

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

3
4 STEVE DOOB,
5 *Petitioner,*

6
7 vs.

8
9 JOSEPHINE COUNTY,
10 *Respondent,*

11 and

12
13 ALLEN ELIASON and VIRGINIA ELIASON,
14 *Intervenors-Respondent.*

15
16 LUBA No. 2002-067

17
18 FINAL OPINION
19 AND ORDER

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21 Appeal from Josephine County.

22 Steve Doob, Josephine County, represented himself.

23
24 Steven Rich, Grants Pass, represented respondent.

25
26 Duane Wm. Schultz, Grants Pass, represented intervenors-respondent.

27
28 HOLSTUN, Board Chair; BASSHAM, Board Member; BRIGGS, Board Member,
29 participated in the decision.

30
31 REMANDED

32 10/03/2002

33
34 You are entitled to judicial review of this Order. Judicial review is governed by the
35 provisions of ORS 197.850.
36

1 Opinion by Holstun.

2 Petitioner appeals a county decision that approves comprehensive plan map and
3 zoning map amendments. Intervenors challenge petitioner’s standing and move to dismiss
4 the appeal. Intervenors and respondent also move for a voluntary remand. We resolve those
5 motions below.

6 **MOTION TO DISMISS**

7 Under ORS 197.830(2), one of the requirements that petitioner must satisfy to have
8 standing to appeal to LUBA is that he must have “[a]ppared before the local government
9 * * * orally or in writing.” Petitioner appeared several times below. Petition for Review 4.
10 Intervenors contend that those appearances were inadequate to establish standing for
11 petitioner to bring this appeal on his own behalf, because petitioner’s local appearances were
12 made on behalf of other persons, rather than on his own behalf.

13 Petitioner disputes intervenors’ characterization of the nature of his appearances and
14 contends they were adequate to constitute appearances on his own behalf. We agree with
15 petitioner.

16 The motion to dismiss can also be read to argue that petitioner lacks standing in this
17 appeal to LUBA based the holding in *Utsey v. Coos County*, 176 Or App 524, 32 P3d 933
18 (2001), *rev allowed* 334 Or 75 (2002). We reject the argument. The limit on standing to
19 seek *judicial* review of a LUBA decision, which is discussed in *Utsey*, does not apply to
20 standing to seek *administrative agency* review of a local government decision before LUBA.
21 *Central Klamath County CAT v. Klamath County*, 41 Or LUBA 524, 526-37 (2002).

22 The motion to dismiss is denied.

23 **MOTION FOR VOLUNTARY REMAND**

24 Respondent and intervenors move for voluntary remand and state the county “will
25 conduct a public Remand Hearing, which Hearing will be limited to the Parties to this
26 Appeal and all issues raised by said Petition for Review.” Motion for Voluntary Remand 1.

1 Petitioner objects to the motion for two reasons. First, petitioner notes intervenors’
2 motion to dismiss and expresses concern that the county might take the position that he lacks
3 standing to participate in the remand hearing. We understand the county’s motion to state
4 that the parties in this appeal, including petitioner, will be allowed to participate in the
5 remand hearing and that all issues raised in the petition for review will be considered. We
6 take the county at its word.

7 Petitioner’s second objection to the motion for voluntary remand is essentially that
8 the county already had an opportunity to address the issues that petitioner raises in the
9 petition for review when it first decided the challenged decision. Therefore, petitioner
10 argues, the county should not be allowed to seek a second chance now to address issues it
11 should have already addressed in the challenged decision. In support of this argument
12 petitioner notes that under ORS 197.763(1) and 197.835(3) he was required to raise the
13 issues he presents in the petition for review during the local proceedings or he would be
14 barred from raising those issues at LUBA. Petitioner further notes that he is not only
15 required to raise issues locally or waive those issues, he must also accompany those raised
16 issues with “statements or other evidence sufficient to afford the governing body * * * and
17 the parties an adequate opportunity to respond to each issue.” ORS 197.763(1). Petitioner
18 argues that he did so here and that it is unfair to allow the county a second chance now to
19 address those issues:

20 “It would be cynical to conclude that the legislature intended to give local
21 governments * * * the opportunity to respond poorly [during the initial local
22 proceedings], secure in the knowledge that they would have a second chance
23 to respond more thoroughly later because of the voluntary remand process. In
24 addition, if voluntary remands were intended to be used in this way, then there
25 would be nothing to prevent a local government from asking for a second
26 voluntary remand if it thought its decision after a remand hearing would be
27 overturned on appeal.” Response to Motion for Voluntary Remand 4 n 2.

28 Where a petitioner objects to a local government’s motion for voluntary remand, we
29 grant the motion, if the local government asserts that it will address all of the allegations set

1 out in the petition for review. As we explained in *Angel v. City of Portland*, 20 Or LUBA
2 541, 543 (1991), we grant such requests for voluntary remand because:

3 “The legislature has clearly expressed an intent that appeals of land use
4 decisions be thoroughly and expeditiously determined by the Board. ORS
5 197.805 and 197.835[(11)](a). Granting a local government request for
6 remand of an appealed decision, over petitioner’s objection, is consistent with
7 this policy of expeditious and complete review only if the local government
8 demonstrates that the proceedings on remand will be capable of providing the
9 petitioner with everything he would be entitled to from this Board. If the
10 local government’s request for remand of its decision does not demonstrate
11 that *all* of the allegations of error made by petitioner in the petition for review
12 will be addressed on remand, it is inappropriate to remand the decision over
13 petitioner’s objections.” (Citations and footnote omitted; emphasis in
14 original.)

15 Petitioner offers no reason to doubt the county’s representation that it will consider the
16 merits of all of the arguments that are presented in the petition for review.

17 Petitioner’s general point—that a local government should not be given a second
18 chance when it failed to respond to issues that were raised in the initial proceedings—has
19 some facial appeal if the question is approached as an abstract question of fairness.
20 However,

21 as we explained in *Mulholland v. City of Roseburg*, 24 Or LUBA 240, 243 (1992):

22 “* * * If, as ORS 197.805 states, ‘time is of the essence in reaching final
23 decisions in matters involving land use,’ that purpose is hardly served by
24 forcing [a local government] to defend a decision it does not believe is
25 defensible. That purpose would be furthered by remanding the decision so
26 that the [local government] can reconsider the decision and adopt a decision it
27 is prepared to defend.”

28 With regard to petitioner’s suggestion that a local government might make half-
29 hearted attempts to address issues, and seek serial voluntary remands to correct those half-
30 hearted attempts, if we were shown that such was the case here, denial of the motion for
31 voluntary remand would likely be warranted. *See Mulholland*, 24 Or LUBA at 244 n 3
32 (voluntary remand inappropriate if “motivated by delay or other improper reasons”).

1 Petitioner does not show that the county is approaching this matter in a half-hearted way or
2 that the motion for voluntary remand is motivated by delay or any other improper reason.

3 The county's decision is remanded.