

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Failure to meet the preservation requirement of ORS 197.763(1) and ORS 197.835(3) and the exhaustion requirement of ORS 197.825(2)(a) and *Miles v. City of Florence*, 190 Or App 500, 79 P3d 382 (2003), rev den, 336 Or 615 (2004), removes issues from the scope of LUBA’s review; it does not deprive LUBA of jurisdiction to review final land use decisions. *Nehmzow v. Deschutes County*, 81 Or LUBA 571 (2020).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Where a petitioner cites over one hundred pages of the record in its preservation of error statement, but the respondents do not argue that the issues were not raised during the local proceeding and the petitioner provides more focused record citations in their reply brief, and where it is evident from the challenged decision itself that the issues were raised during the local proceeding, such failure to adequately specify in the petition for review where the issues were preserved is a technical violation that does not prejudice the respondents’ substantial rights. *Nehmzow v. Deschutes County*, 81 Or LUBA 571 (2020).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Under ORS 197.763(1) and ORS 197.835(3), a member of a decision-making body is not a participant in a local proceeding and, while planning staff may be participants in a land use proceeding, any issue that is raised in a staff response to decision-maker questions that is provided to the decision-making body after the record has closed may not be raised for the first time at LUBA. *Marek v. City of Corvallis*, 81 Or LUBA 91 (2020).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** An argument below that a proposed building was similar to an industrial building and an inappropriate size, and that the area would need to be rezoned, does not fairly raise any issue regarding whether the proposed use meets the definition of “residential facility” in the local code for purposes of ORS 197.763(1) and ORS 197.835(3). *Eagle-Eye v. City of Veneta*, 81 Or LUBA 1 (2020).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Where the staff reports that were available to the public accepted the applicant’s premise that a proposed building is a “residential facility,” as defined in the local code, and where the petitioners do not explain why they could not have raised the issue of whether the proposed building is a “residential facility” prior to the close of the initial evidentiary hearing, LUBA will refuse to allow that issue to be raised on appeal under ORS 197.835(4)(a), even assuming that the definitions section of the local code was an applicable approval criterion that the local government should have, but did not, identify in its notices. *Eagle-Eye v. City of Veneta*, 81 Or LUBA 1 (2020).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Where an applicant generally argued below that the local government could apply only clear and objective standards, and where the applicant more specifically argued that the local government could not apply certain local safety standards regulating roads and connectivity because the term “safety” is subjective and undefined in the local code, argued that the local government could not apply certain ODOT standards referenced in the local safety standards because they are undefined and not clear and objective, and opposed a proposed ODOT condition

of approval as not clear and objective, LUBA will conclude that an argument that the local government erred by refusing to analyze whether the applicable criteria are “clear and objective” under ORS 197.307(4) was sufficiently raised for purposes of ORS 197.835(3), ORS 197.195(3)(c)(B), and ORS 197.763(1). *Buffalo-Bend Associates, LLC v. Clackamas County*, 81 Or LUBA 66 (2020).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** A petitioner fails to satisfy OAR 661-010-0030(4)(d) or to establish that the issues raised in its six assignments of error were raised as required by ORS 197.763(1) and ORS 197.835(3) where the petitioner broadly cites its submittals into the record during the proceedings before the local government. Such a broad citation is not a technical violation where it interferes with the substantial rights of the parties by improperly shifting the burden to the respondents to review over one hundred pages of the record to determine whether the issues raised in six assignments of error in an overlength, 68-page petition for review have been preserved. *H2D2 Properties, LLC v. Deschutes County*, 80 Or LUBA 528 (2019).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** 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).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** 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).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** 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).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Where petitioner had the opportunity to object to the use of the 2017 USGS report and requested more time to respond but did not use that opportunity to raise the issue of which report’s data to use. The right to raise the issue under ORS 197.763 was waived. *Gould v. Deschutes County*, 78 Or LUBA 118 (2018).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** 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).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** 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).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Even if a motion to take evidence outside the record under OAR 661-010-0045(1) were otherwise proper, LUBA will deny such motion where petitioners have failed to demonstrate that the issue the proffered evidence goes to was raised with the specificity required by ORS 197.763(1), and even if LUBA viewed petitioners’ arguments as one particular “argument” toward the general issue, that issue does not appear to have raised even in a most general way. Because the proffered evidence goes to an issue that is not within the Board’s scope of review, petitioners have not established a basis under OAR 661-010-0045(1) to grant the motion to consider the evidence for any purpose, and such motion will be denied. *Renken v. City of Oregon City*, 78 Or LUBA 1070 (2018).

**25.3.9 Local Government Procedures – Compliance with Statute – Raise It/Waive It (ORS 197.763).** An argument that the issue raised in an assignment of error is waived is not a basis to dismiss the appeal as moot. If LUBA agrees with that argument, the appropriate disposition would be to deny the assignment of error and affirm the local government’s decision, not to dismiss the appeal as moot. *McNichols v. City of Canby*, 78 Or LUBA 1090 (2018).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Under ORS 197.763(6)(c), if a party requests in writing an opportunity to respond to new evidence submitted during an open record period, the hearings authority must allow that opportunity. But nothing in the statute requires the hearings authority to expand this second open

record period to include submittal of any evidence, arguments and testimony a person desires to submit. *Martucci v. Jackson County*, 77 Or LUBA 252 (2018).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Principles of preservation that would govern a quasi-judicial decision, e.g., the “raise it or waive it” requirements of ORS 197.763(1), do not apply to an appeal of a legislative decision. *Columbia Pacific v. City of Portland*, 76 Or LUBA 15 (2017).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** A petitioner does not waive her right to assign error to a hearings officer’s conclusion that a structure qualifies as a nonconforming use, and the hearings officer’s approval of an alteration of that nonconforming use, where the applicant did not apply for verification of a nonconforming use or an alteration of a nonconforming use and the notices of hearing did not identify the county’s nonconforming use regulations as applicable criteria for the decision. *Kaimanu v. Washington County*, 70 Or LUBA 217 (2014).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Where an “Article” of the community development code includes 373 single spaced pages of land use regulations made up of 44 separate sections devoted to a variety of topics, a notice of hearing that identifies that article of the community development code as an applicable standard is not sufficient, under ORS 197.763(3), to provide notice of an eight-page section of that article devoted to nonconforming uses. *Kaimanu v. Washington County*, 70 Or LUBA 217 (2014).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** In circumstances where the local government makes a decision without holding a hearing, ORS 197.835(3) does not apply to limit the issues that LUBA may consider in an appeal of that decision. *Devin Oil Co. Inc. v. Morrow County*, 70 Or LUBA 420 (2014).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Where issues regarding compliance with approval criteria were raised below, petitioners may challenge the adequacy of findings that are ultimately adopted regarding those approval criteria. *League of Women Voters v. City of Corvallis*, 63 Or LUBA 432 (2011).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** The “raise it or waive it” rule does not apply outside of the context of a quasi-judicial proceeding. ORS 197.763(1). *Santiam Water Control District v. City of Stayton*, 62 Or LUBA 149 (2010).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** When the state administrative rules applicable to a comprehensive plan amendment are amended during the local proceedings, raising the issue of compliance with the old administrative rules is not sufficient under ORS 197.763(1) and ORS 197.835(3) to raise the issue of whether the application complies with the new provisions of the amended rules. *Walker v. Josephine County*, 60 Or LUBA 186 (2009).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Although ORS 197.835(4) provides an exception to the “raise it or waive it” rule, it only allows a petitioner to raise new issues based upon applicable criteria that were omitted from the notice. A local provision that tentative approval will expire if not completed and the ORS 227.178(5) limit on the number of days an applicant may extend the deadline for a local government to make a final decision on an application are not “applicable criteria.” Therefore, a petitioner may not raise issues concerning the statutes and local provision for the first time at LUBA, even though they were not listed in the notice. *Oh v. City of Gold Beach*, 60 Or LUBA 356 (2010).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Even though an issue is raised below, if only one point of view on that issue is raised and the local government is not asked to consider alternative points of view, a petitioner may not argue an alternative point of view at LUBA. *Boucot v. City of Corvallis*, 56 Or LUBA 662 (2008).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** To comply with ORS 197.763(3)(b), a notice of hearing must identify the applicable approval criteria by code number or similar means of identification sufficient to direct the recipient to the actual code or plan provisions that the city deems to be approval criteria. Reference to a code provision that itself merely requires “conformance with the comprehensive plan” is insufficient to provide effective notice of any comprehensive plan provisions. *Kingsley v. City of Sutherlin*, 49 Or LUBA 242 (2005).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** The city’s failure to list certain plan policies as approval criteria in the notice of hearing does not allow petitioner to raise new issues regarding those plan policies under ORS 197.835(4)(a), where two staff reports and a planning commission decision address the plan policies as approval criteria and petitioner is given ample constructive notice that the city believed the policies to be approval criteria. *Kingsley v. City of Sutherlin*, 49 Or LUBA 242 (2005).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** An issue regarding compliance with an approval criterion is waived if not raised below, unless the petitioner demonstrates that the local government failed to list the criterion in the notice of hearing under ORS 197.835(4). However, LUBA will not address an issue under ORS 197.835(4) where the petitioner fails to explain why the notice of hearing is defective. *Staus v. City of Corvallis*, 48 Or LUBA 254 (2004).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Language in a subarea plan that allows submittal of master plan application with fewer than all of the owners of affected property and requires a particular planning focus for property not controlled by the applicant is a mandatory approval criterion that must be listed in the hearing notice because the city could deny or require modification of the application based on that language. *Lowery v. City of Keizer*, 48 Or LUBA 568 (2005).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Where language in master plan that is a mandatory approval criterion was not listed in

the hearing notice, no criterion listed in the notice reasonably would have led petitioners to that language, and petitioners otherwise could not have anticipated the issue because the city's final decision was the first notice petitioners had that the master plan language applied, petitioners did not waive the issue by failing to raise it at the local level. *Lowery v. City of Keizer*, 48 Or LUBA 568 (2005).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** The ORS 197.763(6)(b) right to request that a hearing be continued must be exercised prior to the close of the initial evidentiary hearing. Where the initial evidentiary hearing was held before the planning commission, a party has no right under ORS 197.763(6)(b) to request a continuance in a subsequent hearing before the city council, notwithstanding that the planning commission was evenly divided and could not reach a majority vote to approve or to deny an application for subdivision approval. *Frewing v. City of Tigard*, 47 Or LUBA 331 (2004).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** 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).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** In order to preserve the right before LUBA to challenge the adequacy of findings addressing an approval criterion and the supporting evidence, a petitioner must demonstrate that the proposal's compliance with that criterion was raised below accompanied by statements or evidence sufficient to afford other parties an adequate opportunity to respond. *Bruce Packing Company v. City of Silverton*, 45 Or LUBA 334 (2003).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Absent a local code requirement to the contrary, ORS 197.763 does not require that every hearing notice given by a local government must provide an overview of local appeal procedures and how those procedures may affect an appeal at LUBA, as long as the notices inform participants of their obligation to raise issues regarding compliance with applicable criteria at the earliest opportunity. *Scheyer v. City of Hood River*, 43 Or LUBA 112 (2002).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Where a hearings officer concludes that a local code provision setting out seven potential methods of creating a parcel applies in determining whether a parcel was lawfully created, the hearings officer is obligated to consider each of the arguably applicable methods, notwithstanding that the applicant below did not specifically raise issues regarding which of the arguably applicable methods applies. *DeBoer v. Jackson County*, 43 Or LUBA 219 (2002).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** The raise it or waive it provisions of ORS 197.763(1) apply only where the local government provides a hearing at which issues may be raised. Where the county did not provide a

hearing where petitioners could raise issues, petitioners may raise issues before LUBA in the first instance. *Dead Indian Memorial Rd. Neigh. v. Jackson County*, 43 Or LUBA 511 (2003).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** An ambiguous assertion that a driveway providing access to a proposed flag lot does not qualify as a street is insufficient to raise an issue that the proposed minor partition creates a street and therefore must be approved as a major partition and comply with the criteria applicable to major partitions. *Webb v. City of Bandon*, 39 Or LUBA 584 (2001).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** The predicate to application of the “raise it or waive it” principle in ORS 197.835(3) is a local proceeding pursuant to ORS 197.195 or 197.763. That principle does not apply to proceedings to vacate county roads under ORS 368.346. *Mekkers v. Yamhill County*, 39 Or LUBA 367 (2001).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Where a city determines that revisions to easements within a previously approved subdivision require a replat, verbal testimony and a letter submitted by the applicants’ attorney noting that the applicants will comply with the city’s determination but consider a replat unnecessary under the statutes cited by the city are sufficient to preserve the issue for appeal to LUBA, notwithstanding that the applicants did not expressly submit the disputed replat application under protest. *Haber v. City of Gates*, 39 Or LUBA 137 (2000).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Even though petitioners may have obtained a continuance or caused the record to be left open had they made either request, a local government is not required to provide a continuance or leave the record open unless it is requested. *Lange-Luttig v. City of Beaverton*, 39 Or LUBA 80 (2000).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Failure to list applicable criteria in a pre-hearing notice in violation of ORS 197.763(3)(a) allows petitioner to raise issues at LUBA relating to the omitted criteria without having raised those issues before the local government. However, failure to list applicable criteria does not, in itself, provide a basis for reversal or remand. *Ashley Manor Care Centers v. City of Grants Pass*, 38 Or LUBA 308 (2000).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** After the petition for review is filed, petitioner must respond to allegations that issues that are raised in the petition for review were not raised during the local proceedings. If petitioner fails to do so, those issues are waived. However, petitioner is not initially obligated to specify in the petition for review where the issues that are raised in the petition for review were raised below. *Robinson v. City of Silverton*, 37 Or LUBA 521 (2000).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** An issue that could have, but was not, raised in the initial petition for review before LUBA in an appeal that was voluntarily remanded, may not be included in an assignment of error

in a later appeal of a decision following remand. *Riggs v. Douglas County*, 37 Or LUBA 432 (1999).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Listing the “Comprehensive Plan goals, policies and land use map” as applicable criteria on the notice of hearing without listing specific applicable plan provisions is insufficient to satisfy ORS 197.763(3)(b), and such a general listing does not support a conclusion that petitioner could have raised issues regarding specific plan provisions below. *Herman v. City of Lincoln City*, 36 Or LUBA 521 (1999).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** ORS 197.763(3)(b) only requires that the notice of hearing list the applicable criteria from the local government’s ordinance and comprehensive plan. The failure of the notice to list applicable statutory provisions is not a violation of ORS 197.763(3), and does not excuse petitioner from the obligation to raise the issue of compliance with those statutes during the local proceedings. *Van Dyke v. Yamhill County*, 35 Or LUBA 676 (1999).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Where the record shows petitioner knew or should have known of the existence and potential applicability of criteria in the county ordinance and comprehensive plan that were omitted from the notice of hearing, LUBA will conclude pursuant to ORS 197.835(4)(a) that petitioner could have raised the applicability of those criteria during the local proceedings below, and thus petitioner cannot raise new issues before LUBA regarding those criteria. *Van Dyke v. Yamhill County*, 35 Or LUBA 676 (1999).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** A petitioner would not likely have noticed an arguably relevant plan provision where the plan provision was located in a different section of the plan from the plan provisions identified as relevant by the local government in their notice of hearing. Petitioner is therefore not barred by ORS 197.835(4)(a) from raising an issue concerning compliance with the plan provision. *Visher v. City of Cannon Beach*, 35 Or LUBA 74 (1998).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** ORS 197.835(3) and 197.763 require that petitioners at LUBA have raised the issues they wish to raise at LUBA during the local proceeding. However, this statutory restriction does not apply to individual arguments regarding those issues. *DLCD v. Tillamook County*, 34 Or LUBA 586 (1998).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Where an issue is adequately raised below, ORS 197.763 does not limit particular arguments related to that issue on appeal. *DLCD v. Curry County*, 33 Or LUBA 728 (1997).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Under ORS 197.763(1) and ORS 197.835(3), all petitioner must do is raise the issue before the final evidentiary hearing record is closed to enable petitioner to raise an issue before LUBA. *Central Bethany Dev. Co. v. Washington County*, 33 Or LUBA 463 (1997).



**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** A petitioner failing to respond to a local government’s request to make his general objections more detailed fails to afford the city an opportunity to respond, may not make those objections more detailed for the first time at LUBA and waives the right to appeal based on those objections. *Arnett v. City of Lake Oswego*, 33 Or LUBA 384 (1997).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Where the city’s application form requests a written narrative, but petitioner does not identify an applicable legal standard or criterion that requires its submission, petitioner may not raise new issues as a result of the city’s failure to include such a criterion on the notice of hearings. *Design Home Construction v. City of Silverton*, 32 Or LUBA 452 (1997).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Where a local government limits discussion of an ordinance not identified in the hearing notice as an applicable criterion, and then adopts findings based on that ordinance, petitioners had no opportunity to address or rebut the ordinance, and their failure to do so does not waive their right to appeal its application. *Nicholson v. Clatsop County*, 32 Or LUBA 399 (1997).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** The provisions of ORS 197.763(6)(c) only apply to the “initial evidentiary hearing,” and therefore do not require the city council to reopen the record for rebuttal upon the request of a participant in a subsequent evidentiary hearing. *Wicks-Snodgrass v. City of Reedsport*, 32 Or LUBA 292 (1997).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Where petitioners contend a decision fails to address an applicable approval criterion that was not identified in the local government’s hearing notice as required by ORS 197.763(3)(b), and respondents contend petitioners cannot raise this issue because they failed to raise it below, LUBA must decide whether the provision in question establishes an approval criterion for the subject application, in which case petitioners may raise the new issue before LUBA pursuant to ORS 197.835(4)(b). *Wicks-Snodgrass v. City of Reedsport*, 32 Or LUBA 292 (1997).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** The 1995 amendment to ORS 197.763(1) adds a requirement that issues not only be raised, but also be *accompanied by statements or evidence* sufficient to afford the local decision maker an opportunity to respond. What is “sufficient” still depends upon whether the governing body, planning commission, hearings body or hearings officer, and the parties are afforded an adequate opportunity to respond to each issue. *Lett v. Yamhill County*, 32 Or LUBA 98 (1996).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Where defining the relevant area is an essential, stated component of the stability standard for nonfarm dwellings, petitioner must object below to the area selected by the county in order to avoid waiving the objection on appeal. *Lett v. Yamhill County*, 32 Or LUBA 98 (1996).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Under ORS 197.835(4)(b), petitioners may raise an issue for the first time on appeal only if it relates to an applicable criterion that was omitted from the notice provided by the local government in violation of ORS 197.763(3)(b). *Friends of Indian Ford v. Deschutes County*, 31 Or LUBA 248 (1996).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Where petitioners contend a local government’s notice of hearing on a conditional use permit application did not comply with the requirement of ORS 197.763(3)(a) to explain the nature of the application and the uses that could be authorized, but do not contend their substantial rights were prejudiced by the alleged error, petitioners provide no basis for reversal or remand. ORS 197.835(7)(a)(B). *Jackman v. City of Tillamook*, 29 Or LUBA 391 (1995).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** A local government’s failure to comply with the requirements of ORS 197.763(3)(h) and (i) that its notice of hearing state the staff report and applicant’s materials are available for inspection and that copies will be provided at reasonable cost is a procedural error, and does not provide a basis for reversal or remand unless petitioners explain how their substantial rights were prejudiced by the error. *Jackman v. City of Tillamook*, 29 Or LUBA 391 (1995).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Where petitioners do not move for an evidentiary hearing, and the only undisputed fact alleged by petitioners is that a petitioner was required to pay 14 dollars for the local government’s 14-page staff report, petitioners fail to establish the local government’s failure to provide a copy of the staff report at a reasonable cost, as required by ORS 197.763(3)(i), violated petitioners’ substantial rights. *Jackman v. City of Tillamook*, 29 Or LUBA 391 (1995).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** If the local government did not hold a land use hearing, subject to the requirements of ORS 197.763, before making the challenged decision, petitioners cannot waive the right to raise issues for the first time on appeal to LUBA, because they were not provided the forum in which to raise such issues at the local level. *Leathers v. Washington County*, 29 Or LUBA 343 (1995).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** ORS 197.763 governs how a quasi-judicial land use hearing is conducted, not whether one is required. ORS 197.763 does not confer a right to a quasi-judicial land use hearing where such a right does not otherwise exist. *Save Amazon Coalition v. City of Eugene*, 29 Or LUBA 335 (1995).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Where a local government’s “initial evidentiary hearing” on a quasi-judicial land use application was held before the planning commission, the local government does not violate ORS 197.763(6) by denying petitioner’s request to leave open the record of a subsequent evidentiary hearing before the governing body. *ONRC v. City of Oregon City*, 29 Or LUBA 90 (1995).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Listing an entire zoning ordinance as the applicable criteria in a local government’s notice of its initial evidentiary hearing on a quasi-judicial land use application does not satisfy ORS 197.763(3)(b). Neither does listing entire chapters of the zoning ordinance, where such chapters contain criteria for several different types of applications. *ONRC v. City of Oregon City*, 29 Or LUBA 90 (1995).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Where petitioner submits detailed argument to the local government regarding the applicability of a particular code provision and whether that code provision is satisfied by the subject application, the local government’s failure to list that code provision as an applicable criterion in the notice of its initial evidentiary hearing, as required by ORS 197.763(3)(b), did not prejudice petitioner’s substantial rights. *ONRC v. City of Oregon City*, 29 Or LUBA 90 (1995).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Where new information in support of an application is received by a local government on the last day the record is left open, pursuant to a request that the record be left open under ORS 197.763(6), an opposing party is entitled to a continuance under ORS 197.763(4)(b), if it requests a continuance. A request for a continuance under ORS 197.763(4)(b) is not specifically required to be made before the evidentiary record closes. *ONRC v. City of Seaside*, 29 Or LUBA 39 (1995).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** In a quasi-judicial hearing on a land use application, an applicant has a right to rebut evidence submitted by opponents. However, if the applicant’s rebuttal includes “additional documents or evidence \* \* \* in support of the application,” ORS 197.763(4)(b) gives opponents a right to request a continuance. *ONRC v. City of Seaside*, 29 Or LUBA 39 (1995).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Because a local code enforcement proceeding does not involve an “application” or an “applicant” in the sense those terms are used in ORS 197.763, the “raise it or waive it” provisions of ORS 197.763 and 197.835(2) do not apply to such proceedings. *Sanchez v. Clatsop County*, 29 Or LUBA 26 (1995).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Where petitioners do not argue the challenged decision violates any criterion which they failed to raise below because that criterion was not listed in the local government’s notice of initial hearing or proposed action, as required by ORS 197.763(3)(b) or ORS 197.195(3)(c)(C), petitioners fail to show their substantial rights were prejudiced by the error and establish no basis for reversal or remand. *Wicks v. City of Reedsport*, 29 Or LUBA 8 (1995).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** ORS 197.763(8) applies only to a local government’s notice of its initial evidentiary hearing. It does not apply to local hearings conducted after remand by LUBA. *Collins v. Klamath County*, 28 Or LUBA 553 (1995).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Where the local government’s notice of its first evidentiary hearing before the planning commission failed to list the applicable standards, as required by ORS 197.763(3)(b), petitioners may raise issues at LUBA even though such issues may not have been raised during the local proceedings. However, this procedural error provides no basis for reversal or remand of the decision where petitioners fail to establish the error caused prejudice to their substantial rights. *Shapiro v. City of Talent*, 28 Or LUBA 542 (1995).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Where during the local proceedings petitioners affirmatively waived their right to request a continuance, petitioners cannot raise the local government’s failure to provide such a continuance as a basis for reversal or remand in an appeal to LUBA. *Shapiro v. City of Talent*, 28 Or LUBA 542 (1995).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Where a local government fails to list a single applicable approval criterion in its notice of initial evidentiary hearing, issues may be raised at LUBA even though they were not raised during the local proceedings. *Lamm v. City of Portland*, 28 Or LUBA 468 (1995).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Where the challenged decision includes a determination that a nonconforming use of the subject property exists, but the notice of hearing indicated the only issue to be addressed was an expansion of an existing nonconforming use, the notice of hearing failed to adequately describe the nature of the application, as required by ORS 197.763(3)(a), and failed to reasonably describe the county’s final action under ORS 197.835(2)(b). Either of these deficiencies means petitioners may raise issues before LUBA regardless of whether they were raised below. *Tylka v. Clackamas County*, 28 Or LUBA 417 (1994).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** ORS 215.416(5) and 197.763(3)(b) require a county to identify applicable approval standards in its notices of hearing. Where petitioner’s right to participate in the local proceedings is impaired by the county’s failure to identify relevant standards, the challenged decision must be remanded. *Murphy Citizens Advisory Comm. v. Josephine County*, 28 Or LUBA 274 (1994).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** ORS 197.763(3)(c) does not require that the addresses of all properties included within a proposal for quasi-judicial land use approval be set out in the notice of public hearing. An “easily understood geographical reference” may be provided instead. *Kevedy, Inc. v. City of Portland*, 28 Or LUBA 227 (1994).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** A statement that the requested Willamette River Greenway permit is to allow placement of a dwelling on the identified subject property is sufficient to satisfy the requirement of ORS 197.763(3)(a) that the notice of hearing “[e]xplain the nature of the application and the proposed use or uses which could be authorized.” *Reeves v. Yamhill County*, 28 Or LUBA 123 (1994).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Under ORS 197.830(10) and 197.835(2), LUBA’s review of both land use decisions and limited land use decisions is limited to issues raised below, unless (1) the local government did not satisfy the procedural requirements of ORS 197.763 or ORS 197.195, or (2) the land use decision or limited land use decision adopted differs significantly from what was described in the local government’s notice. *Tri-County Metro. Trans. Dist. v. City of Beaverton*, 28 Or LUBA 78 (1994).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Where the relevant local government notices did not list the applicable approval criteria, as required by both ORS 197.763(3)(b) and 197.195(3)(c)(C), then regardless of whether the challenged decision is a land use decision or limited land use decision, issues may be raised before LUBA irrespective of whether they were raised during the proceedings below. *Tri-County Metro. Trans. Dist. v. City of Beaverton*, 28 Or LUBA 78 (1994).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** ORS 197.763(4)(b) establishes a remedy for failure to comply with ORS 197.763(4)(a). Where a document supporting a land use application was not available for review prior to the initial local evidentiary hearing, as required by ORS 197.763(4)(a), but the local government continued the hearing to a later date and made a copy of the document available for review in its planning office prior to the continued hearing, the local government complied with ORS 197.763(4)(b). *Bates v. Josephine County*, 28 Or LUBA 21 (1994).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Where a party is entitled to and requests a continuance under ORS 197.763(4), and the local government decision maker does not respond to the request or grant a continuance prior to the close of the evidentiary hearing portion of a quasi-judicial land use proceeding, the party does not waive its right to allege failure to grant the continuance as error in a LUBA appeal by failing to repeat the continuance request at subsequent local government meetings held to adopt a final written decision. *Historical Development Advocates v. City of Portland*, 27 Or LUBA 617 (1994).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Where the record shows petitioner was aware of the applicable approval criteria in the comprehensive plan and participated effectively in the local hearing, a local government’s failure to comply with the requirements of ORS 197.763(3)(b) and (j), regarding listing applicable criteria from the plan and explaining hearing procedures in its notice of hearing, does not prejudice petitioner’s substantial rights or provide a basis for reversal or remand. *Furler v. Curry County*, 27 Or LUBA 546 (1994).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** ORS 197.763(3)(b) and (5)(a) require a local government to provide notice of the standards applicable to an application for a quasi-judicial land use decision, prior to its hearing on such an application. *Laine v. City of Rockaway Beach*. 27 Or LUBA 493 (1994).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Where a local government mistakenly believes it is adopting a limited land use decision, and for that reason fails to follow the notice and hearing requirements of ORS 197.763, no issues

petitioner wishes to raise at LUBA were waived because they were not raised below. ORS 197.835(2)(a). *Fechtig v. City of Albany*, 27 Or LUBA 480 (1994).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** A local government’s failure to follow the notice and hearing requirements of ORS 197.763 provides no basis for reversal or remand, where petitioner neither assigns that failure as error nor explains how his substantial rights were prejudiced by that failure. *Fechtig v. City of Albany*, 27 Or LUBA 480 (1994).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Where certain comprehensive plan and code provisions are mentioned in the local government’s decision, but are not applied as approval criteria for the subject application, ORS 197.763(3)(b) does not require that those provisions be listed in the local government’s notice of hearing. *BCT Partnership v. City of Portland*, 27 Or LUBA 278 (1994).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** ORS 197.763(3)(b) requires a local government to identify, in its notice of hearing on a quasi-judicial land use application, *which* comprehensive plan goals and policies the local government considers to be “applicable” criteria for the subject application. *Eppich v. Clackamas County*, 26 Or LUBA 498 (1994).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** ORS 197.763(5)(a) requires that a statement listing the applicable substantive criteria from the local government comprehensive plan and code be made at the beginning of a quasi-judicial land use hearing. Where such a statement is not made, or other requirements of ORS 197.763 are not met, petitioners may raise new issues in an appeal to LUBA. *Eppich v. Clackamas County*, 26 Or LUBA 498 (1994).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Under ORS 197.763, absent consideration of a new development application, local proceedings after remand by LUBA are part of a single, continuous land use process. *Citizens for Resp. Growth v. City of Seaside*, 26 Or LUBA 458 (1994).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** ORS 197.763(6), concerning requests by participants to leave the local evidentiary record open, applies only to the “initial evidentiary hearing” and not to local proceedings after remand by LUBA. *Citizens for Resp. Growth v. City of Seaside*, 26 Or LUBA 458 (1994).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** It is unclear whether the provisions of ORS 197.763(4) entitling parties to a continuance of a local government quasi-judicial land use hearing if additional evidence is provided in support of the application, applies to local remand proceedings. Nevertheless, to trigger the requirement of ORS 197.763(4) to continue the hearing, a party must request a continuance. *Citizens for Resp. Growth v. City of Seaside*, 26 Or LUBA 458 (1994).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** A local government’s failure to list a comprehensive plan provision establishing different standards for comprehensive plan map and text amendments as an applicable approval criterion constitutes a failure to follow the procedures required by ORS 197.763. *Nathan v. City of Turner*, 26 Or LUBA 382 (1994).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** ORS 197.763(7) does not preclude a local government from reopening an evidentiary record for limited purposes after it has been closed. It simply provides that if the record is reopened, new issues may be raised in an appeal to LUBA with regard to the evidence accepted after the record is reopened. *Sorte v. City of Newport*, 26 Or LUBA 236 (1993).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Local government failure to comply with ORS 197.763(3) notice of hearing requirements (1) means that under ORS 197.835(2)(a), LUBA may consider issues that were not raised below; and (2) is a procedural error which, under ORS 197.835(7)(a)(B), provides a basis for reversal or remand of the challenged decision only if such error prejudices petitioners’ substantial rights. *Mazeski v. Wasco County*, 26 Or LUBA 226 (1993).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** A statement in the local government notice of hearing required under ORS 197.763(3), to the effect that the applicable criteria can be reviewed at the local government planning office, does not constitute listing the applicable criteria, as is required by ORS 197.763(3)(b). *Friends of Bryant Woods Park v. Lake Oswego*, 26 Or LUBA 185 (1993).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Where petitioners contend that under ORS 197.835(2)(a), they may raise new issues before LUBA because the local government failed to comply with ORS 197.763, and petitioners allege specific respects in which the local government failed to follow the procedural requirements of ORS 197.763, the local government or other respondents must demonstrate that the local government complied with the relevant requirements of ORS 197.763. *Cummings v. Tillamook County*, 26 OR LUBA 139 (1993).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Where the local government’s notice of hearing did not include the list of applicable criteria or the explanation of the rights to request a continuance and to keep the record open that are required by ORS 197.763(3)(b) and (j), petitioners may raise issues in their appeal to LUBA irrespective of whether they were raised during the proceedings below. *Cummings v. Tillamook County*, 26 OR LUBA 139 (1993).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Where ORS 197.763 was not in effect at the time the subject application was submitted to the local government, LUBA’s scope of review is not limited to issues raised during the local proceedings. *Choban v. Washington County*, 25 Or LUBA 572 (1993).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Under the “raise it or waive it” provisions of ORS 197.763 and ORS 197.835(2), a local government’s failure to list a single relevant criterion means petitioner need not have raised an issue locally as a prerequisite for raising that issue before LUBA, even where the issue pertains to plan or land use regulation criteria that were listed in the notice required by ORS 197.763(3)(b). *Weuster v. Clackamas County*, 25 Or LUBA 425 (1993).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** LUBA’s scope of review is limited by ORS 197.835(2) and 197.763(1) to issues raised during the local government proceedings, only where the local government complies with the requirements of ORS 197.763. *Friends of the Metolius v. Jefferson County*, 25 Or LUBA 411 (1993).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Where (1) the local government’s plan and land use regulations were unacknowledged when the original development application was submitted, (2) there has been no proceeding in which the local government identified the applicable standards after limited acknowledgment and enforcement orders were issued by LCDC, and (3) a prior LUBA opinion specifically required the local government to identify the applicable standards, the requirements of ORS 197.763 must be applied to the local proceedings on remand. *Schatz v. City of Jacksonville*, 25 Or LUBA 327 (1993).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** The hearing notice content requirements of ORS 197.763(3) apply to the notice ORS 197.763(3)(f) requires to be given a certain number of days before the local government’s *evidentiary* hearing on a quasi-judicial land use application. They do not apply to notice of a hearing by the governing body on such application, based on the record before a lower local body. *Murphy Citizens Advisory Comm. v. Josephine County*, 25 Or LUBA 312 (1993).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** A statement that applicable criteria can be viewed at the local government planning office does not satisfy the requirement of ORS 197.763(3)(b) that a local government hearing notice list the applicable criteria from the comprehensive plan and ordinances. *Murphy Citizens Advisory Comm. v. Josephine County*, 25 Or LUBA 312 (1993).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** 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).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** 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).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** A local government is required to provide parties with an opportunity to rebut evidence submitted during local proceedings on remand from this Board under either ORS 197.763(4)(b) or *Fasano*. A local government's failure to provide petitioner with such opportunity is a procedural error that prejudices petitioner's substantial rights. *Caine v. Tillamook County*, 25 Or LUBA 209 (1993).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** A local government's failure to comply with procedural requirements of ORS 197.763 on remand from LUBA does not allow a petitioner to raise issues in a second appeal to LUBA that are otherwise barred by the doctrine of waiver articulated in *Mill Creek Glen Protection Assoc. v. Umatilla County*, 88 Or App 522, 527, 746 P2d 728 (1987). *Caine v. Tillamook County*, 25 Or LUBA 209 (1993).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Where petitioners contend a decision fails to address an applicable approval criterion that was *not* identified in the local government's hearing notice as required by ORS 197.763(3)(b), and respondents contend petitioners cannot raise this issue because they failed to raise it below, LUBA must decide whether the provision in question establishes an approval criterion for the subject application, in which case petitioners may raise the new issue before LUBA pursuant to ORS 197.835(2)(a). *O'Mara v. Douglas County*, 25 Or LUBA 25 (1993).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** While a local government is not obliged to respond to a taking claim raised during the local proceedings, the local government should, in the first instance, have an opportunity to respond to a taking issue during the local proceedings. Where there is more than one possible interpretation of the local approval standards, the local government should have the opportunity to adopt an interpretation that is constitutional. *Larson v. Multnomah County*, 25 Or LUBA 18 (1993).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Under ORS 227.178(3), the quasi-judicial land use decision-making procedures of ORS 197.763 apply to an urban subdivision decision, where the subdivision application was submitted after ORS 197.763 became effective, but before the effective date of legislation exempting limited land use decisions from the requirements of ORS 197.763. *Warren v. City of Aurora*, 25 Or LUBA 11 (1993).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Where some of the notices preceding local government quasi-judicial hearings on a land use application failed to identify applicable approval criteria, but the notice of the first hearing identified the applicable approval criteria and the record shows all parties were aware of the applicable criteria, the notice errors are at most procedural errors which did not prejudice the

parties' substantial rights. Such errors provide no basis for reversal or remand. *Reeder v. Clackamas County*, 23 Or LUBA 583 (1992).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Where the local government fails to identify the relevant plan and land use regulation standards in the notice of hearing, a petitioner is free to raise noncompliance with those standards in an appeal to LUBA, even though compliance with such standards was not raised as an issue below. *Ruff v. Harney County*, 23 Or LUBA 521 (1992).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Because OAR 660-12-060 is not part of a county's ordinances or comprehensive plan, it need not be listed as an applicable criterion under ORS 197.763(3)(b), and the county's failure to so list OAR 660-12-060 as an applicable criterion in its notice of hearing does not excuse petitioner from having to raise the issue of compliance with OAR 660-12-060 during the proceedings below in order to have it reviewed by LUBA. *ODOT v. Clackamas County*, 23 Or LUBA 370 (1992).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Where a local government's notice of hearing does not comply with ORS 197.763(3)(b) because it fails to identify an applicable statewide planning goal as an approval criterion, petitioners may raise the local government's failure either to comply with or to adopt an exception from that goal as an issue in a LUBA appeal proceeding. *Murray v. Marion County*, 23 Or LUBA 269 (1992).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Where petitioners argued below that in view of the outside storage of automobiles, a major portion of a home occupation is conducted outside of the dwelling, in violation of local code requirements, petitioners may argue at LUBA that the outside storage of automobiles violates the local code, regardless of whether the outside storage of automobiles constitutes a *major* portion of the home occupation. *Stevenson v. Douglas County*, 23 Or LUBA 227 (1992).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Where a local government contends an issue was not raised below, and the petitioner fails to cite any portions of the record which he contends demonstrate that he raised the issue during the local proceedings, under ORS 197.763(1) and 197.835(2) that issue may not be raised in an appeal to LUBA. *Coyner v. City of Portland*, 23 Or LUBA 79 (1992).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Where no specific use is proposed in conjunction with a zone change, the notice of hearing is not required to indicate all of the possible uses of the property under the proposed new zone. However, where a reasons goal exception for a particular use is also proposed, ORS 197.763(3)(a) requires that the notice of hearing identify the particular use proposed to be made of the property. *Caine v. Tillamook County*, 22 Or LUBA 687 (1992).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Local government failure to comply with ORS 197.763(3) notice of hearing

requirements (1) is a procedural error, which will result in reversal or remand of the challenged decision only if such error prejudices petitioner's substantial rights; and (2) under ORS 197.835(2)(a), allows LUBA to consider issues that were not raised below. *Caine v. Tillamook County*, 22 Or LUBA 687 (1992).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** ORS 197.763(1) does not require that arguments identical to those in the petition for review were presented during the local proceedings, but it does require that the argument presented in the local proceedings sufficiently raise an issue sought to be raised in the petition for review, so that the local government and other parties had a chance to respond to that issue in the local proceedings. *Schellenberg v. Polk County*, 22 Or LUBA 673 (1992).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Where additional evidence in support of an application is received after the notice of hearing required by ORS 197.763(3) is provided, the parties are entitled to request a continuance under ORS 197.763(4)(b), but a continuance need not be granted unless it is requested. *Reed v. Clatsop County*, 22 Or LUBA 548 (1992).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Where parties are entitled to a continuance following the introduction of new evidence in support of an application under ORS 197.763(4)(b), and make it clear they wish to present additional evidence at a later hearing, a local government commits error in not continuing the evidentiary hearing, even though a continuance under ORS 197.763(4)(b) was never explicitly requested. *Reed v. Clatsop County*, 22 Or LUBA 548 (1992).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** A local government's failure to include notice of the right to request a continuance under ORS 197.763(4)(b) or that the record be held open under ORS 197.763(6) in the notice of hearing required by ORS 197.763(3) is procedural error, and the parties' substantial rights are violated where it is clear from the record that they would have exercised such rights if they had known about them. *Reed v. Clatsop County*, 22 Or LUBA 548 (1992).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** ORS 197.763(3)(b) and (5)(a) require a local government to identify the standards it believes to be applicable to an application for quasi-judicial land use approval prior to conducting hearings on the application. LUBA is required to reverse or remand a local government's decision if it failed to follow applicable procedures in a manner that prejudiced petitioner's substantial rights, which include "rights to an adequate opportunity to prepare and submit their case and a full and fair hearing." *Bradbury v. City of Independence*, 22 Or LUBA 783 (1991).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** The statutory procedural requirements of ORS 197.763 are limited to quasi-judicial land use hearings and do not apply to local government legislative land use decision making. *Parmenter v. Wallowa County*, 21 Or LUBA 490 (1991).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** ORS 197.763(3)(b) does not require a local government to list related code provisions as “applicable criteria” in its notice of a quasi-judicial land use hearing in order to be able to consider them in interpreting the central code provisions at issue consistently with such related code provisions. *Ward v. City of Lake Oswego*, 21 Or LUBA 470 (1991).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Where a party alleges petitioner failed to raise an issue during local proceedings, and petitioner neither contends he raised the issue below nor claims the local government failed to follow the procedures required by ORS 197.763, petitioner may not raise the issue for the first time at LUBA. ORS 197.763(1); 197.835(2). *Wethers v. City of Portland*, 21 Or LUBA 78 (1991).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** The failure of a local government to identify its general procedures for the conduct of hearings in its notice of hearing, as required by ORS 197.763(3)(j), is a procedural error, for which LUBA is empowered to reverse or remand the challenged decision only if such error “prejudiced the substantial rights of the petitioner.” ORS 197.835(7)(a)(B). *Stefan v. Yamhill County*, 21 Or LUBA 18 (1991).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Regardless of whether a local government informed participants of their right under ORS 197.763(6) to request that the record remain open after the close of the initial evidentiary hearing, if the local government did *not* leave the record open, it was not obliged to accept a subsequently offered letter as part of the local record. *Wissusik v. Yamhill County*, 20 Or LUBA 246 (1990).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Under ORS 197.763(3)(j), a local government is required to provide in its notice of hearing a general explanation regarding the right under ORS 197.763(6) to request that the record of the initial evidentiary hearing remain open. A local government’s failure to provide such notice is a procedural error which, if it prejudiced the parties’ substantial rights, would require reversal or remand of the challenged decision. *Wissusik v. Yamhill County*, 20 Or LUBA 246 (1990).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Where petitioners allege the local government violated the procedural requirements of ORS 197.763, but do not contend that violation is a basis for reversal or remand of the challenged decision, and respondents do not argue that petitioners are precluded from raising any issue raised in the petition for review, LUBA need not determine whether the local government committed a procedural error. *Wissusik v. Yamhill County*, 20 Or LUBA 246 (1990).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Where a local government’s notice of hearing, rather than listing applicable approval criteria, states the applicable criteria “are attached to this notice,” but the record does not include any such attachment, LUBA will conclude the notice does not comply with the requirement of ORS 197.763(3)(b) to list applicable criteria and will review issues raised by petitioners regardless of whether they were raised below. *Thormahlen v. City of Ashland*, 20 Or LUBA 218 (1990).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Where a local government’s notice of hearing did not comply with ORS 197.763(3)(b), in that it failed to identify an approval criterion relevant to the proposed development, petitioners may raise the local government’s failure to require compliance with that approval criterion as an issue in a LUBA appeal proceeding. ORS 197.835(2)(a). *Neuenschwander v. City of Ashland*, 20 Or LUBA 144 (1990).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** ORS 197.763 and 197.835(2) represent a quid pro quo, whereby local governments are required to give broader and more detailed notice of quasi-judicial land use hearings and make staff reports available in advance of such hearings, in exchange for participants being required to raise an issue during the local proceedings in order to be able to raise that issue before LUBA. *1000 Friends of Oregon v. Benton County*, 20 Or LUBA 7 (1990).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Nothing in the language of ORS 197.763(3)(f) or the overall statutory purpose of ORS 197.763 requires that in order for the mailing of notice 10 days before the first evidentiary hearing to be sufficient under ORS 197.763(3)(f)(B), the “two or more evidentiary hearings \* \* \* allowed” must be held at the same level of local government. *1000 Friends of Oregon v. Benton County*, 20 Or LUBA 7 (1990).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** Local governments may not impose unreasonable conditions or restrictions on persons seeking to exercise their right under ORS 197.763(3)(f)(B) to two evidentiary hearings, where only 10 days notice of the first hearing is provided. *1000 Friends of Oregon v. Benton County*, 20 Or LUBA 7 (1990).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** 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).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** 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).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** When there is no specific proposed use, as in the case of a simple zone change, the requirement of ORS 197.763(3)(a) that notices of quasi-judicial land use hearings “explain the nature of \* \* \* the proposed use or uses which could be authorized” does not apply, and it is

sufficient if the notices of hearing explain that the application is for a change from one identified zoning district to another identified zoning district. *McKay Creek Valley Assoc. v. Washington County*, 19 Or LUBA 421 (1990).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** The requirement of ORS 197.763 that the procedures for the conduct of quasi-judicial land use hearings set out therein “shall be incorporated into [local government] comprehensive plan[s] and land use regulations” is *not* satisfied by local government land use regulations which set out procedures inconsistent with ORS 197.763, but include a general statement that those procedures apply *unless* state law mandates different procedures. *McKay Creek Valley Assoc. v. Washington County*, 19 Or LUBA 421 (1990).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** ORS 197.763, interpreted as a whole and considering its legislative history, expresses an intent to provide participants in quasi-judicial land use hearings with an adequate opportunity to prepare and submit evidence for such hearings. While ORS 197.763 does not guarantee participants in such hearings *20 days* between mailing of notice of the hearing and the date evidence is required to be submitted to the local government, a local ordinance requirement that certain written evidence be submitted within *10 days* of when notice is mailed is not consistent with ORS 197.763. *1000 Friends of Oregon v. Lane County*, 18 Or LUBA 858 (1990).

**25.3.9 Local Government Procedures – Compliance with Statutes – Raise It/Waive It (ORS 197.763).** ORS 197.763(3)(f)(A) and (4)(a) provide an applicant must submit all evidence relied on in support of an application to the local government at least 20 days before the evidentiary hearing. However, under ORS 197.763(4)(b), if the applicant does submit additional evidence in support of the application after that deadline, the appropriate local government response is to continue the evidentiary hearing in order to provide participants sufficient time to prepare for the evidentiary hearing. *1000 Friends of Oregon v. Lane County*, 18 Or LUBA 858 (1990).