

27.16 LUBA Procedures/Rules – Withdrawal of Decision. While the county has an unqualified right to timely withdraw its decision for reconsideration under ORS 197.830(13)(b), that provision also requires the county to affirm, modify, or reverse its decision “within such time as the board may allow.” LUBA’s rules provide that a local government’s decision on reconsideration “shall be filed with the Board within 90 days after the filing of the notice of withdrawal or within such other time as the Board may allow.” OAR 661-010-0020(1). Accordingly, where a local government requests 180 days to reconsider its decision on reconsideration, LUBA will treat the local government’s notice of withdrawal as including a motion to extend the time for filing the county’s decision on reconsideration. *Deschutes County Farm v. Deschutes County*, 79 Or LUBA 1049 (2019).

27.16 LUBA Procedures/Rules – Withdrawal of Decision. The legislature has granted LUBA broad authority to manage the proceedings before it. Accordingly, where a local government files a notice to withdraw its decision for reconsideration under ORS 197.830(13)(b) after the petition for review was filed but prior to the deadline of the filing of the respondent’s brief, and the local government’s explanation for withdrawing its decision demonstrates it is attempting to eliminate confusion, clarify findings, change its decision, narrow disputed issues, or eliminate the need for appeal, LUBA will grant the local government’s request for an extension of time to provide a copy of the decision on reconsideration. *Deschutes County Farm v. Deschutes County*, 79 Or LUBA 1049 (2019).

27.16 LUBA Procedures/Rules – Withdrawal of Decision. OAR 661-010-0021(1) provides that a “copy of the decision on reconsideration shall be filed with the Board within 90 days after the filing of the notice of withdrawal or within such other time as the Board may allow.” This rule explicitly contemplates that LUBA may modify the deadline for the local government to file a copy of the decision on reconsideration, including allowing the local government a time period longer than 90 days. *McDougal v. Lane County*, 78 Or LUBA 1016 (2018).

27.16 LUBA Procedures/Rules – Withdrawal of Decision. Neither ORS 197.830(13)(b) nor OAR 661-010-0021 dictate the scope of the issues that must be addressed when a local government withdraws a decision for reconsideration after it has been appealed to LUBA. The statute and rule also do not dictate how a local government must address offers of additional evidence at a reconsideration hearing. *Central Oregon Landwatch v. Crook County*, 76 Or LUBA 396 (2017).

27.16 LUBA Procedures/Rules – Withdrawal of Decision. In *Dexter Lost Valley Community Assn. v. Lane County*, 255 Or App 701, 300 P3d 1243 (2013), the Court of Appeals rejected the distinction that LUBA previously drew between motions for voluntary remand that are opposed by one or more parties and the unilateral right a respondent has to withdraw a decision for reconsideration under ORS 197.830(13)(b). Under LUBA’s current rules all parties must join in a motion for voluntary remand. Where one or more parties oppose a local government’s request to be allowed to reconsider a decision that has been appealed to LUBA, ORS 197.830(13)(b) is now the sole authority for LUBA to allow such reconsideration. *Central Oregon Landwatch v. Crook County*, 75 Or LUBA 523 (2017).

27.16 LUBA Procedures/Rules – Withdrawal of Decision. Where a county’s request to be allowed to reconsider a post-acknowledgement plan amendment is styled a motion for voluntary

remand but is filed before the response brief was filed, LUBA will treat the motion to reconsider the decision under ORS 197.830(13)(b). Under ORS 197.830(13)(b), a motion to reconsider a post-acknowledgment plan amendment that is filed before the response brief is filed is timely filed. *Central Oregon Landwatch v. Crook County*, 75 Or LUBA 523 (2017).

27.16 LUBA Procedures/Rules – Withdrawal of Decision. Where a county withdraws an appealed decision for reconsideration pursuant to OAR 661-010-0021(1), and a new decision is adopted to repeal the appealed decision and petitioner does not refile its notice of intent to appeal or file an amended notice of intent to appeal, LUBA will dismiss the appeal. In that circumstance, where petitioner thereafter files a cost bill seeking an award of costs to recover its filing fee and no party objects to the cost bill, LUBA will assume that petitioner is the prevailing party, even if petitioner fails to allege the appeal played a causative role in the decision on reconsideration to repeal the appealed decision. *Friends of Yamhill County v. Yamhill County*, 73 Or LUBA 367 (2016).

27.16 LUBA Procedures/Rules – Withdrawal of Decision. LUBA’s supervisory role over land use decisions that have been withdrawn for reconsideration under OAR 661-010-0021 includes taking action to reactivate the appeal if the local government fails to take timely action on the reconsideration. LUBA’s supervisory role does not extend to issuing interlocutory orders regarding the propriety of actions taken by the local government following withdrawal of the decision or regarding the need to disclose *ex parte* contacts or consider challenges to the impartiality of individual decision makers. *Columbia Riverkeeper v. Clatsop County*, 68 Or LUBA 524 (2013).

27.16 LUBA Procedures/Rules – Withdrawal of Decision. Under ORS 197.830(13)(b) a local government has a unilateral right to withdraw a decision on appeal to LUBA for reconsideration, provided the local government’s request for withdrawal is filed “prior to the date set for filing the record.” Where LUBA grants an uncontested request to extend the deadline for filing the record, the extended deadline for filing the record becomes the “date set for filing the record,” within the meaning of ORS 197.830(13)(b). *Columbia Riverkeeper v. Clatsop County*, 63 Or LUBA 509 (2011).

27.16 LUBA Procedures/Rules – Withdrawal of Decision. LUBA will deny a city’s voluntary motion to remand where the petition for review has not yet been filed and motion does not explicitly state that the city will address all of petitioner’s issues regarding the appealed decision. *Jacobsen v. City of Winston*, 61 Or LUBA 536 (2010).

27.16 LUBA Procedures/Rules – Withdrawal of Decision. LUBA will grant a motion for voluntary remand over a petitioner’s objections where the appeal concerns both a property line adjustment and a conditional use permit and although it appears the property line adjustment might be subject to reversal, it is not clear whether the property line adjustment is essential to the conditional use permit approval. *Fenn v. Douglas County*, 56 Or LUBA 261 (2008).

27.16 LUBA Procedures/Rules – Withdrawal of Decision. LUBA will grant a motion for voluntary remand of a property line adjustment decision over a petitioner’s objections where the statutes governing property line adjustments recently changed and although the property line

adjustment decision appears to violate the statutes that were in effect when the decision was rendered, it is unclear whether the property line adjustment would be barred by the amended statutes. *Fenn v. Douglas County*, 56 Or LUBA 261 (2008).

27.16 LUBA Procedures/Rules – Withdrawal of Decision. Opponents of land use approval have no legal right to comment on the findings that a city adopts to support its decision to grant land use approval, and opponents similarly have no legal right to comment on amended findings that a city adopts after it withdraws a decision following an appeal to LUBA under 197.830(13)(b). *Loprinzi’s Gym v. City of Portland*, 56 Or LUBA 358 (2008).

27.16 LUBA Procedures/Rules – Withdrawal of Decision. Where a local government’s motion for voluntary remand does not make clear that it will address all of the allegations of error set forth in the petition for review, the local government does not provide a sufficient basis for LUBA to grant the motion over a party’s objections. *Examilotis v. Coos County*, 55 Or LUBA 708 (2007).

27.16 LUBA Procedures/Rules – Withdrawal of Decision. Notwithstanding that under OAR 661-010-0015 a notice of intent to appeal is deemed filed with LUBA on the date it is mailed by registered or certified mail, LUBA is not at liberty to read a similar provision into notices of intent to appeal decisions on reconsideration under OAR 661-010-0021(5). Notices under OAR 661-010-0021(5) are filed on the date they are delivered to or received by LUBA. *West Coast Media v. City of Tigard*, 45 Or LUBA 703 (2003).

27.16 LUBA Procedures/Rules – Withdrawal of Decision. Untimely filing of a notice of intent to appeal a decision on reconsideration under OAR 661-010-0021(5) is a technical violation of LUBA’s rules and does not affect LUBA’s review, absent prejudice to the substantial rights of the parties. *West Coast Media v. City of Tigard*, 45 Or LUBA 703 (2003).

27.16 LUBA Procedures/Rules – Withdrawal of Decision. Even though granting a motion for voluntary remand would give a local government a second chance to respond to issues that it failed to respond to in the appealed decision, a motion for voluntary remand will not be denied for that reason alone, because forcing the local government to defend a decision that it does not believe is defensible would not serve the ORS 197.805 goal of quickly reaching finality in land use matters. *Doob v. Josephine County*, 43 Or LUBA 130 (2002).

27.16 LUBA Procedures/Rules – Withdrawal of Decision. Denial of a motion for voluntary remand may be warranted if it is shown that a local government is making only half-hearted attempts to respond to relevant issues and then seeking serial voluntary remands to correct those half-hearted attempts. *Doob v. Josephine County*, 43 Or LUBA 130 (2002).

27.16 LUBA Procedures/Rules – Withdrawal of Decision. Where a land use decision has been withdrawn for reconsideration under OAR 661-010-0021, but LUBA later determines that the LUBA appeal was not timely filed and for that reason dismisses the appeal, LUBA will not address arguments about the possible consequences of that dismissal on the local proceedings to reconsider the withdrawn decision. *Larner v. City of Portland*, 41 Or LUBA 471 (2002).

27.16 LUBA Procedures/Rules – Withdrawal of Decision. A notice of intent to appeal a decision on reconsideration that duplicates the initial notice of intent to appeal is sufficient to challenge the substance of the decision on reconsideration, where no one argues that the decision on reconsideration is materially different from the initial decision. *Piltz v. City of Portland*, 41 Or LUBA 461 (2002).

27.16 LUBA Procedures/Rules – Withdrawal of Decision. A notice of withdrawal of a decision for reconsideration under OAR 661-010-0021(1) and ORS 197.830(12)(b) must be filed on or before the date the record is due. A notice of withdrawal filed after that date will be denied. *Bates v. City of Cascade Locks*, 37 Or LUBA 993 (1999).

27.16 LUBA Procedures/Rules – Withdrawal of Decision. Where a county gives adequate assurances that it will comprehensively review petitioner’s assignments of error, LUBA will grant a motion for voluntary remand and will not assume the motion for voluntary remand is motivated by delay or other improper reasons simply because there has been a lengthy course of litigation in the matter. *Murphy Citizens Advisory Committee v. Josephine Co.*, 35 Or LUBA 117 (1998).

27.16 LUBA Procedures/Rules – Withdrawal of Decision. Where a local government moves for voluntary remand of its decision after the record and petition for review have been submitted to the Board, LUBA will allow the motion when the voluntary remand is more likely to result in a thorough and expeditious resolution of the land use matter than would a review by the Board. *Deal v. City of Hermiston*, 34 Or LUBA 767 (1998).

27.16 LUBA Procedures/Rules – Withdrawal of Decision. The burden is on the local government seeking voluntary remand to show that the remand is more likely to bring about a thorough and expeditious resolution of the land use matter than would LUBA review. *Deal v. City of Hermiston*, 34 Or LUBA 767 (1998).

27.16 LUBA Procedures/Rules – Withdrawal of Decision. Whether multiple enactments constitute a single decision for purposes of appeal to LUBA depends on the relationship between the enactments. Where a decision on reconsideration reenacts the original decision together with a supplemental enactment that is characterized as an “integral part” of the reconsidered decision, there is a single decision for purposes of appeal of the decision on reconsideration to LUBA. *Barnard Perkins Corp. v. City of Rivergrove*, 34 Or LUBA 660 (1998).

27.16 LUBA Procedures/Rules – Withdrawal of Decision. OAR 661-10-021, which allows a local government to withdraw a limited land use decision for reconsideration, does not impose an obligation on the parties to make or waive additional objections after the 14-day period for comment allowed under ORS 197.195(3)(c)(A). *Clark v. City of Albany*, 29 Or LUBA 325 (1995).

27.16 LUBA Procedures/Rules – Withdrawal of Decision. It is not necessary for a party who filed a motion to intervene before a decision was withdrawn for reconsideration to refile its motion to intervene, or file a second motion to intervene, if an original notice of intent to appeal is refiled, or an amended notice of intent to appeal is filed, after the decision on reconsideration is filed with LUBA. *ONRC v. City of Seaside*, 29 Or LUBA 39 (1995).

27.16 LUBA Procedures/Rules – Withdrawal of Decision. Under OAR 661-10-021, a local government has a unilateral right to withdraw a decision for reconsideration if the notice of withdrawal is filed on or before the date the record is due. A motion for voluntary remand may be filed after the record is filed and, if granted by LUBA, is not governed by the provisions of OAR 661-10-021, including the 90-day deadline specified in that rule for decisions on reconsideration. *Sanchez v. Clatsop County*, 29 Or LUBA 26 (1995).

27.16 LUBA Procedures/Rules – Withdrawal of Decision. OAR 661-10-075(6) requires a local government to be represented by an attorney in a LUBA appeal. Therefore, a local government's notice of withdrawal of the challenged decision, pursuant to ORS 197.830(12)(b), is properly submitted by the local government's attorney. *Tylka v. Clackamas County*, 28 Or LUBA 417 (1994).

27.16 LUBA Procedures/Rules – Withdrawal of Decision. Neither ORS 197.830(12) nor OAR 661-10-021 establishes any requirements regarding the nature of the local government proceedings conducted after withdrawal. However, the local government must follow any applicable requirements its own land use regulations impose for making a new final decision. *Tylka v. Clackamas County*, 28 Or LUBA 417 (1994).

27.16 LUBA Procedures/Rules – Withdrawal of Decision. Where a local government decision maker authorizes the withdrawal of a challenged local government decision for reconsideration, pursuant to ORS 197.830(12)(b), that decision is reflected in the Notice of Withdrawal filed with LUBA, and that notice is part of the local record of the proceedings leading to the local government's decision on reconsideration. *Tylka v. Clackamas County*, 28 Or LUBA 712 (1994).

27.16 LUBA Procedures/Rules – Withdrawal of Decision. Letters to and from LUBA concerning the filing of a local government decision on reconsideration and refiling of a notice of intent to appeal, pursuant to ORS 197.830(12)(b), postdate the adoption of the challenged decision on reconsideration and, therefore, are not part of the *local* record. They are, however, part of LUBA's record. *Tylka v. Clackamas County*, 28 Or LUBA 712 (1994).

27.16 LUBA Procedures/Rules – Withdrawal of Decision. While ORS 197.830(12)(b) grants a local government the unilateral power to withdraw an appealed decision for reconsideration before the date the record is due, it does not eliminate the discretion LUBA has under ORS 197.835 and 197.805 to grant a motion for voluntary remand after the record is filed, in accordance with sound principles of judicial review. *Mazeski v. Wasco County*, 27 Or LUBA 45 (1994).

27.16 LUBA Procedures/Rules – Withdrawal of Decision. Where a local government withdraws a challenged decision for reconsideration pursuant to ORS 197.830(12)(b) and OAR 661-10-021(1), OAR 661-10-021(3) requires that the *decision* on reconsideration itself, not simply notice of the decision, be filed with LUBA and served on the parties to the LUBA appeal. *Home Builders Association v. City of Portland*, 26 Or LUBA 653 (1994).

27.16 LUBA Procedures/Rules – Withdrawal of Decision. Neither ORS 197.830(12)(b) nor OAR 661-10-021 prescribes the scope of a local government's reconsideration of a decision that is withdrawn following the filing of a notice of intent to appeal. Therefore, the scope of

reconsideration may be determined by the local government that withdraws its decision. *ONRC v. City of Seaside*, 26 Or LUBA 645 (1994).

27.16 LUBA Procedures/Rules – Withdrawal of Decision. Where a local government withdraws a challenged land use decision for reconsideration pursuant to ORS 197.830(12)(b) and OAR 661-10-021 and thereafter adopts a decision on reconsideration, and petitioner does not refile the original notice of intent to appeal or file an amended notice of intent to appeal within the time provided in OAR 661-10-021(5)(a), the appeal will be dismissed. *Matrix Development v. City of Tigard*, 25 Or LUBA 557 (1993).

27.16 LUBA Procedures/Rules – Withdrawal of Decision. Under ORS 197.830(12)(b) and OAR 661-10-021(1), LUBA cannot refuse to allow a local government to withdraw a challenged decision for reconsideration, so long as the local government files a notice of withdrawal on or before the date the record is due. *Fraser v. Wallowa County*, 25 Or LUBA 788 (1993).