

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

3
4 HOWARD GRABHORN, and GRABHORN, INC.,
5 *Petitioners,*

6
7 vs.

8
9 WASHINGTON COUNTY,
10 *Respondent.*

11
12 LUBA No. 2005-116

13
14 FINAL OPINION
15 AND ORDER

16
17 Appeal from Washington County.

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19 Wendie L. Kellington, Lake Oswego, represented petitioner.

20
21 Christopher A. Gillmore, Assistant County Counsel, Hillsboro, represented respondent.

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23 BASSHAM, Board Member; DAVIES, Board Chair; HOLSTUN, Board Member,
24 participated in the decision.

25
26 REMANDED 11/02/2005

27
28 You are entitled to judicial review of this Order. Judicial review is governed by the
29 provisions of ORS 197.850.

NATURE OF THE DECISION

Petitioners appeal a letter from the county planning director concluding that a solid waste landfill is not allowed on petitioners’ property in the exclusive farm use (EFU) zone.¹

VOLUNTARY REMAND

The county has moved for voluntary remand of the challenged decision, stating:

“On remand respondent will either revoke the letter in its entirety or review and comprehensively address the assignments of error raised by petitioners in their petition for review including the issue of permitting landfills on high value farmland.
* * *” Motion for Voluntary Remand 1.

Petitioners object to voluntary remand, arguing that, while the county may be willing to revoke the challenged letter in its entirety, the county is apparently not willing to abandon the position taken in that letter, *i.e.*, that a solid waste landfill is not allowed on petitioners’ property in the EFU zone. Petitioners explain that, based on conversations with the assistant county counsel, they believe that the county will continue to assert that position in a pending claim under Ballot Measure 37 (2004) that petitioners filed against the county in March 2005.² Therefore, petitioners argue, voluntary remand is not appropriate, because remand will not provide petitioners with everything they would be entitled to from this Board. *Angel v. City of Portland*, 20 Or LUBA 541, 543 (1991).

In *Angel*, we stated:

¹ The challenged letter does not state the basis for that conclusion, but we understand from the parties’ briefing that it is based on the position that the subject parcel is composed predominantly of high-value farmland, and county land use regulations that prohibit new solid waste disposal facilities on high-value farmland.

² The Marion County Circuit Court declared Ballot Measure 37 invalid in October 2005. *MacPherson v. Department of Administrative Services*, (Circuit Court No. 00C15769, October 14, 2005). The county is a defendant in that lawsuit. As discussed below, the county requests that we dismiss this appeal, because the challenged decision is not subject to our jurisdiction under Ballot Measure 37. We need not and do not consider that motion, or what consequences, if any, the circuit court opinion has on our jurisdiction.

1 “The legislature has clearly expressed an intent that appeals of land use decisions be
2 thoroughly and expeditiously determined by the Board. ORS 197.805 and
3 [197.835(11)(a)]. Granting a local government request for remand of an appealed
4 decision, over petitioner’s objection, is consistent with this policy of expeditious and
5 complete review only if the local government demonstrates that the proceedings on
6 remand will be capable of providing the petitioner with everything he would be
7 entitled to from this Board. * * *” *Id.*

8 Judging from the petition for review, the relief that petitioners seek from LUBA is a
9 determination that the county is wrong as a matter of law in taking the position that a solid waste
10 disposal facility is not allowed on high value farmland in the EFU zone. Petitioners are apparently
11 concerned that voluntary remand followed by revocation of the challenged letter will leave the merits
12 of that dispute unresolved, allowing the county to assert it in other proceedings.

13 However, *Angel* does not guarantee the petitioner a particular *result* before LUBA. To
14 obtain voluntary remand over a petitioner’s objections, the local government must demonstrate that
15 the proceedings on remand are capable of providing the petitioner with “everything he would be
16 entitled to” from LUBA, *i.e.*, review of the issues raised in the petition for review. *Id.* Voluntary
17 remand requires no confession of error, and there is no obligation on remand to correct the
18 challenged decision in response to the issues raised in the petition for review. *Paddock v. Yamhill*
19 *County*, 45 Or LUBA 39, 43 (2003); *Hribernick v. City of Gresham*, 35 Or LUBA 329, 331
20 (1988), *aff’d* 158 Or App 519, 974 P2d 791 (1999).

21 Here, the county has stated that it will either revoke the decision in its entirety or address all
22 of the issues raised in the petition for review. In our view, that is sufficient to demonstrate that
23 voluntary remand over petitioners’ objection is appropriate in this case. Where, as here, the
24 petitioners essentially seek to reverse or nullify the challenged decision, we see no reason why a
25 local government may not seek voluntary remand over the objection of petitioners, with the intent of
26 revoking the challenged decision in its entirety.³

³ We would almost certainly feel differently if the local government sought remand over the objections of
the *applicant* (who might be a petitioner or intervenor-respondent) with the intent of revoking a decision that

1 The county’s motion for voluntary remand is granted.

2 **OTHER MOTIONS**

3 Our disposition of the motion for voluntary remand makes it unnecessary to resolve the
4 motions to strike filed by petitioners and the county, the county’s motion to dismiss, or petitioners’
5 motion to file a reply brief. We do not reach those motions.

6 The county’s decision is remanded.

approves or denies a development application. In that circumstance, the revocation of the decision would also nullify the underlying development application.