

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a local government requires opponents to be represented at a hearing by one spokesperson, their attorney, and prohibits oral testimony from the opponents themselves, and where the local government makes express and repeated findings that the opponents’ written testimony is not credible or not supported when viewed through the “obscured” lens of the local government’s judgement of the opponents’ attorney’s credibility, LUBA will conclude that the local government’s procedure prejudiced the opponents’ substantial rights to submit their case and to receive a full and fair hearing. *Schrepel v. Yamhill County*, 81 Or LUBA 895 (2020).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a local ordinance requires the county to notify property owners within 500 feet of any application for a similar use determination for a specific property, failure to issue such individualized notice when the application includes the address of a specific property and the signature of the property owner constitutes a procedural error that prejudices the substantial rights of the neighboring property owners, requiring remand. *Jones v. Clackamas County*, 81 Or LUBA 438 (2020).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. In general, a local government’s failure to list some of the applicable approval criteria in its notice does not provide a basis for reversal or remand of the decision but may allow a party to raise issues related to missing approval criteria that were not raised prior to the conclusion of the initial evidentiary hearing. *Marek v. City of Corvallis*, 81 Or LUBA 91 (2020).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Arguments that the local government’s notice failed to list the applicable criteria with sufficient specificity to allow parties to prepare for a hearing and that it was not clear from the notice what criteria the hearings officer intended to apply to an application do not establish that the notice prejudiced the petitioner’s substantial rights to prepare and present its case to the hearings officer where the petitioner had sufficient opportunity to review the applicable criteria identified in a planning director decision and prepare its presentation in its local appeal to the hearings officer, where the petitioner does not identify any applicable criteria that the hearings officer failed to apply, and where the hearings officer did not apply any standards that were not raised by the parties. *Buffalo-Bend Associates, LLC v. Clackamas County*, 81 Or LUBA 66 (2020).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A local government’s erroneous statement in the findings that it was not required to consider the petitioner’s testimony does not establish that the local government committed procedural error where other findings establish that the local government did consider that testimony. *ODOT v. Grant County*, 80 Or LUBA 192 (2019).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where “new evidence” enters the record during a non-evidentiary remand proceeding but plays no role in the decision, such procedural error provides no basis for reversal or remand pursuant to ORS 197.835(9)(a)(B) because it could not possibly have “prejudiced the substantial rights of the petitioner.” *Neighbors for Smart Growth v. Washington County*, 79 Or LUBA 1 (2019).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a county approves a “forest template dwelling” under ORS 215.750(1)(c), arguments that the county relied on units of land that were unlawfully created through partition approval, rather than subdivision approval, provide no basis for reversal or remand since any procedural error the county committed in approving the land division cannot be collaterally attacked in an appeal of a subsequent decision that depends on the prior approval. *Landwatch Lane County v. Lane County*, 79 Or LUBA 65 (2019).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where the county planning director processed a similar use determination under the county’s Type II review to determine whether an electrical transmission line is allowed in a particular zone, the board of county commissioners reviewed the director’s similar use determination in a consolidated appeal under a Type III process, and petitioners argue that the county erred by not providing an intermediate decision by a decisionmaker other than the county governing body, that alleged procedural error provides no basis for reversal or remand because that alleged error does not prejudice petitioner’s substantial rights. *Tilla-Bay Farms, Inc. v. Tillamook County*, 79 Or LUBA 235 (2019).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a county determines an electrical transmission line is a “similar use” authorized in a particular zone pursuant to the county’s “similar use determination” process, which allows a similar use “[w]here a proposed use is not specifically identified by [the code], or [the code] is unclear as to whether the use is allowed in a particular zone,” petitioners’ argument that the county may make a similar use determination only if the proposed use is not specifically identified anywhere in the county’s code is without merit. A similar use determination is not necessary or appropriate where the use is specifically permitted or prohibited in the subject zone. In adopting the similar use determination process, the county contemplated instances where a use is specifically identified as an allowed use in some zones but not specifically identified as an allowed use in the subject zone. *Tilla-Bay Farms, Inc. v. Tillamook County*, 79 Or LUBA 235 (2019).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where petitioners argue that the county made inadequate findings that a proposed electrical transmission project is consistent with general use priorities for estuary zones because the county did not address certain code provisions addressing estuary zones, LUBA is not required to remand the decision to the county for it to interpret its local code provisions in the first instance; LUBA may make its own determination of whether the local government decision is correct. ORS 197.829(2). Where the county determined that the code provision in question is a general priority statement, which does not constitute mandatory approval criteria, LUBA will uphold the county’s decision where the provision provides an inclusive list of general use priorities for estuarine resources and value, and where, in the alternative, the county addressed those impacts to the estuarine resources and values in other applicable parts of the county’s code. *Tilla-Bay Farms, Inc. v. Tillamook County*, 79 Or LUBA 235 (2019).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. While the “raise it or waive it” requirement of ORS 197.763(1) and 197.835(3) does not apply to legislative proceedings, where a party has an opportunity to object to a procedural error during a

legislative proceeding, the party must do so in order to seek remand based on that error. *McCaffree v. Coos County*, 79 Or LUBA 512 (2019).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A party asserting a procedural error must demonstrate that the procedural error was objected to during the proceedings below, if there was an opportunity to lodge an objection. Accordingly, where a dispute may exist regarding whether petitioners objected to the county’s process during the proceedings below, LUBA will allow a motion to take evidence outside the record to consider a document for the limited purpose of allowing petitioners to cite to that document to establish, if the point is disputed in a response brief, that petitioners attempted to lodge objections to the county’s process. *Eng v. Wallowa County*, 79 Or LUBA 1024 (2019).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. 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).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. LUBA will remand a decision by the county planning department approving conversion of a portion of an existing church into a “parsonage,” a term which is undefined by state or local law, but which includes a kitchen, bedroom, and bathroom for the use by the church’s pastor, where the county’s decision fails to identify any land use standards that apply to the proposed use, and did not provide notice or an opportunity for a hearing or otherwise follow the procedures in ORS 215.416(11) without apparent explanation, and LUBA determines that the application for the proposed parsonage is an application for a “permit” as defined in ORS 215.402(4). *Wetherell v. Douglas County*, 78 Or LUBA 33 (2018).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Although it is not clear a proposed “parsonage,” which is a portion of a church to include a bedroom, kitchen and bathroom for use by the church’s pastor, must be evaluated and approved or denied under the criteria that apply to a nonfarm dwelling under the county’s land use ordinance implementing ORS 215.284, those land use standards require the exercise of discretion in approving the development of land. Further, it is possible, even probable, that any application for a proposed residential use associated with a church must be evaluated under the standards at ORS 215.441, and accordingly the county must process such an application according to its procedures that apply to permits. *Wetherell v. Douglas County*, 78 Or LUBA 33 (2018).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a county’s notice described a proposed project as a bed and breakfast inn and campground, but the county only approved the bed and breakfast inn but not the campground, petitioners had an inadequate opportunity to object to the alleged procedural error because they could not know until

the county issued its decision that the final decision would approve something different than the proposal that was noticed. *Elenes v. Deschutes County*, 78 Or LUBA 483 (2018).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. ORS 197.830(3) operates to potentially allow a petitioner a delayed period of time to file a LUBA appeal, but it is not a source of procedural requirements that a local government approved development that differs from the development described in the notice of hearing is not procedural error. *Elenes v. Deschutes County*, 78 Or LUBA 483 (2018).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A proposed land use that requires a conditional land use permit must be processed under quasi-judicial, rather than legislative, procedures where the applicable county code provision specifies that conditional uses in the exclusive farm use zone are subject to conditional use criteria and “shall be reviewed” according to the county’s quasi-judicial review procedures. Further, according to *Strawberry Hill 4-Wheelers v. Board of Comm.*, 287 Or 591, 602-03, 601 P2d 769 (1979), the Oregon Supreme Court established a three-factor test to determine whether a land use matter is quasi-judicial or legislative, and where all three factors indicate that the county’s action is quasi-judicial in nature, the county also erred in processing the application under its legislative rather than its quasi-judicial procedures. *VanDyke v. Yamhill County*, 78 Or LUBA 530 (2018).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A criterion that requires a county to determine whether a proposed short term rental home occupation will not “unreasonably interfere” with other uses permitted in the zone requires the exercise of discretion, and a decision applying that criterion is a decision on a permit as defined in ORS 215.402(4). A county errs in failing to process the short term rental home occupation application according to the procedures for permits in the local code. *Hood River Valley Residents’ Committee v. Hood River County*, 77 Or LUBA 7 (2018).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. It is not sufficient for petitioners to simply point out that the sound study that was prepared to develop a Statewide Planning Goal 5 program to protect an aggregate resource site does not measure noise in precisely the manner required by the Oregon Department of Environmental Quality (DEQ) rules, without any attempt to show that any deviations from required sound measuring locations could have the effect of allowing noise levels that violate DEQ standards. Where the applicant’s expert took the position that the selected sound measuring locations did not have the effect of inflating the ambient noise level or otherwise rendering those sound measurements inaccurate, at least some effort to challenge the expert’s position is required to show the deviations may have led to inaccurate sound readings for purposes of determining if DEQ noise standards will be met. *Save TV Butte v. Lane County*, 77 Or LUBA 22 (2018).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Remand for new proceedings to allow the petitioner to present new evidence to respond to an allegedly new, unanticipated interpretation of an approval standard is not warranted under *Gutoski v. Lane County*, 155 Or App 369, 963 P2d 145 (1998), where the allegedly new interpretation is consistent with the position for which the petitioner argued and presented supporting evidence during the initial proceedings below. *Conte v. City of Eugene*, 77 Or LUBA 69 (2018).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a county code limits administrative review to applications that do not require interpretation or the exercise of policy or legal judgment, and requires quasi-judicial review with notice to nearby property owners for all other applications, the county commits procedural error that is prejudicial to property owners within the notice area by administratively processing without notice an application for a floodplain development permit that requires the exercise of legal judgment. *Rogue Advocates v. Jackson County*, 77 Or LUBA 181 (2018).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a county failed to provide petitioners adequate Ballot Measure 56 (codified at ORS 215.503) notice of a proposed ordinance that proposed to limit the size of, or in some cases prohibit entirely, a use – the growing of cannabis – that was previously allowed in the applicable zone, causing some petitioners to only be able to participate at the final hearing before the board of county commissioners on the proposed ordinance by submitting written comments prior to the record closing, such last-minute participation at the last of many hearings is not “an adequate opportunity to prepare and submit their case and a full and fair hearing” and therefore “prejudiced the substantial rights” of the petitioners. ORS 197.835(9)(a)(B). *Cossins v. Josephine County*, 77 Or LUBA 240 (2018).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A petitioner’s argument that the city erred in processing the application as a minor rather than major site plan modification does not provide a basis for remand, where the city adopted findings that the only difference between a major and minor modification is procedural, and the petitioner does not argue that the procedures the city provided, including a hearing that petitioner attended, prejudiced petitioner’s substantial rights. *Aboud v. City of Stayton*, 77 Or LUBA 300 (2018).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where local law does not dictate the historic review board must be the decision maker that decides whether it has jurisdiction to proceed with a historic land mark designation proposal after the property owner has refused to consent to the historic designation under ORS 197.772(1), a city council does not err by deciding those jurisdictional questions following a LUBA remand of a historic review board decision that failed to address those jurisdictional questions. *McLoughlin Neighborhood Association v. City of Oregon City*, 77 Or LUBA 377 (2018).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A city might be obligated to reopen the evidentiary record to accept relevant local legislative history in interpreting local law in an on-the-record hearing, but where petitioner never took the position that it had relevant legislative history to offer and at LUBA merely suggested that such legislative history might exist, the city did not err by limiting its remand proceedings to the evidentiary record that was submitted to LUBA in the appeal that led to remand. *McLoughlin Neighborhood Association v. City of Oregon City*, 77 Or LUBA 377 (2018).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Dictionary definitions consulted to resolve legislation ambiguity are not properly viewed as

“evidence,” and may be submitted and considered at an on-the-record hearing. *Rawson v. Hood River County*, 77 Or LUBA 415 (2018).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A printout of the results of a Google Search that includes links to both dictionary definitions and to evidentiary materials is properly viewed as new evidence, and a local government does not err by refusing to accept the printout at an on-the-record hearing. *Rawson v. Hood River County*, 77 Or LUBA 415 (2018).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a city council erroneously rejected a letter that was submitted to the city council by someone other than petitioners—because the city council mistakenly believed that person had not appeared during a prior proceeding before the city’s historic review board, but petitioners had no reason to believe the person had made the required appearance before the historic review board—the petitioners’ failure to object does not preclude petitioners from assigning procedural error to the city council’s rejection of the letter. *Friends of Canemah v. City of Oregon City*, 77 Or LUBA 434 (2018).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a city council’s consideration of an appeal of a historic review board’s decision is on the record, the city council’s erroneous rejection of a letter submitted by a person other than petitioners in a subsequent LUBA appeal does not prejudice petitioners’ substantial rights where the city council would not have considered any new evidence in the letter and petitioners themselves could have made any legal arguments that were included in the letter. *Friends of Canemah v. City of Oregon City*, 77 Or LUBA 434 (2018).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where petitioners take the position that historic review and site plan review approval standards are so incompatible that site plan review entirely displaces historic review, but the city council’s interpretation of its code that both reviews are possible and that historic review may be completed before site plan review is plausible, LUBA must defer to the city council’s interpretation. *Friends of Canemah v. City of Oregon City*, 77 Or LUBA 434 (2018).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A city council’s uneven enforcement of time limits on oral presentations to give permit opponents more time than they were entitled to provides no basis for remand where petitioner was given as much time as he wanted for rebuttal and petitioner did not object to the enforcement of time limits until after the public hearing closed. A petitioner’s belated general complaint during the city council’s deliberations after the evidentiary phase of the proceeding had closed that opponents were given more time to argue was inadequate and untimely. *Gu v. City of Bandon*, 77 Or LUBA 535 (2018).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Just as the non-prevailing party in a quasi-judicial land use proceeding has no right to object to or rebut a proposed written final decision and supporting findings that are prepared by the prevailing party in a quasi-judicial land use proceeding, the non-prevailing party has no right to participate in that process and no right to notice that the prevailing party is working with planning staff to prepare a

proposed final decision and supporting findings for the local decision maker to adopt. *Rawson v. Hood River County*, 77 Or LUBA 571 (2018).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Speculation by the non-prevailing party in a quasi-judicial land use proceeding that there may have been *ex parte* contact between the prevailing party’s attorney and the local governing body which may have resulted in bias, based solely on the fact that prevailing party’s attorney prepared drafts of the decision and findings as well as the final decision and findings that the local governing body adopted falls considerably short of establishing a substantial reason to believe that the prevailing party’s attorney had *ex parte* contacts with the local governing body. *Rawson v. Hood River County*, 77 Or LUBA 571 (2018).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where petitioner alleges a local government failed to meet its obligations under ORS 227.186 to provide notice of a comprehensive plan amendment, a zone change, or a change in a land use regulation that may affect the permissible uses of property to be mailed to the owner of each lot or parcel that the ordinance proposes to rezone or that would be affected by a change in the permissible uses of the property, petitioner fails to allege a basis for reversal or remand when petitioner fails to allege the “procedural error” prejudiced petitioner’s “substantial rights.” *Deumling v. City of Salem*, 76 Or LUBA 99 (2017).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A petitioner does not waive his right to assign procedural error at LUBA by failing to object to the procedural error below, where the alleged procedural error occurred after the close of the evidentiary record, and the city council meeting to adopt the final decision did not include an opportunity for parties to lodge procedural objections. *Grahn v. City of Yamhill*, 76 Or LUBA 258 (2017).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. LUBA will remand a decision approving seven property line adjustments based on procedural error where the respondent does not dispute that the county failed to provide the notice and hearing required under the county’s code for applications that propose multiple property line adjustments. *Sarett v. Lane County*, 76 Or LUBA 308 (2017).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A county does not err in failing to process an application to vacate a public easement as a modification of a condition of approval for the subdivision in which the easement is located, where the easement was not required as a condition of subdivision approval, but instead stemmed from a private agreement between the developer and others. *Neighbors for Smart Growth v. Washington County*, 76 Or LUBA 319 (2017).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Even if the petitioner is correct that an application to vacate a public easement is a “development permit” because it eliminates a “right of access,” and therefore that the county erred in failing to process the application under procedures that govern a “development permit,” the error is a procedural error, and warrants remand only if the petitioner establishes that the procedural error prejudiced

the petitioner's substantial rights. Where the vacation procedures the county followed provided for a public hearing at which the petitioner attended and presented evidence, the petitioner has not established that remand is warranted to follow a different procedure that would simply duplicate the hearing that the petitioner has already received. *Neighbors for Smart Growth v. Washington County*, 76 Or LUBA 319 (2017).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A city is obligated to allow a party to submit new evidence if (1) a party reasonably relies on its notice of hearing to believe that he or she is entitled to submit new evidence at that hearing, and (2) denying the party the right to submit new evidence could prejudice that party's substantial rights. However, where the notice of hearing is not clear that testimony before the city commission may include *new* evidence, the notice references a code requirement that the city commission will be limited to the planning commission evidentiary record, and more than one planning staff report made it clear that the city commission consideration would be limited to the planning commission's evidentiary record, the city commission does not err by rejecting new evidence that was not presented to the planning commission. *Nicita v. City of Oregon City*, 75 Or LUBA 38 (2017).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where LUBA sustains an assignment of error that a city councilor failed to disclose *ex parte* communications, but the city councilor is no longer on the city council, and the decision must be remanded for other reasons which will require a new decision adopted by a new city council, LUBA will decline to expand the scope of remand to require the former councilor to disclose the substance of the *ex parte* communications. *J4J Misc PAC v. City of Jefferson*, 75 Or LUBA 120 (2017).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Even if a local government errs in failing to place a letter from the applicant to the city attorney into the public record of the application, the procedural error does not prejudice the petitioner's substantial right or provide a basis for remand under ORS 197.835(9)(a)(B), where the letter was never placed in front of or relied upon by the final decision maker, and the letter includes no arguments or evidence intended to demonstrate compliance with approval criteria. *J4J Misc PAC v. City of Jefferson*, 75 Or LUBA 120 (2017).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A city may err in introducing a copy of the application into the record after the close of the evidentiary record before the city council, the final decision maker. However, the procedural error does not provide a basis for remand under ORS 197.835(9)(a)(B) where the petitioner does not demonstrate that the procedural error played a role in the final decision, or otherwise prejudiced the petitioner's substantial rights. *J4J Misc PAC v. City of Jefferson*, 75 Or LUBA 120 (2017).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. While it might constitute procedural error for a local government to accept new evidence late in the proceedings without providing other parties a reasonable opportunity to respond to that new evidence, no error occurs where the alleged new evidence was introduced early in the final hearing, and the petitioner had an opportunity to respond to that evidence during the hearing. *J4J Misc PAC v. City of Jefferson*, 75 Or LUBA 120 (2017).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Under ORS 197.763(6)(b) or (c), where a party requests in writing the opportunity to respond to new evidence submitted at a continued hearing or during an open record period, any such opportunity is limited to responses to new evidence submitted during the continued hearing or the first open record period. A hearings officer is not compelled by ORS 197.763(6)(b) or (c) to allow a party to submit, during a second open record period, responses to evidence submitted during the initial evidentiary hearing. *Landwatch Lane County v. Lane County*, 75 Or LUBA 302 (2017).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A hearings officer does not violate “due process” or commit procedural error in (1) rejecting new evidence from opponents at a time in the proceedings when the opponents had no right to submit any evidence or responses at all, but (2) accepting new evidence from the applicant in the applicant’s final evidentiary submittal that arguably exceeded the scope of permissible responsive evidence, and providing opponents an opportunity to respond to that new evidence, given the different circumstances governing the two evidentiary submissions. *Landwatch Lane County v. Lane County*, 75 Or LUBA 302 (2017).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Testimony that consists of argument by the applicant that takes the position that evidence already in the record supports a determination that the local government’s code requirements are satisfied or can be met through conditions of approval is not new “evidence,” as defined by ORS 197.763(9)(a), and the planning commission does not err in accepting and considering that testimony. *Rockbridge Capital v. City of Eugene*, 75 Or LUBA 364 (2017).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A planning commission staff report that summarized past interpretations of an applicable local code provision is not new “evidence,” as defined by ORS 197.763(9)(a), but rather something closer to citation to authority. Even if some of the challenged statements qualify as “facts, documents, data or other information[.]” pursuant to ORS 197.763(9)(a), a procedural error has not occurred where planning staff appears to have offered them to demonstrate the city does not have authority to apply the code provision to the application, and not to demonstrate compliance or noncompliance with the standards applicable to the application. *Rockbridge Capital v. City of Eugene*, 75 Or LUBA 364 (2017).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a hearings officer denies an application on multiple grounds, it may be prudent and appropriate for governing body, when affirming one basis for denial, to address all other bases for denial. However, absent authority that requires the governing body to address all issues raised on local appeal, or to address and resolve all bases for denial, the governing body commits no error in failing to address all bases for denial identified in the hearings officer’s decision. *Kine v. Deschutes County*, 75 Or LUBA 407 (2017).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. While ORS 215.422(4) exempts communication between staff and decision-makers from the scope of *ex parte* contacts that must be disclosed under that statute, nonetheless, a county can commit

procedural error if a staff communication to a decision-maker includes new evidence outside the record that is relied upon to approve or deny the application. However, a petitioner must offer more than speculation that staff communications with a local decision-maker included new evidence outside the record to establish procedural error requiring remand. *Kine v. Deschutes County*, 75 Or LUBA 419 (2017).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where the city code requires a “Type III” procedure for a land division that includes four or more lots, but defines “lots” to exclude “tracts,” the city correctly rejects arguments that a division that creates three lots and two open space tracts must be processed under the “Type III” procedure. *Frewing v. City of Portland*, 74 Or LUBA 59 (2016).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. LUBA will reject arguments that a hearings officer committed procedural error in not returning a subdivision application to the neighborhood association for additional review based on minor changes that staff requested to the subdivision plat, where the petitioner identifies nothing in the city code that requires additional review by the neighborhood association when the subdivision plat is amended during the proceedings before the hearings officer. *Frewing v. City of Portland*, 74 Or LUBA 59 (2016).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where the Metro Code requires that a city give Metro notice 35 days before the first hearing on a comprehensive plan or land use regulation amendment, and a city fails to do so, but that hearing was continued twice and Metro was given notice more than 35 days before the continued hearing, any error was not prejudicial. *Nicita v. City of Oregon City*, 74 Or LUBA 176 (2016).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a local government arguably erred by refusing to accept certain evidence, but the local government also takes the position that the evidence is irrelevant, and a petitioner at LUBA assigns error only to the local government’s refusal to accept the evidence without also challenging the local government’s finding that the evidence is irrelevant, any error the county may have made in refusing to accept the evidence is harmless. *Wood v. Crook County*, 74 Or LUBA 278 (2016).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A city’s notices of a remand hearing that do not specifically reference one of many issues to be addressed during the hearing do not amount to procedural error, particularly where petitioners allege prejudice to the substantial rights of “the public” and not to “the petitioner,” which ORS 197.835(9)(a)(B) requires petitioners to establish. *Graser-Lindsey v. City of Oregon City*, 74 Or LUBA 488 (2016).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A city’s notices of a remand hearing that do not specifically reference one of many issues to be addressed during the hearing do not amount to procedural error, particularly where petitioners allege prejudice to the substantial rights of “the public” and not to “the petitioner,” which ORS 197.835(9)(a)(B) requires petitioners to establish. *Graser-Lindsey v. City of Oregon City*, 74 Or LUBA 488 (2016).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Arguments that a local government incorrectly refused to accept documents for the record and that the local government was not sufficiently clear about which documents it was refusing to accept for the record are properly presented as assignments of error in a petition for review, and are not a basis for a record objection. *Nicita v. City of Oregon City*, 74 Or LUBA 633 (2016).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A hearings officer's error in identifying 1984 instead of 1962 as the date a composting operation became nonconforming did not prejudice the applicant's substantial rights to present evidence regarding the lawful existence of the use prior to the date the use became nonconforming. Any remand to correct the erroneous citation to 1984 would focus on the correct date of nonconformity, 1962, and the applicant had a full opportunity to present evidence that the operation lawfully existed in 1962. *Grabhorn v. Washington County*, 73 Or LUBA 27 (2016).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Under ORS 197.763(6)(a) through (c), prior to the conclusion of the initial evidentiary hearing any party may request an opportunity to present additional evidence. In that event, the hearing body must either continue the hearing or leave the record open to receive the additional evidence, and failure to do so is a procedural error. However, where the party making the request appeals and is given a de novo hearing before the local appellate body at which it is allowed to submit additional evidence, the hearings body's error did not result in prejudice to the party's substantial rights and therefore provides no basis for LUBA to remand. *Pinnacle Alliance Group, LLC v. City of Sisters*, 73 Or LUBA 169 (2016).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. LUBA's conclusion that a planning commission's procedural error in failing to grant the continuance or open record period dictated by ORS 197.763(6)(a) through (c) provides no basis for reversal or remand, where the city council took corrective action to avoid prejudice to petitioner's substantial rights, does not improperly insert missing text into a development code that duplicates ORS 197.763(6)(a) through (c). *Pinnacle Alliance Group, LLC v. City of Sisters*, 73 Or LUBA 169 (2016).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. LUBA will deny an assignment of error that the local government committed a procedural error in failing to provide material submitted after the record closed to the final decision maker, where nothing in the local code or any other statute or rule requires the local government to provide to the final decision maker a document that was submitted after the evidentiary record closed. *Trautman v. City of Eugene*, 73 Or LUBA 209 (2016).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Parties opposing an application for a permit do not have the right to surrebuttal of rebuttal evidence submitted by an applicant during the rebuttal period. *Trautman v. City of Eugene*, 73 Or LUBA 209 (2016).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. An attempt by one petitioner to incorporate procedural assignments of error that are presented in a different petition for review would not result in remandable error unless the procedural error prejudiced the substantial rights of the petitioner who filed the petition for review that is attempting incorporation, because a petitioner’s assertion of prejudice to another person’s substantial rights does not provide a basis for remand. *Trautman v. City of Eugene*, 73 Or LUBA 209 (2016).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A hearings officer commits a procedural error that prejudices a party’s substantial rights to a full and fair hearing when he fails to consider, during proceedings on remand from LUBA, relevant evidence that was a part of the record of the previous decision because it was not cited in the manner that was preferred by the hearings officer, where that preference was not clearly communicated to any parties to the proceeding. *Del Rio Vineyards, LLC v. Jackson County*, 73 Or LUBA 301 (2016).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Without clear instructions during the remand proceedings that a hearings officer would not consider evidence that was not presented by a specific citation method, failing to consider that evidence is a procedural error that prejudices a party’s substantial rights. *Del Rio Vineyards, LLC v. Jackson County*, 73 Or LUBA 301 (2016).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A hearings officer improperly shifts the burden of proof to opponents of a mine to prove that the source of dust that is alleged to have a “significant impact” on adjacent farms emanates from a haul road that provides access to the mine, where the findings do not explain why the evidence that was submitted by the mine operator demonstrates that the source of the dust is not the haul road. *Del Rio Vineyards, LLC v. Jackson County*, 73 Or LUBA 301 (2016).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A hearings officer improperly shifts the burden of proof to opponents of a mine to show that source of dust depicted in photographs of the mining area is from mining activities. It is the applicant’s burden of proof to show that either the source of the dust depicted in the photographs is not from the mining activities, or that it can minimize or has minimized the dust from those activities so that the hearings officer can conclude that the mining activities do not significantly contribute to the cumulative dust problem in the protected viewshed. *Del Rio Vineyards, LLC v. Jackson County*, 73 Or LUBA 301 (2016).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A city commits procedural error that prejudiced the applicants’ substantial rights when it failed to provide the applicants with a reasonable opportunity to respond to new evidence regarding compliance with tree preservation requirements that was submitted one day prior to the city’s denial of the application for failure to demonstrate compliance with those requirements, based on the new evidence. *Sage Equities, LLC v. City of Portland*, 72 Or LUBA 163 (2015).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Remand rather than reversal is the appropriate disposition when LUBA sustains an assignment of error to

correct the city's procedural error in failing to provide petitioners with an opportunity to propose conditions in response to new evidence. *Sage Equities, LLC v. City of Portland*, 72 Or LUBA 163 (2015).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A mistaken reference to prior review and decision by the city's design review board, when in fact the city's planning commission actually conducted the prior review, is not reversible procedural error within the meaning of ORS 197.835(9)(a)(B), where the petitioner fails to establish that the mistake in the notice caused the petitioner to fail to prepare for and submit his case to the city council in person, and the evidence in the record demonstrates that previous commitments caused the petitioner to fail to attend the city council hearing in person. *Harrison v. City of Cannon Beach*, 72 Or LUBA 182 (2015).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A party seeking remand based on claims that new evidence was submitted after the close of the evidentiary record must, on appeal to LUBA, adequately identify the new evidence, explain why it constitutes new evidence, and offer some substantial reason to believe that the evidence had some effect on the final decision. Where on appeal to LUBA the petitioners identify statements in expert letters submitted as part of final written argument that the final decision-maker cited and relied upon, that burden is met. *Rogue Advocates v. Josephine County*, 72 Or LUBA 275 (2015).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where planning staff enter a letter including new evidence into the record just prior to the governing board entering into deliberations, the possibility that the petitioner might have raised a "point of order" objecting to the letter does not demonstrate that the petitioner had a reasonable opportunity to object to the procedural error, but failed to, because at that point in the proceeding there was no formal opportunity for participants to speak, present testimony or raise objections. *Rogue Advocates v. Josephine County*, 72 Or LUBA 275 (2015).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A petitioner adequately demonstrates that the final decision-makers relied upon the contents of a letter from a natural gas company regarding safety issues that was improperly received after the close of the evidentiary record, notwithstanding that the findings do not cite or expressly rely on the letter, where the minutes of the proceeding indicate that the decision-makers discussed the letter and appeared to rely on it to conclude that there were no natural gas safety issues. *Rogue Advocates v. Josephine County*, 72 Or LUBA 275 (2015).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A county's failure to give written notice to a party is not rendered harmless error simply because the governing body is given discretion under the code not to allow that party to participate at the hearing. *ODFW v. Crook County*, 72 Or LUBA 316 (2015).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a party would have had at least 10 days to prepare for a hearing, giving that party the right to share 30 minutes with two other persons to present evidence at the end of the hearing is not sufficient to avoid prejudice to the party's substantial rights. *ODFW v. Crook County*, 72 Or LUBA 316 (2015).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Although it is not a statutory requirement, LUBA requires that a party who wishes to assign procedural error at LUBA must have entered an objection to the procedural error before the local government, if the party was given an opportunity to object. *ODFW v. Crook County*, 72 Or LUBA 316 (2015).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Remand would almost certainly be required if a party who was entitled to written notice of a hearing was not given written notice and did not attend the hearing. But where that party learns of the hearing, attends the hearing, and was given an opportunity to object to the county's failure to give the required written notice of hearing and failed to object, that party may not assert the procedural error as a basis for remand at LUBA. *ODFW v. Crook County*, 72 Or LUBA 316 (2015).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where petitioner was not given required written notice of hearing but learned of the hearing and appeared at the hearing and participated, he may not assign error to the failure to give notice where he had an opportunity to object to the notice failure and did not do so. That failure to object constitutes a waiver of the issue under ORS 197.763(1) and a failure preserve the right to assign procedural error. *Pennock v. City of Bandon*, 72 Or LUBA 379 (2015).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. After determining that a proposal to remove 500,000 cubic yards of rock constituted mining and that mining was not listed as an allowable use in the applicable zoning district, a city does not commit reversible or remandable error by then proceeding to consider whether the proposal could be allowed under development code standards that allow approval of unlisted uses. *S. St. Helens LLC v. City of St. Helens*, 71 Or LUBA 30 (2015).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Under ORS 197.835(9)(a)(B), LUBA may reverse or remand for procedural error only if the petitioner demonstrates that the error prejudiced the substantial rights of the petitioner in the appeal before LUBA rather than the substantial rights of a different petitioner in a separate appeal before LUBA that is consolidated with petitioner's appeal. *Mackenzie v. City of Portland*, 71 Or LUBA 155 (2015).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A petitioner fails to establish the requisite prejudice to her substantial rights necessary to sustain a procedural assignment of error regarding the way the city processes her appeal when she appeals a city administrator's decision, the city grants her an appeal hearing, and she presents evidence to support her appeal at the appeal hearing. *Smith v. City of Gearhart*, 71 Or LUBA 184 (2015).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A city's failure to provide a party who is entitled to notice under the city's code with notice of (1) a hearings officer's decision and (2) an appeal hearing on another party's appeal of the hearings officer's decision prejudices the party's right to participate in the planning commission appeal hearing and remand is required. *Oakleigh-McClure Neighbors v. City of Eugene*, 71 Or LUBA 317 (2015).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A hearings officer’s decision to recognize an existing structure as a nonconforming structure and to approve a new school use of that structure as an alteration of a nonconforming use, where there was no prior notice that the local government’s nonconforming use regulations would be applied, constitutes a procedural error that prejudiced petitioner’s substantial rights. *Kaimanu v. Washington County*, 70 Or LUBA 217 (2014).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a county code requires that the application be deemed denied on a tie vote, unless the planning commission members present at the hearing vote to reschedule the deliberation, but the planning commission does not vote to reschedule the deliberation until a subsequent hearing which does not include all of the same members present at the initial hearing, the planning commission may have committed procedural error. However, absent code language to the contrary, that procedural error does not deprive the planning commission of jurisdiction or authority to conduct a second vote on the application. *McLaughlin v. Douglas County*, 70 Or LUBA 314 (2014).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. If a planning commission’s vote to reschedule deliberations and conduct a new vote after a tie vote that would otherwise result in denial constitutes procedural error, that error is a basis for remand under ORS 197.835(9)(a)(B) only if the error prejudices the substantial rights of the petitioner. The substantial rights referenced in ORS 197.835(9)(a)(B) include an adequate opportunity to prepare and submit evidence, and a full and fair hearing, but do not include a right to a specific outcome. *McLaughlin v. Douglas County*, 70 Or LUBA 314 (2014).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. The remedy for correcting a planning commission error in accepting new evidence in an on the record appeal is not to remand the decision to allow an evidentiary free for all in the form of new rebuttal evidence to the improperly accepted evidence, but to remand the decision for the planning commission to make its decision without relying on *any* new evidence. *SE Neighbors Neighborhood Assoc. v. City of Eugene*, 68 Or LUBA 51 (2013).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. City council statements that a proposed plan and zoning map amendment to allow higher density would be “a partial answer to global warming” and generate “affordable housing” and expressions of confidence that a good outcome could be negotiated between opponents and the applicant in design review provide no basis for reversal or remand even though they may have no bearing on whether applicable approval criteria are satisfied. Generally LUBA review is limited to the final, written decision and does not extend to comments that may be made during the proceeding that lead to that final written decision. *Lowery v. City of Portland*, 68 Or LUBA 339 (2013).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Failure of a city council to vote on a valid challenge to the impartiality of a city council member, as required by city code, prejudices the substantial rights of the challenger, regardless of whether the vote would result in the disqualification of the city council member or whether the member’s

alleged bias influenced other decision makers. *STOP Tigard Oswego Project, LLC v. City of West Linn*, 68 Or LUBA 360 (2013).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a local government accepts opponent evidence that goes beyond the stated scope of a seven-day open record period, but grants the applicant final argument and evidentiary rebuttal, the applicant's substantial rights are not prejudiced and the local government's error in accepting the opponent evidence does not provide a basis for remand. *Warren v. Josephine County*, 67 Or LUBA 74 (2013).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. 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).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a quasi-judicial land use decision maker fails to disclose any *ex parte* contacts, a petitioner does not waive its right to assign error to that failure at LUBA by failing to object below to the failure to disclose *ex parte* contacts. *Wal-Mart Stores, Inc. v. City of Hood River*, 67 Or LUBA 332 (2013).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Failure to make a staff report available during the entire minimum period required by ORS 197.763(4)(b) is not a basis for remand, where petitioners had the opportunity during the subsequent hearing to adequately respond to any issues raised or evidence presented in the staff report. *Poe v. City of Warrenton*, 66 Or LUBA 108 (2012).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. The fact that a city believed it was making a decision on the last day allowed by the ORS 227.181 for a decision after remand does not absolve the city from following the procedures applicable to quasi-judicial hearings, including giving all parties the opportunity to respond to new evidence submitted at the hearing. The city could have rejected the new evidence and avoided the procedural conundrum that it apparently believed it faced or could have left the record open to respond to the new evidence under ORS 197.763(4)(b). *Poe v. City of Warrenton*, 66 Or LUBA 108 (2012).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Parties to a land use proceeding have the right to review and respond to substantive changes in the application that occur during the proceedings. If such a change occurs after the close of the record or hearing, the local government may be required to re-open the record to allow other parties a reasonable opportunity to submit responsive testimony and evidence. Failure to do so can be procedural error and a basis for remand, if the petitioners demonstrate the error prejudiced their substantial rights. *Conte v. City of Eugene*, 66 Or LUBA 334 (2012).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Remand is warranted, where a city's procedural error in rejecting the petitioner's request to submit evidence

to respond to a substantive change in the application after the close of the record prejudiced the petitioner's substantial rights to respond to the changed application. *Conte v. City of Eugene*, 66 Or LUBA 334 (2012).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. ORS 197.763 sets out the minimum procedures the county is required to follow in the conduct of quasi-judicial land use hearings under ORS Chapter 215, and ORS 197.763 does not require that the county provide an applicant with prior copies or notice of the evidence that the county submits at the initial evidentiary hearing on a permit application. *Emmert v. Clackamas County*, 65 Or LUBA 1 (2012).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where *ex parte* contacts were disclosed and a petitioner was given the opportunity to object to the adequacy of the disclosure but failed to do so, LUBA will deny an assignment of error that argues that the disclosures were inadequate to explain the substance of the contacts. *Housing Authority of Jackson County v. City of Medford*, 65 Or LUBA 295 (2012).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. The failure by a member of the decision making body to disclose *ex parte* contacts that occurred after the hearing at which the decision making body initially voted to deny an application and before the next meeting at which the decision making body adopted the order denying the application violates ORS 227.180(3). *Housing Authority of Jackson County v. City of Medford*, 65 Or LUBA 295 (2012).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. The remedy for violation of ORS 227.180 is not to require an entire rehearing on an application. An adequate remedy is a remand to the city that allows interested persons the opportunity to prepare and present evidence and argument in response to the substance of the *ex parte* contact. *Housing Authority of Jackson County v. City of Medford*, 65 Or LUBA 295 (2012).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A hearings officer's existing contractual relationship as an independent part time hearings officer for a local government who is an applicant for a permit from a different jurisdiction, and his participation as an independent hearings officer for the decision-making jurisdiction does not create an appearance that he was biased in the proceedings on the applications. *Newell v. Clackamas County*, 65 Or LUBA 384 (2012).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. LUBA will not infer bias based on an argument that a hearings officer's decision did not modify any conditions of approval that the county's planning staff suggested or add any additional conditions. *Newell v. Clackamas County*, 65 Or LUBA 384 (2012).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where local law does not require adherence to the notice and hearing or notice and local appeal procedures that apply to statutory permits, a local government does not err by adhering to those statutory notice and hearing or notice and local appeal procedures when it discovers that the decision it is

being asked to adopt may qualify as a statutory permit. *Bard v. Lane County*, 63 Or LUBA 1 (2011).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where the planning commission makes an oral decision on an application but fails to reduce that oral decision to writing as required by the local code, and petitioner appeals the planning commission’s oral decision to the city council, the planning commission’s failure to reduce its oral decision to writing is not error that prejudices the petitioner’s substantial rights where the city council holds a de novo evidentiary hearing on the application at which petitioner presented evidence and testimony regarding the application. *Poe v. City of Warrenton*, 63 Or LUBA 20 (2011).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Whether a criterion that was not listed in the notice of hearing is an “applicable” criterion or not, there is no procedural error that would warrant reversal or remand where petitioner were given an opportunity to present argument on the criterion. *Siebert v. Crook County*, 63 Or LUBA 379 (2011).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. 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).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. 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).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. The procedure a city is bound to follow in its land use public hearings is dictated in part by the notice of hearing that it gives. Where the notice of hearing represents that written evidence may be submitted for the first time at the hearing and makes no mention of the city council’s general rules and guidelines that state written evidence may not be considered if not submitted at least 10 days before the public hearing, it is error for the city to rely on the general rules and guidelines to refuse to accept written testimony that is submitted for the first time at the public hearing. *Friends of Yamhill County v. City of Newberg*, 62 Or LUBA 5 (2010).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A city’s erroneous refusal to accept a two-page letter at a public hearing results in no prejudice and provides

no basis for reversal or remand where the author of the letter was given sufficient time to read the letter into the record. A city's erroneous refusal to accept a 10-page letter at a public hearing results in prejudice and provides a basis for reversal or remand, where the author was given only 10 minutes to testify orally and when the 10 minutes expired was told to "wrap it up" before the author had time to read the entire letter. *Friends of Yamhill County v. City of Newberg*, 62 Or LUBA 5 (2010).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors.

Limiting a party to 10 minutes for oral testimony in a quasi-judicial land use hearing before a design review board, while allowing unlimited written testimony, and limiting an appeal of the design review board to the city council to an on-the-record review does not violate the party's right to due process. *Reeves v. City of Wilsonville*, 62 Or LUBA 142 (2010).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A city's failure to provide adequate notice that it had recharacterized the application from an application to modify an existing permit to an application for a new permit might constitute procedural error, but that error does not prejudice the petitioner's substantial rights, where the recharacterization was in response to petitioner's arguments, the applicable criteria are the same whether it is a modification or new application, and petitioner had ample opportunity to submit evidence and argument after it became clear that the city was treating the application as one for a new permit. *Brodersen v. City of Ashland*, 62 Or LUBA 329 (2010).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. It is harmless error to rely on new evidence that is accepted after the close of the record regarding water quality impacts of a proposed alteration to a nonconforming use, where the hearings officer also denied the proposed alteration based on fire safety impacts, and the petitioner/applicant does not challenge that basis for denial. *Campers Cove Resort v. Jackson County*, 61 Or LUBA 62 (2010).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A county's alleged failure to process a permit application under "Type II" procedures, which provide for a *de novo* hearing on appeal of an administrative decision, does not provide a basis for remand, where the county initially processed the application under "Type I" procedures that provide for a hearing limited to the issues raised in the appeal petition, but in fact the county provided a *de novo* hearing on the appeal not limited to the issues raised in the appeal petition. *Jensen Properties v. Washington County*, 61 Or LUBA 155 (2010).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A county's failure to include in its decision notice of a right to appeal to LUBA, as required by ORS 215.416(13), results in no prejudice to petitioner and provides no basis for remand, where petitioner files a timely appeal of the decision with LUBA. *Reed v. Jackson County*, 61 Or LUBA 253 (2010).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where the comprehensive plan and land use regulation standards that a county relies on in its decision to deny an application for partition approval were not identified in the notice of hearing, in the planning staff report or in the hearing, the applicant's substantial rights were prejudiced by the

county's error in failing to provide notice of relevant approval standards and remand is required. *MEK Properties, LLC v. Coos County*, 61 Or LUBA 360 (2010).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A local government's failure to inquire whether any hearing participants wish to submit a written request for a continued hearing, as required by its local procedural rules, does not provide a basis for remand, where the petitioner's representative was present at the hearing, had the opportunity to object to the decision-maker's failure to make the inquiry, but failed to object. *Pliska v. Umatilla County*, 61 Or LUBA 429 (2010).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Under *Young v. Crook County*, 224 Or App 1, 197 P3d 48 (2008), in an "as applied" challenge of the appeal fee the county charged petitioners to appeal a planning commission decision that approved a destination resort, petitioners have the burden to establish a *prima facie* case that the appeal fee violates ORS 215.422(1)(c) by exceeding the average cost of such appeals. A county governing body errs by refusing to reopen the record to allow petitioners to supplement the evidentiary record of that local appeal with the planning staff memo that the county relied on in adopting the appeal fee schedule. Petitioners are not required to anticipate that the planning commission decision will be unfavorable and make an anticipatory and potentially unnecessary evidentiary showing regarding the appeal fee before the planning commission. *Eder v. Crook County*, 60 Or LUBA 204 (2009).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Just as a local government errs by refusing to accept relevant evidence, a local government errs if it accepts relevant evidence that is submitted in accordance with local law and then fails to provide that relevant evidence to the local decision maker. *Montgomery v. City of Dunes City*, 60 Or LUBA 274 (2010).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where the applicable process for review of an application requires notice and an opportunity for a hearing, the local government fails to provide such notice and provides no opportunity for a hearing, and those failures prejudice a party's substantial rights, including the right to participate in the decision, those failures constitute a procedural error that provides a basis for remand. *Johnson v. Jackson County*, 59 Or LUBA 94 (2009).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. ORS 197.835(4) allows a petitioner at LUBA to raise issues that were not raised below and that a petitioner would otherwise be precluded from raising under ORS 197.763(1) regarding applicable criteria that were omitted from the notice. A mere allegation that the notice omitted applicable criteria does not, in itself, provide a basis to reverse or remand a decision absent an allegation that the failure to list all applicable criteria in the notice resulted in prejudice to the petitioner's substantial rights. *Knapp v. City of Corvallis*, 59 Or LUBA 285 (2009).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a county board of commissioners adopts a tentative decision approving an application, but requests that the opponents provide comments on a proposed condition of approval, it is not procedural

error for county counsel to discuss the opponents' comments with the commissioners rather than place the written comments in front of the commissioners for their direct review, where the motion that led to tentative approval did not specify how the commissioners wished to receive the comments. *Western Land & Cattle, Inc. v. Umatilla County*, 58 Or LUBA 295 (2009).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Procedural errors a city may have committed might provide a basis for reversal or remand, if there is a timely appeal of a land use decision. However, any such procedural errors do not have the legal effect of preventing a land use decision from becoming final or delaying the date of finality. *Reeves v. City of Wilsonville*, 58 Or LUBA 545 (2009).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. ORS 197.830(5) gives additional appeal rights to parties where a local government makes a decision that is different from the proposal described in the notice. That statute does not require notice of a change to an application. *Welch v. Yamhill County*, 56 Or LUBA 166 (2008).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. When local approval criteria are amended after an application is filed and the local ordinance requires that the notice state the applicable criteria, it is not a procedural error for the local government to list the older approval criteria that are applicable to the application rather than the amended approval criteria that are not applicable. *Painter v. City of Redmond*, 56 Or LUBA 264 (2008).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. There is no prejudice to a party's substantial rights when a notice of a hearing does not list the applicable criteria if the staff report that was available before the hearing lists the applicable criteria, the party was aware of the applicable criteria, and the party had an adequate opportunity to address the applicable criteria. *Painter v. City of Redmond*, 56 Or LUBA 264 (2008).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Opponents of land use approval have no legal right to comment on the findings that a city adopts to support its decision to grant land use approval, and opponents similarly have no legal right to comment on amended findings that a city adopts after it withdraws a decision following an appeal to LUBA under 197.830(13)(b). *Loprinzi's Gym v. City of Portland*, 56 Or LUBA 358 (2008).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Petitioners' arguments to LUBA that a local government failed to give notice of its annexation decision within the deadlines specified by statute and by a regional government provide no basis for reversal or remand, where petitioners raised no issue below concerning the adequacy of the notice and petitioners do not allege that the claimed late notice prejudiced petitioners' substantial rights. *Graser-Lindsey v. City of Oregon City*, 56 Or LUBA 504 (2008).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. 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).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Even if a local government’s decision to hold an *ad hoc* hearing before an application for permit approval was filed constituted procedural error, that error would not provide a basis for reversal or remand where petitioner was allowed to participate in the *ad hoc* hearing and made no attempt to show how that *ad hoc* hearing prejudiced his substantial rights. *Trinkaus v. City of Portland*, 56 Or LUBA 771 (2008).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. The substantial rights that parties in a land use proceeding have under ORS 197.835(9)(a)(B) are the rights to prepare and submit their case and to a full and fair hearing. Those rights are not preserved by allowing another party to testify and assuming that other parties would have nothing to add to that testimony. *Siporen v. City of Medford*, 55 Or LUBA 29 (2007).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a local government erroneously decides that certain parties may not participate regarding certain issues in public hearings following a LUBA remand, but then nevertheless allows those parties to participate fully, the initial error would likely not result in prejudice to the parties’ substantial rights. However, where the record in fact supports a conclusion that the parties’ testimony on the disputed issues was not considered, the parties’ substantial rights were prejudiced. *Siporen v. City of Medford*, 55 Or LUBA 29 (2007).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a hearings officer’s authority to issue a declaratory ruling has not been properly invoked, the hearings officer has no authority to issue the ruling, and the erroneous exercise of that authority is not accurately characterized as a mere procedural error that may be overlooked absent a demonstration of prejudice to the petitioner’s substantial rights. *Cushman v. City of Bend*, 55 Or LUBA 234 (2007).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where evidence was introduced at a city council hearing by the mayor and a city councilor, but that evidence was not directed at any approval criterion and the city did not deny the application on any grounds that were based on or related to the improperly generated evidence, their actions did not demonstrate that they were incapable of making a decision based on the evidence before them. *Taylor v. City of Canyonville*, 55 Or LUBA 658 (2008).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where the purpose of a zoning code requirement that a permit application be initiated in one of six specified ways is to ensure that the current property owner or purchaser of the affected property knows about and agrees with the application, and the record establishes that the current property owner agrees with the application, the county’s procedural error in allowing the permit application to be initiated in other than one of the six ways specified in the zoning code could not prejudice a permit opponent’s rights and provides no basis for reversal or remand. *Womble v. Wasco County*, 54 Or LUBA 68 (2007).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A county’s procedural error in providing a permit opponent notice of a planning commission decision

on the permit rather than a copy of the permit decision itself could result in prejudice to the opponent's substantial rights, where it prevented the opponent from being able to file a timely appeal to the board of county commissioners. However, where the opponent was nevertheless able to file a timely local appeal, there was no prejudice to the opponent's substantial rights, and the county's failure provides no basis for reversal or remand at LUBA. *Womble v. Wasco County*, 54 Or LUBA 68 (2007).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A city's argument that all of petitioner's assignments of error should be denied for failure to argue that the alleged errors prejudiced petitioner's substantial rights will be rejected where non-procedural errors need not prejudice a petitioner's substantial rights and petitioner's assignments of error allege substantive rather than procedural errors. *Caster v. City of Silverton*, 54 Or LUBA 441 (2007).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. That a conditional use permit application is deemed complete under ORS 227.178 does not necessarily mean that the application is supported by substantial evidence that demonstrates compliance with all applicable approval criteria. *Caster v. City of Silverton*, 54 Or LUBA 441 (2007).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A local government errs in accepting new information into the record after the public hearing on a matter is closed without allowing other parties an adequate opportunity to respond to the new evidence. *Gunzel v. City of Silverton*, 53 Or LUBA 174 (2006).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A county does not err by interpreting a development code compatibility standard for the first time in its written decision, where the interpretation was not beyond the range of interpretations that could reasonably have been anticipated during the evidentiary phase of the county's proceedings, and petitioners do not demonstrate (1) that there is specific evidence that they could present that differs in substance from the evidence that they already submitted or (2) that the new evidence is directly responsive to the county's interpretation. *Gutoski v. Lane County*, 155 Or App 369, 963 P2d 145 (1998). *Clark v. Coos County*, 53 Or LUBA 325 (2007).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Although local governments frequently attempt to advise permit applicants regarding the scope and nature of evidence that will be required to demonstrate that a proposal complies with applicable land use approval criteria, it is not the local government's burden to accurately predict in advance all of the evidence that may ultimately be needed to obtain approval of a land use application. *Gillette v. Lane County*, 52 Or LUBA 1 (2006).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A hearings officer's refusal to leave the record open to allow the petitioners to respond to alleged "new evidence" that was submitted during the final evidentiary hearing is not a basis to reverse or remand the decision, where petitioners fail to establish that in fact "new evidence" was submitted or that there is anything to rebut under the hearings officer's unchallenged interpretation of the applicable code provision. *Angius v. Washington County*, 52 Or LUBA 222 (2006).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a hearings officer reopens the evidentiary record to allow parties to present arguments and evidence concerning whether a different adjustment/variance criterion than had been applied before should be applied to an application for an adjustment/variance, and petitioners do not argue that the hearings officer’s actions failed to provide petitioners with an adequate opportunity to present their arguments on the merits concerning which adjustment/variance criterion should apply, petitioners fail to demonstrate that the hearings officer’s action resulted in prejudice to their substantial rights or that any substantive error on the hearings officer’s part was not harmless error. *Bickford v. City of Tigard*, 52 Or LUBA 301 (2006).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Given the Department of Land Conservation and Development Commission’s (DLCD’s) critical role in the plan amendment review process, complete failure to provide notice of post-acknowledgment plan amendments to DLCD may be a “substantive” error that obviates the requirement to show that the procedural error prejudiced the petitioner’s substantial rights. However, it does not follow that failure to provide other types of notice to other parties in other contexts is also a “substantive” error obviating the ORS 197.835(9) requirement that the petitioner show prejudice. *Bollam v. Clackamas County*, 52 Or LUBA 738 (2006).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. In making limited land use decisions, it is error for local governments to consider evidence submitted after the close of the comment period. By requesting and accepting a mini traffic study from the applicant that the decision maker relied upon after the close of the comment period, without giving petitioners an opportunity to review and respond to the study, the local government violates petitioners’ substantial rights. *Delk v. City of Salem*, 51 Or LUBA 123 (2006).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. In order to prevail on a claim of procedural error, a petitioner must do more than allege his substantial rights were prejudiced; he must also identify the procedure that was allegedly violated. *Stoloff v. City of Portland*, 51 Or LUBA 560 (2006).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where an applicant submits a traffic impact analysis on the day the last public hearing closes, and an opponent thereafter asks the city planning department to provide him with a copy of all the applicant’s traffic materials within the 7-day period the record remained open for opponents to submit additional evidence, the city’s failure to provide the opponent with a copy of the traffic impact analysis is a procedural error that prejudiced the opponents’ substantial rights. *Jaffer v. City of Monmouth*, 51 Or LUBA 633 (2006).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. When new evidence is submitted after the close of the comment period during limited land use proceedings, as with land use decisions, the local government must either (1) reopen the record to allow participants an opportunity to respond to the new evidence or (2) reject the new evidence as untimely. *Wal-Mart Stores, Inc. v. City of Oregon City*, 50 Or LUBA 87 (2005).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Failure to post notice of a hearing as required under the local government’s code is not a basis for reversal or remand, where the petitioner nonetheless knew of the hearing and attended. *Gordon v. Polk County*, 50 Or LUBA 502 (2005).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. The time to reject or accept new evidence that is submitted after the close of the evidentiary record is before the decision maker deliberates and reaches a tentative decision. A local government cannot accept such untimely evidence, reach a tentative decision based on the entire record, and then adopt a final written decision that belatedly rejects or purports not to rely on the evidence. *Ploeg v. Tillamook County*, 50 Or LUBA 608 (2005).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A city’s failure to make a staff report available 15 days prior to a hearing as required by the local code prejudices a petitioner’s substantial rights where the staff report is made available only 7 days before the hearing and the application is particularly complex. *Hammons v. City of Happy Valley*, 49 Or LUBA 38 (2005).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. The failure of a local government to provide LUBA with the entire local record does not in itself require remand. However, where the record is so inadequate that LUBA cannot adequately review the decision, the local government’s failure to provide the whole record may result in remand. *McCulloh v. City of Jacksonville*, 49 Or LUBA 345 (2005).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where LUBA can understand a party’s presentation and arguments, the local government’s failure to provide oversized exhibits for use at oral argument does not prejudice the party’s substantial rights. *McCulloh v. City of Jacksonville*, 49 Or LUBA 345 (2005).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A city may not accept a revised planned unit development plan the day before an appeal without providing the local parties an opportunity to review and respond to the revised plan. *Baker v. City of Garibaldi*, 49 Or LUBA 437 (2005).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Although a city may not take procedural short-cuts that it knows or reasonably should know will prejudice one or more party’s substantial rights and thereby provide a reasonably certain basis for an appeal to and remand by LUBA, ORS 197.835(10)(a)(B) or ORS 227.178 do not prohibit a city from expediting its local review process to meet the 120-day deadline, provided that expedited process does not require one or more parties to sacrifice their substantial right to fully and fairly present their position on the merits of the application. *Wal-Mart Stores, Inc. v. City of Central Point*, 49 Or LUBA 472 (2005).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. The ORS 227.178(1) requirement that a city render a final decision on a permit application within 120 days is not satisfied by a *pro forma* denial. To comply with ORS 227.178(1) and comply with the

ORS 197.835(10)(a)(B) requirement that the city not take action to avoid the requirements of ORS 227.178, the city's decision must be a *real* decision that is made in good faith, in the sense that the decision is supported by findings and is based on an evidentiary record that the city could reasonably believe are adequate to allow that decision to be defended in the event of an appeal to LUBA. *Wal-Mart Stores, Inc. v. City of Central Point*, 49 Or LUBA 472 (2005).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Neither the text of ORS 197.835(10)(a)(B) nor contextual statutes dictate that *any* deviation by a city from its procedures to render a timely final decision within the 120-day deadline imposed by ORS 227.178(1) necessarily constitutes an “action [taken] to avoid the requirements of ORS * * * 227.178,” within the meaning of ORS 197.835(10)(a)(B). *Wal-Mart Stores, Inc. v. City of Central Point*, 49 Or LUBA 472 (2005).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. The actions taken to avoid the requirements of ORS 227.178, which may provide a basis for reversal by LUBA under ORS 197.835(10)(a)(B), are not limited to a city's final action. Actions the city takes before adopting its final decision may also violate the statute. *Wal-Mart Stores, Inc. v. City of Central Point*, 49 Or LUBA 472 (2005).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Petitioners are in no position to fault the city for accepting new evidence during a non-evidentiary hearing, where petitioners were the only persons who testified and were the persons who submitted the new evidence. That the city accepted petitioners' evidence did not convert the hearing into an evidentiary hearing, or require the city to renote the hearing and provide additional opportunities to present evidence. *Patterson v. City of Independence*, 49 Or LUBA 589 (2005).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A petitioner's failure to object to untimely disclosure of a site visit and to request the opportunity to rebut the site visit precludes assigning error to that disclosure, where the disclosure was made 10 days prior to the hearing at which the local government adopted the final decision, and petitioner could have entered an objection at any time during those 10 days or during the final hearing, but did not. *Carrigg v. City of Enterprise*, 48 Or LUBA 328 (2004).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where statutory notice of hearing requirements are not jurisdictional, failure to comply with those statutory requirements is reviewed under ORS 197.835(9)(a)(B), which establishes LUBA's scope of review for procedural errors. *Kneeland v. Douglas County*, 48 Or LUBA 347 (2005).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a notice for the required second hearing on formation of a special district corrects certain errors in the notice of the first hearing, any defects in the first notice are cured. *Kneeland v. Douglas County*, 48 Or LUBA 347 (2005).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where applicable criteria require that the applicant and city identify the intended use and evaluate its impacts, a city errs when, in a combined role as applicant and decision-maker, it substantially

changes a “intended use” of property proposed for rezoning after the close of the evidentiary hearing without providing the petitioner an opportunity to present argument and evidence with respect to the new intended use. *Nielson v. City of Stayton*, 47 Or LUBA 52 (2004).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A citizen participation requirement for appointment of a three-person citizens’ advisory committee when considering major land use regulation amendments is a procedural requirement. A petitioner who wishes to assign error to the local government’s failure to appoint such a committee must have objected to that failure during the proceedings below. *Dobson v. City of Newport*, 47 Or LUBA 267 (2004).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. An ambiguous statement that could be understood to refer to *ex parte* contacts, but could also be understood to refer to contacts that were not *ex parte* contacts might be sufficient to warrant an evidentiary hearing to clarify the meaning of the reference, but is not sufficient to support a conclusion that there were improper undisclosed *ex parte* contacts. *Frewing v. City of Tigard*, 47 Or LUBA 331 (2004).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. LUBA is unable to perform its review function and remand is required where the county rejects, without any explanation, evidence that is arguably relevant to an applicable criterion. *Nez Perce Tribe v. Wallowa County*, 47 Or LUBA 419 (2004).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. ORS 215.422(4), which excludes certain contacts between planning staff and the local decision maker from the definition of *ex parte* contacts, does not authorize a decision maker to rely on evidence provided by planning staff that it specifically refuses to include in the record, after the close of the record, without providing an opportunity for rebuttal. *Nez Perce Tribe v. Wallowa County*, 47 Or LUBA 419 (2004).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Assuming, without deciding, that it is reversible error to combine a unitary legislative proceeding with a geographically and otherwise unrelated site-specific proposal, a city decision that applies a height bonus to a particular property that is within a 535-acre study area subject to a number of legislative plan and land use regulation amendments is not geographically or otherwise unrelated to the legislative proceeding. *NWDA v. City of Portland*, 47 Or LUBA 533 (2004).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Any prejudice to petitioners’ substantial rights that might have resulted from late filing of a staff report and late evidentiary submissions prior to a final hearing was avoided by providing petitioners an opportunity to submit additional evidence and testimony after that hearing. *McCulloh v. City of Jacksonville*, 46 Or LUBA 267 (2004).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. When neither the notice, nor the staff report, nor the local government’s public discussion, nor the decision ever mentions the applicable criteria, a local government commits procedural errors that

prejudice a petitioner's substantial rights. *Naumes Properties, LLC v. City of Central Point*, 46 Or LUBA 304 (2004).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Before the “raise it or waive it” provisions now codified at ORS 197.763(1) and 197.835(3) were adopted, LUBA required that a petitioner who asserts procedural error at LUBA must have raised the procedural error below. While the obligation to object locally to procedural errors overlaps with ORS 197.763(1) and 197.835(3), it exists independently and may require that a petitioner enter an objection after the close of the final evidentiary hearing. *Hayden Island, Ltd. v. City of Portland*, 46 Or LUBA 439 (2004).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. That a committee entertained questions from the public during its deliberations after the close of its final evidentiary hearing does not mean the committee would have allowed a legal challenge to its reliance on a committee rule, or that it would have reconsidered its decision to rely on that rule to deny a local appeal. A petitioner's failure to object to the rule at that stage does not mean the issue is waived in a subsequent LUBA appeal. *Hayden Island, Ltd. v. City of Portland*, 46 Or LUBA 439 (2004).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A city does not err in approving a subdivision applicant's tree protection plan with a condition that the applicant provide the city arborist with construction documents so that the arborist can determine whether additional trees must be removed. While that condition could be viewed as an improper deferral of a finding concerning the adequacy of the tree protection plan, it does not do so where the condition does not specify that the tree protection plan may be revised without additional public hearings and the condition simply creates a more structured approach for computing the mitigation that would be required in any event without the condition. *Miller v. City of Tigard*, 46 Or LUBA 536 (2004).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a party is present at a rezoning hearing where a county commissioner discloses that he and a county planner made a site visit to the subject property, and that party testifies after the disclosure without objecting to the site visit, the planner's attendance at the site visit or the adequacy of the county commissioner's disclosure of the site visit, that party waives his right to assign error based on the site visit in an appeal at LUBA. *Mattson v. Clackamas County*, 46 Or LUBA 552 (2004).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A petitioner's argument that a city's erroneous notice regarding the date it would reconsider a decision following remand from LUBA provides no basis for reversal or remand, where petitioner's entire argument is based on an erroneous assumption that an evidentiary hearing was required on remand and that the notice the city gave did not comply with ORS 197.763(2). *McFall v. City of Sherwood*, 46 Or LUBA 735 (2004).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A local government does not err in failing to provide an evidentiary hearing on remand to accept updated information regarding the current status of petitioner's property, where LUBA's remand did not

require the local government to conduct additional evidentiary hearings, and petitioner fails to identify any authority that requires the local government to conduct an additional evidentiary hearing to accept updated information. *Manning v. Marion County*, 45 Or LUBA 1 (2003).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A city commits no error by processing a lot line adjustment as a quasi-judicial land use matter before the planning commission rather than as a ministerial matter before the planning department, where the lot line adjustment decision requires that the city exercise significant legal and factual judgment. *Smith v. City of St. Paul*, 45 Or LUBA 281 (2003).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Petitioners do not have a right to rebut recitations of fact in adopted findings, and such findings do not constitute “evidence,” although if adopted findings of fact that are not supported by the record, that lack of evidentiary support may be a basis for reversal or remand under ORS 197.835(9)(a)(C). *Bruce Packing Company v. City of Silverton*, 45 Or LUBA 334 (2003).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. An assignment of error that alleges that petitioners’ substantial rights were prejudiced by a city’s failure to provide notice of an applicable approval criterion provides no basis for reversal or remand, where (1) the record shows that the criterion was identified at a public hearing as being applicable; (2) petitioners had an opportunity to respond to the assertion that the criterion was applicable; and (3) petitioners’ attorney responded to the assertion by contending that the criterion was not applicable. *Martin v. City of Dunes City*, 45 Or LUBA 458 (2003).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. If a county rejects evidence that was submitted after the close of the record, and does not consider that evidence in making its decision, the county’s refusal to permit rebuttal of that late submittal does not provide a basis for reversal or remand. *Sheppard v. Clackamas County*, 45 Or LUBA 507 (2003).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where it is clear that a decision maker considered evidence that was submitted after the close of the record, and that the decision maker may have relied on that evidence in making its decision, the decision maker errs in refusing to allow rebuttal to that evidence, notwithstanding a statement in the final decision document that the disputed evidence was rejected. *Sheppard v. Clackamas County*, 45 Or LUBA 507 (2003).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Providing only 22 days’ notice of hearing to DLCD of a post-acknowledgment plan amendment, rather than the full 45 days’ notice required by ORS 196.610(1), is not reversible error, where both petitioner and DLCD participated in the proceedings, and there is no attempt to demonstrate that short notice prevented any other person that might rely on the notice from participating in the local government’s proceedings. *Bryant v. Umatilla County*, 45 Or LUBA 653 (2003).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Alleged statements made by a decision maker at a social function that the decision maker would listen to

the evidence and testimony regarding an application for a plan amendment and zone change, but would nevertheless vote to approve the application are not sufficient to establish prejudgment bias where the accuracy of those statements were disputed and the decision maker stated that he had considered the testimony and evidence and was prepared to make a decision based on that testimony and evidence. *Roberts v. Clatsop County*, 44 Or LUBA 178 (2003).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. The absence of required information or analysis in an application is not necessarily viewed as a procedural error, and may be a basis for reversal or remand even without a showing of prejudice to petitioner's substantial rights, where the information or analysis is necessary to determine compliance with approval criteria. *Bauer v. City of Portland*, 44 Or LUBA 210 (2003).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A city commits no error in proceeding with a decision on an application for a subdivision, and does not violate a subdivision opponent's due process rights, where a quiet title action is pending to resolve an ownership dispute between the opponent and the subdivision applicant, but the applicant is the record fee owner of the property. *McFall v. City of Sherwood*, 44 Or LUBA 493 (2003).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A petitioner's substantial rights include the right to a final written decision by the final decision maker on petitioner's local appeal. An allegation that the city council failed to adopt a final written decision on petitioner's appeal is sufficient to allege prejudice to petitioner's substantial rights. *Shaffer v. City of Happy Valley*, 44 Or LUBA 536 (2003).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A petitioner fails to demonstrate that he was entitled to an evidentiary hearing before the local government following a remand from LUBA under *Gutoski v. Lane County*, 155 Or App 369, 963 P2d 145 (1998), where the arguments petitioner sought to present in that evidentiary hearing on remand were legal arguments rather than an expanded evidentiary presentation. *Dimone v. City of Hillsboro*, 44 Or LUBA 698 (2003).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. That certain documents may not have been provided to the planning commission provides no basis for remand, where the planning commission decision was appealed to the city governing body, the governing body adopted the city's final decision and there is no contention that the disputed documents were provided to the city governing body. *Lord v. City of Oregon City*, 43 Or LUBA 361 (2002).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Petitioners fail to establish that they are entitled to a new evidentiary hearing to respond to an interpretation setting an unanticipated evidentiary standard, where petitioners do not describe what additional evidence responsive to the unanticipated interpretation they would produce, or how that evidence differs in substance from evidence already in the record. *Stahl v. Tillamook County*, 43 Or LUBA 518 (2003).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. LUBA will not remand a decision based on an allegation that the decision maker failed to follow the consultation and coordination requirements of OAR 340-252-0060, where the record makes clear that all parties required by the rule to be consulted were aware of and actively participated in the process leading to the challenged decision, and any failure to follow the procedures set out by the rule was attributable to someone other than the decision maker. *Witham Parts and Equipment Co. v. ODOT*, 42 Or LUBA 435 (2002).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. While ORS 197.835(4) operates as a limited defense to a waiver challenge under ORS 197.763(1) and 197.835(3), it does not obviate the requirement that a party given the opportunity to object to a procedural error below must do so in order to seek reversal or remand based on that error. *Confederated Tribes v. City of Coos Bay*, 42 Or LUBA 385 (2002).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Failure to complete a conditional use application on city forms created for that purpose will not result in reversal or remand absent some argument from petitioners that the lack of a formal application prejudiced their substantial rights. *Monogios and Co. v. City of Pendleton*, 42 Or LUBA 291 (2002).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a local government departs from the procedures for continuing a hearing set out in ORS 197.763(6)(a) to (c), the revised procedures must be clearly communicated to all parties and, preferably, reduced to writing. *Hawman v. Umatilla County*, 42 Or LUBA 223 (2002).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where the circumstances under which oral testimony would be allowed at a continued hearing are not clearly defined, and petitioners allege that they were prejudiced by being denied an opportunity to present oral testimony at the continued hearing based on the ambiguity of the procedures, remand is appropriate to ensure that petitioners receive an opportunity to present that oral testimony. *Hawman v. Umatilla County*, 42 Or LUBA 223 (2002).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Decision maker bias in a land use matter must be deduced from the totality of the circumstances. Where a decision maker is a member of a church congregation and the church is an applicant for a land use permit, the decision maker's church membership does not, in itself, require the decision maker's recusal for bias. *Friends of Jacksonville v. City of Jacksonville*, 42 Or LUBA 137 (2002).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a land use decision maker is a member of a church congregation and the church has applied for a land use permit, and the decision maker has expressed concern regarding the impact proposed conditions of approval would have on church operations but nevertheless declares that she is able to render a decision regarding the church's application based on the facts and law before her, that decision maker has not impermissibly prejudged the application. *Friends of Jacksonville v. City of Jacksonville*, 42 Or LUBA 137 (2002).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a land use decision maker is a member of a church congregation and the church has applied for a land use permit, and the decision maker has (1) testified as an individual in favor of the application prior to his election to the decision making body; and (2) stated that he did not believe he had to be objective regarding the application and would support the application “all the way to the Supreme Court,” the decision maker has impermissibly prejudged the church’s application and, absent some need for his participation in order to reach a decision, recusal is required. *Friends of Jacksonville v. City of Jacksonville*, 42 Or LUBA 137 (2002).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A local government’s failure to comply with the notice requirements of OAR 660-018-0040(1) provides DLCD and other parties subject to notice under ORS 197.615 an opportunity to appeal the county’s decision beyond the deadline established in ORS 197.830. It does not provide an independent ground for reversal or remand, in the absence of an argument that the failure to comply with the standard prejudged petitioner’s substantial rights. *Doty v. Coos County*, 42 Or LUBA 103 (2002).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a city provides notice that it will provide a hearing to comment on a proposed expedited annexation if a hearing is requested, and petitioner requested a hearing, the city errs in approving the expedited annexation without providing the requested hearing. *Cape v. City of Beaverton*, 41 Or LUBA 515 (2002).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Notwithstanding a city’s procedural error in failing to provide a hearing on a proposed expedited annexation, petitioner’s substantial rights were not thereby violated where petitioner was nevertheless allowed to appear before the city council and present his comments before the city council approved the expedited annexation. *Cape v. City of Beaverton*, 41 Or LUBA 515 (2002).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A city council’s failure to adopt required findings explaining why it allowed a partial *de novo* appeal hearing, rather than an on-the-record review, provides no basis for reversal or remand where petitioner does not show that the city council’s failure to adopt the required findings prejudged his substantial rights. *Dimone v. City of Hillsboro*, 41 Or LUBA 167 (2001).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. An allegation that a city mischaracterized its decision as a limited land use decision does not itself provide a basis for reversal or remand, absent a further allegation that the city failed to follow the procedures applicable to the decision and that petitioners’ substantial rights were prejudged by that failure. *Crowley v. City of Bandon*, 41 Or LUBA 87 (2001).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Whatever prejudice to petitioners’ substantial rights might have occurred before the initial decision maker, when the city arguably failed to provide petitioners an adequate opportunity to comment before the planning commission on whether a proposed design complied with applicable criteria, was cured by providing petitioners an opportunity to present testimony directed at applicable

criteria in a subsequent appeal to the city council. *Crowley v. City of Bandon*, 41 Or LUBA 87 (2001).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where new evidence is improperly submitted as part of an applicant’s final legal arguments, but that evidence has no bearing on the relevant approval criteria, the error in accepting the new evidence results in no prejudice to other parties’ substantial rights and provides no basis for reversal or remand. *Farrell v. Jackson County*, 41 Or LUBA 1 (2001).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. 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).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where an applicant’s final legal rebuttal under ORS 197.763(6)(e) is not limited to legal arguments and includes factual assertions, but petitioner fails to demonstrate that the factual assertions concerned a legally relevant issue, such factual assertions provide no basis for reversal or remand. *Donnell v. Union County*, 40 Or LUBA 455 (2001).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Even if evidence is improperly accepted by the local government, remand is not appropriate where petitioners fail to demonstrate that the improperly accepted evidence is potentially relevant to an approval criterion. Evidence regarding development of a neighborhood plan, ownership patterns in the neighborhood, and whether a proposed hotel can meet height limitations is not potentially relevant to a criterion that requires a proposed hotel to be consistent with regard to “building size, height, color, material and form” with other structures in the neighborhood. *Terra v. City of Newport*, 40 Or LUBA 286 (2001).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. That petitioner was mailed notice of a hearing only 10 days prior to the hearing is not reversible error. The fact that petitioner was not available to receive the given notice does not demonstrate substantial prejudice. *Hausam v. City of Salem*, 40 Or LUBA 234 (2001).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where petitioner knew or should have known of the county’s procedural error in omitting local code criteria from the notice of hearing, but failed to object to that procedural error and request appropriate relief, the county’s procedural error provides no basis to seek remand of the county’s decision. *Central Klamath County CAT v. Klamath County*, 40 Or LUBA 111 (2001).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Any procedural error by a local government in failing to provide written notice of a proposed annexation decision to persons other than petitioner resulted in no prejudice to petitioner’s

substantial rights, and therefore provides no basis for reversal or remand of the annexation decision, where petitioner learned of the proposal and made a written appearance opposing the proposal. *Cape v. City of Beaverton*, 40 Or LUBA 78 (2001).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Reference to “a portion of Sunset Highway” in a notice of proposed annexation decision is likely insufficient to provide reasonable notice of the decision under applicable code and statutory requirements. However, where a petitioner nevertheless was able to determine the nature and scope of the proposal and submit written opposition to the proposal, the petitioner may not successfully assert possible injury to other persons’ substantial rights as a basis for reversal or remand. *Cape v. City of Beaverton*, 40 Or LUBA 78 (2001).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Petitioner does not demonstrate an actual conflict of interest, as that term is defined in ORS 244.020, on the part of two decision makers who own homes in a PUD where uses allowed on commonly held property are subject to a land use appeal. *Halvorson Mason Corp. v. City of Depoe Bay*, 39 Or LUBA 702 (2001).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A city councilor has prejudged an application and must recuse himself from participating in a decision on the application where the councilor, prior to the time a land use matter came before the city council, actively opposed an application, and sent correspondence to the other city councilors in which he advocated in opposition to the application, stating that the law and evidence point to denial of the application. *Halvorson Mason Corp. v. City of Depoe Bay*, 39 Or LUBA 702 (2001).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. The bias of one decision maker may warrant reversal or remand of a land use decision pursuant to ORS 197.835(9)(a)(B), where participation of that decision maker prevented petitioner from receiving a full and fair hearing, one of petitioner’s substantial rights. *Halvorson Mason Corp. v. City of Depoe Bay*, 39 Or LUBA 702 (2001).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A county’s error in providing notice of a planning commission hearing to property owners within 500 feet of the subject property, rather than to those within 750 feet of the subject property as required by local legislation, is a procedural error and provides no basis for reversal or remand unless petitioner’s substantial rights are violated by the error. Where petitioner received notice of the planning commission hearing and the proper notice was given prior to a subsequent hearing by the board of county commissioners, there was no prejudice to petitioner’s substantial rights. *Donnell v. Union County*, 39 Or LUBA 419 (2001).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Failure to provide proper notice pursuant to ORS 197.763(3) is a procedural error and does not provide a basis for reversal or remand unless the error prejudices a party’s substantial rights. *Lange-Luttig v. City of Beaverton*, 39 Or LUBA 80 (2000).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where petitioners appeared below and testified about the uses that would be authorized by a conditional use permit, petitioners may not claim that their substantial rights were prejudiced by a local government’s failure to specifically identify all proposed uses in the notice of the hearing. *Lange-Luttig v. City of Beaverton*, 39 Or LUBA 80 (2000).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A lack of supporting information in an application does not provide a basis for reversal or remand when the missing information is not necessary to determine compliance with a specific approval standard. *Roth v. Jackson County*, 38 Or LUBA 894 (2000).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Absent a state or local provision to the contrary, once the local record is closed to new evidence the local government is not compelled to reopen the record to accept new evidence, no matter how relevant that evidence is to the local government’s decision. *Utsey v. Coos County*, 38 Or LUBA 516 (2000).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A city does not violate an applicant’s right to due process by denying its request to cross-examine witnesses, where the local code provides no right of cross-examination and the applicant fails to explain why an alternative process offered by the city in place of cross-examination would be insufficient to protect the applicant’s right to due process. *Oregon Entertainment Corp. v. City of Beaverton*, 38 Or LUBA 440 (2000).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A city’s failure to provide notice that it considered a particular comprehensive plan goal to be an approval criterion is a procedural error, and where that failure denies the applicant an opportunity to present argument and evidence concerning that plan goal, the procedural error prejudices the applicant’s substantial rights. *Oregon Entertainment Corp. v. City of Beaverton*, 38 Or LUBA 440 (2000).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Failure to list applicable criteria in a pre-hearing notice in violation of ORS 197.763(3)(a) allows petitioner to raise issues at LUBA relating to the omitted criteria without having raised those issues before the local government. However, failure to list applicable criteria does not, in itself, provide a basis for reversal or remand. *Ashley Manor Care Centers v. City of Grants Pass*, 38 Or LUBA 308 (2000).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where petitioner fails to allege that it was entitled to written notice of hearing under Ballot Measure 56, a local government’s failure to provide written notice of hearing under Ballot Measure 56 did not prejudice petitioner’s substantial rights and provides no basis for reversal or remand. *Homebuilders Association v. City of Portland*, 37 Or LUBA 707 (2000).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A condition of approval that is suggested by the applicant after the close of the evidentiary hearing in a quasi-judicial land use proceeding is not “new evidence,” within the meaning of ORS

197.763(6)(e), and there is no legal requirement that parties be given a right to rebut such a proposed condition of approval. *Marine Street LLC v. City of Astoria*, 37 Or LUBA 587 (2000).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where LUBA remands a decision for additional proceedings requiring that the current members of the county board of commissioners review the record compiled before the previous board, such remand cures the procedural error, if any, resulting from the fact that, due to an intervening election, only one of the three commissioners who signed the final written order attended the evidentiary hearings and participated in the oral vote on the merits of the application. *Greer v. Josephine County*, 37 Or LUBA 261 (1999).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a county lacks decisional authority over annexation requests, it exceeds its jurisdiction in denying an annexation that is part of a combined application for a plan map amendment and zone change over which the county has co-adoption authority. *Copper Basin, Inc. v. Umatilla County*, 37 Or LUBA 147 (1999).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a local government elects to conduct additional hearings prior to making a decision following remand of a decision by LUBA, all parties to the LUBA appeal that led to the remand are entitled to some form of individualized notice of the proceedings on remand, and a local government's failure to provide notice to one of those parties is procedural error. *DLCD v. Crook County*, 37 Or LUBA 39 (1999).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A party's right to appeal a local decision that is adopted following a remand by LUBA does not eliminate prejudice to that party's substantial rights caused by the local government's failure to provide notice of its proceedings on remand. The rights the party has in seeking LUBA review of the decision on remand are much more circumscribed than the rights the party has during a local land use hearing. *DLCD v. Crook County*, 37 Or LUBA 39 (1999).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a decision maker discloses the existence but not the substance of *ex parte* communications at the beginning of the public hearing, and despite being given an opportunity to do so petitioner fails to object to the inadequacy of the decision maker's disclosure, petitioner has waived the right to raise the decision maker's inadequate disclosure of *ex parte* communications before LUBA as a basis for reversal or remand of the challenged decision. *Mulford v. Town of Lakeview*, 36 Or LUBA 715 (1999).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A city commits procedural error where it fails to identify the relevant approval criteria in its notice of hearing or in its oral statement at the beginning of the hearing on a conditional use request. The city also commits procedural error where the staff report that identifies the relevant approval criteria is not made available seven days before the hearing and the report is only provided to the city council at the hearing. Where these errors contribute to confusion about the nature of the use for which approval is requested and the city's legal theory for approving the request, petitioners'

substantial rights are prejudiced by the city's procedural errors and remand is required. *Latta v. City of Joseph*, 36 Or LUBA 708 (1999).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where LUBA rejects as a matter of law a county's erroneous interpretation of its comprehensive plan as imposing a 2.3-acre minimum residential density, procedural errors the county may have committed in considering evidence outside the record in reaching that erroneous interpretation provide no additional basis for remand. *Columbia Hills Development Co. v. Columbia County*, 36 Or LUBA 691 (1999).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Failure to observe statutory notice and hearing requirements prior to making a permit decision will result in remand by LUBA where petitioner's substantial rights were prejudiced because petitioner was entirely prevented from participating in the decision making process. *Friends of the Creek v. Jackson County*, 36 Or LUBA 562 (1999).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Failure to observe statutory notice and hearing requirements prior to making a permit decision will result in remand by LUBA, where petitioner's substantial rights were prejudiced because petitioner was entirely prevented from participating in the decision making process. *Friends of Clean Living v. Polk County*, 36 Or LUBA 544 (1999).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A city's procedural error in failing to send notice of a hearing at which zone changes affecting petitioner's property would be considered does not prejudice petitioner's substantial rights, where petitioner nonetheless participated in the hearing and the city continued the hearing to allow petitioner an adequate time to prepare. *Herman v. City of Lincoln City*, 36 Or LUBA 521 (1999).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A county's failure to explain in its notice of hearing that all evidence and the staff report would be available for review seven days before the hearing provides no basis for reversal or remand, where petitioner did not object to the adequacy of the notice, does not claim he was surprised by anything in the staff report and does not explain how his substantial rights were violated by the inadequate notice. *Woods v. Grant County*, 36 Or LUBA 456 (1999).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where the county's notice of hearing failed to include notice of the procedures to be followed at the hearing, but petitioner did not object below to the inadequate notice and does not explain how his substantial rights were violated by the defective notice, the notice defect provides no basis for reversal or remand. *Woods v. Grant County*, 36 Or LUBA 456 (1999).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A petitioner does not waive his right to object to the county's failure to list the applicable criteria governing permit revocation in the notice of hearing by failing to object below, where it was not clear until the end of the hearing what criteria would be applied or that the decision makers intended to revoke petitioner's permit. *Woods v. Grant County*, 36 Or LUBA 456 (1999).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where petitioner was provided a local appeal and hearing before the county governing body, the failure of the planning commission to give notice before its hearing of the criteria that it intended to apply or that it intended to revoke petitioner's permit provides no basis for reversal or remand, where petitioner does not explain why the appeal to the governing body was inadequate to avoid any prejudice to his substantial rights. *Woods v. Grant County*, 36 Or LUBA 456 (1999).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a decision is withdrawn for reconsideration following appeal to LUBA and a new ordinance is adopted without following the applicable local adoption procedures, such a procedural error provides no basis for reversal or remand where petitioner was given an opportunity for meaningful participation and there was no prejudice to petitioner's substantial rights. *Barnard Perkins Corp. v. City of Rivergrove*, 34 Or LUBA 660 (1998).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Consideration of a legislative action more than once within a 12-month period despite a code requirement that such actions be considered only once in a 12-month period provides no basis for reversal or remand, where all parties were given a full opportunity to participate in the proceedings and there was no prejudice to a party's substantial rights. *Barnard Perkins Corp. v. City of Rivergrove*, 34 Or LUBA 660 (1998).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a local government decision maker commits a procedural error by failing to require a transcript of the proceedings below, but petitioner fails to demonstrate that failure prejudiced his substantial rights, the procedural error provides no basis for remand. *Johns v. City of Lincoln City*, 34 Or LUBA 594 (1998).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A city council's procedural error in failing to require preparation of a transcript of proceedings on remand before the planning commission cannot have any bearing on whether the challenged decision is supported by substantial evidence, where the proceedings on remand were on the record. *Johns v. City of Lincoln City*, 34 Or LUBA 594 (1998).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Procedural errors before a lower-level local decision maker provide no basis for reversal or remand at LUBA where the errors are cured by *de novo* review by a higher-level local decision maker. *Rouse v. Tillamook County*, 34 Or LUBA 530 (1998).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Even if a local government's notice is not sufficiently specific to identify all approval criteria, petitioner fails to establish any prejudice to its substantial rights when the approval criteria are identified in a staff report and petitioner was in fact made aware of and addressed the criteria in the proceedings below. *Northwest Aggregates Co. v. City of Scappoose*, 34 Or LUBA 498 (1998).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where the notice of a hearing fails to list all of the criteria required for approval of an application, that procedural error does not prejudice petitioners’ substantial rights where all of the applicable criteria were raised and addressed at the public hearing. *Turrell v. Harney County*, 34 Or LUBA 423 (1998).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. If the city committed a procedural error by approving final subdivision and PUD plans without providing a hearing or opportunity for local appeal, such error provides no basis for remand where the petitioner at LUBA was allowed to submit 65 pages of comments to the city prior to its decision. *Rochlin v. City of Portland*, 34 Or LUBA 379 (1998).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where the comprehensive plan requires that the planning commission forward findings and a report to the city council for consideration with a proposed plan amendment, the planning commission commits a procedural error by not forwarding the required findings and report. *Fogarty v. City of Gresham*, 34 Or LUBA 309 (1998).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A planning commission’s error in not forwarding findings and a report to the city council with a proposed legislative plan amendment provides no basis for remand where petitioner does not specify any arguments he was prevented from making due to the error. Alleged inability to “bolster” petitioner’s arguments is not sufficient to demonstrate petitioner’s substantial rights were prejudiced. *Fogarty v. City of Gresham*, 34 Or LUBA 309 (1998).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. The city’s failure to provide any notice of the hearing at which the challenged ordinance was adopted was procedural error that prejudiced petitioners’ substantial rights to participate in the process, notwithstanding that petitioners had participated in earlier proceedings leading to the challenged decision. *Casey Jones Well Drilling, Inc. v. City of Lowell*, 34 Or LUBA 263 (1998).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. The local government may be required to reopen the evidentiary hearing where the local government (1) changes to a significant degree an established interpretation of an approval standard; (2) the change makes relevant a different type of evidence that was irrelevant under the old interpretation; and (3) the party seeking to submit evidence responsive to the new interpretation identifies what evidence not already in the record it seeks to submit. *Gutoski v. Lane County*, 34 Or LUBA 219 (1998).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a revised site plan is introduced after the close of the record, and evidence exists that petitioner was aware of the addition but did not object below, that procedural error does not justify reversal or remand by LUBA. *Brown v. City of Portland*, 33 Or LUBA 700 (1997).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. If a local government determines an *ex parte* contact that is prohibited by local code occurred during

local proceedings, other parties must be allowed the opportunity to rebut the substance of the *ex parte* contact. *Opp v. City of Portland*, 33 Or LUBA 654 (1997).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. There is no legal requirement that decision makers disclose the substance of their site observations and provide an opportunity for rebuttal where the decision is legislative rather than quasi-judicial. *Valerio v. Union County*, 33 Or LUBA 604 (1997).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A county errs in not requiring a scaled drawing of a proposed dwelling as required by local code, where the drawing is necessary to determine that the proposed dwelling complies with applicable height and roof pitch standards, and the missing information is not otherwise in the record. *Pekarek v. Wallowa County*, 33 Or LUBA 225 (1997).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A city's error in converting an appeal of a quasi-judicial decision into a *de novo* legislative proceeding is substantive rather than procedural, and its decision is prohibited as a matter of law. *Anderson v. City of Shady Cove*, 33 Or LUBA 173 (1997).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. To demonstrate prejudice to substantial rights as a result of a procedural error, a petitioner must explain with some specificity what would have been different or more complete had the correct procedures been followed. LUBA requires more than general assertions that the petitioner's case would have been better presented had there been no procedural violations below. *Concerned Citizens v. Jackson County*, 33 Or LUBA 70 (1997).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a continuance required by ORS 197.753(4)(b) to allow opponents to respond to new evidence was not granted before the city and county planning commissions made their recommendation to the city council and county commissioners, a procedural error occurred, but that error is no basis for remand when the opponents submitted a detailed rebuttal during the year-long interim between the date of the recommendation and the decision of the governing bodies, who considered additional evidence and testimony as part of a *de novo* review of the applications. *Concerned Citizens v. Jackson County*, 33 Or LUBA 70 (1997).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where petitioners do not explain how the city's failure to conduct a public hearing (if one was required under local code) prejudiced their substantial rights, there is no basis for reversal or remand pursuant to ORS 197.828(2)(d). *Venable v. City of Albany*, 33 Or LUBA 1 (1997).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. When a hearing audio tape is inadvertently destroyed, the city cannot include it in the record. However, the city's failure to include the tape in the record does not require remand unless LUBA cannot perform its review function as a result. *Village Properties, L.P. v. City of Oregon City*, 32 Or LUBA 475 (1996).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where petitioners are qualified participants in a local appeal, but are denied the opportunity to respond to issues raised in the local appeal, their substantial rights are prejudiced and the challenged decision must be remanded. *Spencer Creek Neighbors v. Lane County*, 32 Or LUBA 349 (1997).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. The city's failure to provide petitioner with the notice of hearing to which she was entitled under ORS 197.763(2) effectively denied petitioner the right to participate in the hearings process and to present evidence, thereby violating her substantial rights. *Wicks-Snodgrass v. City of Reedsport*, 32 Or LUBA 292 (1997).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a party has the opportunity to object to a procedural error before the local government, but fails to do so, that error cannot be assigned as grounds for reversal or remand of the local government's decision in an appeal to LUBA. *Wicks-Snodgrass v. City of Reedsport*, 32 Or LUBA 292 (1997).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Because the county's violation of ORS 215.422 is not a procedural error, petitioner is not required to show that his substantial rights were prejudiced by the county's error in order to obtain a remand. *Brown v. Union County*, 32 Or LUBA 168 (1996).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Even if petitioner was not afforded an opportunity below to present argument and rebuttal on the issue of how the city should proceed on remand, petitioner has not demonstrated prejudice to its substantial rights where it was provided both an adequate opportunity to prepare and submit a case and a full and fair hearing. *Prineville Properties, Inc. v. City of Prineville*, 32 Or LUBA 139 (1996).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Although the county's refusal to permit a party below to participate in a hearing on remand prejudiced that party's substantial rights, ORS 197.835(9)(a)(B) permits remand only where the failure to satisfy applicable procedural requirements prejudiced the substantial rights of the petitioner. *Fraley v. Deschutes County*, 32 Or LUBA 27 (1996).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where the proceedings on remand were limited to argument and the petitioner was allowed to present argument, the county's improper refusal to allow another party to present argument did not prejudice the substantial rights of the petitioner. *Fraley v. Deschutes County*, 32 Or LUBA 27 (1996).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. The county's failure to provide adequate notice of a proposed goal exception under ORS 197.732(5) is a procedural error that will not result in reversal or remand where the record demonstrates that petitioners' substantial rights were not prejudiced. *Middleton v. Josephine County*, 31 Or LUBA 423 (1996).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. The city’s violation of the notice requirements of ORS 197.763(3) does not justify reversal or remand absent a showing by petitioners that their substantial rights were prejudiced as a result of the improper notice. *Tucker v. City of Adair Village*, 31 Or LUBA 382 (1996).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. LUBA reviews the final decision made by the county board of commissioners, not the decision of the planning commission. A procedural violation by the planning commission is not ground for reversal or remand unless petitioner establishes that the board of commissioners did not correct the violation. *Simonds v. Hood River County*, 31 Or LUBA 305 (1996).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. The requirement of ORS 197.763(4)(b) that a staff report be available seven days prior to a land use hearing is a procedural requirement; under ORS 197.835(9)(c), its violation is ground for reversal or remand only if petitioner demonstrates that his substantial rights were prejudiced. *Simonds v. Hood River County*, 31 Or LUBA 305 (1996).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Statements by city staff at a local appeal hearing regarding evidence already in the record do not give petitioner a right to rebuttal. *Thornton v. City of St. Helens*, 31 Or LUBA 287 (1996).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where the county allows the applicants to provide a requisite septic system evaluation after the final hearing, and petitioners are provided seven days to respond, petitioners’ procedural rights are not violated. *Friends of Indian Ford v. Deschutes County*, 31 Or LUBA 248 (1996).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A memorandum from planning staff to the city council concerning interpretation of the city code is not evidence. Therefore, that petitioners had no opportunity to rebut the substance of staff’s memorandum at a continued hearing provides no basis for reversal or remand of the challenged decision. *Sullivan v. City of Woodburn*, 31 Or LUBA 192 (1996).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Under ORS 197.763(6)(b), oral evidence submitted at a continued hearing provides no basis for a request that the record be left open for a response. Therefore, that petitioners had no opportunity to rebut the substance of testimony given at a continued hearing provides no basis for reversal or remand of the challenged decision. *Sullivan v. City of Woodburn*, 31 Or LUBA 192 (1996).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. LUBA may reverse or remand a local decision based on a local government’s failure to comply with applicable notice requirements only if the defect prejudices a petitioner’s substantial rights. *Thomas v. Wasco County*, 30 Or LUBA 142 (1995).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. The existence of procedural error resulting from defects in a notice of final decision fails to establish prejudice to substantial rights in the absence of a causal relationship between the defects and

petitioner's failure to participate in the process. *Thomas v. Wasco County*, 30 Or LUBA 142 (1995).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where petitioner's failure to file a timely local appeal resulted from his absence during the appeal period, and not from the failure of the notice of decision to include required findings of fact, the necessary relationship between the procedural defects and petitioner's substantial rights was not established. *Thomas v. Wasco County*, 30 Or LUBA 142 (1995).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Under ORS 12.270, a boundary alteration, initiated and purported to be effective, is conclusively presumed effective one year after the purported effective date, notwithstanding procedural defects in adoption. *Carlson v. City of Dunes City*, 30 Or LUBA 129 (1995).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A procedural error is grounds for remand or reversal only when a party establishes the violation prejudices its substantial rights. LUBA will not search the record to find evidence to support the alleged procedural error. *Wakeman v. Jackson County*, 29 Or LUBA 521 (1995).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where petitioners contend a local government's notice of hearing on a conditional use permit application did not comply with the requirement of ORS 197.763(3)(a) to explain the nature of the application and the uses that could be authorized, but do not contend their substantial rights were prejudiced by the alleged error, petitioners provide no basis for reversal or remand. ORS 197.835(7)(a)(B). *Jackman v. City of Tillamook*, 29 Or LUBA 391 (1995).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A local government's failure to comply with the requirements of ORS 197.763(3)(h) and (i) that its notice of hearing state the staff report and applicant's materials are available for inspection and that copies will be provided at reasonable cost is a procedural error, and does not provide a basis for reversal or remand unless petitioners explain how their substantial rights were prejudiced by the error. *Jackman v. City of Tillamook*, 29 Or LUBA 391 (1995).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where petitioners do not move for an evidentiary hearing, and the only undisputed fact alleged by petitioners is that a petitioner was required to pay 14 dollars for the local government's 14-page staff report, petitioners fail to establish the local government's failure to provide a copy of the staff report at a reasonable cost, as required by ORS 197.763(3)(i), violated petitioners' substantial rights. *Jackman v. City of Tillamook*, 29 Or LUBA 391 (1995).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where the challenged decision is that of the governing body, made on appeal from a planning commission decision, allegations of procedural error in the manner in which the planning commission adopted its order and findings do not provide a basis for reversal or remand. *Jackman v. City of Tillamook*, 29 Or LUBA 391 (1995).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where petitioners are denied the opportunity to rebut evidence that is potentially relevant to applicable approval standards in a quasi-judicial land use proceeding, their substantial rights are prejudiced and the challenged decision must be remanded. *Jackman v. City of Tillamook*, 29 Or LUBA 391 (1995).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Under ORS 197.835(7)(a)(B), LUBA may reverse or remand a challenged decision because the decision maker failed to follow applicable procedural requirements, including notice requirements, only if that failure prejudiced the substantial rights of the *petitioner*. *Moore v. Clackamas County*, 29 Or LUBA 372 (1995).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where petitioners allege the planning commission denied them an opportunity to submit evidence relevant to a proposed comprehensive plan amendment, but petitioners were able to submit the evidence during a *de novo* hearing on the proposed plan amendment before the governing body, the alleged error in the planning commission proceedings was cured by the governing body's *de novo* review. *O'Rourke v. Union County*, 29 Or LUBA 303 (1995).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A local government's failure to provide notice that it was considering a floodplain permit application was a procedural error which prejudiced petitioners' substantial rights because the error deprived petitioners of an adequate opportunity to address floodplain issues relevant to local floodplain permit requirements. *Mission Bottom Assoc. v. Marion County*, 29 Or LUBA 281 (1995).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. When the local government decision maker reviews allegations of procedural irregularities and finds, based on substantial evidence, that no such irregularities exist, LUBA is bound by the finding. *Huntzicker v. Washington County*, 29 Or LUBA 587 (1995).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a local governing body improperly accepts potentially relevant new evidence while conducting an on-the-record review of a lower level decision maker's decision, and does not provide petitioners an opportunity to rebut that new evidence, petitioners' substantial rights are prejudiced, and the local government's decision must be remanded. *Penland v. Josephine County*, 29 Or LUBA 213 (1995).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A local government's failure to provide notice of its hearings to persons other than petitioners is a procedural error that does not prejudice petitioners' substantial rights if petitioners received notice of the local government hearings and participated in them. *Skrepetos v. Jackson County*, 29 Or LUBA 193 (1995).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where petitioners were allowed to submit evidence to the planning commission, and do not identify any additional evidence they tried to submit which was refused by the governing body, any error by

the governing body in conducting its hearing “on the record” did not prejudice petitioners’ substantial rights. *Skrepetos v. Jackson County*, 29 Or LUBA 193 (1995).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a party has the opportunity to object to a procedural error before a local government, but fails to do so, that error cannot be assigned as grounds for reversal or remand of the local government decision in an appeal to LUBA. *Skrepetos v. Jackson County*, 29 Or LUBA 193 (1995).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Petitioner’s argument that it was denied a meaningful opportunity to rebut evidence presented at a local government hearing does not provide a basis for remand, if petitioner does not identify any evidence relevant to applicable approval standards that was submitted at the hearing and which petitioner was denied an opportunity to rebut. *ONRC v. City of Oregon City*, 29 Or LUBA 90 (1995).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where petitioner submits detailed argument to the local government regarding the applicability of a particular code provision and whether that code provision is satisfied by the subject application, the local government’s failure to list that code provision as an applicable criterion in the notice of its initial evidentiary hearing, as required by ORS 197.763(3)(b), did not prejudice petitioner’s substantial rights. *ONRC v. City of Oregon City*, 29 Or LUBA 90 (1995).

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

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where members of a local decision making body disclose, at the beginning of the initial evidentiary hearing, that they made site visits to the subject property, and petitioners fail to object to the adequacy of that disclosure, insufficiency of the disclosure cannot be assigned as grounds for reversal or remand. *Wicks v. City of Reedsport*, 29 Or LUBA 8 (1995).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where the local governing body is the final decision maker, after a *de novo* review of a planning commission decision, failure of members of the planning commission to disclose the substance of observations made during a site visit provides no basis for reversal or remand. *Wicks v. City of Reedsport*, 29 Or LUBA 8 (1995).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. The improper exclusion of evidence relevant to an arguably applicable approval standard is a prejudicial procedural error, where LUBA is unable to determine the improperly excluded evidence could not have affected the decision reached. *Wicks v. City of Reedsport*, 29 Or LUBA 8 (1995).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where the local governing body improperly accepts new evidence while conducting an on-the-record review of a lower level decision maker’s decision, and does not provide petitioners an opportunity to rebut that new evidence, petitioners’ substantial rights are prejudiced. *Wicks v. City of Reedsport*, 29 Or LUBA 8 (1995).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a local governing body is authorized to limit issues on appeal to issues raised before the planning commission but the local government failed to keep an adequate record of the planning commission proceedings, and LUBA cannot determine whether the governing body correctly limited its review to two particular issues, LUBA will remand the governing body’s decision. *Andrews v. City of Prineville*, 28 Or LUBA 653 (1995).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where petitioner submitted evidence and argument to the city council during its *de novo* review of a decision of the city landmarks commission, even if procedural errors were made in the proceeding before the landmarks commission, petitioner’s substantial rights were not prejudiced. *Champion v. City of Portland*, 28 Or LUBA 618 (1995).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. To obtain reversal or remand of a decision because information required by the local code is missing from the application, petitioner must explain why the missing information is necessary to determine compliance of the proposed development with applicable approval standards, and the missing information must not be found elsewhere in the record. *Champion v. City of Portland*, 28 Or LUBA 618 (1995).

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

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Even if a local government committed a procedural error in following legislative rather quasi-judicial procedures, if the only claimed prejudice to petitioner’s substantial rights is inadequate time to prepare its case and LUBA concludes the local government provided petitioner ample time to prepare its case, there is no basis for reversal or remand. *Friends of Cedar Mill v. Washington County*, 28 Or LUBA 477 (1995).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A code provision prohibiting a hearings officer from taking “notice of any communications * * * or other materials prepared in connection with the particular case unless the parties are afforded an opportunity to contest the material” gives parties a substantial right to an opportunity to rebut

materials submitted during a hearings officer's proceeding. Therefore, violation of such a code provision provides a basis for reversal or remand by LUBA. *Tylka v. Clackamas County*, 28 Or LUBA 417 (1994).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where the local decision maker conducted a site view, but failed to place on the record the substance of its site observations and failed to provide the parties any opportunity to rebut the evidence obtained from the site view, the decision maker committed procedural errors that prejudiced petitioners' substantial rights. *McNamara v. Union County*, 28 Or LUBA 396 (1994).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Because petitioners do not have a right to seek a referendum on a quasi-judicial land use decision, a local government error in adopting such a decision as an emergency ordinance provides no basis for reversal or remand. *Neuman v. City of Albany*, 28 Or LUBA 337 (1994).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. ORS 215.416(5) and 197.763(3)(b) require a county to identify applicable approval standards in its notices of hearing. Where petitioner's right to participate in the local proceedings is impaired by the county's failure to identify relevant standards, the challenged decision must be remanded. *Murphy Citizens Advisory Comm. v. Josephine County*, 28 Or LUBA 274 (1994).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A petitioner may not assert his own *ex parte* contacts with the decision maker as a basis for reversal or remand, where the contacts were disclosed and petitioner did not object to the adequacy or completeness of the disclosure. *Jones v. Lane County*, 28 Or LUBA 193 (1994).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where (1) a local decision maker makes a procedural error in allowing new evidence to be submitted during an on-the-record review; (2) petitioners object to receipt of that new evidence; and (3) the local decision maker does not provide petitioners with an opportunity to rebut the new evidence; LUBA will remand the challenged decision for the local decision maker to provide the required opportunity for rebuttal. *Tucker v. Douglas County*, 28 Or LUBA 134 (1994).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a party has the opportunity to object to a procedural error before the local government, but fails to do so, that error cannot be assigned as grounds for reversal or remand of a local government decision in an appeal to LUBA. *Woodstock Neigh. Assoc. v. City of Portland*, 28 Or LUBA 146 (1994).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where petitioner had notice that the applicant revised his subdivision proposal to include cluster housing, and had an opportunity to present and rebut evidence regarding the proposed cluster housing in a *de novo* evidentiary hearing before the city council, petitioner's substantial rights were not prejudiced simply because the cluster housing proposal was not referred to the hearings officer for hearing. *Woodstock Neigh. Assoc. v. City of Portland*, 28 Or LUBA 146 (1994).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. If the applicant presented new *evidence* relevant to the applicable approval standards during the rebuttal period of the local government hearing, and petitioner was denied an opportunity to rebut that evidence, petitioner’s substantial rights were prejudiced. *Woodstock Neigh. Assoc. v. City of Portland*, 28 Or LUBA 146 (1994).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where the record shows petitioner was aware of the applicable approval criteria in the comprehensive plan and participated effectively in the local hearing, a local government’s failure to comply with the requirements of ORS 197.763(3)(b) and (j), regarding listing applicable criteria from the plan and explaining hearing procedures in its notice of hearing, does not prejudice petitioner’s substantial rights or provide a basis for reversal or remand. *Furler v. Curry County*, 27 Or LUBA 546 (1994).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Although a local governing body may be authorized to conduct a *de novo* review of a development application, its refusal to allow petitioner to submit the planning commission decision and staff report on the subject application into the record as relevant evidence prejudices petitioner’s substantial right to submit evidence. *Furler v. Curry County*, 27 Or LUBA 497 (1994).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. In order for a petitioner to obtain reversal or remand of a decision because information required by the local code is missing from the application, petitioner must explain why the missing information is necessary to determine compliance of the proposed development with applicable approval standards, and the missing information must not be found elsewhere in the record. *Furler v. Curry County*, 27 Or LUBA 497 (1994).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A local government’s failure to follow the notice and hearing requirements of ORS 197.763 provides no basis for reversal or remand, where petitioner neither assigns that failure as error nor explains how his substantial rights were prejudiced by that failure. *Fechtig v. City of Albany*, 27 Or LUBA 480 (1994).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a decision maker improperly refuses to allow relevant testimony, and it is not clear whether the decision maker’s later allowance of expanded oral and written testimony rendered the initial error harmless, the decision will be remanded. *Salem-Keizer School Dist. 24-J v. City of Salem*, 27 Or LUBA 351 (1994).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A local government adjustment committee’s failure to adopt written rules of procedure is a procedural error and provides a basis for reversal or remand only if petitioners’ substantial rights are violated. *Edwards v. City of Portland*, 27 Or LUBA 262 (1994).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where petitioners presented evidence and argument concerning the necessity for a solar height adjustment

and argued the relevant standards were not met, the city's procedural error in not providing notice that it would consider approval of the solar height adjustment did not prejudice petitioners' substantial rights and provides no basis for reversal or remand. *Edwards v. City of Portland*, 27 Or LUBA 262 (1994).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A local government's failure to make available all evidence in support of a quasi-judicial land use application at the time the notice of hearing is provided, as required by ORS 197.763(4)(a), is a procedural error. However, if such evidence is made available prior to or at the hearing and the hearing record is left open for seven days to allow time for additional written testimony from the parties, petitioners' substantial rights are not violated. *Edwards v. City of Portland*, 27 Or LUBA 262 (1994).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where petitioner alleges that he was not provided with written notice of a city manager's letter, in violation of ORS 197.763(2), but petitioner learned of the city manager's letter and appealed it to the city council, petitioner alleges only procedural error, for which prejudice must be shown for LUBA to reverse or remand the challenged city council decision. *Poddar v. City of Cannon Beach*, 26 Or LUBA 429 (1994).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Conditioning approval of a farm dwelling on the applicant obtaining a zoning permit with the board of county commissioners acting as initial decision maker on the zoning permit rather than the planning director is at most a procedural error, which provides a basis for reversal or remand only if petitioner's substantial rights are violated. *Louisiana Pacific v. Umatilla County*, 26 Or LUBA 247 (1993).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. ORS 197.763(1) and 197.835(2) do not supersede LUBA's prior rulings that where a party has an opportunity locally to object to a *procedural* error, at any stage of the local government proceedings, but fails to do so, that error cannot be assigned as grounds for reversal or remand of the local government's decision in an appeal to LUBA. *Mazeski v. Wasco County*, 26 Or LUBA 226 (1993).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where petitioners are denied the opportunity to rebut evidence that is relevant to applicable approval standards in a quasi-judicial land use proceeding, their substantial rights are prejudiced and the challenged decision must be remanded. ORS 197.835(7)(a)(B). *Mazeski v. Wasco County*, 26 Or LUBA 226 (1993).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Local government failure to comply with ORS 197.763(3) notice of hearing requirements (1) means that under ORS 197.835(2)(a), LUBA may consider issues that were not raised below; and (2) is a procedural error which, under ORS 197.835(7)(a)(B), provides a basis for reversal or remand of the challenged decision only if such error prejudices petitioners' substantial rights. *Mazeski v. Wasco County*, 26 Or LUBA 226 (1993).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. That a person moving to intervene in an appeal at LUBA failed to object to a local government’s decision not to allow that person to present testimony is not fatal to that person’s assertion of standing to intervene, where two other persons objected below to the local government’s decision to limit testimony. *Sorte v. City of Newport*, 25 Or LUBA 828 (1993).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. The failure to initiate a timely local rehearing process is *not* a procedural defect which LUBA may overlook if no prejudice is shown. *Rochlin v. Multnomah County*, 25 Or LUBA 637 (1993).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. That a public hearing may have been conducted erroneously, is at most a procedural error which does not prejudice petitioners’ substantial rights to an adequate opportunity to be heard, to prepare and submit their case, and to a full and fair hearing. *McInnis v. City of Portland*, 25 Or LUBA 376 (1993).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. In the absence of a local code requirement to the contrary, a local government is not required to allow parties to rebut staff summaries of evidence in the record. *McInnis v. City of Portland*, 25 Or LUBA 376 (1993).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a local government’s staff briefs an absentee decision maker concerning matters in the record and does not impermissibly advocate denial of the application, but rather simply provides administrative support to the decision maker, the fact that petitioners had no opportunity to rebut the substance of that staff briefing provides no basis for reversal or remand of the challenged decision. *McInnis v. City of Portland*, 25 Or LUBA 376 (1993).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where petitioner failed to object to the board of commissioners concerning the county’s failure to comply with the procedural requirements of ORS 197.763 in the notice of, and announcement at, a planning commission hearing, petitioner cannot assign those errors as a basis for reversing or remanding the county’s decision. *Murphy Citizens Advisory Comm. v. Josephine County*, 25 Or LUBA 312 (1993).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. In order for a petitioner to obtain reversal or remand by LUBA of a challenged decision because information required by the local code is missing from the subject land development application, petitioner must argue that the missing information is not found elsewhere in the record and explain why the missing information is necessary to determine compliance of the proposed development with applicable approval standards. *Murphy Citizens Advisory Comm. v. Josephine County*, 25 Or LUBA 312 (1993).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A local government is required to provide parties with an opportunity to rebut evidence submitted during

local proceedings on remand from this Board under either ORS 197.763(4)(b) or *Fasano*. A local government's failure to provide petitioner with such opportunity is a procedural error that prejudices petitioner's substantial rights. *Caine v. Tillamook County*, 25 Or LUBA 209 (1993).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Even though a city may have committed error in accepting evidence concerning traffic impacts, if the issue of traffic impacts was not properly before the city, such a procedural error would provide no basis for reversal or remand. *Westlake Homeowners Assoc. v. City of Lake Oswego*, 25 Or LUBA 145 (1993).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. LUBA will not look past the written decision to determine whether local government decision makers were influenced by improperly accepted evidence, where the written decision takes the position that the issue to which the disputed evidence relates was not subject to review and that determination concerning the local scope of review is not dependent on the disputed evidence. *Westlake Homeowners Assoc. v. City of Lake Oswego*, 25 Or LUBA 145 (1993).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. In LUBA's review of alleged procedural errors, the substantial rights referred to in ORS 197.828(2)(d) concerning limited land use decisions are the same rights referred to in ORS 197.835(7)(a)(B) concerning land use decisions. *Mannenbach v. City of Dallas*, 25 Or LUBA 136 (1993).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. The post-acknowledgment amendment notice requirements of ORS 197.610(1) and 197.615(1) are procedural in nature. Local government failure to follow these requirements provides a basis for reversal or remand only if such error prejudiced petitioner's rights to an adequate opportunity to prepare and submit its case and a full and fair hearing before the local government. *Oregon City Leasing, Inc. v. Columbia County*, 25 Or LUBA 129 (1993).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Petitioners' allegations that various procedural errors occurred below provide no basis for reversal or remand, unless petitioners establish how such errors prejudiced their substantial rights. *Burghardt v. City of Molalla*, 25 Or LUBA 43 (1993).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Under ORS 197.828(2)(d), in determining whether remand is appropriate where a local government commits procedural error, LUBA must determine whether the substantial rights of the parties were prejudiced by the error. The substantial rights of parties include the rights to an adequate opportunity to prepare and submit their case and a full and fair hearing. *Warren v. City of Aurora*, 25 Or LUBA 11 (1993).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Even though a local code requirement for publication of notice 10 days prior to hearing is mandatory, it is a procedural requirement, and any error in failing to provide the required notice provides a basis

for reversal or remand only if petitioner's substantial rights were prejudiced by the error. *West Amazon Basin Landowners v. Lane County*, 24 Or LUBA 508 (1993).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where the petitioner is a neighborhood association that did not come into existence until after the local government committed an alleged procedural error, and petitioner and its members participated in hearings held after the alleged procedural error, the error did not prejudice petitioner's substantial rights and provides no basis for reversal or remand. *West Amazon Basin Landowners v. Lane County*, 24 Or LUBA 508 (1993).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. While a showing of prejudice to substantial rights is generally required in order to secure a remand for procedural error, no such showing is required to secure a remand where the procedural requirements of ORS 215.060 are not followed. *West Amazon Basin Landowners v. Lane County*, 24 Or LUBA 508 (1993).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. That a local governing body ultimately adopts an interpretation of an applicable code standard that is different from that adopted by the hearings officer, and declines to reopen the evidentiary record, does not provide a basis for reversal or remand where (1) there was no "established" local interpretation of the code standard, (2) the governing body's interpretation does not make relevant any new type of evidence, and (3) petitioner does not identify any evidence it wishes to submit if the evidentiary hearing is reopened. *Heceta Water District v. Lane County*, 24 Or LUBA 402 (1993).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. In rendering a decision on a permit, a city is required to hold at least one public hearing or provide notice of the decision and an opportunity for an appeal. A city's failure to do so requires that the decision be remanded. *Hood River Sand v. City of Mosier*, 24 Or LUBA 381 (1993).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. LUBA will only reverse or remand a challenged decision on procedural grounds where the error causes prejudice to petitioner's substantial rights. A local government's failure to list certain DEQ rules in the notice of hearing does not prejudice petitioner's substantial rights, where petitioner was provided an opportunity to respond to those DEQ rules during the local proceedings. *Stockwell v. Clackamas County*, 24 Or LUBA 358 (1992).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a local government advised petitioners of the substance of an applicable requirement, but failed to identify the ordinance that is the source of the requirement, this is a procedural error which does not prejudice petitioners' substantial rights. *Woosley v. Marion County*, 24 Or LUBA 231 (1992).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a hearings officer improperly conducted a site visit without providing prior notice and an opportunity for rebuttal, a governing body decision that relies on findings of the hearings officer

based on that improper site visit is subject to reversal or remand. *Wilson Park Neigh. Assoc. v. City of Portland*, 24 Or LUBA 98 (1992).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A local government decision maker is entitled to consult with its attorney regarding evidence submitted during the evidentiary phase of the local proceeding and interpretive issues. Parties have no right to rebut the substance of a local government attorney's advice to the local government decision maker. *Linebarger v. City of The Dalles*, 24 Or LUBA 91 (1992).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where the local code requires that the decision maker give an oral statement at the beginning of a local hearing to the effect that any party may request that the record remain open for a period of seven days, and where such oral statement is not given, petitioners' substantial right to submit their case is thereby prejudiced and this error provides a basis for remanding the challenged decision. *Adler v. City of Portland*, 24 Or LUBA 1 (1992).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where petitioners identify no provision of state statute or local ordinance requiring parties to a quasi-judicial land use proceeding to serve documents they submit to the local government on other parties, another party's failure to serve such documents on petitioners does not violate petitioners' *Fasano* right to rebut evidence. *Chauncey v. Multnomah County*, 23 Or LUBA 599 (1992).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where some of the notices preceding local government quasi-judicial hearings on a land use application failed to identify applicable approval criteria, but the notice of the first hearing identified the applicable approval criteria and the record shows all parties were aware of the applicable criteria, the notice errors are at most procedural errors which did not prejudice the parties' substantial rights. Such errors provide no basis for reversal or remand. *Reeder v. Clackamas County*, 23 Or LUBA 583 (1992).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Rejection of relevant evidence by a local decision maker is, at most, a procedural error. Where a planning commission improperly rejected relevant evidence offered by petitioner, but the governing body conducted a *de novo* evidentiary hearing and petitioner did not attempt to submit the evidence to the governing body, petitioner's substantial right to submit evidence was not prejudiced. *Heiller v. Josephine County*, 23 Or LUBA 551 (1992).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Poor quality tape recordings of local land use proceedings provide no basis for reversal or remand where petitioner fails to demonstrate that any properly submitted evidence was not considered by the local decision makers. *Reed v. Benton County*, 23 Or LUBA 486 (1992).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. That a hearings officer committed procedural error by conducting a site visit without providing prior notice to the parties, disclosing his observations and providing an opportunity to rebut such observations, does not prejudice petitioners' substantial rights where the final decision on the

subject application was made by the governing body, after a *de novo* review. *Wilson Park Neigh. Assoc. v. City of Portland*, 23 Or LUBA 708 (1992).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. LUBA may only reverse or remand a land use decision on the basis of procedural error, if the error causes prejudice to the petitioner’s substantial rights. *Seger v. City of Portland*, 23 Or LUBA 334 (1992).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Petitioners’ allegation that the local government failed to provide required notice of local proceedings following LUBA’s remand of a land use decision provides no basis for remand, where petitioners do not contend they were in any way prejudiced by the alleged failure to provide the required notice of the local proceedings. *Wentland v. City of Portland*, 23 Or LUBA 321 (1992).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Alleged errors in the manner in which the findings of a lower level local decision maker were adopted, are harmless if the final decision was properly adopted by the final decision maker. *Rath v. Hood River County*, 23 Or LUBA 200 (1992).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Even if a local government erred by failing to provide notice of local hearings following remand from LUBA to persons other than parties in the LUBA appeal, that failure results in no prejudice to the substantial rights of the parties who did receive notice of the local hearings on remand. *Bartels v. City of Portland*, 23 Or LUBA 182 (1992).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Delay in disclosing an *ex parte* contact until after the close of the public hearing, and failure to make an announcement of the right to rebut the substance of the *ex parte* communication, as required by ORS 227.180(3)(b), are at most procedural errors. *Horizon Construction, Inc. v. City of Newberg*, 23 Or LUBA 159 (1992).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. If petitioners were present at a local government meeting when an alleged procedural error occurred, petitioners must enter an objection in order to preserve their right to raise that procedural error in an appeal to LUBA, even where the local evidentiary record had previously been closed and there was no scheduled opportunity for public input at the meeting in question. *Horizon Construction, Inc. v. City of Newberg*, 23 Or LUBA 159 (1992).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a local government improperly rejected relevant evidence during its proceeding below, LUBA must remand the challenged decision. *Silani v. Klamath County*, 22 Or LUBA 735 (1992).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. The failure of local notices of hearing to summarize the issues involved in a proposed goal exception, as required by ORS 197.732(5), constitutes procedural error and does not provide a basis for reversal or remand of the challenged decision in the absence of prejudice to petitioner’s substantial rights. *Caine v. Tillamook County*, 22 Or LUBA 687 (1992).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Local government failure to comply with ORS 197.763(3) notice of hearing requirements (1) is a procedural error, which will result in reversal or remand of the challenged decision only if such error prejudices petitioner’s substantial rights; and (2) under ORS 197.835(2)(a), allows LUBA to consider issues that were not raised below. *Caine v. Tillamook County*, 22 Or LUBA 687 (1992).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Although under ORS 215.422(3) it may be error for a hearings officer to fail to disclose prior contacts with the planning department, it is a procedural error. LUBA may not reverse or remand on the basis of procedural error unless such error prejudices petitioner’s substantial rights. Petitioner’s substantial rights are not prejudiced by such error where petitioner was aware of and had an opportunity to respond to the substance of the contacts with the planning department. *Marson v. Clackamas County*, 22 Or LUBA 497 (1991).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A petitioner may not assert the occurrence of his own *ex parte* contacts with the decision maker as a basis for reversal or remand, where the contacts were disclosed and petitioner did not object to the adequacy or completeness of the disclosure of such *ex parte* contacts. *Toth v. Curry County*, 22 Or LUBA 488 (1991).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A local government’s failure to follow the procedures specified in the local code for the adoption of legislative code amendments is an error of procedure. Where the error does not prevent petitioner from fully participating in such code amendment proceedings, petitioner does not demonstrate that the alleged error caused prejudice to his substantial rights, and such error provides no basis for reversal or remand. *Smith v. City of Portland*, 22 Or LUBA 485 (1991).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A city permit decision rendered without providing the public hearing or notice of decision and opportunity for local appeal required by ORS 227.175(3) and (10) must be remanded so that the city may comply with the statutory requirements. *Citizens Concerned v. City of Sherwood*, 22 Or LUBA 390 (1991).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where an application for a conditional use permit for a mobile home park includes neither a site plan nor other specific information required under the local code, and the site plan and specific information are relevant to determining compliance with applicable approval criteria, their omission is not a harmless procedural error. *Burghardt v. City of Molalla*, 22 Or LUBA 369 (1991).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where substantive approval standards are the same, a local government error in characterizing a plan map amendment as legislative, rather than quasi-judicial, is procedural in nature and warrants reversal or remand only if petitioners demonstrate their substantial rights were prejudiced because of failure to provide the procedural safeguards required in a quasi-judicial proceeding. *Gray v. Clatsop County*, 22 Or LUBA 270 (1991).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where an application for a residential care facility does not include a vicinity map showing the proposed site in relation to public transportation systems, as required by the local code, but information concerning the location of public transportation is found elsewhere in the record, the failure to include such vicinity map in the application is a procedural error which does not prejudice petitioner’s substantial rights. *Murray v. Clackamas County*, 22 Or LUBA 247 (1991).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. ORS 197.763(3)(b) and (5)(a) require a local government to identify the standards it believes to be applicable to an application for quasi-judicial land use approval prior to conducting hearings on the application. LUBA is required to reverse or remand a local government’s decision if it failed to follow applicable procedures in a manner that prejudiced petitioner’s substantial rights, which include “rights to an adequate opportunity to prepare and submit their case and a full and fair hearing.” *Bradbury v. City of Independence*, 22 Or LUBA 783 (1991).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A local government’s failure to identify approval standards applicable to a permit application may prejudice petitioner’s substantial rights to prepare and submit his case. *Bradbury v. City of Independence*, 22 Or LUBA 783 (1991).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Although the party initiating a challenged zoning ordinance amendment was not clearly identified on the application and notices of local public hearings as required by the local code, such procedural errors provide no basis for reversal or remand where petitioners’ substantial rights were not prejudiced. *Parmenter v. Wallowa County*, 21 Or LUBA 490 (1991).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. If petitioners were present at a local government meeting when an alleged procedural error occurred, petitioners must make their objections known to the decision making body below in order to assign the procedural error as a basis for reversal or remand by LUBA. *Schellenberg v. Polk County*, 21 Or LUBA 425 (1991).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a county orally voted to grant land use approval with conditions, but later learned one of the conditions was based on an erroneous factual assumption and could not be complied with, and the county thereafter denied the application, the county did not commit procedural error and the petitioner’s substantial rights were not violated. Petitioner’s substantial rights do not include a right to a particular decision on his request for land use approval. *Carsey v. Deschutes County*, 21 Or LUBA 118 (1991).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. The failure of a local government to identify its general procedures for the conduct of hearings in its notice of hearing, as required by ORS 197.763(3)(j), is a procedural error, for which LUBA is empowered to reverse or remand the challenged decision only if such error “prejudiced the

substantial rights of the petitioner.” ORS 197.835(7)(a)(B). *Stefan v. Yamhill County*, 21 Or LUBA 18 (1991).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a local government failed to identify its 15-minute time limitation on the presentation of oral testimony and argument in its notice of hearing, but allowed additional time at the hearing for the presentation of petitioners’ oral argument and a continuance of the hearing, petitioners’ substantial rights were not prejudiced. *Stefan v. Yamhill County*, 21 Or LUBA 18 (1991).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. An uncontroverted allegation that a party was provided *no opportunity* to rebut evidence placed before the decision maker through *ex parte* contacts and site observations is sufficient to demonstrate prejudice to that party’s substantial rights. *Angel v. City of Portland*, 21 Or LUBA 1 (1991).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where petitioners failed to take advantage of an opportunity to rebut evidence presented in proceedings below, they did not establish how the local decision maker’s alleged procedural error in admitting such evidence caused harm to their substantial rights. ORS 197.835(7)(a)(B). *White v. City of Oregon City*, 20 Or LUBA 470 (1991).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where the local code vests total discretion to refuse to reconsider a decision with the local decision maker, it is not error for the decision maker to refuse to reconsider a disputed decision. *West v. Clackamas County*, 20 Or LUBA 433 (1991).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. The requirements of ORS 197.763(4)(b) and the local code that staff reports be available a certain number of days prior to land use hearings are procedural requirements; their violation is grounds for reversal or remand of the local government’s decision only if petitioner demonstrates prejudice to its substantial rights. ORS 197.835(7)(a)(B). *Forest Park Estate v. Multnomah County*, 20 Or LUBA 319 (1990).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Petitioner fails to establish that its substantial rights were prejudiced by a late staff report, where petitioner does not identify ways in which its written and oral responses at the local hearing would have been different or more complete if the staff report had been available earlier. *Forest Park Estate v. Multnomah County*, 20 Or LUBA 319 (1990).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Generally, the failure to send notice of hearing to parties other than petitioner would not prejudice the substantial rights of petitioner, so long as petitioner received proper notice. *Forest Park Estate v. Multnomah County*, 20 Or LUBA 319 (1990).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where the record demonstrates that petitioner was fully aware of the criteria applicable to its land use application prior to the local hearing, local failure to comply with the requirement of ORS

197.763(3)(b) that notice of hearing list applicable plan and code approval criteria did not prejudice petitioner's substantial rights. ORS 197.835(7)(a)(B). *Forest Park Estate v. Multnomah County*, 20 Or LUBA 319 (1990).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Under ORS 197.763(3)(j), a local government is required to provide in its notice of hearing a general explanation regarding the right under ORS 197.763(6) to request that the record of the initial evidentiary hearing remain open. A local government's failure to provide such notice is a procedural error which, if it prejudiced the parties' substantial rights, would require reversal or remand of the challenged decision. *Wissusik v. Yamhill County*, 20 Or LUBA 246 (1990).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where petitioners allege the local government violated the procedural requirements of ORS 197.763, but do not contend that violation is a basis for reversal or remand of the challenged decision, and respondents do not argue that petitioners are precluded from raising any issue raised in the petition for review, LUBA need not determine whether the local government committed a procedural error. *Wissusik v. Yamhill County*, 20 Or LUBA 246 (1990).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where the local code requires physical constraints review to be conducted simultaneously with site review, and approval of a physical constraints review permit requires application of substantive criteria which could result in denial of the proposed development, the city's failure to require a proposed development to obtain a required physical constraints review permit at the time of site review approval is not a mere procedural error. *Neuenschwander v. City of Ashland*, 20 Or LUBA 144 (1990).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. It is not error for a governing body to provide a lower local tribunal with a memorandum in the nature of a declaratory ruling interpreting certain code provisions while an application to which those code provisions apply is pending before the lower tribunal. Even if it were a procedural error, there would be no prejudice if petitioners had an adequate opportunity in a local appeal to address the interpretation and applicability of the code provisions in question before the governing body. *Hoffman v. City of Lake Oswego*, 20 Or LUBA 64 (1990).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A hearings officer's acceptance of evidence submitted after the deadline established by local code provides no basis for reversal or remand where petitioner did not request a continuance, and petitioner fails to explain how he was prejudiced by the hearings officer's action. *Reed v. Lane County*, 19 Or LUBA 276 (1990).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. The planning commission's error in failing to consider the propriety of a commissioner's participation in the decision on the subject application, where the issue was raised before the commission, is procedural and, therefore, petitioner must establish the error caused prejudice to his substantial rights. *Murphey v. City of Ashland*, 19 Or LUBA 182 (1990).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. If the governing body holds a *de novo* hearing on an appeal of the planning commission’s decision on the subject application, such hearing cures any prejudice due to a planning commissioner’s allegedly improper participation in the planning commission proceedings. *Murphey v. City of Ashland*, 19 Or LUBA 182 (1990).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. A city’s failure to adopt ordinances specifying the city council’s scope of review in appeals of planning commission decisions and providing procedures for hearings on such appeals, as required by ORS 227.170, is a procedural error. *Murphey v. City of Ashland*, 19 Or LUBA 182 (1990).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where petitioner was not given notice of the city council’s *de novo* scope of review in appeals of planning commission decisions, but the city council continued its hearing to provide an opportunity for parties to submit evidence, petitioner’s substantial rights were not prejudiced by the procedural error. *Murphey v. City of Ashland*, 19 Or LUBA 182 (1990).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where there is no dispute concerning the authenticity or identity of a document a party believes was improperly excluded from the record by the local government, the parties may stipulate that the document be included in the LUBA record for the limited purpose of reviewing the correctness of the local government’s decision to exclude the document from the local government record. Alternatively, the document may be attached to a party’s brief, and if any party objects to LUBA’s consideration of the document, the party offering the document may move for an evidentiary hearing. *Von Lubken v. Hood River County*, 19 Or LUBA 548 (1990).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a party has the opportunity to object to a *procedural* error before the local government, but fails to do so, that error cannot be assigned as a basis for reversal or remand of the local government’s decision in an appeal to LUBA. *Torgeson v. City of Canby*, 19 Or LUBA 511 (1990).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. In order to obtain reversal or remand of a city decision due to a procedural error, petitioners must demonstrate that their substantial rights were prejudiced. ORS 197.835(7)(a)(B). Where the alleged procedural error is participation by a planning commissioner, in violation of a city ordinance, petitioners must demonstrate that the commissioner’s participation denied them a fair hearing. *Torgeson v. City of Canby*, 19 Or LUBA 511 (1990).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a city is not required under its code to allow surrebuttal if rebuttal is limited to nonevidentiary testimony and evidence already in the local record, parties asserting city denial of surrebuttal as reversible error must show that the rebuttal included new evidence and that denial of an opportunity to rebut such evidence prejudices their substantial rights. *Walker v. City of Beaverton*, 18 Or LUBA 712 (1990).

28.8.4 LUBA Scope of Review – Grounds for Reversal/Remand – Procedural Errors. Where a mayor's *ex parte* contacts were completely disclosed, although late in the deliberations and after an incomplete disclosure earlier in the proceedings, and the mayor invited challenges and inquiries, the remedial purpose of ORS 227.180(3) is nevertheless served. Where petitioners did not object to the timing and manner of the disclosure, and do not show their substantial rights were violated, there is no basis for remand. *Walker v. City of Beaverton*, 18 Or LUBA 712 (1990).