25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. Where state statute requires that a local government provide either a public hearing before ruling on an application for a statutory permit or an opportunity for an appeal that includes a *de novo* public hearing, although the local government may require a notice of appeal that sets forth with reasonable particularity the issues that the appealing party will raise at the hearing, the local government may not, consistent with the statute, (1) make that notice requirement a jurisdictional bar to obtaining the hearing, (2) limit the issues specified to five types of issues, or (3) approve or reject requests for hearings based on a qualitative assessment of how well the appellant has explained the issues specified. *Landwatch Lane County v. Lane County*, 79 Or LUBA 96 (2019).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. A city's rejection of petitioner's as-applied challenge of a city's appeal fee during the city's proceeding on intervenor's land use application, and legal challenges to the city's future assessment of actual attorney's fees is not excluded from LUBA's jurisdiction by the "fiscal" exception. However, to the extent petitioner challenges the amount of the actual attorney fees, that challenge is outside the Board's scope of review because that fee dispute arose after the city issued the fee invoice and after the city made a decision on petitioner's underlying appeal, and is therefore a "fiscal" decision. The fact that the local record includes the invoice for the actual attorney fees petitioner was charged for his local appeal does not convert the amount of the fees in that invoice into an issue that is reviewable by LUBA. *Nicita v. City of Oregon City*, 78 Or LUBA 463 (2018).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. In an as-applied challenge, a petitioner cannot challenge the manner in which the city adopted its appeal fee structure. Instead, LUBA's inquiry regarding petitioner's as-applied challenge to the appeal fee charged by the city, is whether petitioner has produced a *prima facie* case that the fee that the city charged petitioner pursuant to the city's previously adopted fee schedule is "more than the average cost of such appeals or the actual cost of the appeal." ORS 227.180(1)(c). *Nicita v. City of Oregon City*, 78 Or LUBA 463 (2018).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. A county is not required to evaluate a petitioner's standing to file a local appeal based on the presumption that the petitioner was entitled to notice of the decision, where there is no dispute that the petitioner did not live within the notice area and was not entitled to notice of the decision at the time the decision was made. That the petitioner now lives within the notice area does not establish entitlement under state or local law to notice of the decision or to file a local appeal. *Eng v. Wallowa County*, 76 Or LUBA 432 (2017).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. The exhaustion/waiver principle articulated in *Miles v. City of Florence*, 190 Or App 500 (2003), requires the petitioner to identify issues in the local appeal to the local appeal body, regardless of whether the appeal body conducts a hearing or whether the local appeal proceeding is on the record or *de novo*. *Central Oregon Landwatch v. Deschutes County*, 74 Or LUBA 540 (2016).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. ORS 215.422(1) authorizes a county to impose a local appeal fee to defray the costs of "acting upon an appeal," but that authorization is not limited to local appeal processes where the county conducts a full local

appeal, and does not exclude local appeal processes where the county initially makes a determination whether to hear the full appeal and declines to do so. *Central Oregon Landwatch v. Deschutes County*, 74 Or LUBA 540 (2016).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. Where a county's local appeal regulations provide an opportunity to request a *de novo* evidentiary hearing, in order to preserve the ability to challenge the reasonableness of the local appeal fee before LUBA, the petitioner must at a minimum request a *de novo* evidentiary hearing before the final decision maker at which the petitioner can submit evidence to establish a *prima facie* case that the fee is unreasonable. *Central Oregon Landwatch v. Deschutes County*, 74 Or LUBA 540 (2016).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. A petitioner's challenge to a city's local appeal fee, on the grounds that the record does not include evidence establishing that the fee is consistent with ORS 227.180(1)(c), is not a basis for reversal or remand, where the city's final decision maker lacks authority under the city code to develop an evidentiary record regarding the appeal fee. *Treadmill Joint Venture v. City of Eugene*, 65 Or LUBA 213 (2012).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. Even if county code language could be interpreted to bar non-applicant parties who participated in the evidentiary phase of a local permit proceeding from participating in an on-the-record appeal filed by the applicant to challenge permit conditions of approval, such a local appeal procedure would violate ORS 197.763 and 215.422. *Families for a Quarry Free Neighborhood v. Lane County*, 64 Or LUBA 297 (2011).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. In order to allow effective review of an as-applied appeal fee challenge in circumstances where, due to local regulations, the delegated local final decision maker does not have authority to accept new evidence or to consider appeal fee challenges, the local final decision maker must allow the fee challenger to submit argument and evidence into the record so that LUBA can perform its review function. *Willamette Oaks LLC v. City of Eugene*, 63 Or LUBA 75 (2011).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. In *Ramsey v. City of Portland*, 29 Or LUBA 139 (1995), LUBA held the city's land use appeal fees were "an integral part of the zoning code provisions governing the processing and review of land use applications." LUBA has relied on that holding in a number of subsequent appeals to reject jurisdictional challenges to appeals of local government decisions that adopt or amend application or appeal fee schedules. *Montgomery v. City of Dunes City*, 61 Or LUBA 123 (2010).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. LUBA has relied on *Ramsey v. City of Portland*, 29 Or LUBA 139 (1995) in a number of decisions to reject jurisdictional challenges to appeals that assert "as-applied" challenges to previously adopted land use permit and appeal fee schedules. *Montgomery v. City of Dunes City*, 61 Or LUBA 123 (2010).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. A city decision to charge a subdivision applicant the actual cost of processing his subdivision application is not a land use decision that is subject to review by LUBA, where the city's final decision demanding payment of the actual costs was not made as part of its decision on the merits of the subdivision application and instead postdates that decision on the merits by over one year. The city's later decision to demand payment of the actual cost of processing the subdivision application is a "fiscal" decision, and under the reasoning in *Housing Council v. City of Lake Oswego*, 48 Or App 525, 617 P2d 655 (1980), *rev dismissed*, 291 Or 878, 635 P2d 647 (1981), is not a land use decision subject to LUBA review. *Montgomery v. City of Dunes City*, 61 Or LUBA 123 (2010).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. An approval standard requiring a finding that a proposed boardwalk in a natural resource area will not "seriously interfere with the preservation of fish and wildlife habitat areas and habitat" appears to involve the "discretionary approval of a proposed development of land," and is therefore a "permit" as defined at ORS 215.402(4). If so, ORS 215.416(11)(b) limits to $250 the local appeal fee the county can charge for the initial hearing on the appeal. *Jensen Properties v. Washington County*, 61 Or LUBA 155 (2010).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. ORS 215.422(1)(c) allows counties to set fees to defray the costs of local appeals. Determining the "average cost of such appeals" for purposes of ORS 215.422(1)(c) requires some kind of arithmetic calculation of the average of a set of numbers. *1000 Friends of Oregon v. Crook County*, 60 Or LUBA 232 (2009).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. To reliably determine the "average" costs of an appeal under ORS 215.422(1)(c), the set of numbers used to generate the required average must be broadly representative or reflective of the range of appeal costs that the county is likely to experience. *1000 Friends of Oregon v. Crook County*, 60 Or LUBA 232 (2009).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. ORS 215.422(1)(c) does not require a county to calculate appeal costs based on a contemporaneous accounting of actual staff time and costs in past appeals, or provide that appeal costs derived solely from estimates of costs cannot constitute substantial evidence for purposes of establishing an appeal fee under the statute. Any evaluation of appeal costs will involve some estimation, even if the county bases that evaluation as much as possible on records of actual costs incurred in prior appeals. *1000 Friends of Oregon v. Crook County*, 60 Or LUBA 232 (2009).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. The principal regulatory concern of ORS 215.422(1)(c) is to place limitations on the maximum amounts a county can charge for processing a local appeal. That concern is not implicated by adoption of multiple appeal fees that apply to different types of appeals, as long as the fees so adopted are consistent with the statute's limitations within each different type of appeal. *1000 Friends of Oregon v. Crook County*, 60 Or LUBA 232 (2009).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. A county may define different categories of appeals that tend to have similar levels of appeal costs, and within a specific category determine a set of costs for processing that type of appeal. Based on that set of costs, the county can calculate the arithmetic average of the set, and determine the average cost of appeals in that category. Having determined the relevant average, the county can then establish an appeal fee applicable only to that category of appeals that does not exceed the average cost of appeals in that category. *1000 Friends of Oregon v. Crook County*, 60 Or LUBA 232 (2009).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. Under ORS 215.422(c), if a county chooses not to require a county-produced transcript and fee, it may instead allow appellants to submit a transcript of those "portions" of the media recording of one or more hearings that are deemed "relevant." *1000 Friends of Oregon v. Crook County*, 60 Or LUBA 232 (2009).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. As-applied challenges to previously adopted fee schedules are permissible, overruling *Maxwell v. Lane County*, 39 Or LUBA 556, *rev'd and rem'd on other grounds*, 178 Or App 210, 35 P3d 1128 (2001), and *Cummings v. Tillamook County*, 30 Or LUBA 17 (1995). *Mazorol v. City of Bend*, 59 Or LUBA 260 (2009).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. A petitioner establishes a *prima facie* case that a city appeal fee schedule may violate ORS 227.180(1)(c) when the city has a two-tiered review system where the city council can either review a lower decision on the merits or decline review and the city refunds 75 percent of the appeal when the city council declines review *except* when an appellant appeals to LUBA, in which case the city does not refund any of the appeal fee. Once a petitioner has established a *prima facie* case, the burden shifts to the city to demonstrate that the appeal fee schedule does not violate ORS 227.180(1)(c). *Mazorol v. City of Bend*, 59 Or LUBA 260 (2009).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. A county erred by dismissing a local appeal of a building permit where (1) the county's land use regulations provided a right of local appeal to challenge decisions that required the exercise of significant discretion, (2) the county was required to determine if the dwelling that was the subject of the building permit was lawfully established, and (3) the history of the development of the property required the county to exercise considerable discretion to determine if the dwelling was lawfully established. *Kuhn v. Deschutes County*, 58 Or LUBA 483 (2009).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. Where a party challenges a resolution adopting fees charged by the county for permits and appeals, the burden is on the county to include evidence in the record that demonstrates that the fees were set consistent with the statute's mandate that the fees that are subject to ORS 215.416(1) and ORS 215.422(1)(c) will not exceed average or actual costs of processing permits or appeals. *Sommer v. Josephine County*, 58 Or LUBA 505 (2009).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. ORS 215.416(11)(a)(E)(ii) prohibits local governments from limiting issues that can be raised in an

appeal of a permit decision made without a prior hearing to those issues specified in the local notice of appeal. A local government cannot avoid that prohibition by allowing parties to raise the issue at the appeal hearing, and then summarily dismissing the local appeal for failure to specify the basis for the appeal in the local notice of appeal. *Woodard v. Yamhill County*, 56 Or LUBA 141 (2008).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. Where a county provides two rounds of appeals to the governing body, both rounds of appeals constitute as single proceeding, and the fact that the county did not require that petitioner pay a second appeal fee for the second appeal does not preclude petitioner from challenging imposition of the first appeal fee. *Young v. Crook County*, 56 Or LUBA 704 (2008).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. While acknowledged comprehensive plans and regulations are not reviewable for compliance with statewide planning goals and rules, quasi-judicial land use decisions that apply local regulations that were adopted in an earlier, unappealed legislative decision are not generally immune from an as-applied challenge for compliance with applicable statutes. *Young v. Crook County*, 56 Or LUBA 704 (2008).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. A county is not required to produce evidence during the hearing on a local appeal that the appeal fee charged to the petitioner is "more than the average cost of such appeals or the actual cost of the appeal" under ORS 215.422(1), where the petitioner merely asserts that the appeal fee does not comply with the statute but there is no evidence in the record supporting that assertion. *Young v. Crook County*, 56 Or LUBA 704 (2008).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. A planning director decision not to refer a revocation request to the planning commission for a hearing is not a "permit" decision as that term is defined at ORS 227.160(2), because it does not constitute the "discretionary approval of a proposed development of land." *Emami v. City of Lake Oswego*, 52 Or LUBA 18 (2006).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. A proceeding to revoke a permit is more analogous to an enforcement action than to a permit proceeding under ORS 227.175, and thus is not subject to the statutory procedural and other requirements applicable to permit proceedings. *Emami v. City of Lake Oswego*, 52 Or LUBA 18 (2006).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. Because ORS 215.422(1)(c) explicitly limits the appeal fee that counties can charge for certain land use appeals, evidence that total annual revenues produced by over 200 county fees fall short of total planning department annual expenses is not sufficient to demonstrate that the fees collected for three types of appeals comply with ORS 215.422(1)(c). A more particularized evidentiary effort to focus on the costs and expenses associated with the three types of appeals subject to ORS 215.422(1)(c) is required. *Landwatch Lane County v. Lane County*, 52 Or LUBA 140 (2006).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. Absent any contravening evidence or need for more detailed analysis, staff testimony that proposed application fee increases accurately reflect increased costs and are less than the maximum amount that cities may charge under ORS 227.175(1) is substantial evidence supporting a finding of compliance with the statute. *Doty v. City of Bandon*, 49 Or LUBA 411 (2005).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. Limiting issues addressed in a decision following a *de novo* hearing under ORS 214.416 to issues specifically raised in the local notice of appeal is inconsistent with ORS 215.416(11)(a)(E), which provides that the "testimony, argument and evidence shall not be limited to issues raised in a notice of appeal[.]" *Sisters Forest Planning Comm. v. Deschutes County*, 48 Or LUBA 78 (2004).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. Where a local code appeal requirement merely requires that the local appellant include a "statement of interest of the person seeking review," the local government may not dismiss the local appeal because the local appellant does not demonstrate in the notice of local appeal that the appellant is "adversely affected or aggrieved." If a local appellant is going to be required to demonstrate he or she is adversely affected in the local notice of appeal, and is not going to be allowed an opportunity to make that demonstration at the statutorily required *de novo* hearing, the local code must make that requirement clear. *Crowley v. City of Bandon*, 48 Or LUBA 545 (2005).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. By statute, an opportunity for a *de novo* appeal must be provided where a permit decision is made without first providing a hearing. ORS 227.175(10)(a)(E)(ii) provides that at the required *de novo* hearing "[t]he presentation of testimony, arguments and evidence shall not be limited to issues raised in a notice of appeal[.]" Under these statutes it is highly unlikely that the legislature could have intended that a city may dismiss a local appeal, without first providing a *de novo* hearing, simply because the appellant's local notice of appeal did not sufficiently identify the issues to be asserted on appeal. *Crowley v. City of Bandon*, 48 Or LUBA 545 (2005).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. Once an administrative permit approval decision is appealed locally, ORS 227.175(10)(a)(A) and (D) require that a city provide a *de novo* appeal and a decision on that appeal. A city fails to provide the statutorily required *de novo* appeal when it relies on a committee rule that is not part of the zoning ordinance and was not adopted by the city council to decide that a 2-2 vote of the committee results in denial of the appeal. *Hayden Island, Ltd. v. City of Portland*, 46 Or LUBA 439 (2004).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. Under ORS 227.180(1)(c), the question of whether local appeal fees are "reasonable" is not separable from the question of whether the appeal fees are not more than the average or actual cost of such appeals, absent evidence that the local government spends an unreasonable amount of time or incurs unreasonable expenses in processing appeals. *Friends of Linn County*, 45 Or LUBA 408 (2003).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. That the legislature has capped local fees for providing a hearing under ORS 215.416(11)(b) and 227.175(10)(b) at $250 does not demonstrate that a $500 fee to appeal a planning commission

decision to the governing body is unreasonable, for purposes of ORS 227.180(1)(c). *Friends of Linn County*, 45 Or LUBA 408 (2003).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. Land use decisions appealed to LUBA pursuant to ORS 197.830(3) or (4) are not subject to the ORS 197.825(2)(a) exhaustion of remedies requirement absent circumstances where the local government voluntarily grants a local appeal, while decisions appealed pursuant to ORS 197.830(9) are subject to the exhaustion of remedies requirement. *Comrie v. City of Pendleton*, 45 Or LUBA 758 (2003).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. Where a local government conducts a hearing but fails to provide notice of the decision to a petitioner who appeared at the hearing, that failure of process does not obviate the requirement that the petitioner exhaust all administrative remedies below before appealing to LUBA. In such circumstances, the local government must accept a properly filed local appeal from the petitioner and cannot reject that local appeal on the basis of an imperfection that is caused by the local government's own procedural error. *Comrie v. City of Pendleton*, 45 Or LUBA 758 (2003).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. Where a county order establishes a fee of $700 to, among other things, request a hearing on a permit application or file a local appeal of a permit decision rendered without a hearing, LUBA will remand the order where the $700 fee appears to violate the $250 maximum fee established by ORS 215.416(11)(b), and the county offers no defense of the order. *Friends of Yamhill County v. Yamhill County*, 43 Or LUBA 270 (2002).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. Where a timely request is filed to locally appeal a decision made without a hearing under ORS 215.416(11) or 227.175(10), the local government must conduct a *de novo* hearing and render a final decision approving or denying the permit application. Where the local government conducts a *de novo* hearing and renders a final decision, the decision made without a hearing is not and cannot become a final decision, and cannot be appealed to LUBA under ORS 197.830(4) or any other provision of law. *Dead Indian Memorial Rd. Neigh. v. Jackson County*, 43 Or LUBA 597 (2002).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. Where a timely request is filed to locally appeal a decision made without a hearing under ORS 215.416(11) or 227.175(10) and a *de novo* hearing is held, but the request is withdrawn and the local appeal dismissed prior to reaching a final decision on the local appeal, the underlying decision made without a hearing becomes the county's final land use decision on the permit application. *Dead Indian Memorial Rd. Neigh. v. Jackson County*, 43 Or LUBA 597 (2002).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. Where the *de novo* hearing provided under ORS 215.416(11) or 227.175(10) is dismissed without reaching a decision on the permit application, the underlying decision made without a hearing becomes the final land use decision on the permit application, as of the date of the order dismissing the local appeal. The underlying decision does not become final retroactively back to the date the local

appeal period expired. *Dead Indian Memorial Rd. Neigh. v. Jackson County*, 43 Or LUBA 597 (2002).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. A local code providing that the scope of review for an appeal of a planning commission decision to the city council is a "Record Hearing," and defining a "Record Hearing" as a hearing limited to review of the existing record or evidence previously submitted, does not limit the *legal issues* or arguments that may be presented on appeal; only the *evidence* that may be considered. *Haug v. City of Newberg*, 42 Or LUBA 411 (2002).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. A local appellate body may, on its own, raise issues that are not presented in the notice of local appeal, where the local code does not specifically limit the scope of review on appeal to the issues identified in the notice of local appeal. *Haug v. City of Newberg*, 42 Or LUBA 411 (2002).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. Where new evidence is improperly submitted as part of an applicant's final legal arguments, but that evidence has no bearing on the relevant approval criteria, the error in accepting the new evidence results in no prejudice to other parties' substantial rights and provides no basis for reversal or remand. *Farrell v. Jackson County*, 41 Or LUBA 1 (2001).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. That the city council declined to hear petitioner's local appeal of a planning commission site design approval does not provide a basis to reverse the city's decision or award attorney fees to petitioner under ORS 197.835(10), even if the city council's decision was motivated by a desire to avoid violating the ORS 227.178(1) requirement that the city issue a final decision on an application for a limited land use decision within 120 days. ORS 197.835(10) applies where the local government *denies* an application in a bad faith attempt to avoid the requirements of ORS 227.178. It does not apply to a decision approving an application. *Elliott v. City of Redmond*, 40 Or LUBA 242 (2001).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. A local government may not separate an otherwise unitary land use decision into separate components, remand some components for further local proceedings and designate some components as immediately appealable to LUBA. *Besseling v. Douglas County*, 39 Or LUBA 177 (2000).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. A county's code cannot define which participants in a land use proceeding are "aggrieved" by a land use decision, within the meaning of ORS 215.416, more restrictively than the statute. *Friends of Douglas County v. Douglas County*, 39 Or LUBA 156 (2000).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. A county errs in denying the opportunity for local appeal of a permit approval on the grounds that the petitioner is not "aggrieved" by the county's decision within the meaning of ORS 215.416(11), where petitioner is an organization interested in the correct application of the county's land use laws and it appeared before the county to oppose the county's approval. That petitioner is a recently formed organization and appears for the first time before the county is not a basis to conclude that

petitioner is not aggrieved by the county's decision. *Friends of Douglas County v. Douglas County*, 39 Or LUBA 156 (2000).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. ORS 197.763(2)(b) and 215.416(11) require counties to provide notice and an opportunity for local appeal to "recognized" neighborhood associations; the county cannot apply its code in a manner that limits notice and appeal rights extended by statute. *McKy v. Josephine County*, 37 Or LUBA 554 (2000).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. Where the county's legislation is ambiguous with respect to whether the county "recognizes" a neighborhood association for purposes of statutory notice and local appeal requirements, LUBA will remand to the county for interpretation in the first instance. *McKy v. Josephine County*, 37 Or LUBA 554 (2000).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. Where a local government refuses to consider petitioner's letters and refuses petitioner's requests to present testimony during the local proceedings, the appearance requirement of ORS 197.830(2) is obviated. *Hugo v. Columbia County*, 34 Or LUBA 577 (1998).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. Providing a copy of the decision constitutes the notice of the decision and opportunity for appeal required by ORS 215.416(11)(a) if it unambiguously states that a particular decision has been made and provides sufficient information concerning the opportunity for a local appeal. *Confederated Tribes v. Jefferson County*, 34 Or LUBA 565 (1998).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. Neither ORS 215.416(11)(a) nor 197.763 provides any requirements regarding what constitutes "filing" a local appeal. Nothing in those statutes precludes a local government from requiring that a local appeal be physically delivered to the county within the appeal period. *Confederated Tribes v. Jefferson County*, 34 Or LUBA 565 (1998).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. There is no basis for applying the doctrine of unique circumstances to local land use decisions. If local regulations make failure to timely file an appeal a jurisdictional defect, LUBA has no authority to develop an equitable remedy that overcomes such a defect. *Mountain Gate Homeowners v. Washington County*, 34 Or LUBA 169 (1998).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. Although a local government may narrow its own scope of review in local appeals, it cannot narrow LUBA's scope of review over issues raised at any time below. *Laurence v. Douglas County*, 33 Or LUBA 292 (1997).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. Where a party receives notice of a decision and subsequent appeal, and the record contains no evidence that the party attempted to appear at the hearing, that party cannot claim that it was denied the opportunity

to participate in the appeal hearing when it had no notice of the withdrawal of the appeal. *DLCD v. Polk County*, 33 Or LUBA 30 (1997).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. Where a local government is not required to conduct a hearing, ORS 197.830(3) does not apply, nor does that statute operate to allow a party's lack of notice of a decision to toll the time limit for appeal. *DLCD v. Polk County*, 33 Or LUBA 30 (1997).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. A pro forma review by the county board of commissioners that must result in approval of a planning commission decision does not satisfy the requirement stated in ORS 197.050 and 197.060 that exceptions to the Statewide Planning Goals be adopted by the county governing body. *Young v. Douglas County*, 31 Or LUBA 545 (1996).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. A petitioner is not required to go through the process of appealing from the county planning commission to the county board of commissioners to obtain a review the board of commissioners is already required by statute to give. *Young v. Douglas County*, 31 Or LUBA 545 (1996).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. The local appeal from an administrative decision provided by ORS 227.175(10) must be exhausted prior to an appeal to LUBA, which otherwise lacks jurisdiction under ORS 197.825(2)(a). *Caraher v. City of Klamath Falls*, 30 Or LUBA 204 (1995).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. When petitioners fail to satisfy the county's jurisdictional appeal provision requiring local appellants to state the basis of their standing, the county is not at liberty to take notice of petitioners' standing or to excuse their failure satisfy the requirement as "harmless error." *Tipton v. Coos County*, 29 Or LUBA 474 (1995).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. When a county zoning ordinance provision states that a local appeal will be dismissed if the requirements of the provision are not satisfied, the provision is jurisdictional. An appellant's failure to satisfy a jurisdictional requirement results in dismissal of the appeal. *Tipton v. Coos County*, 29 Or LUBA 474 (1995).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. While ORS 215.416(11) allows a county to make land use permit decisions without a hearing, it protects an individual's right to participate in a local hearing by requiring that notice of the decision be given to affected persons and that the opportunity for a *de novo* local appeal be provided. *Tarjoto v. Lane County*, 29 Or LUBA 408 (1995).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. Where a local appeal is available, the purpose of the exhaustion requirement of ORS 197.825(2)(a) is to assure that the local government decision is reviewed by the highest level local decision making body the

local code makes available, before an appeal to LUBA is pursued. *Tarjoto v. Lane County*, 29 Or LUBA 408 (1995).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. If a local government fails to provide the notice of a permit decision made without a hearing required by ORS 215.416(11) or 227.175(10), the time for filing a local appeal does not begin to run until an appellant is provided the notice of decision to which he or she is entitled. Because a local appeal is available to such an individual, under ORS 197.825(2)(a) that local appeal must be exhausted before appealing to LUBA. *Tarjoto v. Lane County*, 29 Or LUBA 408 (1995).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. ORS 227.180(1) prescribes procedures only for appeals from a *hearings officer's* decision to a planning commission or city council, not for appeals from a *planning commission* decision to a city council. *Jackman v. City of Tillamook*, 29 Or LUBA 391 (1995).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. Petitioner's contention that the fee charged for a local appeal violates ORS 227.180(1)(c) must fail where there is no evidence in the record establishing that the local appeal fee is unreasonable or that it exceeds the average or actual cost of such an appeal, and petitioner does not move for an evidentiary hearing to submit such evidence. *Ramsey v. City of Portland*, 29 Or LUBA 139 (1995).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. Where petitioner appeals a decision by a local governing body not to accept petitioner's appeal of a planning commission decision, LUBA's scope of review is limited to whether the governing body correctly decided not to accept petitioner's local appeal. LUBA will not review the merits of the planning commission decision. *Cummings v. Tillamook County*, 29 Or LUBA 550 (1995).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. Where a county code allows a "permit" decision to be made without a hearing, but provides for a local appeal only by the permit applicant, ORS 215.416(11) nevertheless requires the county to provide an opportunity to obtain a hearing through an appeal to persons who would have had a right to notice if a hearing had been scheduled and who are adversely affected or aggrieved by the decision. In these circumstances, a county does not err by allowing such persons to pursue a local appeal. *McKenzie v. Multnomah County*, 27 Or LUBA 523 (1994).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. Where the local code provides for an initial decision on a permit application without a hearing, subject to obtaining a hearing through a *de novo* local appeal, regardless of a code requirement that the bases for appeal be specified in the local notice of appeal, the local appellant is entitled to raise any relevant issue during the local appeal. *McKenzie v. Multnomah County*, 27 Or LUBA 523 (1994).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. Where ORS 215.416(3) and (11) require a county to provide an opportunity for a local appeal of a design review decision made by the planning director without a hearing, the county cannot interpret a code provision requiring that "final design review approval" has been granted to be satisfied when a

local appeal of the planning director's design review approval decision is pending. *McKenzie v. Multnomah County*, 27 Or LUBA 523 (1994).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. ORS 197.195, which establishes minimum procedural requirements for making limited land use decisions, does not require that local governments provide either a public hearing or a local appeal. ORS 227.175(3) and (10) do not apply to limited land use decisions, because they are not "permits," as defined in ORS 227.160(2). *Forest Park Neigh. Assoc. v. City of Portland*, 27 Or LUBA 215 (1994).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. A statement that failure to raise an issue before the planning commission precludes appeal to the local governing body does not satisfy the requirement of ORS 197.763(3)(e) that a local government hearing notice include a statement that failure to raise an issue precludes appeal to LUBA on that issue. *Murphy Citizens Advisory Comm. v. Josephine County*, 25 Or LUBA 312 (1993).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. Even where a governing body's review of the decision of a lower level decision maker is limited to the evidentiary record below, the governing body must either make its own decision and findings regarding compliance with applicable approval standards, adopt by reference the decision and findings of the lower level decision maker, or in some other way take action such that a decision regarding compliance with applicable approval standards becomes final and subject to appeal to LUBA as part of the governing body's decision. *Murphy Citizens Advisory Comm. v. Josephine County*, 25 Or LUBA 312 (1993).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. Local government provisions narrowing the scope of review during local appeals do not similarly narrow LUBA's scope of review under ORS 197.763(1) and 197.835(2). *Davenport v. City of Tigard*, 25 Or LUBA 67 (1993).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. Where neither the local code nor or any statute creates a "duty" on the part of a local government to advise local appellants of local appeal requirements stated in the local code itself, that the county provided petitioners with a detailed information sheet concerning local appeals which did not indicate the existence of the county's "jurisdictional" requirement that a local appeal document be signed, provides no basis for reversal or remand of the challenged decision. *Breivogel v. Washington County*, 24 Or LUBA 63 (1992).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. Pursuant to 215.406(1) and 215.422(2), a county governing body may designate a hearings officer to conduct hearings on permit applications and may provide that the hearings officer's decision is the final county decision. *Wickwire v. Clackamas County*, 21 Or LUBA 278 (1991).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. ORS 215.416 and 215.422 do not prohibit a county from establishing a fee requirement for appeals of decisions

on permit applications made by the planning director without a hearing. *DLCD v. Jackson County*, 21 Or LUBA 93 (1991).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. Where a local government provides neither notice of the decision nor an opportunity to appeal a decision rendered without a public hearing, to anyone other than the applicant, it does not comply with ORS 227.175(10). *Citizens Concerned v. City of Sherwood*, 21 Or LUBA 515 (1991).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. Local government requirements that an appeal be filed and that a fee be paid before a second evidentiary hearing is held do not violate the requirement of ORS 197.763(3)(f)(B) that two or more evidentiary hearings be "allowed," where only 10 days notice of the first hearing is provided. *1000 Friends of Oregon v. Benton County*, 20 Or LUBA 7 (1990).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. Where a local government elects to give only 10 days notice of the initial evidentiary hearing, subject to a right to a second evidentiary hearing on appeal, ORS 197.763(3)(f)(B) requires that a participant be allowed to raise new issues during the second evidentiary hearing. A local government could not, consistent with ORS 197.763(1), (3)(f)(B), and (5)(b) cut off that right prematurely by requiring that all issues to be raised in the second hearing be identified in the notice of appeal. *1000 Friends of Oregon v. Benton County*, 20 Or LUBA 7 (1990).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. A city's failure to adopt ordinances specifying the city council's scope of review in appeals of planning commission decisions and providing procedures for hearings on such appeals, as required by ORS 227.170, is a procedural error. *Murphey v. City of Ashland*, 19 Or LUBA 182 (1990).

25.3.8 Local Government Procedures – Compliance with Statutes – Appeals. If a county neither (1) holds a public hearing before making a decision on an application for a "permit," as defined in ORS 215.402(4), nor (2) provides an opportunity to appeal that decision at the county level, it fails to comply with the requirements of ORS 215.416(3), (5) and (11). *Flowers v. Klamath County*, 18 Or LUBA 647 (1990).