

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3  
4 BRASETH PROPERTIES, LLC,  
5 *Petitioner,*

6  
7 vs.

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9 CITY OF LA GRANDE,  
10 *Respondent,*

11 and

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13  
14 STEPHEN DONNELL,  
15 *Intervenor-Respondent.*

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17 LUBA No. 2003-150

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19 FINAL OPINION  
20 AND ORDER

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22 Appeal from City of La Grande.

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24 David M. Blanc, Pendleton, filed the petition for review and argued on behalf of  
25 petitioner. With him on the brief was Corey, Byler, Rew, Lorenzen & Hojem, LLP.

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27 Jonel K. Ricker, La Grande, filed a response brief and argued on behalf of  
28 respondent. With him on the brief was Ricker and Roberson.

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30 Stephen Donnell, La Grande, filed a response brief and argued on his own behalf.

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

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35 REMANDED

12/19/2003

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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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**MOTION TO INTERVENE**

Stephen Donnell moves to intervene on the side of respondent. There is no opposition to the motion and it is allowed.

**DECISION**

Petitioner appeals a city council decision denying petitioner’s application for a zone change from Medium Density Residential to Light Industrial. In petitioner’s tenth assignment of error, petitioner asserts that the city council erred because it inadequately disclosed *ex parte* contacts between individual city councilors and opponents to petitioner’s application. The city and intervenor concede the tenth assignment of error and agree with petitioner that remand is appropriate for the councilors to disclose the content of their *ex parte* contacts and to allow petitioner an opportunity to rebut those contacts.

Given the city and intervenor’s concession on that point and the possibility that, as a result of those disclosures and rebuttal evidence, the city might adopt a new decision that affects resolution of petitioner’s other assignments of error, it would be premature to consider those assignments of error.<sup>1</sup>

The tenth assignment of error is sustained. We do not address the first through ninth assignments of error.

The city’s decision is remanded.

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<sup>1</sup> The first through ninth assignments of error challenge the adequacy of the findings the city adopted in denying petitioner’s application.