUBA. That new decision would likely have the effect of rendering the pending appeal of the previous decision moot. *Jacobsen v. Douglas County*, 62 Or LUBA 461 (2010).

25.2 Local Government Procedures – Authority to Act. An application that is incomplete on the one hundred and eighty-first day after it has been submitted becomes void where the applicant has not taken one of the steps enumerated in ORS 228.178(4)(a) through (c). A city exceeds its jurisdiction when it thereafter approves such an application. *Painter v. City of Redmond*, 56 Or LUBA 311 (2008).

25.2 Local Government Procedures – Authority to Act. Where a hearings officer’s authority to issue a declaratory ruling has not been properly invoked, the hearings officer has no authority to issue the ruling, and the erroneous exercise of that authority is not accurately characterized as a mere procedural error that may be overlooked absent a demonstration of prejudice to the petitioner’s substantial rights. *Cushman v. City of Bend*, 55 Or LUBA 234 (2007).

25.2 Local Government Procedures – Authority to Act. Absent a code provision to the contrary, a governing body does not exceed its authority in an appeal of a planning commission decision by approving a modification of the development application that the planning commission did not consider, and does not commit procedural error in doing so if all participants were provided an opportunity to present argument and evidence on the proposed modification. *O’Rourke v. Union County*, 54 Or LUBA 614 (2007).

25.2 Local Government Procedures – Authority to Act. A hearings officer had authority to issue a declaratory ruling interpreting a condition of approval in a prior decision, where the code allows a declaratory ruling when there is “doubt or a dispute” as to the meaning of a permit decision, and the condition of approval at issue was ambiguous regarding what components of the development must be located within a defined area. *Chackel Family Trust v. City of Bend*, 53 Or LUBA 385 (2007).

25.2 Local Government Procedures – Authority to Act. A failure to appeal an ambiguous condition of approval does not preclude the applicant from seeking a declaratory ruling regarding the meaning of the condition, under a code provision allowing such declaratory rulings if it is not a “substitute for appeal,” where no party recognized the potential ambiguity until long after the appeal period had run. *Chackel Family Trust v. City of Bend*, 53 Or LUBA 385 (2007).

25.2 Local Government Procedures – Authority to Act. 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).

25.2 Local Government Procedures – Authority to Act. ORS 223.930(1) does not require that a city, rather than a subdivision developer, construct public street improvements, in order to exercise its condemnation authority to acquire the street right-of-way. *Butte Conservancy v. City of Gresham*, 52 Or LUBA 550 (2006).

25.2 Local Government Procedures – Authority to Act. When a city issues a variance to applicable driveway distance requirements while an approval of a previously issued driveway permit is on appeal to LUBA, the variance does not modify the driveway permit decision. Because the variance decision does not modify the earlier driveway permit decision, it does not run afoul of the jurisdictional principle in *Standard Insurance Co. v. Washington County*, 17 Or LUBA 647, *rev’d on other grounds*, 97 Or App 687, 776 P2d 1315 (1989). *Delk v. City of Salem*, 51 Or LUBA 123 (2006).

25.2 Local Government Procedures – Authority to Act. When local government counsel denies a local appeal and returns the appeal fee, unless the local government takes some action to disavow its counsel’s actions, LUBA will assume counsel had authority to take the actions. *Wells v. Yamhill County*, 51 Or LUBA 659 (2006).

25.2 Local Government Procedures – Authority to Act. Where a city council exercises its authority to review a decision of a hearings officer granting approval of site development review, sensitive lands review and adjustments for a proposed development and, in substance, affirms the hearings officer’s decision, its action is a final land use decision and is subject to LUBA’s jurisdiction. *Beilke v. City of Tigard*, 51 Or LUBA 837 (2006).

25.2 Local Government Procedures – Authority to Act. Absent legal authority to the contrary, withdrawal of an application for land use approval prior to reaching a final decision on that application results in the local government losing jurisdiction over the application. *Grabhorn v. Washington County*, 50 Or LUBA 344 (2005).

25.2 Local Government Procedures – Authority to Act. Where the applicant requests in writing that an application be withdrawn, and planning staff with apparent authority to do so responds by sending a letter refunding the application fees for “withdrawal” of the application, the letter constitutes a decision allowing withdrawal of the application. *Grabhorn v. Washington County*, 50 Or LUBA 344 (2005).

25.2 Local Government Procedures – Authority to Act. That a planner may have erred in failing to address a code provision governing withdrawal of applications in issuing a letter allowing withdrawal of an application does not mean that the letter is not a final effective decision allowing withdrawal. Unless that decision is appealed or formally rescinded or reconsidered in some way authorized under applicable law, the decision is a final decision that deprives the local government of jurisdiction to proceed on the application. *Grabhorn v. Washington County*, 50 Or LUBA 344 (2005).

25.2 Local Government Procedures – Authority to Act. ORS 227.180(1) requires that a local government take action within 90 days of the date LUBA remands a decision or within 90 days of the date of final resolution of judicial review. ORS 227.180(1) does not authorize a local government to take action on a decision before LUBA prior to the effective date of LUBA’s order or the date of the Court of Appeals’ appellate judgment, if LUBA’s decision is appealed to the court. *Rose v. City of Corvallis*, 49 Or LUBA 260 (2005).

25.2 Local Government Procedures – Authority to Act. Under *Standard Insurance Co. v. Washington County*, 17 Or LUBA 647 (1989), absent statutory authority to the contrary, a local government has no jurisdiction to modify a land use decision that is before LUBA or the Court of Appeals. *Rose v. City of Corvallis*, 49 Or LUBA 260 (2005).

25.2 Local Government Procedures – Authority to Act. A local government does not lose its inherent authority to interpret or reinterpret an ambiguous code provision in a quasi-judicial context when it decides to initiate a legislative code amendment process to resolve the code ambiguity. *Bemis v. City of Ashland*, 48 Or LUBA 42 (2004).

25.2 Local Government Procedures – Authority to Act. Contrary to *Thede v. Polk County*, 1 Or LUBA 339 (1980), irregularities in signing and approving a final city decision does not mean that the challenged decision is not a “final decision” subject to LUBA’s jurisdiction. *Knutson Family LLC v. City of Eugene*, 48 Or LUBA 618 (2004).

25.2 Local Government Procedures – Authority to Act. A county does not exceed the authority granted under ORS 195.025(1) or 197.005(3) by adopting county comprehensive plan amendments that inform cities what considerations will suffice to gain county concurrence in UGB amendments or other decisions requiring county concurrence. *City of Woodburn v. Marion County*, 45 Or LUBA 423 (2003).

25.2 Local Government Procedures – Authority to Act. An assignment of error that alleges a planning commission may only make recommendations to the city council and may not make a final decision on an application for a conditional use permit for a home occupation is without merit where (1) ORS 227.090(h) specifically authorizes planning commissions to carry out the statutory provisions governing land use permits and (2) the city’s zoning code specifically authorizes the planning commission to make decisions on conditional use permits. *Roe v. City of Union*, 45 Or LUBA 660 (2003).

25.2 Local Government Procedures – Authority to Act. The Oregon Attorney General interprets ORS 174.130 to require the affirmative votes of a majority of a body that is made of three or more persons to take action, rather than a majority of the members of the body who happen to be present. However, where a body’s enabling legislation includes provisions for a quorum, a majority vote of the quorum is sufficient to take action. *Roe v. City of Union*, 45 Or LUBA 660 (2003).

25.2 Local Government Procedures – Authority to Act. A local government decision maker has authority under ORS 197.830(13)(b) to make a decision on reconsideration from LUBA even when the appeal that led to the withdrawal of the decision has been dismissed. *6710 LLC v. City of Portland*, 43 Or LUBA 177 (2002).

25.2 Local Government Procedures – Authority to Act. A local governing body may not adopt an order to disregard its acknowledged land use regulations, simply because those ordinance provisions are perceived to be too onerous. If the local governing body believes that ordinance provisions are either unnecessary or do not further land use planning goals, it must amend the ordinance to delete those provisions; it may not by order elect to ignore them. *Palaske v. Clackamas County*, 43 Or LUBA 202 (2002).

25.2 Local Government Procedures – Authority to Act. ORS 197.620(1), which states that a decision not to adopt a legislative amendment or new land use regulation is not appealable to LUBA, does not explicitly or implicitly limit a local government’s authority to define what matters it will consider on a quasi-judicial or legislative basis. *Homebuilders Assoc. v. Metro*, 42 Or LUBA 176 (2002).

25.2 Local Government Procedures – Authority to Act. An urban growth area management agreement that identifies the county as having the decision making authority over all land use

actions that “affect” the urban growth area does not confer authority on the county to decide any matters concerning property within the city that may affect property located within the urban growth area. *ODOT v. City of Mosier*, 41 Or LUBA 73 (2001).

25.2 Local Government Procedures – Authority to Act. A city has authority under ORS 92.040 and 92.180 to review and approve subdivision plats. Where a city requires an application for a subdivision replat to show revised easements and applies its land use regulations to approve the replat, the city’s decision is a land use decision or limited land use decision subject to LUBA’s review. *Haber v. City of Gates*, 39 Or LUBA 137 (2000).

25.2 Local Government Procedures – Authority to Act. Where petitioner submits a letter to the city that expresses an opinion concerning the elevation of petitioner’s property but provides no evidence to support that opinion, the city’s failure to object to the opinion in the letter does not constitute a waiver of the city’s right to disagree with petitioner’s opinion at a later time. *Rivera v. City of Bandon*, 38 Or LUBA 736 (2000).

25.2 Local Government Procedures – Authority to Act. A city is not estopped from finding that a dwelling exceeds a code-mandated 28-foot height limit where a city building official approved the plans for the proposed dwelling, but the city building official who approved the plans did not have the authority to authorize a dwelling in excess of 28 feet. *Rivera v. City of Bandon*, 38 Or LUBA 736 (2000).

25.2 Local Government Procedures – Authority to Act. Where the process a county utilizes to determine whether its land use regulations have been violated affords petitioners a hearing, a right to present and rebut evidence and a written decision, petitioners are not deprived of their substantial rights by the county’s alleged failure to follow the procedures set out in its ordinance. *Crook v. Curry County*, 38 Or LUBA 677 (2000).

25.2 Local Government Procedures – Authority to Act. A county has authority or jurisdiction to deny a permit application on its merits, where the permit applicant fails to demonstrate he was authorized to submit the permit application but the code limitations on who can submit permit applications do not impose a “jurisdictional” requirement. *Base Enterprises, Inc. v. Clackamas County*, 38 Or LUBA 614 (2000).

25.2 Local Government Procedures – Authority to Act. Where the city council’s review of a planning commission decision is limited to whether the lower decision is supported by substantial evidence, and petitioner argues that the city council exceeded its review authority by reweighing the evidence, LUBA will deny the assignment of error where it concludes that the city council understood and applied the substantial evidence standard correctly. *Ontrack, Inc. v. City of Medford*, 37 Or LUBA 472 (2000).

25.2 Local Government Procedures – Authority to Act. Where LUBA remands a decision for additional proceedings requiring that the current members of the county board of commissioners review the record compiled before the previous board, such remand cures the procedural error, if any, resulting from the fact that, due to an intervening election, only one of the three commissioners who signed the final written order attended the evidentiary hearings and

participated in the oral vote on the merits of the application. *Greer v. Josephine County*, 37 Or LUBA 261 (1999).

25.2 Local Government Procedures – Authority to Act. A city must have jurisdiction over property before it approves applications for development on it. Therefore, in the absence of a specific agreement between the city and the county, the county retains regulatory control over property within its unincorporated boundaries. *Benchmark Enterprises v. City of Stayton*, 36 Or LUBA 433 (1999).

25.2 Local Government Procedures – Authority to Act. Where provisions allowing enforcement of the city’s ordinance only specifically authorize judicial remedies, the city’s interpretation of the enforcement provisions as allowing the city to conduct quasi-judicial proceedings to determine nonconforming use status is inconsistent with the terms of that provision and not entitled to deference under *Goose Hollow Foothills League v. City of Portland*, 117 Or App 211, 843 P2d 992 (1992), or ORS 197.829(1). *Dept. of Transportation v. City of Mosier*, 35 Or LUBA 701 (1999).

25.2 Local Government Procedures – Authority to Act. A county is not equitably estopped from denying the nonconforming use status of a dog kennel because of the applicant’s reliance on a previous county decision approving site design for a dog kennel. *Marquam Farms Corp. v. Multnomah County*, 35 Or LUBA 392 (1999).

25.2 Local Government Procedures – Authority to Act. A county hearings officer is not legally bound to defer to a board of county commissioners’ determination that a particular site is necessary for a proposed utility facility, where the board of county commissioners adopted its determination in its capacity as the governing body of a service district. *Clackamas Co. Svc. Dist. No. 1 v. Clackamas County*, 35 Or LUBA 374 (1998).

25.2 Local Government Procedures – Authority to Act. ORS 215.130(2) authorizes a city to process and approve a zone change contingent on future annexation to the city. *Lodge v. City of West Linn*, 35 Or LUBA 42 (1998).

25.2 Local Government Procedures – Authority to Act. Where an intergovernmental agreement authorizes a city to grant conditional use and design review approval provided a pre-annexation agreement has been recorded, the city may grant such conditional use and design review approval subject to a condition of actual annexation. *Lodge v. City of West Linn*, 35 Or LUBA 42 (1998).

25.2 Local Government Procedures – Authority to Act. A city may generally exercise land use planning authority within its corporate limits, except where a county or the state grants the city the right to exercise land use planning authority beyond the city’s corporate limits. *Northwest Aggregates Co. v. City of Scappoose*, 35 Or LUBA 30 (1998).

25.2 Local Government Procedures – Authority to Act. Where a hearings officer’s decision on a previous application for design review on the subject property determined that no nonconforming use existed, but specifically left the door open for intervenors to establish such a legal use, the

hearings officer in a subsequent proceeding is not bound by the earlier determination. *Marquam Farms Corp. v. Multnomah County*, 32 Or LUBA 240 (1996).

25.2 Local Government Procedures – Authority to Act. Local governing body may not determine an appeal to be moot and reinstate an earlier, rescinded decision, based on petitioner’s collateral challenge to the authority of the planning director to rescind that earlier decision, when the rescission decision was not timely appealed. *Petterson v. Klamath County*, 31 Or LUBA 402 (1996).

25.2 Local Government Procedures – Authority to Act. The absence of relevant or even essential information in an application does not preclude consideration by the city, although it may result in a denial of the application. *Sullivan v. City of Woodburn*, 31 Or LUBA 192 (1996).

25.2 Local Government Procedures – Authority to Act. Even if a local decision maker had no authority to make a land use decision, LUBA has jurisdiction over an appeal of that decision if it falls within the class of decisions over which LUBA has review authority. *Cara her v. City of Klamath Falls*, 30 Or LUBA 204 (1995).

25.2 Local Government Procedures – Authority to Act. Since a local appeal is not available from an ORS 197.825 administrative decision made without authority, a petitioner may appeal the decision directly to LUBA. *Cara her v. City of Klamath Falls*, 30 Or LUBA 204 (1995).

25.2 Local Government Procedures – Authority to Act. Where local land use regulations permit the governing body to render its own formal interpretation of its zoning ordinance either in response to an interpretation made by the planning commission or upon its own motion, the delegation of initial interpretive authority is not total, and the governing body may render an interpretation in the first instance. *East Lancaster Neigh. Assoc. v. City of Salem*, 30 Or LUBA 147 (1995).

25.2 Local Government Procedures – Authority to Act. Where the local code requires the governing body to review the planning commission’s recommendation on a proposed comprehensive plan amendment, but does not limit the governing body’s authority to adopt a plan amendment to instances where the planning commission recommendation is free from error, that there was an error in the procedures by which the planning commission arrived at its recommendation does not deprive the governing body of jurisdiction over the proposed plan amendment. *O’Rourke v. Union County*, 29 Or LUBA 303 (1995).

25.2 Local Government Procedures – Authority to Act. Where the county code specifically authorizes the board of commissioners to make the initial determination on a land use application, the board of commissioners had jurisdiction to initially consider and approve a floodplain permit application, regardless of other code provisions stating the planning commission should make the initial determination on such applications. *Mission Bottom Assoc. v. Marion County*, 29 Or LUBA 281 (1995).

25.2 Local Government Procedures – Authority to Act. ORS 433.750 completely occupies the field of regulation of outdoor mass gatherings of less than 120 hours duration. There is no room

for more restrictive local regulation of such gatherings. However, ORS 433.735(1) authorizes a county to adopt a more expansive definition of outdoor mass gatherings of less than 120 hours duration. *Fence v. Jackson County*, 29 Or LUBA 147 (1995).

25.2 Local Government Procedures – Authority to Act. Where a challenged local government decision finds the subject property is entirely within the local government’s boundaries, and those findings are supported by substantial evidence in the record, the local government did not exceed its jurisdiction in approving the subject development application. *ONRC v. City of Seaside*, 29 Or LUBA 39 (1995).

25.2 Local Government Procedures – Authority to Act. Where the local code requires a local government to make a particular determination in acting on a partition application, the local government does not lack authority to make that determination. *Hilderbrand v. Marion County*, 28 Or LUBA 703 (1995).

25.2 Local Government Procedures – Authority to Act. Where the local code gives the planning director authority to make an initial determination on the existence of a nonconforming use, that the planning director made a previous determination on the existence of the nonconforming use does not mean he lacks authority to adopt a subsequent determination, pursuant to an agreement of the parties. *Huiras v. Clackamas County*, 28 Or LUBA 667 (1994).

25.2 Local Government Procedures – Authority to Act. Limitations on a local government’s authority over development applications must be specifically expressed in the local code. *Lamm v. City of Portland*, 28 Or LUBA 468 (1995).

25.2 Local Government Procedures – Authority to Act. With regard to siting a lot of record dwelling on high-value farmland, a county does not have authority to require that an Oregon Department of Agriculture hearings officer make determinations other than those specified in ORS 215.705(2)(c). *DLCD v. Josephine County*, 28 Or LUBA 459 (1994).

25.2 Local Government Procedures – Authority to Act. Where the local code provides for discretionary review of certain development applications by the planning director, and also provides a process for the planning director to refer questions concerning code interpretation to the governing body, the code does not divest the planning director of authority to interpret the code in carrying out his duties. *Knee Deep Cattle Company v. Lane County*, 28 Or LUBA 288 (1994).

25.2 Local Government Procedures – Authority to Act. A local government loses jurisdiction over an application for land use approval when the application is withdrawn before a final decision is rendered. *Davis v. City of Bandon*, 28 Or LUBA 38 (1994).

25.2 Local Government Procedures – Authority to Act. Where a local code neither expressly allows a local appellant to withdraw his appeal of a planning commission decision to the governing body, nor expressly provides the governing body retains jurisdiction over such an appeal once filed, a local government acts within its interpretive discretion under ORS 197.829 in concluding that it retains jurisdiction over such an appeal notwithstanding the local appellant’s attempt unilaterally to withdraw the appeal. *Davis v. City of Bandon*, 28 Or LUBA 38 (1994).

25.2 Local Government Procedures – Authority to Act. ORS 197.835(8) applies only where LUBA determines a local government made a land use decision exceeding the local government’s discretionary authority under applicable comprehensive plan and land use regulation provisions, not where LUBA determines the local government misconstrued its permissible scope of review on remand from a previous LUBA appeal. *Louisiana Pacific v. Umatilla County*, 28 Or LUBA 32 (1994).

25.2 Local Government Procedures – Authority to Act. ORS 275.320 to 275.340 deal with a county’s proprietary power to manage county-acquired land. The designation of county-acquired real property as “county forests, public parks or recreational areas” under ORS 275.320 does not supersede the comprehensive land use planning process established under ORS chapter 197. *Sahagian v. Columbia County*, 27 Or LUBA 592 (1994).

25.2 Local Government Procedures – Authority to Act. Absent other limitations, if a local code gives local decision makers authority to impose conditions of approval that protect the public from adverse effects associated with a proposed use, this authority to impose conditions is not limited to conditions required to establish compliance with a particular permit approval standard. *McKenzie v. Multnomah County*, 27 Or LUBA 523 (1994).

25.2 Local Government Procedures – Authority to Act. Where a school district concludes a proposed school site complies with a city’s comprehensive plan in a school district proceeding in which the city participates, the city council nevertheless may reach a contrary conclusion concerning the proposed site’s compliance with the city comprehensive plan in a subsequent city proceeding. *Salem-Keizer School Dist. 24-J v. City of Salem*, 27 Or LUBA 351 (1994).

25.2 Local Government Procedures – Authority to Act. Neither ORS 222.173 nor ORS 222.115 purports to preempt local government use of consents to annexation in circumstances other than those identified in ORS 222.173(1). Statements by individual legislators during legislative proceedings leading to adoption of ORS 222.115 expressing general hostility towards involuntary annexation do not establish a legislative intent to preclude city or county legislation concerning consents to annexation. *Bear Creek Valley San. Auth. v. City of Medford*, 27 Or LUBA 328 (1994).

25.2 Local Government Procedures – Authority to Act. Where LUBA has remanded a city decision annexing certain property, a subsequent city decision amending the comprehensive plan and zoning designations for that property, in reliance on the annexation, exceeds the city’s authority. *Roloff v. City of Milton-Freewater*, 27 Or LUBA 256 (1994).

25.2 Local Government Procedures – Authority to Act. That a county zoning ordinance authorizes imposition of “fines” for its violation, whereas a separate county compliance ordinance authorizes imposition of “civil penalties” in amounts determined under ORS 203.065(1) or the violated ordinance, does not prevent the county from imposing a civil penalty for violation of its zoning ordinance, based on the amount of the fines allowed by the zoning ordinance for violations. *Watson v. Clackamas County*, 27 Or LUBA 164 (1994).

25.2 Local Government Procedures – Authority to Act. Circuit court jurisdiction to grant declaratory relief does not include jurisdiction to make a land use decision in the process of granting declaratory relief. The appropriate local government must render any required land use decisions. *DLCD v. Benton County*, 27 Or LUBA 49 (1994).

25.2 Local Government Procedures – Authority to Act. Claim and issue preclusion may not be asserted against a petitioner in a LUBA appeal based on a prior circuit court proceeding where the circuit court proceeding ended in a stipulated judgment and where petitioner had no notice of and was not a party to the circuit court proceeding. *DLCD v. Benton County*, 27 Or LUBA 49 (1994).

25.2 Local Government Procedures – Authority to Act. A condition of permit approval prohibiting remonstrance against the formation of an LID does not violate ORS 260.665 (protecting voting rights) where petitioners are neither prevented from voting nor required to vote in any particular manner. *Larsson v. City of Lake Oswego*, 26 Or LUBA 515 (1994).

25.2 Local Government Procedures – Authority to Act. The validity of a challenged city council decision that ratifies and affirms a letter written by a city manager is unaffected by arguments that the city manager lacked authority to write the letter. *Poddar v. City of Cannon Beach*, 26 Or LUBA 429 (1994).

25.2 Local Government Procedures – Authority to Act. A local government may interpret its code requirement for a “description” of the subject property showing “access” not to require a final legal determination concerning the existence of access adequate to serve the proposed use, where the subject property is served by a disputed easement. Only the circuit court can provide a final legal determination concerning the nature and scope of a disputed easement. *Mohler v. Josephine County*, 26 Or LUBA 1 (1993).

25.2 Local Government Procedures – Authority to Act. Where a local governing body fails to initiate rehearing of a matter within the period provided in the local code, the governing body has no authority to conduct a rehearing proceeding. *Rochlin v. Multnomah County*, 25 Or LUBA 637 (1993).

25.2 Local Government Procedures – Authority to Act. Unless the local code specifically provides to the contrary, the local governing body may ratify the authority of a local official to act on the local government’s behalf. *Choban v. Washington County*, 25 Or LUBA 572 (1993).

25.2 Local Government Procedures – Authority to Act. Where the governing body ratifies an act of another local government official in the challenged decision, that aspect of the challenged decision is itself substantial evidence that the local official possessed authority to accomplish the disputed act. *Choban v. Washington County*, 25 Or LUBA 572 (1993).

25.2 Local Government Procedures – Authority to Act. Where a challenged decision simply expresses a conclusion that the county court has discretion to act on a subdivision application without that application having first been acted on by the county planning commission, but does not identify the source of that discretion or interpret apparently relevant code provisions, the basis

for the challenged decision is not sufficiently articulated for review, and the challenged decision must be remanded. *Larson v. Wallowa County*, 25 Or LUBA 537 (1993).

25.2 Local Government Procedures – Authority to Act. Where petitioner fails to establish a false representation was made, and also fails to establish that the representation made was made by a person with authority to bind the local decision maker, petitioner has not adequately alleged estoppel against the local decision maker. *DLCD v. Wasco County*, 25 Or LUBA 529 (1993).

25.2 Local Government Procedures – Authority to Act. After a mandamus proceeding has been initiated pursuant to ORS 215.428(7), a county retains jurisdiction to make a “land use decision” on a pending permit application at any time before the circuit court issues a final judgment in the mandamus proceeding. Although made while circuit court mandamus proceedings are pending, such a “land use decision” is reviewable by LUBA under ORS 197.825(1). *Murphy Citizens Advisory Comm. v. Josephine County*, 25 Or LUBA 507 (1993).

25.2 Local Government Procedures – Authority to Act. Where the evidence in the record is insufficient to establish a zoning inspector’s representation concerning nonconforming use status was made with knowledge of the material facts that present and certain past commercial uses of the subject property occurred without required local government approvals, the local government is not estopped from denying petitioners’ application for the establishment of a nonconforming use. *Pesznecker v. City of Portland*, 25 Or LUBA 463 (1993).

25.2 Local Government Procedures – Authority to Act. The use of land for a recreational parachuting center and for parachute landings is a “land use” subject to regulation by local land use ordinances. *Skydive Oregon v. Clackamas County*, 25 Or LUBA 294 (1993).

25.2 Local Government Procedures – Authority to Act. Federal preemption of local authority to regulate is not presumed. Rather it is necessary to determine whether preemption was the “clear and manifest purpose of Congress.” *Skydive Oregon v. Clackamas County*, 25 Or LUBA 294 (1993).

25.2 Local Government Procedures – Authority to Act. Nothing in the federal regulatory scheme relating to the regulation of parachute jumping purports to foreclose state and local land use regulation of the ground based impacts of parachuting. *Skydive Oregon v. Clackamas County*, 25 Or LUBA 294 (1993).

25.2 Local Government Procedures – Authority to Act. Where a condition of approval imposing a fine for a violating the terms of a conditional use permit, regardless of the amount of actual damage sustained due to the violation, is not specifically authorized by the local code, such condition is beyond the local government’s authority to impose. *Skydive Oregon v. Clackamas County*, 25 Or LUBA 294 (1993).

25.2 Local Government Procedures – Authority to Act. Although ORS 459.017(1)(a) provides that the “planning, location, acquisition, development and operation of landfill disposal sites is a matter of statewide concern,” ORS chapter 459 also contains numerous references to the power of local governments to enact legislation affecting solid waste landfills and, therefore, ORS chapter

459 does not preempt local regulation of landfill siting. *Riverbend Landfill Company v. Yamhill County*, 24 Or LUBA 466 (1993).

25.2 Local Government Procedures – Authority to Act. Claim preclusion applies to preclude relitigation of a claim that has been litigated. Where a party’s claim of a vested right to residential use of certain property was determined in a circuit court judgment, to which the local government and other parties to the LUBA appeal were also parties, the local government is precluded from making a new determination on that vested right claim, even if it would otherwise have jurisdiction to do so. *Joines v. Linn County*, 24 Or LUBA 456 (1993).

25.2 Local Government Procedures – Authority to Act. A city ordinance rezoning property located outside the city’s municipal boundaries exceeds the city’s jurisdiction and must be reversed. *Hofmann v. City of Seaside*, 24 Or LUBA 183 (1992).

25.2 Local Government Procedures – Authority to Act. Where local land use regulations delegate the authority to act initially on an application to a planning commission or hearings officer, and reserve to the governing body *only* the power to review the planning commission’s or hearings officer’s decision, the governing body exceeds its authority if it approves such an application without it having first been acted on by the planning commission or hearings officer. *Larson v. Wallowa County*, 23 Or LUBA 527 (1992).

25.2 Local Government Procedures – Authority to Act. Subsequent changes in county ordinances do not affect an energy facility for which a site certificate has been approved by EFSC. Under ORS 469.400(5), a county is required to issue the “appropriate permits” for such an energy facility, regardless of whether a subsequent change in county ordinances makes the “appropriate permit” a type different from that which was appropriate when the site certificate was approved. *McDole v. Lane County*, 23 Or LUBA 500 (1992).

25.2 Local Government Procedures – Authority to Act. A local ordinance which prohibits the short term rental use of dwellings in residential zones is not an unlawful rent control regulation under ORS 91.225. *Cope v. City of Cannon Beach*, 23 Or LUBA 233 (1992).

25.2 Local Government Procedures – Authority to Act. In order to establish estoppel, petitioners must show (1) the local government made a false representation with knowledge of the facts, (2) petitioner was ignorant of the truth, (3) the local government intended that petitioner act upon the false representation, and (4) petitioner in fact acted upon the false representation. That a local government planner stated his opinion that an application is approvable is not adequate to establish estoppel. *Schoppert v. Clackamas County*, 23 Or LUBA 138 (1992).

25.2 Local Government Procedures – Authority to Act. A use which is industrial in nature, involving the *processing* of both logging debris and woody debris from other sources, does not constitute “forest practices on forest lands” and, therefore, is not subject to the prohibition of ORS 527.722(1) against regulation by local governments. *Wastewood Recyclers v. Clackamas County*, 22 Or LUBA 258 (1991).

25.2 Local Government Procedures – Authority to Act. Where an applicant seeks approval for development outside of a “stream corridor area,” but has already placed related development within the “stream corridor area” on the same property without obtaining necessary local permits, the local government has authority to impose conditions on approval of the applicant’s proposed development requiring that the unauthorized development be removed or that necessary local permits be obtained for the unauthorized development. *Tylka v. Clackamas County*, 22 Or LUBA 166 (1991).

25.2 Local Government Procedures – Authority to Act. Where local land use regulations delegate the authority to act initially on an application to a hearings officer, and reserve to the governing body *only* the power to review the hearings officer’s decision, the governing body exceeds its authority if it approves such an application without it having first been acted on by the hearings officer. *Scott v. Josephine County*, 22 Or LUBA 82 (1991).

25.2 Local Government Procedures – Authority to Act. A city is not prohibited from issuing a building permit pursuant to an unappealed planning commission decision, notwithstanding that a second application seeking to expand the scope of the project approved by the unappealed planning commission decision was denied by the city council. *Townsend v. City of Newport*, 21 Or LUBA 286 (1991).

25.2 Local Government Procedures – Authority to Act. A local government cannot deny building permits for approved conditional uses based on subsequent local code interpretations, where the subject conditional use permit remains effective and was not appealed locally or to LUBA. *Townsend v. City of Newport*, 21 Or LUBA 286 (1991).

25.2 Local Government Procedures – Authority to Act. City charter requirement for a majority vote of the governing body (as opposed to a majority vote of a quorum) is to be given effect and may leave a quorum of the governing body unable to achieve the required majority vote. *Strawn v. City of Albany*, 20 Or LUBA 344 (1990).

25.2 Local Government Procedures – Authority to Act. A county does not exceed its jurisdiction in taking final action on a permit application after the 120-day time limits established by ORS 215.428(1) and its code have elapsed; and its decision will be given effect. *Forest Park Estate v. Multnomah County*, 20 Or LUBA 319 (1990).

25.2 Local Government Procedures – Authority to Act. Where the county charter and code grant the county administrator broad administrative powers, but do not explicitly grant the county administrator authority to determine whether decisions are appealable under the county code, LUBA will accept the county’s interpretation of the charter and code as granting the administrator such authority, so long as that interpretation is not inconsistent with the charter and code. *Von Lubken v. Hood River County*, 20 Or LUBA 208 (1990).

25.2 Local Government Procedures – Authority to Act. Even if the planning commission chairman’s participation in the planning commission proceedings on a proposed comprehensive plan amendment were improper, and without his participation the planning commission would not have had a quorum, there would be no basis for reversal or remand of the city council decision

approving the plan amendment, because no provisions of state statute or city plan or land use regulations make a planning commission recommendation on a proposed plan amendment a necessary prerequisite to action by the city council. *Burk v. Umatilla County*, 20 Or LUBA 54 (1990).

25.2 Local Government Procedures – Authority to Act. If petitioners believe the assessor has not properly considered the restrictions the county’s timber zone puts on their property, their remedy is with the county board of equalization. Petitioners cannot claim in an appeal to LUBA that the assessment of their property over the years constituted a “false representation,” such that the county is estopped from denying their application for a nonforest dwelling. *Sabin v. Clackamas County*, 20 Or LUBA 23 (1990).

25.2 Local Government Procedures – Authority to Act. Where city regulations governing applications for conditional use approval do not make all contiguous property owned by an applicant subject to the conditional use review, and an applicant files a conditional use application for only a portion of his property, the city does not have authority to impose conditions on contiguous property owned by the applicant which is not the subject of the application. *Goodman v. City of Portland*, 19 Or LUBA 289 (1990).

25.2 Local Government Procedures – Authority to Act. The local governing body has the *authority* to conduct either an evidentiary or on the record *de novo* review of planning commission decisions in circumstances where local ordinances are silent on the scope of review. *Murphey v. City of Ashland*, 19 Or LUBA 182 (1990).