

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

3  
4 ROBERT PATERSON,  
5 *Petitioner,*

6  
7 vs.

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9 CITY OF BEND,  
10 *Respondent,*

11  
12 and

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14 PALMER HOMES,  
15 *Intervenor-Respondent.*

16  
17 LUBA No. 2004-104

18  
19 FINAL OPINION  
20 AND ORDER

21  
22 Appeal from City of Bend.

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24 William Hugh Sherlock, Eugene, represented petitioner.

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26 Peter M. Schannauer, Bend, represented respondent.

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28 Tia M. Lewis, Bend, represented intervenor-respondent.

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

32  
33 REMANDED

02/11/2005

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

**DECISION**

The city and intervenor filed a motion for voluntary remand in this case on January 27, 2005 “to allow the parties to address the issues raised by Petitioner in his Petition for Review.” Stipulated Motion for Voluntary Remand 1. The city’s and intervenor’s brief were due on February 2, 2005. No response briefs were filed. On February 3, 2005, petitioner filed an objection to the motion for voluntary remand. He argues that once the record and the petition for review have been filed, as they have in this case, a voluntary remand under OAR 661-010-0021(1) is not allowed as a matter of right. In such cases, petitioner contends, the local government must make assurances that it will provide a comprehensive and open-minded review of petitioner’s assignments of error and that its process will provide petitioner with the same relief it could obtain before LUBA. Petitioner’s Response to Respondent’s Motion for Voluntary Remand 3 (citing *Murphy Citizens Advisory Committee v. Josephine Co.*, 35 Or LUBA 117 (1998)). Petitioner claims that the city has not made such assurances and, specifically, has not stated that the city council will review the matter, as petitioner alleges it should have done in the first place.<sup>1</sup> *Id.* Petitioner also explains the relationship of the challenged decision in this appeal to another appeal of a related development, and argues that we should deny the motion unless the city moves for voluntary remand on that related appeal.

We are sympathetic to petitioner’s frustrations with this motion after having argued for certain actions at the local level, filed an appeal, argued record objections and filed his petition for review. However, the relief that petitioner’s appeal seeks is a remand of the decision. The city states that it seeks voluntary remand to address the issues petitioner raised

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<sup>1</sup> The challenged decision is a decision by the hearings officer. Petitioner appealed that determination to the city council, and the city council declined to hear the appeal, making the hearings officer’s decision the final decision of the city. Petitioner has not assigned as error the city council’s decision not to grant discretionary review of the hearings officer’s decision.

1 in his petition for review. The city need only assert that it will address every assignment of  
2 error, not that it will agree with them. We see no purpose in proceeding with oral argument,  
3 scheduled for February 17, 2004, without the assistance of briefing by the city and intervenor,  
4 where the likely outcome will be the remand that the city seeks voluntarily. Further, the  
5 appeal of the related development to which petitioner refers has not been consolidated with  
6 this case, so the determination whether to seek or grant voluntary remand in that case will be  
7 determined independently of this case.

8           The motion for voluntary remand is granted.

9           The city's decision is remanded.