

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 CARL R. PELZ and ROSALIE C. PELZ,
5 *Petitioners,*

6
7 vs.

8
9 CLACKAMAS COUNTY,
10 *Respondent.*

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12 LUBA No. 2008-089

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14 FINAL OPINION
15 AND ORDER

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17 Appeal from Clackamas County.

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19 Carl R. Pelz and Rosalie C. Pelz, Portland, filed the petition for review and argued on
20 their own behalf.

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22 D. Daniel Chandler, Oregon City, filed the response brief and argued on behalf of
23 respondent.

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25 HOLSTUN, Board Member; BASSHAM, Board Chair, participated in the decision.

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27 RYAN, Board Member, did not participate in the decision.

28
29 REMANDED

10/16/2008

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

NATURE OF THE DECISION

Petitioners appeal the county’s denial of their minor land partition application.

MOTION FOR VOLUNTARY REMAND

The county moves for a voluntary remand and agrees to address all the issues presented in the petition for review. Petitioners oppose the motion.

As a general rule, where a local government agrees to address all of a petitioner’s assignments of error, LUBA will grant a motion for voluntary remand over a petitioner’s objections. *Angel v. City of Portland*, 20 Or LUBA 541, 543 (1991). The county in this appeal agrees to address all of petitioner’s assignments of error on remand, and therefore, absent an exception to the general rule, a voluntary remand is appropriate.

Petitioners first argue that the issue of incorrect tables relied on in the decision by the hearings officer have been corrected before LUBA and therefore remand is not necessary to correct the tables. The inaccuracy of the tables, however, is not the only issue raised in the petition for review. The hearings officer’s treatment of those tables and interpretation of local provisions is also at issue. The mere correction of the tables does not answer those questions.

Petitioners also argue that because the same hearings officer who heard the case below would also hear the case on remand, there would be no point in remanding the decision because “[f]undamental disagreements regarding these issues are not likely to be resolved without intervention from LUBA.” Response to Motion for Voluntary Remand 2. We have no reason to doubt the county’s word that it will address all the assignments of error, and petitioners provide no evidence that the remand is sought for improper purposes. *See Mulholland v. City of Roseburg*, 24 Or LUBA 240, 244 n 3 (1992) (voluntary remand inappropriate if motivated by delay or other improper reasons). Absent any evidence that the

1 county's request is motivated by an improper purpose or delay, we will not deny the motion
2 for voluntary remand on this ground.

3 Finally, petitioners argue that the case has already been briefed, oral argument has
4 been conducted, and the parties have invested a lot of time and money in the process.
5 According to petitioners, granting the voluntary remand would not serve the purpose that
6 "time is of the essence in reaching final decisions in matters involving land use." ORS
7 197.805. While we sympathize with petitioners, we have held that the "time is of the
8 essence" purpose is not served by forcing a local government to defend a decision it no
9 longer wishes to defend. Instead, that purpose is "furthered by remanding the decision so
10 that the [local government] can reconsider the decision and adopt a decision it is prepared to
11 defend." *Mulholland*, 24 Or LUBA at 243.

12 The county's decision is remanded.