

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3  
4 RED HILLS PROVINCIAL DINING,  
5 RICHARD GEHRTS, and  
6 NANCY GEHRTS,  
7 *Petitioners,*

8  
9 vs.

10  
11 CITY OF DUNDEE,  
12 *Respondent,*

13  
14 and

15  
16 WILLIAM RAWSON,  
17 *Intervenor-Respondent.*

18  
19 LUBA No. 2001-149

20  
21 FINAL OPINION  
22 AND ORDER

23  
24 Appeal from City of Dundee.

25  
26 Steven W. Abel, Portland, represented petitioner.

27  
28 David Doyle, Dallas, represented respondent.

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30 Andrew H. Stamp, Portland, represented intervenor-respondent.

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32 BASSHAM, Board Member; BRIGGS, Board Chair; HOLSTUN, Board Member,  
33 participated in the decision.

34  
35 REMANDED

01/08/2002

36  
37 You are entitled to judicial review of this Order. Judicial review is governed by the  
38 provisions of ORS 197.850.

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1 Bassham, Board Member.

2 The city moves for voluntary remand, stating that “[t]he hearing on remand will be  
3 expressly limited to considering and addressing all assignments of error raised in the Petition  
4 for Review.” Motion and Order for Voluntary Remand 1.

5 Petitioners do not object to voluntary remand, but express concern that limiting the  
6 scope of remand to considering and addressing the assignments of error raised in the petition  
7 for review may not provide petitioners with everything they would be entitled to from  
8 LUBA’s review. Petitioners state that the following language is acceptable: “The hearing on  
9 remand must consider and address all assignments of error raised in the Petition for Review,  
10 filed December 18, 2001.”

11 LUBA will grant a motion for voluntary remand over the objection of the petitioner  
12 where the local government “demonstrates that the proceedings on remand will be capable of  
13 providing the petitioner with everything he would be entitled to from this Board.” *Angel v.*  
14 *City of Portland*, 20 Or LUBA 541, 543 (1991) (denying a motion for voluntary remand,  
15 where the local government indicated that it would only reconsider issues raised in two of the  
16 petitioner’s seven assignments of error); *see also Smith v. Douglas County*, 33 Or LUBA 682  
17 (1997) (granting a motion for voluntary remand over the objection of the petitioner, where  
18 the county indicates that its proceedings on remand will address all of the allegations of error  
19 made in the petition for review). Therefore, as far as it concerns granting or denying the  
20 city’s motion for voluntary remand in the present case, the city’s demonstration is sufficient  
21 to warrant granting the motion.

22 In granting the city’s motion, we do not endorse or reject any view regarding the  
23 permissible scope of the city’s proceedings on remand, other than the city must consider and  
24 address all assignments of error raised in the petition for review.

25 The city’s decision is remanded.