

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

3
4 MARK FRITCH,
5 *Petitioner,*

6
7 vs.

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9 CLACKAMAS COUNTY,
10 *Respondent,*

11 and

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13 ROBIN JACOBS, LON WELSH,
14 CHRISTINA MEDLYN, MARILYN SULLIVAN,
15 SUZANNE PILAND and DIANA PARTIN,
16 *Intervenors-Respondents.*

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18 LUBA No. 2012-094

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20 FINAL OPINION
21 AND ORDER

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23 Appeal from Clackamas County.

24 Daniel Kearns, Portland, represented petitioner.

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26 Stephen L. Madkour, County Counsel and Rhett C. Tatum, Assistant County Counsel,
27 Oregon City, represented respondent.

28 Erin Madden, Portland, represented intervenors-respondents.

29 RYAN, Board Member; BASSHAM, Board Chair; HOLSTUN, Board Member,
30 participated in the decision.

31
32 REMANDED

03/07/2013

33 You are entitled to judicial review of this Order. Judicial review is governed by the
34 provisions of ORS 197.850.
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NATURE OF THE DECISION

Petitioner appeals a hearings officer decision denying a request for a conditional use permit to operate a log home manufacturing business.

VOLUNTARY REMAND

The county and petitioner previously jointly moved for a voluntary remand of the decision, and intervenors objected to the motion. In the first joint motion the county agreed to address the two assignments of error that petitioner asserted he would have raised at LUBA. In an order dated February 13, 2013, we denied the first joint motion because we concluded that the county had not demonstrated that the proceedings on remand will be capable of providing intervenors everything they would be entitled to from LUBA. *Fritch v. Clackamas County* __ Or LUBA __ (LUBA No. 2012-094, Order, February 13, 2013), slip op 3, *citing Angel v. City of Portland*, 20 Or LUBA 541, 543 (1991). The first joint motion failed to acknowledge intervenors' right to file a cross petition for review and to assert cross assignments of error. We allowed the county to refile its motion and demonstrate that the proceedings on remand will be capable of providing intervenors everything they would be entitled to from LUBA.

The county and petitioner subsequently filed a second joint motion for voluntary remand. Intervenors object to the second joint motion on the same grounds that they objected to the first joint motion. Intervenors argue that LUBA does not have authority to grant a motion for voluntary remand after the record is filed. According to intervenors, the legislature has not provided authority for LUBA to remand a decision after the record has been filed, and LUBA's administrative rules do not allow LUBA to grant a motion for voluntary remand. In our recent decision in *Dexter Lost Valley Community Association v. Lane County*, __ Or LUBA __ (LUBA No. 2012-044, October 16, 2012), *review pending*

1 (CA 152839), we rejected identical arguments, and we rejected them in our February 13,
2 2013 Order for the reasons we explained in *Dexter*. We reject them here as well.

3 The second joint motion demonstrates that the proceedings on remand will be capable
4 of providing intervenors with everything they would be entitled to from LUBA.
5 Accordingly, the motion is granted.

6 The county's decision is remanded.