

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON

3
4 NEIL HAUSAM,
5 *Petitioner,*

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7 vs.

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9 CITY OF SALEM,
10 *Respondent,*

11 and

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14 TIMOTHY TEMPLE,
15 *Intervenor-Respondent.*

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17 LUBA No. 2001-061

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19 FINAL OPINION
20 AND ORDER

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22 On remand from the Court of Appeals.

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24 Paul R.J. Connolly, Salem, represented petitioner.

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26 Paul A. Lee, Assistant City Attorney, Salem, represented respondent.

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28 Gordon Hanna, Salem, represented intervenor-respondent.

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30 BRIGGS, Board Member; HOLSTUN, Board Chair; BASSHAM, Board Member,
31 participated in the decision.

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33 REMANDED

03/05/2002

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

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Opinion by Briggs.

In *Hausam v. City of Salem*, 39 Or LUBA 51 (2000), petitioner appealed a tentative subdivision plat approval. We remanded the decision to the city after sustaining several of petitioner’s evidentiary assignments of error. The city then held a hearing on remand, but provided only 10 days’ notice of the hearing to petitioner. Petitioner then requested reconsideration of the remand decision because he was not able to attend the hearing where the city again approved the tentative subdivision plat. The city denied his request, and petitioner appealed the denial to LUBA. *Hausam v. City of Salem*, 40 Or LUBA 234 (2001) (*Hausam II*). We affirmed the city’s decision in *Hausam II*, concluding that petitioner did not demonstrate that the city’s proceedings violated petitioner’s substantial rights. We based our conclusion in part on our belief that petitioner was provided notice of the hearing and an adequate amount of time to prepare and present his case.

Petitioner appealed our decision to the Court of Appeals. In *Hausam v. City of Salem*, 178 Or App 417, ___ P3d ___ (2001), the Court of Appeals reversed our decision, holding that in these circumstances, petitioner is entitled to 20 days’ notice prior to an evidentiary hearing on remand. The court remanded the case for proceedings that comply with ORS 197.763(3).

We now remand the decision to the city for the city to provide the notice and hearing required by ORS 197.763(3). The city’s decision is remanded.