

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where LUBA concludes that a local government’s conclusion that an application did not meet an applicable approval criterion was a valid basis for denial, although any error committed with respect to alternative or independent bases for denial would generally not provide a basis for reversal or remand, remand is nonetheless required where LUBA also concludes that the local government failed to address a threshold argument from the applicant that, if correct, would prevent the local government from applying criteria that would prohibit approval of the application. *M & T Partners, Inc. v. City of Salem*, 80 Or LUBA 221 (2019).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Local governments are not required to condition approvals rather than deny noncompliant applications. *H2D2 Properties, LLC v. Deschutes County*, 80 Or LUBA 528 (2019).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where an argument is derivative of other arguments made by the petitioner, the derivative argument provides no independent basis for reversal or remand. *Underwood v. Clackamas County*, 80 Or LUBA 542 (2019).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where an applicant proposes to vacate an existing right-of-way and construct a replacement, and where approval criteria require that the vacation “not create an access configuration which violates present development standards,” arguments that the proposed replacement (1) is adjacent to a private street which is in noncompliance with development standards requiring curbs and sidewalks, a planter strip with trees, and on-street parking, or (2) connects to an existing sidewalk and crosses an existing driveway which are in noncompliance with development standards regulating their width and the length, provide no basis for reversal or remand because neither the vacation nor the proposed replacement cause or create the noncompliance. Similarly, arguments that the proposed replacement violates development standards regulating fencing and requiring that certain pedestrian connections be identified by more than striping alone provide no basis for reversal or remand because those standards have nothing to do with access configurations. *Neighbors for Smart Growth v. Washington County*, 79 Or LUBA 1 (2019).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Remand is necessary where petitioners argue that a boundary line adjustment application is governed by a county ordinance addressing the “Sale or Transfer of Land to an Adjacent Owner * * *,” under the section on nonconforming uses that apply to “Designated Resource Areas,” where the subject parcels are designated for agricultural and forest uses and are zoned exclusive farm use – grazing (FG) and where respondents filed no response brief. Because there is no local interpretation of the applicability of the ordinance, LUBA will remand the decision for the county to interpret the ordinance in the first instance. *Friends of Douglas County v. Douglas County*, 78 Or LUBA 11 (2018).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Remand, rather than reversal, is the appropriate remedy when the board of county commissioners did not address an argument or adopt findings in response to the argument on appeal. *Rogue Advocates v. Josephine County*, 78 Or LUBA 38 (2018).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. While remand of a local government decision approving a permit means that the permit decision is no longer “effective,” that does not necessarily mean the permit application is no longer “approved” by the local government. Remand of a decision can occur for any number of reasons having little to do with the substance of an approval. *Conte v. City of Eugene*, 78 Or LUBA 289 (2018).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where LUBA sustains petitioner’s assignment of error and remands a local government’s decision denying petitioner’s application, LUBA will address an intervenor’s contingent cross assignments of error in a cross petition for review, where those cross-assignments of error raise issues that might provide additional bases for remanding the decision, in order to correct other alleged errors on remand. *Blu Dutch LLC v. Jackson County*, 78 Or LUBA 495 (2018).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. A petitioner’s argument that an application to modify a site plan to replace a previously approved produce stand with a coffee kiosk cannot be processed as a modification, but instead requires a new site plan application, does not provide a basis for remand, where the local government adopted findings rejecting that argument, and the petitioner does not challenge those findings. *Aboud v. City of Stayton*, 77 Or LUBA 300 (2018).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where LUBA’s review of an historic review board decision resulted in LUBA remanding the decision for the historic review board to answer threshold jurisdictional questions, but no issue was presented to LUBA regarding who the decision maker on remand should be, the city council does not err by addressing and answering those threshold jurisdictional questions on remand, instead of allowing the historic review board to answer those questions. *McLoughlin Neighborhood Association v. City of Oregon City*, 77 Or LUBA 377 (2018).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where petitioners seek reversal or remand of the city’s decision pursuant to OAR 661-010-0071, and LUBA’s decision agrees with petitioners that the city’s decision improperly construed the municipal code and was not supported by substantial evidence in the record, but it is possible on remand that the petitioner’s proposal could demonstrate compliance with the municipal code without significant changes to the proposed development, remand is the appropriate remedy. *McMonagle v. City of Ashland*, 76 Or LUBA 1 (2017).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where a comprehensive plan policy requires the city to provide information to allow public participation in land use proceedings, and the city does not respond to a request for information for over a month, that delay is not a basis for remand where petitioner’s request was broad, did not express any urgency and did not say the request was submitted with regard to any particular proceeding. In that circumstance, the city’s delay in responding and its requirement that petitioner submit a public records request to more clearly identify the scope of the request was not error. *Nicita v. City of Oregon City*, 75 Or LUBA 38 (2017).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Petitioner’s allegations that applicants for quasi-judicial land use approval purchased property from the city and helped elect the mayor and city councilors falls far short of demonstrating disqualifying bias under *Fasano v. Washington Co. Comm.*, 264 Or 574, 507 P2d 23 (1973). *Nicita v. City of Oregon City*, 75 Or LUBA 38 (2017).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. In evaluating a bias challenge, LUBA is to limit its consideration to the quasi-judicial matter where the bias challenge is raised and may not consider actions by the decision maker that are unrelated to that matter. *Columbia Riverkeeper v. Clatsop County*, 267 Or App 578, 341 P3d 790 (2014). *Nicita v. City of Oregon City*, 75 Or LUBA 38 (2017).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. In considering whether new comprehensive plan and zoning map designations are consistent with statewide planning goal, comprehensive plan and code requirements of adequate and safe transportation facilities, a city does not err by concluding the new designations will have no impact on those facilities because the new designations include a condition that development under the new designations be suspended as soon as it generates the same traffic impact that would be generated under the existing acknowledge comprehensive plan and zoning map designations. *Nicita v. City of Oregon City*, 75 Or LUBA 38 (2017).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where the local code contains separate standards for on-site versus off-site storm water quality management, and an applicant relies solely on on-site management to satisfy code provisions regarding storm water quality and does not propose any off-site management, it is clear by implication that the applicant did not believe that the standards governing off-site storm water quality management applied. Nonetheless, when the hearings officer apparently believed that the applicant proposed off-site management, the issue of whether off-site storm water quality management standards applied was “raised in the record” before the hearings officer. *Rockbridge Capital v. City of Eugene*, 75 Or LUBA 364 (2017).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where LUBA has affirmed a local government’s primary interpretation of a comprehensive plan policy, supporting the local government’s decision to deny the application, LUBA need not resolve challenges to independent, alternative interpretations supporting denial. *Kine v. Deschutes County*, 75 Or LUBA 419 (2017).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. LUBA has no express statutory authority to summarily reverse or remand a decision without reviewing the merits of the appeal, absent the written stipulation of all parties. *Conte v. City of Eugene*, 75 Or LUBA 532 (2017).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. LUBA will not affirm a hearings officer’s decision based on a legal theory that application of a rural industrial zone to rural property does not require an exception to Goal 14, where the hearings officer did not

adopt that theory and instead approved an exception to Goal 14 to apply the rural industrial zone. *Central Oregon Landwatch v. Deschutes County*, 74 Or LUBA 156 (2016).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. LUBA need not determine whether a city council erred by approving a dwelling because the dwelling’s prior DEQ septic system permit has expired and a septic system does not qualify as a “required public facility” under the code, where a sewer improvement district boundary was expanded to include the dwelling thus allowing the dwelling to be connected to the public sewer system, the expansion decision was not challenged, and the city council changed its decision following a LUBA remand of its initial decision to require that the dwelling connect to the public sewer system. *Evans v. City of Bandon*, 74 Or LUBA 418 (2016).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. When called upon to determine the applicability or meaning of a statute, LUBA is not limited to the parties’ arguments. *Kaplowitz v. Lane County*, 74 Or LUBA 386 (2016).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where a hearings officer does not take the position that his inability to verify the nature and extent of certain aspects of a prior concrete batch plant makes it impossible to determine whether an application to alter that prior nonconforming concrete batch plant will result in a more intensive use or result in greater adverse impact on the surrounding neighborhood, but intervenor does not file a cross-petition for review to assign error to that aspect of the hearings officer’s decision, LUBA will not consider whether that position could provide an independent basis for denying the requested alteration. *Meyer v. Jackson County*, 73 Or LUBA 1 (2016).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where petitioners concede that a hearings officer was not legally obligated to develop conditions of approval that would make an application for alteration of a nonconforming use approvable, and petitioners proposed no conditions of approval themselves that would have permitted the hearings officer to approve the alteration, petitioners fail to demonstrate error in the hearings officer’s decision. *Meyer v. Jackson County*, 73 Or LUBA 1 (2016).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where a hearings officer concludes that an application for nonconforming use verification does not include a request to approve alterations to the nonconforming use, but the hearings officer also observes that future applications for alterations are unlikely to be approved under the county code standards that apply to alterations, the observation is dicta, and not a basis for reversal or remand. *Grabhorn v. Washington County*, 73 Or LUBA 27 (2016).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. In some circumstances a local government may have to provide some interpretation or findings explaining its understanding of a subjective standard such as a requirement to adopt buffers that “ensure compatibility” between urban and rural agricultural uses. However, in the context of a legislative proceeding to adopt regulations for such buffers there is no inherent obligation to adopt an interpretation of the standard, and the failure to adopt an interpretation is not in itself a basis for

reversal or remand. *Forest Park Neighborhood Assoc. v. Washington County*, 73 Or LUBA 193 (2016).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. A county finding that wind turbines are a conditional use in a commercial zone is not reversible error, even though wind turbines are not listed as a conditional use in the zone, where the balance of the decision clearly demonstrates the county in fact utilized its authority to approve uses that are similar to listed permitted and conditional uses in the zone to approve the wind turbines. *Burgermeister v. Tillamook County*, 73 Or LUBA 291 (2016).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where an assignment of error can be read to advance a “literal” interpretation argument, but that argument is not clearly stated and is undeveloped, LUBA will not consider the argument. *Burgermeister v. Tillamook County*, 73 Or LUBA 291 (2016).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where a decision that rezoned property specifically authorized development of the rezoned property in advance of adoption of a concept plan for the area, in an appeal of a subsequent decision approving development of the property, LUBA’s scope of review does not permit review of an argument that the concept plan must be adopted before development may be approved for the rezoned property. Raising a legal issue in the development approval decision that was resolved in the rezoning decision constitutes an improper collateral attack on the rezoning decision. *Graser-Lindsey v. City of Oregon City*, 72 Or LUBA 25 (2015).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. An assignment of error that argues that the county erred in failing to impose the same conditions of approval that it imposed more than five years earlier in a decision approving the same proposal that has since become void provides no basis for reversal or remand of the decision, where the petitioner does not identify any requirement in the county code or state law or regulation that obligates the county to carry over previously imposed conditions of approval simply because they were imposed five years earlier. *Devin Oil Co., Inc. v. Morrow County*, 72 Or LUBA 240 (2015).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where a city council adopts alternative interpretations of a disputed standard that allows building height increases, and approves a proposed building height increase under both interpretations, the city’s decision must be affirmed where the petitioner at LUBA only assigns error to one of the city council’s interpretations. *Preserve the Pearl, LLC v. City of Portland*, 72 Or LUBA 261 (2015).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. An assignment of error that assigns error to a county’s finding that land does not qualify as “wildlife habitat” as that term is defined at OAR 660-023-0110(1)(b) provides no basis for reversal or remand, where the challenged decision only takes the position that the subject property is poor quality wildlife habitat in justifying a decision under OAR 660-023-0050(c) to fully allow uses that conflict with the poor quality wildlife habitat. *ODFW v. Crook County*, 72 Or LUBA 316 (2015).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. A city council’s occasional erroneous reference to a “Definition of Village Character” as a “purpose statement” is not a basis for remand, where it is clear that the city council simply refused to interpret the definition as a mandatory permit approval standard that required the city to compare proposed development with existing development to determine if the proposed development is “small scale.” *LO 138 LLC v. City of Lake Oswego*, 71 Or LUBA 195 (2015).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where respondents respond to petitioner’s argument that a proposed development violates comprehensive plan standards by arguing in their response brief that the challenged decision is a “limited land use decision” and the plan policies therefore do not apply under ORS 197.195(1) because the plan policies have not been incorporated into the city’s land use regulations, and petitioner does not respond to that argument at oral argument or seek permission to respond in a reply brief, petitioner’s assumption that the plan policies apply is inadequate to state a basis for reversal or remand. *LO 138 LLC v. City of Lake Oswego*, 71 Or LUBA 195 (2015).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. That a local government may have erroneously found that a natural gas pipeline is not a water-related use provides no basis for reversal or remand, where the county does not rely on that finding in denying the application for permit approval for the pipeline. *Oregon Pipeline Company v. Clatsop County*, 71 Or LUBA 246 (2015).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Absent any developed argument as to why a facility used to board horses is an “agricultural building” as defined in Chapter 4 of the Uniform Building Code and is not a “stable” as defined in the county’s zoning and development ordinance, LUBA will affirm the county’s conclusion that the building is a stable and not an agricultural building. *Stavrum v. Clackamas County*, 71 Or LUBA 290 (2015).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. No statute or local code provision prohibits a party from submitting an application for a conditional use permit to settle an ongoing enforcement matter and subsequently arguing during the proceedings on the application that the proposed use is not a conditional use, but rather is a permitted use in the zone. *Stavrum v. Clackamas County*, 71 Or LUBA 290 (2015).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Issue preclusion bars relitigation of an issue in subsequent proceedings when the issue has been determined by a valid and final determination in a prior proceeding, but issue preclusion only applies if all of the five requirements set out in *Nelson v. Emerald People’s Utility Dist.*, 318 Or 99, 103, 862 P2d 1293 (1993), are met. Those five factors are as follows: (1) the issue in the two proceedings is identical; (2) the issue was actually litigated and was essential to a final decision on the merits in the prior proceeding; (3) the party sought to be precluded had a full and fair opportunity to be heard on that issue; (4) the party sought to be precluded was a party or was in privity with a party to the prior proceeding; and (5) the prior proceeding was the type of proceeding to which preclusive effect will be given. *Widgi Creek Homeowners Association v. Deschutes County*, 71 Or LUBA 321 (2015).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. In a variety of contexts both the Court of Appeals and LUBA have held that decisions rendered in early stages of a multi-stage approval process can be final (appealable) land use decisions. In such cases, issues that could have been raised, but were not raised in early stages, and issues that were raised and resolved adversely to a petitioner in early stage decisions that were not appealed, generally may not be raised by that petitioner in appeals of a later stage decision. In rejecting arguments in appeals of subsequent stage land use decisions that in reality are a belated challenge to earlier stage land use decision, LUBA has sometimes referred to those arguments as a “collateral attack” on those earlier stage land use decisions. *Widgi Creek Homeowners Association v. Deschutes County*, 71 Or LUBA 321 (2015).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. A challenge to a decision that grants tentative subdivision plan approval for a 24-lot subdivision is not a collateral attack on prior decisions that (1) granted site plan approval for a 42-unit condominium project, or (2) approved a 26-lot subdivision, because the proposed 24-lot subdivision is not a subsequent phase of a multi-phase process but rather an application for a new development proposal. *Widgi Creek Homeowners Association v. Deschutes County*, 71 Or LUBA 321 (2015).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. LUBA will affirm a local government’s conclusion that an application to modify a condition of approval imposed in a prior decision does not propose dredging or filling, where no ground disturbing activity of any kind is proposed that differs from the ground disturbing activity approved in the prior decision. *McCaffree v. Coos County*, 70 Or LUBA 15 (2014).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. LUBA will not entertain arguments based on equitable estoppel unless the proponent first provides a sufficient basis to conclude that the legislature granted LUBA the authority to reverse or remand a land use decision based on equitable doctrines. *Macfarlane v. Clackamas County*, 70 Or LUBA 126 (2014).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Even if application requirements have not been satisfied, that failure does not provide a basis for reversal or remand of the decision where the alleged failure to comply with the application requirements has not resulted in noncompliance with any approval standards. *Hess v. City of Corvallis*, 70 Or LUBA 283 (2014).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where a petitioner’s entire argument is that the location of a drywell and a sedimentation manhole are shown in opposite locations on the approved plan and a later operation and maintenance plan are reversed and the locations shown on the operation and maintenance plan appear to be an inadvertent labeling error, the cited plan differences provide no basis for remand. *Beaumont-Wilshire Neighbors v. City of Portland*, 68 Or LUBA 393 (2013).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where a local government adopts one approach over another for achieving overlapping and generally worded planning goals, LUBA will rarely be in a position to second guess the local government’s choice. *Stevens v. Clackamas County*, 68 Or LUBA 490 (2013).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. An assignment of error that challenges a local government’s rejection of a legal theory that petitioner does not assert on appeal would normally provide no basis for remand, even though the challenge is meritorious. However, where the local government in rejecting that legal theory decides a legal issue that is properly decided by a circuit court rather than the county, LUBA will sustain the assignment of error. *Willamette Oaks, LLC v. City of Eugene*, 67 Or LUBA 43 (2013).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. A notice of decision’s characterization of a decision as legislative when it is actually a quasi-judicial decision does not, in itself, warrant remand so long as the relevant criteria were applied and there were no procedural errors that prejudiced petitioner’s substantial rights. *Warren v. Josephine County*, 67 Or LUBA 74 (2013).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where a county code requires that bias challenges be filed at least 48 hours before the public hearing on a quasi-judicial matter, and there is no reason why the challenge could not have been filed before or during that hearing, petitioner’s challenge filed three days before board of commissioners meeting where the board approved the written decision and findings comes too late. *Warren v. Josephine County*, 67 Or LUBA 74 (2013).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where contract consents to annexation have been executed and recorded and there is nothing on the face of the contract consents that calls their validity into question, LUBA does not have authority under ORS 197.835 to consider the contract consent parties’ claims that the contract consents were invalidly coerced or that those contract consents have been unilaterally revoked. Claims that the contract consents are invalid or have been revoked must be pursued in circuit court. *Roads End Water District v. City of Lincoln City*, 67 Or LUBA 452 (2013).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Notwithstanding that a city erroneously determined that a particular section of the development code exempted a permit applicant from development code buffer requirements, where another section of the development code cited by the petitioner clearly does exempt the permit applicant from the buffer requirements, LUBA will affirm the city’s decision. ORS 197.835(11)(b). *Nielsen v. City of Gresham*, 66 Or LUBA 24 (2012).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where the county land use regulations at issue are 38 pages long and the city land use regulations at issue are 69 pages long, a petitioner’s undeveloped argument that the city regulations that will apply to the uses authorized by the zoning district the city applied to property will not “most closely approximate” the county zoning it replaced, when compared to another city zone, is not sufficiently developed for review and will be rejected for that reason. *Mintz v. City of Beaverton*, 66 Or LUBA 118 (2012).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. That a city may have posted an inaccurate copy of its comprehensive plan on its website during permit proceedings

does not provide a basis for remand of the decision that followed those permit proceedings. *Rosenzweig v. City of McMinnville*, 66 Or LUBA 164 (2012).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where an assignment of error does not challenge the reasoning that led a county to conclude a post-acknowledgment plan amendment would be necessary to mine a particular mineral, an assignment of error that asks LUBA to remand the decision because the decision maker might change its mind about whether the post acknowledgment plan amendment is necessary, based on LUBA’s disposition of another assignment of error, presents no basis for remand. *Mark Latham Excavation Inc. v. Deschutes County*, 65 Or LUBA 32 (2012).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. LUBA will not consider a petitioner’s argument that a vacation decision that was initiated by a city council violates a statutory vacation standard where petitioner omits and fails to address in her petition for review statutory language that suggests the cited statutory standard applies only to vacation decisions that are initiated by petition rather than by city council initiative. *Heitsch v. City of Salem*, 65 Or LUBA 187 (2012).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. ORS 215.030, which provides that no more than two voting members of a county planning commission can be principally engaged in real estate sales or development, does not specify that a planning commission decision is invalid or subject to reversal or remand because the planning commission membership violates the statute. ORS 215.030 is silent regarding the consequences and potential remedies for violation of the membership requirement. *O’Brien v. Lincoln County*, 65 Or LUBA 286 (2012).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where the decision before LUBA is a governing body decision based on the recommendation of a planning commission, that the planning commission membership may have violated the requirements of ORS 215.030 limiting the number of members principally engaged in real estate sales or development does not provide a basis to reverse or remand the governing body’s decision. *O’Brien v. Lincoln County*, 65 Or LUBA 286 (2012).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. In a county code enforcement proceeding before a hearings officer, petitioner’s complaints that a county code enforcement officer improperly interfered with pending civil litigation between petitioner and his neighbor and improperly contacted the Oregon Department of Fish and Wildlife regarding the county hearings officer’s decision in the code enforcement proceeding after the hearings officer’s decision was entered provide no basis for reversing or remanding the hearings officer’s decision. The alleged improprieties by the county code enforcement officer may be actionable in a different forum, but they provide no basis for remanding the county hearings officer’s decision. *Wigen v. Jackson County*, 63 Or LUBA 490 (2011).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. The exclusive remedy for an alleged failure by a county code enforcement officer to produce requested public records is to petition the county district attorney for relief under ORS 192.460. Where the disputed

photographs and the substance of the disputed field notes were made part of the record before a hearings officer in a land use code enforcement proceeding and petitioner was permitted to submit contrary evidence and cross examine the code enforcement officer in the hearing before the hearings officer, there was no prejudice to petitioner's substantial rights and no basis for remand. *Wigen v. Jackson County*, 63 Or LUBA 490 (2011).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where a hearings officer's order appears to require that a property owner submit a plan to the Oregon Department of Fish and Wildlife to replant a significant area of petitioner's property with native vegetation and the factual and legal basis for that requirement is not apparent in the hearings officer's decision, the decision must be remanded so that the hearings officer may explain the factual and legal basis for the order. *Wigen v. Jackson County*, 63 Or LUBA 490 (2011).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where a city's stated rationale for its 20-year employment projections in its economic opportunities analysis is the OAR 660-024-0040(9)(a) safe harbor, the city may not adopt an alternative legal rationale for the 20-year employment projections for the first time in its brief at LUBA. *Friends of Yamhill County v. City of Newberg*, 62 Or LUBA 5 (2010).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where a county's decision that land is not suitable for commercial forest use misapplies the test that LUBA determined must be applied in an earlier appeal, but the county also properly applies and adequately explains why the land does not qualify as suitable for commercial forest uses under the correct test, the county's misapplication of the test does not provide a basis for reversal or remand. *Anderson v. Coos County*, 62 Or LUBA 38 (2010).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. A hearing official's failure to require that the applicant for a group care home show exactly where the proposed home would be located within a proposed 7,700-square-foot footprint, how large the home would be and what it would look like provides no basis for reversal or remand, where the applicable approval standard only requires that the home not have significant adverse impacts, and the hearing official explains that the potential number of residents and other operational characteristics of the home are known and the impacts of the home are more likely to be attributable to the operational characteristics than the design, size and location of the home. *Phillips v. Lane County*, 62 Or LUBA 92 (2010).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. An Oregon Department of Transportation (ODOT) decision to adopt an interchange area management plan that calls for closure of a particular access without the additional formal review that is called for in an intergovernmental agreement between ODOT and a city may constitute a violation of the intergovernmental agreement, but it does not provide a basis for reversing or remanding ODOT's decision to adopt the an interchange area management plan. *Parker Johnstone Wilsonville Honda v. ODOT*, 62 Or LUBA 116 (2010).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Under common law a property owner has a right of access to public thoroughfares. However, that common law

right of access does not extend to a right to access of a particular type or at a particular location. *Parker Johnstone Wilsonville Honda v. ODOT*, 62 Or LUBA 116 (2010).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Absent permit approval criteria requiring otherwise, a petitioner cannot challenge an earlier unappealed decision extending a permit approval for 18 months, in the context of an appeal of a later decision modifying the permit. *Brodersen v. City of Ashland*, 62 Or LUBA 329 (2010).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Even assuming LUBA has authority to reject an otherwise meritorious exhaustion/waiver challenge based on the argument that the county is equitably estopped from asserting exhaustion/waiver due to alleged erroneous advice from county planning staff in accepting the local notice of appeal, the argument fails where based on petitioners' affidavits the best that can be said with confidence is that there was mutual misunderstanding and miscommunication regarding the sufficiency of the local notice of appeal and what issues petitioners wished to raise therein. *Wellet v. Douglas County*, 62 Or LUBA 372 (2010).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where a petitioner fails to challenge all the reasons a hearings officer gives for finding that a proposed wind turbine facility will not force a significant change in or significantly increase the cost of accepted farm practices on nearby farms, petitioner's challenge to the adequacy of one of the reasons the hearings officer gave provides no basis for reversal or remand. *Falls v. Marion County*, 61 Or LUBA 39 (2010).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. LUBA will not consider an assignment of error that is presented only in a footnote. *Falls v. Marion County*, 61 Or LUBA 39 (2010).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where a local government's reasoning is difficult to follow and based on LUBA's understanding of that reasoning the local government should have required measures to screen mining from surrounding uses but failed to do so, remand is appropriate so that the local government can clarify its reasoning or require screening. *Hoffman v. Deschutes County*, 61 Or LUBA 173 (2010).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where a petitioner does not challenge a hearings officer's finding that petitioner's use of his property for a wedding event required review and county approval under one code provision, and petitioner does not allege his wedding event received county review and approval, petitioner's arguments that the use could have been approved under a different code provision provide no basis for reversal or remand. *Reed v. Jackson County*, 61 Or LUBA 253 (2010).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. In considering an application for a three-parcel partition, the failure of an existing intersection that is not adjacent to the property to satisfy local zoning ordinance standards that apply to the design and construction of a new road or intersection does not provide a basis for the county to deny an application for a

partition, where no new roads or intersections are proposed as part of the partition. *Pelz v. Clackamas County*, 59 Or LUBA 219 (2009).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Under OAR 661-010-0073, LUBA will reverse a decision where “[t]he decision violates provision of applicable law and is prohibited as a matter of law.” However, where a decision *was* prohibited as a matter of law on the date it was rendered, but *is* no longer prohibited as a matter of law on the date of LUBA’s decision, remand rather than reversal is appropriate. *Remington Ranch, LLC v. Crook County*, 59 Or LUBA 361 (2009).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where LUBA remands a decision by sustaining one or more assignments of error, it does not necessarily mean that LUBA agreed with every argument or sub-argument the petitioner advanced in the sustained assignments of error, or that on remand the local government must address every argument in the petition for review under those assignments of error. Instead, the local government must address the issues described in the portion of LUBA’s opinion remanding the decision. *Easterly v. Polk County*, 59 Or LUBA 417 (2009).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where a city does not rely on the ORS 836.640 through 836.642 “through the fence” pilot program to adopt an Airport Related zoning district that authorizes airpark residential development with through the fence access to an airport, arguments that ORS 836.640 through 836.642 do not authorize the kind of through the fence access that is permitted in the city’s new Airport Related zoning district provide no basis for reversal or remand. *Port of St. Helens v. City of Scappoose*, 58 Or LUBA 122 (2008).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. A city’s legislative decision to adopt a new Airport Related zoning district without applying the new zoning district to any property is not reversible where petitioner fails to demonstrate that the zone could in no circumstances be applied to property in the future without violating applicable legal standards. *Port of St. Helens v. City of Scappoose*, 58 Or LUBA 122 (2008).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. An argument that a county erred by changing a proposed zoning ordinance text amendment approximately a month before the change was adopted provides no basis for reversal or remand where a detailed explanation of the proposed change was provided shortly after the change was introduced, many written comments were received and one of the petitioners submitted detailed comments opposing the proposed change. *Carver v. Deschutes County*, 58 Or LUBA 323 (2009).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where a petitioner argues that a comprehensive plan amendment is inconsistent with a comprehensive plan policy, but the cited comprehensive plan policy has been repealed, petitioner provides no basis for reversal or remand. *Carver v. Deschutes County*, 58 Or LUBA 323 (2009).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. In challenging a local government’s finding that a permit applicant failed to carry its burden to demonstrate the

application complies with applicable approval criteria, a petitioner must assign error to all the local government's bases for that finding. If a petitioner fails to assign error to any independent basis for denying a permit application, the decision must be affirmed. *Delta Property Company v. Lane County*, 58 Or LUBA 409 (2009).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where arguments in support of an assignment of error are not sufficiently developed to demonstrate error, LUBA will summarily reject those arguments. *Kipfer v. Jackson County*, 58 Or LUBA 436 (2009).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where LUBA sustains an assignment of error and remands a county decision, and the county hearings officer adopts approximately two pages of findings on remand addressing that assignment of error, it is the hearings officer's reasoning in rejecting the assignment of error that is before LUBA in a subsequent appeal. Where a petitioner merely re-alleges the assignment of error and makes no meaningful attempt to challenge the hearings officer's reasoning in rejecting the assignment of error, LUBA will deny the assignment of error. *Kipfer v. Jackson County*, 58 Or LUBA 436 (2009).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Assignments of error that consist of a single sentence alleging error and that include no argument explaining why the local government erred in the manner alleged are undeveloped and do not provide a basis for reversal or remand. *Kane v. City of Beaverton*, 56 Or LUBA 240 (2008).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. An argument that is insufficiently developed for review provides no basis for reversal or remand of a land use decision. *Hermanson v. Lane County*, 56 Or LUBA 433 (2008).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Arguments that are directed at a concept plan that is in the process of being adopted provide no basis for reversal or remand of separate annexation decision. *Graser-Lindsey v. City of Oregon City*, 56 Or LUBA 504 (2008).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where LUBA determines that three county findings regarding the significance of an aggregate site are not supported by substantial evidence, are inadequately explained, or fail to appreciate the significance of certain evidence in the record, remand is required where LUBA cannot assume the findings were minor or unimportant parts of the county's ultimate decision that the applicant failed to demonstrate that the aggregate site qualifies as "significant," under OAR 660-023-0180(3). *Westside Rock v. Clackamas County*, 56 Or LUBA 601 (2008).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where it is undisputed that an application meets all other approval criteria, and the only basis for the county's second denial of the application is a code provision that the county is precluded from applying, LUBA will reverse rather than remand the decision. *Curtain v. Jackson County*, 56 Or LUBA 649 (2008).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where a city’s decision explains how its zoning ordinance assigns floor area ratios to properties and that the past, present or future use of property does not affect a property’s assigned floor area ratio, a petitioner’s argument that property that will shortly be developed as a park should not have any floor area ratio provides no basis for reversal or remand. *Trinkaus v. City of Portland*, 56 Or LUBA 771 (2008).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. An isolated statement by a design review commission member that an application is “a poster-child for floor-area transfer” is not sufficient to show he prejudged an application for permit approval. And even if it was, it would provide no basis for reversal or remand where (1) the design review commissioner did not participate in the decision on the permit, and (2) the decision on appeal to LUBA is a city council decision that affirmed the design review commission decision and there is no basis for imputing any prejudgment by the design review commissioner to the city council. *Trinkaus v. City of Portland*, 56 Or LUBA 771 (2008).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where LUBA sustains an assignment of error because the county’s approval of the subdivision application is “prohibited as a matter of law,” reversal rather than remand is the appropriate disposition. *Dunn v. Yamhill County*, 55 Or LUBA 206 (2007).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. LUBA’s rules do not authorize LUBA to affirm a decision in part and reverse or remand that decision in part. *7th Street Station LLC v. City of Corvallis*, 55 Or LUBA 321 (2007).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. A local code provision that allows the city and county to consider amendments to a UGB using “the latest Annual Development Report * * * as a guide” does not require the city and county to prepare such a report, and an assignment of error based on the failure to prepare such a report provides no basis for reversal or remand. *Sommer v. City of Grants Pass*, 55 Or LUBA 400 (2007).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where a petitioner’s only challenge to the decisions being appealed is based on an argument that the decisions fail to satisfy criteria that are not applicable to the challenged decisions, petitioner’s challenge provides no basis for reversal or remand. *Sommer v. City of Cave Junction*, 55 Or LUBA 423 (2007).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. A hearings officer’s conclusion that a deed had the effect of aggregating separate lots within a subdivision was correct given the totality of the circumstances surrounding the execution of the deed, including a condition of approval in a previous decision requiring aggregation of the lots and the absence of any statute or other applicable law governing lot aggregation. *McKeel v. Multnomah County*, 55 Or LUBA 608 (2008).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. In a LUBA appeal, petitioners’ challenges to local government decisions other than the decision that is the

subject of the appeal provide no basis for reversal or remand. *Robson v. City of La Grande*, 54 Or LUBA 10 (2007).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. An equipment shed may or may not be allowed as part of a utility, where the zoning ordinance defines a “building,” in part, as a “structure” and allows utilities in all zones but prohibits such utilities from including a “building.” Because the zoning ordinance distinguishes between “structures” and “accessory structures,” the issue becomes whether the equipment shed qualifies as an “accessory structure” and whether the prohibition is limited to “structures” and does not extend to “accessory structures.” *Skyliner Summit at Broken Top v. City of Bend*, 54 Or LUBA 316 (2007).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. A county’s interpretation of a local code provision as allowing the construction and use of a motorcycle track without review is incorrect where that provision requires site plan review for development of land, the code defines “development” broadly to include making a physical change in the land, and evidence in the record indicates that a bulldozer was used to develop a large portion of the land with a track and jumps. *Love v. Klamath County*, 54 Or LUBA 410 (2007).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. A county does not commit error in approving a reduced minimum lot or parcel size in a portion of its exclusive farm use zone simply because it did not require the applicant to supply an accurate map of the affected area, where the record includes an accurate metes and bounds description of the affected area and an assessors map that shows the affected tax lots. *Thompson v. Umatilla County*, 54 Or LUBA 531 (2007).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where a local government finds that there is a lack of evidence that vacant buildable lands inside an urban growth boundary are available for development, the local government impermissibly avoids the burden placed on it by Goal 14 and the applicable administrative rules to demonstrate that additional land is needed inside the urban growth boundary for urban development. *Hildenbrand v. City of Adair Village*, 54 Or LUBA 734 (2007).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where a petitioner challenges a city council’s findings concerning a screening and buffering criterion, but fails to challenge a finding that the city council adopted by reference, and that finding addresses and finds that the proposal complies with that criterion, LUBA will deny the assignment of error. *Ettro v. City of Warrenton*, 53 Or LUBA 485 (2007).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. A party who assigns error to the city’s failure to find that the lot sizes in a proposed subdivision are compatible with the lot sizes of adjacent properties must establish that such a finding is legally required. Where a party does not explain why the statutes, local code provisions, and comprehensive plan provisions that the party cites apply or have any bearing on the disputed decision, the assignment of error fails to state a basis for reversal or remand. *Douglas v. City of Salem*, 53 Or LUBA 567 (2007).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where a city’s alternative theory for affirming a decision does not appear in the city’s findings, LUBA will remand the decision. *Douglas v. City of Salem*, 53 Or LUBA 567 (2007).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. LUBA does not have authority to declare a city permit decision “moot, void or invalid” simply because the applicant corporation failed to renew its corporate registration on time. *O’Brien v. City of Portland*, 52 Or LUBA 113 (2006).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. LUBA will reject a petitioner’s argument that a city adjustment committee erred by failing to find that the zoning of a property reverted to its prior zoning because a rezoning condition of approval was violated, where petitioner fails to cite any authority to contradict the city’s position that the adjustment committee lacks authority to question the zoning shown on the city’s official zoning map. *O’Brien v. City of Portland*, 52 Or LUBA 113 (2006).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where petitioners’ arguments under an assignment of error largely ignore the three-part rationale set out in a city’s findings concerning the approval criteria at issue under that assignment of error, and petitioners instead erroneously characterize a city agency’s “suggestion” as an essential basis for the agency’s support for the requested adjustment, petitioners’ assignment of error will be denied. *O’Brien v. City of Portland*, 52 Or LUBA 113 (2006).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Arguments that the planning commission erred in denying a variance request based on concerns regarding traffic levels do not provide a basis to reverse or remand the challenged decision, where the challenged decision is the city council’s, and the city council did not deny the variance based on traffic levels. *Krishchenko v. City of Canby*, 52 Or LUBA 290 (2006).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Petitioners may not ignore a hearings officer’s findings that particular adjustment/variance criteria do not apply in a particular circumstance and then argue only to LUBA that the proposal violates those adjustment/variance criteria. *Bickford v. City of Tigard*, 52 Or LUBA 301 (2006).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Petitioners’ assignment of error challenging a hearings officer’s decision to consider whether the adjustment/variance criteria that had been applied from the beginning during the local proceedings were the correct adjustment/variance criteria will be denied, where petitioners fail to assign error to the hearings officer’s explanation for why he reconsidered whether those criteria were the correct criteria to apply and petitioners make no effort to argue that the hearings officer’s explanation is faulty in some way. *Bickford v. City of Tigard*, 52 Or LUBA 301 (2006).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. A petitioner may not fail to assign error to a finding that certain issues were not preserved and are not within the hearings officer’s scope of review, and instead on appeal to LUBA, simply assign error with

respect to the same issues that the hearings officer found were not preserved. *Franzke v. Tigard*, 52 Or LUBA 761 (2006).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where petitioners appeal a planning commission decision that grants variances and subdivision approval both to LUBA and to the city council, but petitioners do not appeal the city’s subsequent decision that there is no right of local appeal to appeal the planning commission decision to the city council, petitioners may not challenge the city’s decision that there is no right of local appeal in their LUBA appeal of the planning commission decision. The LUBA appeal is limited to the planning commission decision. *Lockwood v. City of Salem*, 51 Or LUBA 334 (2006).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where all parties believed that a two-variance subdivision proposal was before the planning commission, the planning commission voted to approve the two-variance subdivision, but the planning commission’s final written decision approved a prior, withdrawn three-variance subdivision proposal with a slightly different lot configuration, remand is required so that the city can adopt a written decision that approves the two-variance subdivision that the planning commission intended to approve. *Lockwood v. City of Salem*, 51 Or LUBA 334 (2006).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. That a proposal was called an expansion of an existing site at the beginning of local deliberation and was later referred to as a new mining site, in and of itself, provides no basis for reversal or remand. *Lindsey v. Josephine County*, 51 Or LUBA 383 (2006).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Petitioners must do more than argue that a county erroneously relied on a noise study that assumed that the DEQ standards for existing noise sources apply; petitioners must identify which new noise source standards they believe apply and why. *Lindsey v. Josephine County*, 51 Or LUBA 383 (2006).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where petitioner appeals the city council’s determination that a local appeal of a planning commission decision was untimely filed, petitioner’s allegation that members of the planning commission are biased does not provide a basis for reversal or remand. *Jacobsen v. City of Winston*, 51 Or LUBA 602 (2006).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. In an appeal of a land use decision that applies an acknowledged comprehensive plan policy a petitioner may not challenge the validity of the acknowledged comprehensive plan policy. *Sommer v. Josephine County*, 49 Or LUBA 134 (2005).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. A county’s error in finding that ORS 215.253 imposes an absolute bar on adopting and applying local land use regulations to farm uses provides no basis for remand of land use decision approving a feedlot, where petitioners identify no existing, applicable local land use regulations that apply to county approval of a feedlot. *Friends of Jefferson County v. Jefferson County*, 48 Or LUBA 107 (2004).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. A petitioner’s expression of disagreement with the substance of a new design review ordinance is, in and of itself, insufficient to provide a basis for reversal or remand. *Dobson v. City of Newport*, 47 Or LUBA 267 (2004).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Arguments that (1) the notice that preceded the public hearings on a post-acknowledgment land use regulation amendment did not separately list every proposed change, and (2) the local government made additional modifications to the proposed amendments after the final evidentiary hearing provide no basis for remand, where the petitioner cites no legal authority that the notice of hearing must specifically list every proposed change or that the proposed amendments may not be modified following the final evidentiary hearing. *Dobson v. City of Newport*, 47 Or LUBA 267 (2004).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where a petitioner’s challenge to a conditional use permit allowing 45 cubic yards of fill in a wetland is based on the mistaken premise that the conditional use permit also authorized many more cubic yards of fill that were not placed in wetlands and the fill placed outside the wetlands did not require a conditional use permit, petitioner’s challenge provides no basis for reversal or remand. *Bonnett v. Deschutes County*, 46 Or LUBA 318 (2004).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. An assignment of error that is based on a mistaken assumption about the reason why a local appellant’s appeal was rejected provides no independent basis for remand. *Burke v. Crook County*, 46 Or LUBA 413 (2004).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. An adjoining property owner who faces loss of his only current access in the future and assigns error to a city council’s decision not to require a subdivision applicant to provide access presents no basis for reversal or remand, where the city council interprets a local code provision that requires subdivision applicants to provide access to adjoining properties not to apply where the adjoining properties currently have access and the property owner fails to demonstrate how the city council’s interpretation is erroneous under ORS 197.829(1). *McFall v. City of Sherwood*, 46 Or LUBA 735 (2004).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. A city may not approve a modification to a site plan for one property that has the effect of altering the approved site plan of a second property, unless the owner of the second property agrees to the modification. *Farrer v. City of Grants Pass*, 45 Or LUBA 117 (2003).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Administrative rules promulgated by the Environmental Quality Commission (EQC) that set out the policies the EQC will apply when considering capital funding requests do not constitute applicable approval standards that a city must apply when considering an annexation request. *Just v. City of Lebanon*, 45 Or LUBA 162 (2003).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Unless the requirements of a periodic review remand order are embodied in a city’s comprehensive plan or other applicable regulations, an allegation that a proposed comprehensive plan amendment and zone change are inconsistent with that periodic review remand order is not a basis for reversal or remand. *Friends of Marion County v. City of Keizer*, 45 Or LUBA 236 (2003).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Even if a city erroneously applied its zoning ordinance standards for lots or parcels to an applicant’s request for a lot line adjustment, that error provides no basis for reversal or remand where the city’s decision to deny the lot line adjustment request was not based on those standards. *Smith v. City of St. Paul*, 45 Or LUBA 281 (2003).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where a city’s interpretation that a broadcast radio tower may be allowed in a residential zoning district as a “private utility” and a “utility substation and related facilities” includes a number of erroneous interpretations of the city’s zoning ordinance, but LUBA identifies a potentially sustainable interpretation of relevant zoning ordinance terms that would appear to permit approval of the radio tower, remand is nevertheless required where there are reasons why the city might not agree with LUBA’s interpretation. *Citizens for Env. Resp. Dev. v. City of Beaverton*, 45 Or LUBA 378 (2003).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where a county’s findings adequately explain its conclusion that a buffer is not necessary to protect adjoining properties from impacts from a hunting preserve, an adjoining property owner’s disagreement with that conclusion provides no basis for reversal or remand of the county’s decision. *Underhill v. Wasco County*, 45 Or LUBA 566 (2003).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. That a county may have required hunting preserve buffers in other decisions that approve hunting preserves does not necessarily mean that the county errs in not requiring a hunting preserve buffer in an appealed decision, where there may have been factual differences or different evidence in the proceedings that led to the appealed decision that explain the different results. *Underhill v. Wasco County*, 45 Or LUBA 566 (2003).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. An assignment of error that challenges a county’s failure to apply code criteria governing zoning map amendments provides no basis for reversal or remand where the assignment of error contends the zoning code criteria should have been applied to a comprehensive plan map amendment. *Doherty v. Morrow County*, 44 Or LUBA 141 (2003).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. A city commits no error in denying a request for a fence height variance based on the application as submitted, without taking into account changes to the fence that the applicant stated he was willing to make, where the applicant was invited to submit an amended application and declined to do so. *Finkle v. City of Portland*, 44 Or LUBA 484 (2003).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. LUBA will not attempt to resolve a largely hypothetical dispute between a petitioner and a county over the degree of incidental social activity that might be permissible at an existing airport in conjunction with any particular activity that the county must allow under ORS 836.616(2). *Landsem Farms v. Marion County*, 44 Or LUBA 611 (2003).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. An assignment of error challenging the evidentiary support for an alleged finding that a private bridge is not available to serve a proposed residential development provides no basis for remand where the decision is not based on the alleged finding and petitioner fails to challenge the findings that the city did make in support of its decision. *Oregon Diverse Industries v. City of Jacksonville*, 43 Or LUBA 135 (2002).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where LUBA finds that a local government correctly determined that a particular conditional use approval criterion applies, but LUBA disagrees with the local government’s reasons for concluding that the criterion applies, the local government’s erroneous reasons for correctly concluding that the criterion applies provide no basis for reversal or remand. *Dundas v. Lincoln County*, 43 Or LUBA 407 (2002).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. In determining that an applicant failed to carry his burden to demonstrate that a proposed home occupation would be carried out inside a building and in a manner that would not unreasonably interfere with other uses, the county did not err by considering existing and past conditions on the property. *Hick v. Marion County*, 43 Or LUBA 483 (2003).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where the response brief does not respond to the merits of the petitioners’ assignments of error, and LUBA cannot resolve those merits absent some assistance from the respondent, LUBA will remand the decision to the county to address petitioner’s assignments of error. *Dead Indian Memorial Rd. Neigh. v. Jackson County*, 43 Or LUBA 511 (2003).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Petitioner’s argument that the county failed to address negative impacts resulting from a UGB expansion provides no basis for reversal or remand where petitioner fails to allege below that negative impacts existed. *Friends of Linn County v. Linn County*, 41 Or LUBA 342 (2002).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. A city council finding that corrects a local appellant’s citation to a city code provision provides no basis for reversal or remand where the correction has no effect on the city council’s disposition of the merits of the local appellant’s challenge. *Sattler v. City of Beaverton*, 41 Or LUBA 295 (2002).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. A petitioner’s challenge to a finding because it is more responsive to one code criterion than to another provides no basis for reversal or remand where the city’s findings as a whole show that both criteria have been met. *Sattler v. City of Beaverton*, 41 Or LUBA 295 (2002).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. A decision to revoke a permit is similar to a denial in that only one basis for revocation, supported by substantial evidence, is necessary to support a city’s decision. A petitioner’s challenge to only one of three bases for a city’s decision to revoke a permit does not provide a basis for reversal or remand. *Howard v. City of Madras*, 41 Or LUBA 122 (2001).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Any error that may have been committed by failing to provide a proposed comprehensive plan amendment to DLCD 45 days before the first evidentiary hearing was corrected on remand by offering to provide the proposal to DLCD more than 45 days before the evidentiary hearing on remand, where there is no contention that DLCD failed to receive the proposal or failed to provide notice of the proposal in accordance with ORS 197.610(1) and DLCD advises the county that it does not oppose the proposal. *Donnell v. Union County*, 40 Or LUBA 455 (2001).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Assignments of error that are directed at a decision other than the decision that is the subject of the LUBA appeal provide no basis for reversal or remand. *Robson v. City of La Grande*, 40 Or LUBA 250 (2001).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where a city planner expresses an opinion in a transmittal letter, but the city council decision that is transmitted with the letter clearly does not express that opinion, the expression of opinion is not reviewable by LUBA in an appeal of the city council’s decision. *Robson v. City of La Grande*, 40 Or LUBA 250 (2001).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. A lengthy delay in filing the local record with LUBA does not substantially prejudice petitioner’s right to the speediest practicable review, where the delay was partially attributable to petitioner’s failure to bring the local government’s noncompliance to LUBA’s attention. *Petersen v. Columbia County*, 39 Or LUBA 799 (2001).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. A county is not estopped from denying an expansion of a nonconforming use because it required improvements to a shop building to satisfy building code requirements, where petitioner does not demonstrate how the county’s actions concerning the building permit translate into approval of the expanded uses within the structure. *Hal’s Construction, Inc. v. Clackamas County*, 39 Or LUBA 616 (2001).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. While a development may have to eventually comply with federal laws, such as the Endangered Species Act, unless local approval criteria or federal law provisions require that the local decision that approves the development also demonstrate compliance with federal law, the decision need not do so. *McNern v. City of Corvallis*, 39 Or LUBA 591 (2001).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. When petitioner disagrees with a local government’s interpretation of its own ordinance but fails to acknowledge

or challenge that interpretation, petitioner establishes no basis for determining that the interpretation is clearly wrong. *McNern v. City of Corvallis*, 39 Or LUBA 591 (2001).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where a city adopts findings addressing issues raised by petitioner during local proceedings, petitioner presents no basis for reversal or remand by repeating those issues at LUBA without challenging the findings the city adopted to address those issues. *Adams v. City of Medford*, 39 Or LUBA 464 (2001).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where a city’s finding that a zoning map amendment will not significantly affect transportation facilities is based on a lengthy transportation impact study, and petitioner attacks that finding based on other evidence of questionable relevance without developing any arguments challenging the transportation impact study, petitioner provides no basis for reversal or remand. *Adams v. City of Medford*, 39 Or LUBA 464 (2001).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. LUBA will not consider assignments of error challenging a city’s findings of compliance with the wrong approval criteria, where the decision must be remanded in any event for the city to apply the correct approval criteria and the issues presented in the assignments of error may not arise on remand. *Willhoft v. City of Gold Beach*, 39 Or LUBA 353 (2001).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where the notice of intent to appeal challenges a governing body’s decision determining that petitioner has no standing to file a local appeal of a planning director’s decision, but the petition for review assigns error only to the planning director’s decision, the petition for review provides no basis to reverse or remand the governing body’s decision. *Doob v. Josephine County*, 39 Or LUBA 301 (2001).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where petitioner challenges a variance condition on the basis that it improperly delegates approval of a retaining wall to the public works director, but petitioner fails to demonstrate how the condition of approval implicates any of the variance approval standards, petitioner’s argument concerning the condition provides no basis for remand. *Bates v. City of Cascade Locks*, 38 Or LUBA 349 (2000).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Unless a local code *requires* the governing body to remand a decision to the planning commission if it finds that the decision is unsupported by findings, the governing body’s decision to modify the planning commission’s decision rather than remand it provides no basis for reversal or remand. *Dutchuk v. City of Prineville*, 38 Or LUBA 323 (2000).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where the local government’s findings fail to quantify the impacts of the proposed development with sufficient particularity to justify the exactions it imposed, remand is appropriate, because on remand the city may be able to adopt findings to justify some or all of the exactions it imposed. *McClure v. City of Springfield*, 37 Or LUBA 759 (2000).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where a petitioner expresses disagreement with a local government about whether a zoning text amendment violates a comprehensive plan policy, without attempting to demonstrate error in the local government’s findings that interpret and apply the comprehensive plan policy, petitioner states no basis for reversal or remand. *Marine Street LLC v. City of Astoria*, 37 Or LUBA 587 (2000).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Imposition of an ineffective condition as part of a comprehensive plan map amendment may result in remand where the condition is necessary to ensure compliance with a relevant approval criterion. However, such an ineffective condition does not provide a basis for reversal or remand where it is not shown that the condition is necessary to ensure compliance with plan map amendment approval criteria. *Neighbors for Livability v. City of Beaverton*, 37 Or LUBA 408 (1999).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. In considering whether a farm management plan has been substantially complied with, a county is not required to consider issues that could have been presented in a prior, unappealed decision that authorized a property line adjustment for the two parcels that were the subject of the farm management plan. *Rochlin v. Multnomah County*, 37 Or LUBA 237 (1999).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. When the scope of a “planning action,” as that term is used in the city’s code, is uncertain and subject to multiple interpretations, LUBA will remand to allow the city to decide the scope in the first instance. *Davis v. City of Ashland*, 37 Or LUBA 224 (1999).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. LUBA will remand rather than reverse a decision approving partitions in conjunction with a nonfarm dwelling, notwithstanding that the resulting partitions violate the minimum parcel size at ORS 215.780(1), where the decision expressly preserves an issue regarding whether the county’s 20-acre minimum parcel size was adopted under one of the exceptions to ORS 215.780(1), and thus LUBA cannot determine whether the approval is prohibited as a matter of law. *Alliance for Responsible Land Use v. Deschutes Co.*, 37 Or LUBA 215 (1999).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where petitioners do not establish that a land use regulation standard is violated as it is interpreted by the city council, petitioners establish no basis for reversal or remand. *Freedom v. City of Ashland*, 37 Or LUBA 123 (1999).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. ORS 197.835(10)(a)(A) mandates that LUBA reverse a land use decision where a “local government decision is outside the range of discretion allowed the local government under its comprehensive plan and implementing ordinances[.]” If a decision is reversed under ORS 197.835(10)(a)(A), ORS 197.835(10)(b) requires that LUBA award attorney fees to the applicant. However, those statutes do not apply to a land use decision that is reversed because it is outside the discretion allowed under an LCDC administrative rule. *Morse Bros., Inc. v. Columbia County*, 37 Or LUBA 85 (1999).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. LUBA does not have statutory authority to dismiss an appeal of a land use decision *and* direct that particular actions be taken by the city following such dismissal. *Genstar Land Company Northwest v. City of Sherwood*, 36 Or LUBA 787 (1999).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where parties stipulate that LUBA may dismiss an appeal or a petitioner withdraws the notice of intent to appeal, LUBA’s decision dismissing the appeal expresses no position on the legal effect of actions that may have been taken or may yet be taken pursuant to an agreement entered into by parties to the appeal. *Genstar Land Company Northwest v. City of Sherwood*, 36 Or LUBA 787 (1999).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. In deciding whether to grant a request for voluntary remand over petitioner’s objection, LUBA considers whether (1) all issues presented in the petition for review will be considered on remand and (2) the proceedings on remand will be *capable* of providing the petitioner with everything he would be entitled to from LUBA. In such circumstances, LUBA will grant a motion for voluntary remand over a petitioner’s objection unless LUBA concludes that its review to narrow the issues is more important or that the motives for the motion for voluntary remand are improper. *Quest International, Inc. v. City of Silverton*, 36 Or LUBA 259 (1999).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Petitioner’s assignment of error will not be rejected solely because petitioner failed to challenge alternative findings that state law might preempt the county regulations at issue in the assignment of error, where the hearings officer’s alternative finding does not clearly conclude that state law preempts. *Neels v. Clackamas County*, 36 Or LUBA 54 (1999).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where a hearings officer’s findings are inadequate to explain why a proposed use that qualifies as a permitted use as a “household” does not also fall within the definition of a “nursing home,” which is only allowed as a conditional use, a remand would normally be required. However, where the facts are not disputed, and LUBA is presented with a straightforward question of law, it may consider whether the proposed use falls within the definition of “nursing home.” *Neels v. Clackamas County*, 36 Or LUBA 54 (1999).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. A motion for voluntary remand will be denied where the local government does not propose to address arguments that the challenged decision is prohibited as a matter of law or arguments that the local government improperly shifted the burden of proof. *Murphy Citizens Advisory Comm. v. Josephine County*, 35 Or LUBA 732 (1998).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. In determining whether to reverse or remand a land use decision, the question is whether it is the land use decision or the land use proposal that is defective. *Angius v. Washington County*, 35 Or LUBA 462 (1999).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where LUBA concludes on review that a local decision approving a proposed subdivision cannot be corrected

unless the subdivision is first revised by modifying the original application or submitting a new application, reversal rather than remand is appropriate. *Angius v. Washington County*, 35 Or LUBA 462 (1999).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. LUBA does not duplicate the role of a local hearings officer. Where the evidence is conflicting such that a reasonable decision maker could reach different conclusions based on that evidence, the choice of which evidence to believe and which conclusion to reach is for the hearings officer. *River City Disposal v. City of Portland*, 35 Or LUBA 360 (1998).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where petitioner fails to assign error to detailed findings explaining why certain acknowledged comprehensive plan provisions constitute “specific policies” that, under ORS 197.835(7)(b), make it unnecessary for the city to demonstrate compliance with statewide planning goals when amending city land use regulations to implement those policies, LUBA will reject an assignment of error alleging the city erred by failing to demonstrate that the new and amended land use regulations comply with the statewide planning goals. *Rogue Valley Assoc. of Realtors v. City of Ashland*, 35 Or LUBA 139 (1998).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. When the only decision appealed is a decision changing the required sequence of PUD phases, and the assignments of error provide no basis for reversing or remanding that decision, the decision will be affirmed. LUBA will reject assignments of error that challenge other related decisions that were not appealed. *Claus v. City of Sherwood*, 35 Or LUBA 120 (1998).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. 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).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where the petition for review does not identify the ordinance standard that is allegedly violated or what the ordinance requires, petitioners’ argument is not sufficiently developed for LUBA review. *Lodge v. City of West Linn*, 35 Or LUBA 42 (1998).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where petitioner alleges a decision violates an ambiguous land use regulation provision, LUBA must first determine whether the decision includes a reviewable interpretation that is entitled to deference under ORS 197.829(1). *Botham v. Union County*, 34 Or LUBA 648 (1998).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. LUBA is only required to defer to a local government’s express or implied interpretation where the interpretation is adequate for review. *Botham v. Union County*, 34 Or LUBA 648 (1998).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where an interpretation cannot be implied by the way the code was applied and cannot be implied to resolve an irreconcilable conflict between code provisions, the decision lacks an implied interpretation. *Botham v. Union County*, 34 Or LUBA 648 (1998).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where there is no express or implied interpretation of an ambiguous local code provision, LUBA may interpret the code in the first instance. *Botham v. Union County*, 34 Or LUBA 648 (1998).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where the purpose of an ambiguous code provision is not clear and the provision is subject to more than one sustainable interpretation, it is appropriate for LUBA to remand the decision to the local government to interpret its land use regulation in the first instance. *Botham v. Union County*, 34 Or LUBA 648 (1998).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where petitioner fails to articulate in what respects a local government’s findings are inadequate or lacking in evidentiary support, LUBA will not establish petitioner’s legal justification. *Larvik v. City of La Grande*, 34 Or LUBA 467 (1998).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where petitioner contends that findings are inadequate and not supported by substantial evidence, but fails to identify any particular criterion and only expresses disagreement with the city’s evaluation of the evidence, petitioner provides no basis for reversal or remand. *Kelley v. City of Cascade Locks*, 34 Or LUBA 374 (1998).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. A county is not bound by “issue” or “claim” preclusion to a prior finding of noncompliance with an approval criterion in a prior land use proceeding. *Femling v. Coos County*, 34 Or LUBA 328 (1998).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where petitioner appeals a decision granting a conditional use permit that petitioner applied for, but does not assign error to any aspect of the decision other than to contend the conditional use permit should not have been required in the first place, petitioner states no basis for reversal or remand. *Recovery House VI v. City of Eugene*, 33 Or LUBA 327 (1997).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. A county’s decision is subject to remand when the county may be able to correct the defects in its decision. Reversal is appropriate only when the decision is erroneous as a matter of law. *Roberts v. Crook County*, 33 Or LUBA 267 (1997).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Only actions undertaken by the city prior to the date of the final decision being appealed are relevant to LUBA’s review. Assignments of error that relate to actions undertaken by the city after the date of its final decision will be denied. *Tucker v. City of Adair Village*, 31 Or LUBA 382 (1996).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where a county has never made a decision to partition a parcel, the county’s approval of a lot line adjustment, which is premised on the assumption that a partition has occurred, must be reversed. *Higgins v. Marion County*, 30 Or LUBA 426 (1996).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Petitioners fail to develop an argument sufficient for LUBA’s review when they dispute a conclusion of compliance with relevant approval standards by summarily incorporating arguments from other assignments of error. *Canby Quality of Life Committee v. City of Canby*, 30 Or LUBA 166 (1995).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. When petitioners raise concerns about compliance with “applicable standards,” but do not specify in their brief what standards or approval criteria are at risk of being violated, petitioners’ argument is insufficiently developed to provide a basis for reversal or remand. *Marcott Holdings, Inc. v. City of Tigard*, 30 Or LUBA 101 (1995).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Whether LUBA has the authority to reverse a local government decision based on the doctrine of equitable estoppel is unclear. *Sparks v. City of Bandon*, 30 Or LUBA 69 (1995).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Because LUBA’s review is limited to the record of an appealed decision, LUBA cannot rely on a determination in another case that a proposed golf course is not a commercial use to support a determination, in the case on appeal, that a proposed golf driving range is not a commercial use. *Moore v. Clackamas County*, 29 Or LUBA 372 (1995).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Petitioners provide no basis for reversal or remand of the challenged decision where they fail to establish the proposed development violates any legal standard. *Nalette v. City of Klamath Falls*, 28 Or LUBA 709 (1995).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where petitioner simply asserts the challenged decision ignores her solar access rights, and the challenged decision contains detailed findings on local solar access requirements, petitioner provides no basis for reversal or remand of the challenged decision. *Sullivan v. City of Ashland*, 28 Or LUBA 699 (1995).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Petitioners cannot raise a new basis for reversing or remanding a challenged decision for the first time in a post oral argument motion for evidentiary hearing unless they demonstrate that they seek to present facts unknown to them at the time the petition for review was filed. *Salem Golf Club v. City of Salem*, 28 Or LUBA 561 (1995).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where a proposed transportation facility includes open space and pedestrian and bicycle facilities to satisfy comprehensive plan policies implementing Goal 8, petitioner’s speculation that those facilities

might be eliminated in the future in favor of more traffic lanes provides no basis for reversal or remand. Such changes would require a plan amendment and a demonstration that the altered facility complies with the plan policies. *Friends of Cedar Mill v. Washington County*, 28 Or LUBA 477 (1995).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. In the absence of an interpretation of the applicability of zone code regulations to the challenged decision, LUBA cannot determine whether a city council decision approving a road improvement is a statutory land use decision. *Carlson v. City of Dines City*, 28 Or LUBA 411 (1994).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. LUBA is not authorized to remand a challenged decision to a local government for the local government to conduct evidentiary hearings, without first resolving the assignments of error raised by a petitioner. ORS 197.835(9)(a). *Tri-County Metro. Trans. Dist. v. City of Beaverton*, 28 Or LUBA 78 (1994).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Petitioner cannot allege for the first time in the petition for review that a document included in the local record was not actually placed before the local decision maker and, consequently, assign the decision maker's reliance on that document as error. *Bates v. Josephine County*, 28 Or LUBA 21 (1994).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. A petitioner's allegations that an existing fill violates the civil law rule limiting the right of an upland owner to artificially alter discharge of surface waters onto adjoining properties may provide a basis for a cause of action for interference with petitioner's property rights, but does not provide a basis for reversal or remand of a local government decision approving a permit for the fill. *Fechtig v. City of Albany*, 27 Or LUBA 480 (1994).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where petitioner does not contend a challenged decision is inconsistent with an applicable plan policy, but rather that the decision is unnecessary to implement that policy, petitioner's argument provides no basis for reversal or remand. *Rea v. City of Seaside*, 27 Or LUBA 443 (1994).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. That a local government's final written order may not accurately reflect oral comments made by the local decision maker during its deliberations provides no basis for reversal or remand of a challenged decision. *Barrick v. City of Salem*, 27 Or LUBA 417 (1994).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Although the substance of particular objections by neighbors may lead to a conclusion that one or more local code adjustment criteria are violated, the *fact* that one or more neighbors object has no legal significance. *Edwards v. City of Portland*, 27 Or LUBA 262 (1994).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where petitioners repeat the same arguments that were rejected in a prior LUBA appeal, and make no effort to explain why those arguments ought to be sustained in a second LUBA appeal, the arguments will be rejected. *Davenport v. City of Tigard*, 27 Or LUBA 243 (1994).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. LUBA will reject an assignment of error where petitioners fail to adequately identify the issues they believe the local government failed to respond to and fail to challenge findings which address the general area of concern identified by petitioners. *Davenport v. City of Tigard*, 27 Or LUBA 243 (1994).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. That newly elected members of the local decision making body decided not to participate in local proceedings on remand from LUBA, because they were not members of the decision making body at the time the original local proceedings were conducted and are unfamiliar with the record, provides no basis for reversal or remand of the local government decision on remand. *Rhine v. City of Portland*, 27 Or LUBA 86 (1994).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where petitioners do not demonstrate that the issue raised in an assignment of error is relevant to compliance with any legal standard applicable to the challenged decision, LUBA will deny the assignment of error. *Dorgan v. City of Albany*, 27 Or LUBA 64 (1994).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. A petitioner's assignment of error will be rejected where it simply alleges code violations, without supplying any supporting argument, or alleges inconsistent findings and lack of substantial evidence, without identifying the challenged findings. *Draganowski v. Curry County*, 26 Or LUBA 420 (1994).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where LUBA determines a condition of approval was erroneously imposed, but rejects all other assignments of error, a remand rather than reversal nevertheless is required, if LUBA is unable to determine whether the local government relied on the erroneous condition of approval in concluding that all applicable approval criteria are met. *Louisiana Pacific v. Umatilla County*, 26 Or LUBA 247 (1993).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. The exclusive forum for enforcement of public meetings laws is circuit court. That public meetings law violations may have occurred during the land use decision making process does not, of itself, provide a basis for reversal or remand. *Sorte v. City of Newport*, 26 Or LUBA 236 (1993).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. That a proposed partition of land within a PUD may violate private covenants, conditions and restrictions, provides no basis for reversal or remand of a challenged land use decision. *Long v. Marion County*, 26 Or LUBA 132 (1993).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where petitioner fails to cite any applicable law violated by the challenged decision, petitioner's assignment of error provides no basis for reversal or remand. *Long v. Marion County*, 26 Or LUBA 132 (1993).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. LUBA reviews the local government's final written order. That the final written order may not accurately reflect

oral comments made by the local decision maker during its deliberations provides no basis for reversal or remand of the challenged decision. *Derry v. Douglas County*, 26 Or LUBA 25 (1993).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where petitioner’s notice of intent to appeal identifies the challenged decision as the governing body’s decision to dismiss his local appeal, but his petition for review alleges error in the planning commission’s decision to approve the subject application, rather than the governing body’s decision dismissing his appeal, LUBA will affirm the challenged decision. *Churchill v. Tillamook County*, 26 Or LUBA 22 (1993).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where petitioners fail to identify any applicable standard arguably limiting the validity of a local government’s initial PUD development plan approval to a particular period of time, the local government’s failure to address the issue of whether the PUD development plan expired does not provide a basis for reversal or remand. *Gage v. City of Portland*, 25 Or LUBA 449 (1993).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. LUBA can grant relief only if petitioners demonstrate that an applicable legal standard is violated by the challenged decision. *Frankton Neigh. Assoc. v. Hood River County*, 25 Or LUBA 386 (1993).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where petitioner’s assignment of error expresses no more than disagreement with the local government’s decision, such disagreement provides no basis for reversal or remand of the challenged decision. *Neuharth v. City of Salem*, 25 Or LUBA 267 (1993).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where parties object that petitioner failed to properly perfect its local appeal, but the local government nevertheless allows the local appeal, petitioner satisfies the requirement that it exhaust available administrative remedies, as ORS 197.825(2)(a) requires. Although the local government may have committed reversible error in considering the local appeal, LUBA has jurisdiction to review the local government’s final decision. *Miller v. Washington County*, 25 Or LUBA 169 (1993).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. After acknowledgment, unless a challenged local government land use decision is an amendment to an acknowledged comprehensive plan or land use regulation or a new land use regulation, LUBA has no authority to reverse or remand the decision for failure to comply with the statewide planning goals. *O’Mara v. Douglas County*, 25 Or LUBA 25 (1993).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. It is a local government’s final written decision that is subject to LUBA’s review. That conditions imposed in the local government’s final written decision were not discussed in the decision maker’s deliberations does not provide a basis for reversal or remand. *Terra v. City of Newport*, 24 Or LUBA 438 (1993).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. LUBA does not apply land use decision making approval criteria in the first instance. It is the local government’s

responsibility to consider the evidentiary record, identify the applicable standards, make the decision in the first instance and explain the basis for its decision in its findings. *ODOT v. City of Waldport*, 24 Or LUBA 344 (1992).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Reversal of a local government land use decision approving a permit application means the subject application cannot be approved under the applicable criteria as a matter of law, and that a new or amended permit application is required to correct at least one allegation of error sustained in LUBA’s final opinion. *Seitz v. City of Ashland*, 24 Or LUBA 311 (1992).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. The local government record does not include evidence that is specifically rejected by the local government during the local proceedings. That such evidence may have been erroneously rejected may provide a basis for reversal or remand, but it has no bearing on the contents of the record. *Glisan Street Assoc. v. City of Portland*, 24 Or LUBA 600 (1992).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. LUBA reviews the final written decision of the local government decision making body, not statements that may have been made during the local proceedings by individual decision makers. *Linebarger v. City of The Dalles*, 24 Or LUBA 91 (1992).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. General expressions of disagreement with a land use decision provide no basis for reversal or remand. *Reed v. Benton County*, 23 Or LUBA 486 (1992).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. In reviewing local government decisions, LUBA’s role as an appellate tribunal is to review the local government’s explanation of why it believes its decision satisfies relevant approval standards. LUBA’s function is not to identify the relevant approval standards or to interpret relevant code and plan language in the first instance. *Warren v. City of Aurora*, 23 Or LUBA 507 (1992).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. LUBA reviews challenged land use decisions for compliance with applicable approval standards, not for consistency with prior local government decisions. *Sterling Mine Properties v. Jackson County*, 23 Or LUBA 18 (1992).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Petitioners must include sufficient argument in the petition for review to explain the basis for their allegations of error. Petitioners may not fail to make a specific challenge to the findings supporting a decision or the evidentiary support for those findings and rely solely on expressions of disagreement with the challenged decision. *Camp v. Josephine County*, 23 Or LUBA 6 (1992).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where a petition for review contains no argument in support of petitioner’s assignments of error, the assignments of error will be denied. *Camp v. Josephine County*, 23 Or LUBA 6 (1992).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Expressions of disagreement with a local government’s decision, which are unrelated to the local government’s findings or the legal standards applicable to a request for land use approval, are inadequate to constitute a basis for reversal or remand. *Simmons v. Marion County*, 22 Or LUBA 759 (1992).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where petitioners fail to identify any applicable legal standard which they contend is violated by an alleged defect in the local government’s decision, LUBA cannot grant relief. *Schellenberg v. Polk County*, 22 Or LUBA 673 (1992).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. It is petitioners’ responsibility to develop their legal argument sufficiently to establish a basis for reversal or remand. *Kane v. City of The Dalles*, 22 Or LUBA 608 (1992).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where petitioners are afforded a *de novo* evidentiary hearing before a hearings officer, and where petitioners had an adequate opportunity to explain to the hearings officer why the planning department decision appealed from was wrong, that the planning department decision may have been based on erroneous assumptions provides no basis for reversal or remand of the hearings officer’s decision. *Ralston v. Clackamas County*, 22 Or LUBA 573 (1992).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. When LUBA’s decision on the merits of an appeal will be without practical effect, LUBA will dismiss the appeal as moot. LUBA does not have authority in these circumstances to remand the challenged decision to the local government with instructions to dismiss the local proceedings as moot. *Barr v. City of Portland*, 22 Or LUBA 504 (1991).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. That the governing body made a decision different from the recommendation of the hearings officer, and adopted findings inconsistent with those adopted by the hearings officer, is not in itself a basis for reversal or remand of the governing body’s decision. *Brandt v. Marion County*, 22 Or LUBA 473 (1991).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. In establishing actual bias or prejudgment on the part of a local government decision maker, the burden is on petitioner to show the decision maker was biased or prejudged the application and did not reach its decision by applying applicable standards based on the evidence and argument presented. *Oregon Worsted Company v. City of Portland*, 22 Or LUBA 452 (1991).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. That the initial administrative decision maker was not impartial would be insufficient grounds to reverse or remand a challenged decision, where petitioner was afforded a *de novo* review of the administrative decision, including a public hearing, by a hearings officer. *Oregon Worsted Company v. City of Portland*, 22 Or LUBA 452 (1991).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where there are oral statements during local proceedings suggesting confusion about who has the burden of proof in a local appeal, but there is nothing in the written decision to suggest the local government made an erroneous allocation of the burden of proof, LUBA will not assume the burden of proof was erroneously assigned to the opponents of the application. *Coonse v. Crook County*, 22 Or LUBA 138 (1991).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Petitioners' argument that the city failed to submit a sludge management plan to DEQ provides no basis for reversal or remand of the challenged decision, where petitioners cite no approval standard requiring the submission of a sludge management plan to DEQ and do not explain how a sludge management plan is relevant to compliance with applicable code provisions. *Sitsler v. City of Mill City*, 22 Or LUBA 125 (1991).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. While the requirement that local governments carrying out public land development projects grant land use approvals to themselves presents inherent appearance of bias problems, such appearance problems, in and of themselves, present no basis for reversal or remand. *Holladay Investors, Ltd. v. City of Portland*, 22 Or LUBA 90 (1991).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. LUBA's review is limited to the local government's written final decision and does not include review of statements made by individual members of the local government's decision making body during local proceedings. *Holladay Investors, Ltd. v. City of Portland*, 22 Or LUBA 90 (1991).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Petitioner's argument that an approved residential care facility is really a correctional facility provides no basis for remand where (1) the code definition of residential care facility appears to be broad enough to include correctional facilities, (2) the local government found the proposal satisfies the code definition of residential care facility, and (3) petitioner does not challenge the local government's findings. *Wentland v. City of Portland*, 22 Or LUBA 15 (1991).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where a local government imposes an improper condition in granting land use approval, but does not rely on the improper condition in finding applicable approval criteria are met, LUBA will reverse the condition and otherwise affirm the decision granting land use approval. *Olson Memorial Clinic v. Clackamas County*, 21 Or LUBA 418 (1991).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Without a showing by petitioner that an applicable legal criterion has been violated, LUBA cannot grant relief. *Reynolds v. Clackamas County*, 21 Or LUBA 412 (1991).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. If a challenged plan and zone map amendment was adopted in compliance with the applicable criteria, it cannot be considered arbitrary and, therefore, is not invalid "spot zoning." Where petitioners fail to show

an applicable standard is violated by the city's decision, no basis for reversal or remand is established. *Brown & Cole, Inc. v. City of Estacada*, 21 Or LUBA 392 (1991).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Erroneous expressions of plan or code interpretation by the decision maker, whether expressed before or after the decision is reduced to writing and becomes final, provide no basis for reversal, if such erroneous expressions are not included in the written decision or findings supporting the written decision. *Waker Associates, Inc. v. Clackamas County*, 21 Or LUBA 588 (1991).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Without a showing that an applicable approval criterion has been violated by the local government's decision, LUBA cannot grant relief. *Hale v. City of Beaverton*, 21 Or LUBA 249 (1991).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where LUBA cannot determine from the local record on what basis the proposed use *was* approved by the local government, or on what basis the proposed use *could* be approved by the local government under the applicable zoning district, LUBA cannot say the local government's decision approving the proposed use is prohibited as a matter of law and, therefore, will remand the challenged decision. OAR 661-10-07192)(b). *McKay Creek Valley Assoc. v. Washington County*, 21 Or LUBA 66 (1991).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where the local record indicates a petitioner was not allowed to speak at a hearing because his testimony would include new evidence, the acceptance of which would indisputably have been improper, and petitioners do not claim that his testimony would *not* have included new evidence, petitioners fail to identify a basis upon which LUBA may grant relief. *White v. City of Oregon City*, 20 Or LUBA 470 (1991).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Unless petitioners demonstrate that an applicable legal criterion or standard has been violated by the appealed decision, LUBA cannot grant relief. *19th Street Project v. City of The Dalles*, 20 Or LUBA 440 (1991).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where a governing body erroneously construed the legal effect of its failure to reach the merits in a *de novo* review, LUBA will remand rather than reverse, to allow an abstaining member of the governing body to consider whether abstention is required and to allow an absent governing body member an opportunity to participate so that a decision on the merits may be reached. *Strawn v. City of Albany*, 20 Or LUBA 344 (1990).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. In order to establish bias on the part of the decision maker, petitioner must show that the decision maker either has a personal stake in the outcome of the proceeding or has prejudged the matter. LUBA will not infer the existence of bias on the part of a decision maker. *Kittleson v. Lane County*, 20 Or LUBA 286 (1990).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. LUBA reviews a local government’s final written decision. The oral comments of individual members of the local decision making body are not relevant to LUBA’s review, and do not provide a basis for reversal or remand of the challenged decision. *Neuenschwander v. City of Ashland*, 20 Or LUBA 144 (1990).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Expressions of disagreement with a local government’s decision, which are unrelated to the local government’s findings or the legal standards applicable to a request for land use approval, are inadequate to constitute a basis for reversal or remand. *McCarty v. City of Portland*, 20 Or LUBA 86 (1990).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Without a showing that an applicable legal criterion or standard has been violated by the county’s decision, LUBA cannot grant relief. *Weist v. Jackson County*, 18 Or LUBA 627 (1990).

28.8.1 LUBA Scope of Review – Grounds for Reversal/Remand – Generally. Where the record shows the *ex parte* contacts alleged by petitioner were disclosed during local hearings, such *ex parte* contacts provide no basis for reversal or remand. *Douglas v. Multnomah County*, 18 Or LUBA 607 (1990).