

**28.8.2 LUBA Scope of Review – Grounds for Reversal/Remand – Lack of Jurisdiction.** Pursuant to ORS 197.835(2), LUBA may make its own factual findings as to whether an appeal was timely filed, which is a jurisdictional question. Accordingly, LUBA may consider evidence outside the record for the limited purpose of resolving disputes regarding whether an appeal was timely filed, even in the absence of a motion to take evidence outside the record under OAR 661-010-0045. *Leyden v. City of Eugene*, 79 Or LUBA 151 (2019).

**28.8.2 LUBA Scope of Review – Grounds for Reversal/Remand – Lack of Jurisdiction.** 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).

**28.8.2 LUBA Scope of Review – Grounds for Reversal/Remand – Lack of Jurisdiction.** Where a provision of the local code prohibits the filing of a new application for at least one year after an application is denied and the local government denies an application, a local government exceeds its authority in accepting and approving a new application within one year of the original denial. *Hood River Valley Residents' Committee v. Hood River County*, 77 Or LUBA 1 (2018).

**28.8.2 LUBA Scope of Review – Grounds for Reversal/Remand – Lack of Jurisdiction.** *Standard Insurance Co. v. Washington County*, 17 Or LUBA 647 (1989), holds that a local government lacks jurisdiction to modify a decision that is currently on appeal to LUBA or the Court of Appeals. However, *Standard Insurance Co.* does not prohibit a local government from *commencing* local proceedings to modify a condition of approval of a decision that is on appeal to LUBA, as long as the final decision adopting the modification is issued after all appeals of the original decision have been concluded. *Foland v. Jackson County*, 70 Or LUBA 247 (2014).

**28.8.2 LUBA Scope of Review – Grounds for Reversal/Remand – Lack of Jurisdiction.** Where nothing in the county's code supports a claim that payment of a local appeal fee is a jurisdictional requirement, failure to pay the appeal fee is not grounds for dismissal of the appeal at the local level. *Ratzlaff v. Polk County*, 56 Or LUBA 740 (2008).

**28.8.2 LUBA Scope of Review – Grounds for Reversal/Remand – Lack of Jurisdiction.** LUBA has jurisdiction to review land use decisions and limited land use decisions, and the fact that there may not be reviewable issues merely limits the Board's scope of review; it does not eliminate the Board's jurisdiction over the appeal. *Papst v. Clackamas County*, 53 Or LUBA 344 (2007).

**28.8.2 LUBA Scope of Review – Grounds for Reversal/Remand – Lack of Jurisdiction.** Regional plan provisions that limit regional planning to a designated region are not violated or improperly amended by non-regulatory expressions of interest in a city parks, recreation and open space plan concerning parks outside the region and city in the county, where the city's plan makes it clear that the county's plan is the controlling planning document for such parks. *Home Builders Assoc. v. City of Eugene*, 52 Or LUBA 341 (2006).

**28.8.2 LUBA Scope of Review – Grounds for Reversal/Remand – Lack of Jurisdiction.** Where petitioners fail to establish that any statute obligates a county to provide petitioners notice of a building permit decision that modifies a condition of partition approval, the "knew or should have

known” standard at ORS 197.830(3)(b) applies rather than the “actual notice” standard at ORS 197.830(3)(a), in determining whether an appeal is timely filed under that statute. *Neelund v. Josephine County*, 52 Or LUBA 683 (2006).

**28.8.2 LUBA Scope of Review – Grounds for Reversal/Remand – Lack of Jurisdiction.** The 21-day deadline to file an appeal under ORS 197.830(3)(b) begins on the date petitioners knew or should have known of the “decision,” *i.e.*, that the local government had approved development on the subject property. It is not necessary that petitioners know the particular detail of the proposed development that offends them, such as its exact location on the property, before the 21-day deadline begins running. *Neelund v. Josephine County*, 52 Or LUBA 683 (2006).

**28.8.2 LUBA Scope of Review – Grounds for Reversal/Remand – Lack of Jurisdiction.** Where the petitioners are provided written notice of an application for a proposed height variance for an already approved dwelling, the petitioners are placed on at least “inquiry notice” that the county has previously approved a dwelling on the subject property. Given that information, it is incumbent on petitioners to make timely inquiries to discover the decision that approved the dwelling, such as investigating the planning file, and failure to make such inquiries within 21 days of being placed on inquiry notice means that the deadline to appeal the decision to LUBA under ORS 197.830(3)(b) begins on the date of inquiry notice. *Neelund v. Josephine County*, 52 Or LUBA 683 (2006).

**28.8.2 LUBA Scope of Review – Grounds for Reversal/Remand – Lack of Jurisdiction.** An appeal that is filed four to five weeks after the petitioners learned that the local government had approved the challenged decision is untimely filed under ORS 197.830(3)(b). *Neelund v. Josephine County*, 52 Or LUBA 683 (2006).

**28.8.2 LUBA Scope of Review – Grounds for Reversal/Remand – Lack of Jurisdiction.** A local government exceeds its jurisdiction where it issues a decision on a withdrawn application. Accordingly, OAR 661-010-0071(1)(a) compels reversal of the decision. Early LUBA cases indicating that dismissal of the appeal is the appropriate disposition in such circumstances are overruled. *Grabhorn v. Washington County*, 50 Or LUBA 344 (2005).

**28.8.2 LUBA Scope of Review – Grounds for Reversal/Remand – Lack of Jurisdiction.** Where a LUBA decision that remands a city resolution is on appeal to the Court of Appeals, the city lacks jurisdiction to amend that resolution. But the city has jurisdiction to adopt a comprehensive plan amendment that LUBA found the city should have adopted at the time it adopted the resolution. *Rhodes v. City of Talent*, 50 Or LUBA 415 (2005).

**28.8.2 LUBA Scope of Review – Grounds for Reversal/Remand – Lack of Jurisdiction.** Concern about the potential for conversion of industrially planned and zoned lands to commercial and office uses is a legitimate area of metropolitan concern within the jurisdiction of the Metropolitan Service District. *City of Sandy v. Metro*, 48 Or LUBA 363 (2005).

**28.8.2 LUBA Scope of Review – Grounds for Reversal/Remand – Lack of Jurisdiction.** A county has authority or jurisdiction to deny a permit application on its merits, where the permit applicant fails to demonstrate he was authorized to submit the permit application but the code

limitations on who can submit permit applications do not impose a “jurisdictional” requirement. *Base Enterprises, Inc. v. Clackamas County*, 38 Or LUBA 614 (2000).

**28.8.2 LUBA Scope of Review – Grounds for Reversal/Remand – Lack of Jurisdiction.** Metro may adopt a functional plan with site-specific requirements without necessarily exceeding its authority under ORS 268.030(3) to “provide for those aspects of land use planning having metropolitan significance.” *Commercial Real Estate Economic Coalition v. Metro*, 37 Or LUBA 171 (1999).

**28.8.2 LUBA Scope of Review – Grounds for Reversal/Remand – Lack of Jurisdiction.** A combined application for a plan map amendment, zone change and annexation request does not convert a local government’s recommendation regarding the annexation request into a binding decision where the local government lacks decisional authority over annexation requests. *Copper Basin, Inc. v. Umatilla County*, 37 Or LUBA 147 (1999).

**28.8.2 LUBA Scope of Review – Grounds for Reversal/Remand – Lack of Jurisdiction.** A county hearings officer is not legally bound to defer to a board of county commissioners’ determination that a particular site is necessary for a proposed utility facility, where the board of county commissioners adopted its determination in its capacity as the governing body of a service district. *Clackamas Co. Svc. Dist. No. 1 v. Clackamas County*, 35 Or LUBA 374 (1998).

**28.8.2 LUBA Scope of Review – Grounds for Reversal/Remand – Lack of Jurisdiction.** Where a challenged local government decision finds the subject property is entirely within the local government’s boundaries, and those findings are supported by substantial evidence in the record, the local government did not exceed its jurisdiction in approving the subject development application. *ONRC v. City of Seaside*, 29 Or LUBA 39 (1995).

**28.8.2 LUBA Scope of Review – Grounds for Reversal/Remand – Lack of Jurisdiction.** That the electorate may have exceeded its authority in adopting land use legislation by initiative, is a question bearing on the merits of an appeal from such a decision, not on LUBA’s jurisdiction to review the appealed decision. *Riverbend Landfill Company v. Yamhill County*, 24 Or LUBA 607 (1992).

**28.8.2 LUBA Scope of Review – Grounds for Reversal/Remand – Lack of Jurisdiction.** A city ordinance rezoning property located outside the city’s municipal boundaries exceeds the city’s jurisdiction and must be reversed. *Hofmann v. City of Seaside*, 24 Or LUBA 183 (1992).