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

HAYSTACK ROCK, LLC,
Petitioner,

vs.

CITY OF CANNON BEACH,
Respondent,

and

STANLEY ROBERTS and REBECCA ROBERTS,
Intervenors-Respondents.

LUBA No. 2022-041

FINAL OPINION
AND ORDER

Appeal from City of Cannon Beach.

William L. Rasmussen and Steven G. Liday filed the petition for review and reply brief on behalf of petitioner. Also on the briefs was Miller Nash LLP. William L. Rasmussen argued on behalf of petitioner.

William K. Kabeiseman filed a response brief and argued on behalf of respondent. Also on the brief was Bateman Seidel Miner Blomgren Chellis & Gram, PC.

Wendie L. Kellington filed the intervenors-respondents' brief and argued on behalf of intervenors-respondents. Also on the brief was Kellington Law Group PC.

ZAMUDIO, Board Member; RYAN, Board Chair, participated in the decision.

RUDD, Board Member, did not participate in the decision.

REMANDED 03/16/2023

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

Opinion by Zamudio.

NATURE OF THE DECISION

Petitioner appeals a city community development director decision approving a development permit for a new dwelling and vehicular access.

BACKGROUND

This is the second time that a city decision related to the development of a dwelling on the subject property has been before us. In 2021, the city denied intervenors-respondents' (intervenors) application for a development permit for a new dwelling. We affirmed the city's denial in *Roberts v. City of Cannon Beach*, ___ Or LUBA ___ (LUBA No 2020-116, July 23, 2021), *aff'd*, 316 Or App 305, 504 P3d 1249 (2021), *rev den*, 370 Or 56 (2022). This appeal involves the city's approval of a subsequent application.

The subject property is a 5,394-square-foot lot on a steep hillside facing the Pacific Ocean in the Tolovana Park Subdivision. The property is vacant and is zoned Residential Lower Density (RL) with an Oceanfront Management (OM) overlay. The property slopes towards the ocean. To the east of the subject property is South Hemlock Street, the city's main north-south street. Intervenors propose vehicular access to the dwelling from South Hemlock Street via Nenana Avenue, an undeveloped right-of way dedicated to the city in the Tolovana Park Subdivision plat.

Petitioner owns the adjacent property to the north and east of the subject property. Petitioner's property is developed with one residence located within 100 feet of the subject property.

On August 3, 2021, intervenors submitted applications for a development permit, building permit, tree removal permit, and grading permit to develop a dwelling. Record 638. On that same date, intervenors submitted an application for approval to develop a driveway to access the dwelling. Record 624. Intervenors requested that the city consider the driveway and dwelling application together in a consolidated review. With respect to the dwelling, intervenors submitted development permit applications for the dwelling, grading, erosion and sedimentation control, site plan, architectural drawings, a tree inventory, a tree removal and protection plan, and geotechnical reports. Record 639. With respect to the driveway, intervenors submitted a right-of-way application, driveway plans, and a tree removal and protection plan. Record 625. The proposed driveway would be constructed in the Nenana Avenue right-of-way and continue onto the subject property. Intervenors cover letters for the driveway and dwelling applications explain that the driveway application is in addition to the public road application pending with the city and that intervenors were willing to construct either a public road or a driveway based on the city's preference. Record 624, 639.

On March 21, 2022, the community development director issued an order approving a "development permit in conjunction with a building permit * * * for

the development of a new residence and accompanying road development." Record 8. This appeal followed.

MOTIONS TO TAKE OFFICIAL NOTICE

We may take official notice of relevant law as defined in ORS 40.090. A motion for official notice must explain the relevance of the document to an issue in the appeal. *Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians v. City of Coos Bay*, ___ Or LUBA ___ (LUBA No 2020-012, May 4, 2021).

The city moves LUBA to take official notice of the city charter and Cannon Beach Ordinance 21-05 (Ord 21-05) under ORS 40.090(7), which authorizes taking notice of "[a]n ordinance, comprehensive plan or enactment of any county or incorporated city in this state." The city explains that those documents are relevant to petitioner's argument that the city erred by not requiring conditional use review and the city's response invoking the goal post rule at ORS 227.178(3). The city's motion to take official notice is allowed.

Intervenors move LUBA to take official notice of Ord 21-05 and a Clatsop County Circuit Court Order in 22CV07199, a civil suit involving the same parties as this appeal. With respect to Ord 21-05, intervenors rely on ORS 40.090(7) and explain that Ord 21-05 adopts Cannon Beach Municipal Code (CBMC) 17.42.030(F)(3), which petitioner relies on to argue that intervenors' driveway requires conditional use approval. Intervenors' motion to take official notice is allowed with respect to Ord 21-05.

Intervenors' motion to take official notice does not explain what the circuit court order is intended to establish or how it is relevant to an issue on appeal. Intervenors point out that petitioner refers to the circuit court proceedings in the petition for review. However, in both of those references, petitioner contends that the circuit court dispute is not relevant to the issues in this appeal. Intervenors' motion to take official notice is denied with respect to the circuit court order.

MOTION TO STRIKE

On September 16, 2022, the city filed the respondent's brief and argued therein that LUBA lacks jurisdiction. On September 27, 2022, the Board held oral argument in this appeal. On September 28, 2022, the Board issued an order informing the parties that the Board will treat the city's jurisdictional argument as a motion to dismiss and allowing 14 days for petitioner and intervenors to respond to the city's motion to dismiss. On October 12, 2022, petitioner filed a response to the city's motion to dismiss and a contingent motion to transfer the case to circuit court and intervenors filed a response to the city's motion to dismiss. On October 21, 2022, intervenors filed a reply to petitioner's response to the city's motion to dismiss. On October 27, 2022, petitioner filed a motion to strike intervenors' reply. On November 2, 2022, intervenors filed a response to petitioner's motion to strike. On November 8, 2022, we issued an order instructing the parties that no further pleadings would be considered unless prior permission was sought and obtained from the Board.

Intervenors argue that petitioner's pleading responding to the city's motion to dismiss contains supplemental briefing on the merits of the appeal. Petitioner disputes that characterization and argues that neither our rules nor our September 28, 2022 order allowed intervenors to file a reply to their response. We agree with intervenors that petitioner's post-oral argument pleading contained supplemental briefing on the merits of the appeal and, in fairness, we would either need to disregard that supplemental briefing or allow intervenors' reply to petitioner's response. The most efficient resolution is for the Board to consider both parties' pleadings. Petitioner's motion to strike is denied.

MOTION TO DISMISS

LUBA's jurisdiction is limited to review of "land use decisions" and "limited land use decisions." ORS 197.825(1). In the respondent's brief, the city argues that LUBA lacks jurisdiction because the challenged development permit is explicitly excluded from the definition of a "land use decision" under ORS 197.015(10)(b)(B), because the challenged decision "approves or denies a building permit issued under clear and objective land use standards." ORS 197.015(10)(b)(B); Respondent's Brief 1-2.[1] Petitioner and intervenors respond,

[1] The city does not argue that the development permit is subject to the "ministerial decision exclusion" under ORS 197.015(10)(b)(A), which excludes from LUBA's jurisdiction a local government decision that is "made under land use standards that do not require interpretation or the exercise of policy or legal judgment."

and we agree for reasons explained below, that the challenged decision is not a building permit.

The jurisdictional dispute calls us to interpret the term "building permit" in ORS 197.015(10)(b)(B). In interpreting a statute, we examine the statutory text, context, and legislative history with the goal of discerning the enacting legislature's intent. *State v. Gaines*, 346 Or 160, 171-72, 206 P3d 1042 (2009); *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610-12, 859 P2d 1143 (1993).

In *Madrona Park, LLC v. City of Portland*, we examined the building permit exclusion and explained that "[t]he legislature excluded a specific type of local government decision, a building permit decision, from LUBA's jurisdiction if the building permit was 'issued under clear and objective land use standards.'" 80 Or LUBA 26, 32, *aff'd*, 300 Or App 403, 450 P3d 1050 (2019) (quoting ORS 197.015(10)(b)(B); emphasis omitted). In adopting the building permit exclusion in 1991, the legislature retained the "ministerial decision exclusion," an "existing exclusion for the more general and nonspecific category of local government decisions." *Id.* (citing ORS 197.015(10)(b)(A)). We concluded that the legislature recognized "that building permits are substantively different from more generic land use decisions and that the legislature intended that LUBA's jurisdiction over building permit decisions would be (1) limited and (2) evaluated under a different standard." *Id.* at 33. We concluded that most building permits

are not subject to our jurisdiction. However, we were not required to interpret the phrase "building permit" in *Madrona Park*.

We start with the text. The terms "building" and "permit" are not defined for purposes of ORS 197.015, which is itself a definition section. Hence, we refer to the plain meanings of those terms. "Building" means "a constructed edifice designed to stand more or less permanently, covering a space of land, usu. covered by a roof and more or less completely enclosed by walls, and serving as a dwelling, storehouse, factory, shelter for animals, or other useful structure." *Webster's Third New Int'l Dictionary* 292 (unabridged ed 2002). "Permit" as a noun means "a written warrant or license granted by one having authority."[2] *Webster's* at 1683. The plain meaning of "building permit" is a written document that authorizes the development of a structure.

We proceed to context. State law requires a building permit for all structures that are regulated under the state building code. *See* ORS 455.050 (providing basic requirements for all building permits issued in this state). Municipalities enforce the state building code by requiring and issuing building permits. For example, CBMC Title 15 governs "the construction, alteration,

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[2] The term "permit" in context of a "building permit" is distinct from what we commonly refer to as a "statutory permit" for purposes of ORS 227.175 and ORS 227.160(2), the latter of which defines "permit" as "discretionary approval of a proposed development of land, under ORS 227.215 or city legislation or regulation." We conclude the development permit is a statutory permit later in this decision.

moving, demolition, repair, maintenance and work associated with any building or structure except those located in a public way." CBMC 15.04.030(A). To obtain a building permit, an applicant must describe the proposed construction or alteration of a structure to the city building official. CBMC 15.04.100, 15.04.040.

The legislature declared that "[i]t is in the best interests of this state that construction-related development activities proceed in a manner that is as quick and efficient as practicable." ORS 455.015(1)(a). The legislature furthered that policy by excluding most building permits from LUBA review. As the legislature recognized in ORS 197.015(10)(b)(B), a local government might apply land use standards in issuing a building permit. In some instances, a local government will issue a land use decision verifying the use as an outright permitted use or approving a use prior to or contemporaneously with issuing a building permit.

As pertinent here, the CBMC provides that the city building official reviews an application for a building permit to determine whether the proposed development complies with the city zoning code, CBMC Title 17. CMBC 15.04.100(A)(1); CMBC 17.92.030.[3] A Type 1 development permit is required

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[3] CMBC 15.04.100(A)(1) provides:

> "The application, plans, specifications, computations and other data filed by an applicant for a permit shall be reviewed by the building official. Such plans may be reviewed by other departments of this jurisdiction to verify compliance with any applicable laws under their jurisdiction. If the building official finds that the work described in application for a permit and the plans, specifications

for the construction of a dwelling. CBMC 17.92.010(A)(1)(a).[4] "In the case of a structure or building requiring a building permit, the development permit may be part of the building permit." CBMC 17.92.010(A)(2).

The city argues that the challenged decision approves a building permit for a dwelling. The city explains that

> "[t]ypically, and as specifically authorized by CBMC 17.92.010(A)(2), if the activity subject to review is a structure that requires a building permit, the building permit itself functions as the Type 1 development permit, and no other document is issued. However, because of the significant interest in this development, the City issued a separate development permit." Respondent's Brief 4.

> and other data filed therewith *conform to the requirements of this code and other pertinent laws and ordinances*, and that the fees have been paid, the building official shall issue a permit therefor to the applicant." (Emphasis added.)

CBMC 17.92.030 provides: "Before issuing a permit for the construction, reconstruction or alteration of a structure, it will be the responsibility of the building official to make sure that provisions of this title will not be violated."

[4] CBMC 17.92.010(A)(1)(a) provides:

> "(1) A development permit is required for:
>
> "(a) The construction, enlargement, alteration, repair, moving, improvement, removal, conversion or demolition of any structure or building which requires a building permit pursuant to either the State of Oregon, One and Two Family Dwelling Code, or the State of Oregon, Structural Specialty Code. (For the purpose of this section, these are referred to as Type 1 development permits.)[.]"

The city argues that the challenged development permit was simply a method of determining whether the proposed dwelling complies with land use standards as part of the building permit for the dwelling. The city argues that the city applied only clear and objective standards in issuing the development permit.

Intervenors respond that the challenged development permit is a distinct decision from a building permit for the dwelling. Intervenors point out that, in the challenged decision, the city characterizes the decision as a "development permit" that is "in conjunction with a building permit" and that the challenged decision does not apply and building code standards and, instead, applies only land use standards. Record 8. Those standards include CMBC 17.42.050 and CMBC 17.42.060, the oceanfront management overlay setback requirements for the dwelling and deck, and CBMC 17.70.030 tree removal standards.

Intervenors emphasize that the CMBC provides separate procedures for building permit and development permit applications, including that those decisions are appealable to different authorities. Appeals of development permits are to the planning commission, while appeals of building permits are to the city manager. CBMC 17.92.010(C)(1); CBMC 15.04.150(D). Intervenors argue that, while a development permit may be processed with a building permit pursuant to CMBC 17.92.010(2), a development permit is separate from and a prerequisite to a building permit.

Intervenors also observe that the city has not yet issued a building permit for intervenors' dwelling. Intervenors submitted evidence that the city has not

issued a building permit for the dwelling that the development permit approves. There is no building permit in the record. Intervenors' application for a building permit is listed as "in review" with the city. Intervenors' Response to Motion to Dismiss 3, Ex A at 6, Ex B. Nothing in the record establishes that intervenors' submitted building plans have been approved by the building official. Intervenors emphasize that the development permit also conditionally authorizes development of vehicular access and tree removal. Intervenors argue that, even if the city had issued a building permit for the dwelling with the development permit, we should still consider the development permit a separate land use decision subject to our review. In the alternative, intervenors argue, even if we agree with the city that the challenged decision is a building permit, the city did not apply only clear and objective standards in issuing the decision.

Intervenors and petitioner are aligned in opposing the city's motion to dismiss. Petitioner argues that the challenged decision is not a building permit or, if it is a building permit, that the city did apply or should have applied standards that are not clear and objective.

We agree that the challenged development permit is not a building permit. As we explained in *Madrona Park*, building permits are substantively different from more generic land use decisions. 80 Or LUBA at 33. Based on the text, context, and legislative history of ORS 197.015(10)(b)(B), we conclude that "building permit" means a decision approving or denying specifications for the construction or alteration of a structure that is regulated under the state building

code. Such a decision might also apply land use standards. However, to constitute a building permit, the decision must approve or deny specifications for the construction or alteration of a structure. The development permit approves the dwelling, vehicular access, grading, and tree removal on the subject property, and concludes that intervenors' dwelling plans adhere to required setbacks. The challenged development permit does not apply or approve building code specifications for the dwelling structure. As the city explains, a development permit requires review only of the land use standards in CBMC Title 17. CBMC Title 15 building code standards do not apply to development permit decisions. Respondent's Brief 39. We agree that the challenged development permit is not a building permit and, thus, is not subject to the building permit exclusion.

The city's motion to dismiss is denied.[5]

FIRST ASSIGNMENT OF ERROR

Petitioner argues that the city was required to but failed to give petitioner notice of the decision, therefore depriving petitioner of the opportunity to file a local appeal and participate in a *de novo* hearing before the city. Petitioner argues this procedural error prejudiced its substantial rights. ORS 197.835(9)(a)(B). Petitioner argues that petitioner was entitled to notice of the decision under state and local law. For reasons explained below, we conclude that petitioner was entitled to notice and hearing under state law.

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[5] Petitioner's contingent motion to transfer this appeal to circuit court is moot.

The city may approve or deny an application for a permit without a hearing if the city gives notice of the decision and provides an opportunity for a local appeal and *de novo* hearing. ORS 227.175(10)(a)(A). Consistent with state law, a decision on a development permit may be appealed to the planning commission within 14 days of the date that written notice of the decision was mailed and an appeal of a development permit is heard as a *de novo* hearing. ORS 227.175(10)(a)(D); CBMC 17.92.010(C)(1), (2)(e); CBMC 17.88.140(A); CMBC 17.88.160(A). As an owner of adjacent land, petitioner would be entitled to such notice and opportunity to file a local appeal. ORS 227.175(10)(c)(A).

The notice requirement in ORS 227.175(10)(a)(A) applies only to a statutory permit, which ORS 227.160(2) defines as "discretionary approval of a proposed development of land, under ORS 227.215 or city legislation or regulation." "[T]he term 'discretion' and its derivatives refer to a decision that requires the application of judgment or some form of evaluation, as distinct from 'nondiscretionary' decisions that can be made solely by reference to objective criteria." *Buckman Community Assn. v. City of Portland*, 168 Or App 243, 256 n 1, 5 P3d 1203 (2000).

Petitioner argues that the development permit is a statutory permit because the approval of the driveway within the Nenana Avenue right-of-way is subject to discretionary approval pursuant to criteria in CBMC 12.36.030(B).[6] Petitioner

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[6] CBMC 12.36.030 governs right-of-way permits and provides, in part:

"A. A permit shall be obtained from the public works department before planting, removing or otherwise significantly altering any tree or shrub in the street right-of-way or placing or removing any improvement in the street right-of-way.

"B. The following criteria shall be considered as part of the process of reviewing an application for a permit:

"1. Maintains public safety;

"2. Maintains adequate access for public use of the street right-of-way;

"3. Maintains or improves the general appearance of the area;

"4. Does not adversely affect the drainage or cause erosion of the adjacent property.

"All of these criteria must be met in order for the public works department to issue a permit.

"C. Upon issuance of a permit, property owners may plant trees or shrubs or place improvements in the public right-of-way abutting their property so long as the selection, location and planting of such trees or shrubs or the placing of an improvement is in accordance with the permit.

"* * * * *

"F. Nothing in the ordinance codified in this chapter shall be construed to supersede or replace the requirements of Section 17.70.020 of Chapter 17.70, Tree Removal, which requires a permit from the city prior to any tree removal."

argues that each of the criteria in in CBMC 12.36.030(B) require the exercise of discretion.[7]

Intervenors agree, without much elaboration, that the city's decision is subject to ORS 227.175 and that the city should have provided petitioner notice and opportunity for a *de novo* hearing as required by ORS 227.175(10). Intervenors-Respondents' Brief 16; Intervenors' Response to the City's Motion to Dismiss 21. Intervenors assert that "LUBA can and should accept jurisdiction and remand for the City to provide the ORS 227.175(10) required local hearing with instructions that outline the limited standards that the City can apply." Intervenors' Response to the City's Motion to Dismiss 21.

The city responds that the challenged decision is not subject to notice under ORS 227.175(10)(c)(A). The city does not dispute that the CBMC 12.36.030(B) criteria require the exercise of discretion or argue that those criteria are not applicable to a development permit for development within the Nenana Avenue right-of-way. Instead, the city asserts that the development permit does not

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[7] Elsewhere in this dispute, petitioner argues that the city erred in conditionally approving development in the right-of-way because intervenors' access application was incomplete. Petitioner also alleges that the challenged decision fails to specify what aspect of the access is approved and whether that access complies with all applicable regulations. Nevertheless, petitioner's argument that it was entitled to notice under ORS 227.175(10)(c)(A) depends on the city having approved improvement in the right-of-way without providing petitioner notice of the decision and an opportunity for a local appeal and *de novo* hearing.

approve any development within the Nenana Avenue right-of-way and so the decision is not subject to the discretionary approval criteria in CBMC 12.36.030(B) at all. Respondent's Brief 17-18. The city argues that the development permit approves only the portion of the driveway on intervenors' property. Thus, according to the city, petitioner has not established that it was entitled to notice of the decision under ORS 227.175(10)(c)(A).

CMBC 17.90.020 requires that every lot must have access to a street and provides: "Every lot shall abut a street, other than an alley, for at least twenty-five feet. Lots which were created prior to adoption of the zoning ordinance which do not meet this provision may be accessed via an irrevocable recorded easement of a minimum of ten feet in width." The city concluded that the subject property can be accessed either via "an extension of Nenana Avenue, or an access easement from the City of Cannon Beach that approves the design and location of a driveway within the Nenana Avenue right-of-way." Record 14. The decision approves a development permit for "development of a new residence and accompanying road development" and "a driveway extension over the Nenana Avenue right-of-way servicing the residence." Record 8, 9. The tree removal approval says that "[t]he Cannon Beach Public Works Department will issue the tree removal permit for those trees located in the Cannon Beach right-of-way areas." Record 12. The conditions of approval provide:

> "6. Prior to any construction activity pursuant to this permit, Applicant shall obtain final approval for design and construction of an extension of Nenana Avenue, or an access easement from the

City of Cannon Beach that approves the design and location of a driveway within the Nenana Avenue right-of-way.

"7. No tree removal or grading of city right-of-way is permitted as part of this development permit until an approved Right-of-Way Permit is issued[.]" Record 14.

We agree with petitioner and intervenors that the challenged decision conditionally approves tree removal and development of vehicular access in the Nenana Avenue right-of-way. The decision contemplates later decisions by the city regarding the specific design for the approved access. The decision also contemplates a separate application for a right-of-way permit, presumably under the standards at CBMC 12.36.030(B). However, the city does not argue that those standards do not apply to the development permit. Instead, the city argues simply that the development permit did not approve any development in the right-of-way. With that limited response, we assume without deciding that the standards in CBMC 12.36.030(B) require the application of judgment or some form of evaluation, and that the city should have applied the standards in CBMC 12.36.030(B) and, thus, should have provided petitioner notice of the decision under ORS 227.175(10)(c)(A) because petitioner owns adjacent property.

The issue then becomes whether the city's procedural error in failing to provide petitioner notice of the decision prejudiced petitioner's substantial rights. Petitioner asserts that failure to provide notice of the decision deprived petitioner of the opportunity to initiate a local appeal to the planning commission, as provided in CBMC 17.92.010(C) and CBMC 17.88.140. The city issued its

decision on March 21, 2022. The 14-day local appeal deadline expired on April 4, 2022. CBMC 17.88.140(A). On April 25, 2022, petitioner filed its notice of intent to appeal, initiating this appeal. In the notice of intent to appeal, petitioner asserts, and no party disputes, that petitioner first learned of the decision on April 11, 2022.[8]

Intervenors assert that petitioner was generally aware of and tracking the applications and proceedings. Intervenors-Respondents' Brief 15-16. However, intervenors do not dispute that petitioner received actual notice of the decision after the deadline for a local appeal. Intervenors also do not dispute that the city's procedural error resulted in depriving petitioner of a local appeal and hearing.

We agree with petitioner that the city was required to provide petitioner notice of the decision under ORS 227.175(10)(c)(A). The city's failure to provide such notice prejudiced petitioner's substantial right to file a local appeal and participate in the *de novo* hearing that ORS 227.175(10)(a)(A) and (D) require. Accordingly, we remand the city's decision to the city to provide the required notice and opportunity for a local appeal with a *de novo* hearing. Because we conclude that petitioner was entitled to notice under state law, we need not and

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[8] Petitioner does not explain in its pleadings how and when it received notice of the development permit decision. In the petition for review, petitioner implies that it learned of the decision when the city published a copy of the meeting packet for an April 12, 2022, city council work session. Petition for Review 1-2.

do not resolve petitioner's alternative argument that it was entitled to notice under local law.

The first assignment of error is sustained.

SECOND THROUGH EIGHTH ASSIGNMENTS OF ERROR

We briefly summarize the remaining assignments of error. In the second assignment of error, petitioner argues that the city failed to apply the correct review process for development within the Nenana Avenue right-of-way. In the third assignment of error, petitioner argues that the city improperly conditionally authorized development of the subject property without approval from the owners. In the fourth assignment of error, petitioner argues that the decision improperly defers compliance with applicable criteria through conditions of approval. In the fifth assignment of error, petitioner argues that the dwelling may not be approved because there is no vehicular access to the subject property. In the sixth assignment of error, petitioner argues that the proposed driveway and patio violate the oceanfront setback standard. In the seventh assignment of error, petitioner argues that the proposed driveway violates applicable road standards. In the eighth assignment of error, petitioner argues that the director's decision is not supported by substantial evidence.

We sustain the first assignment of error and remand for the city to provide notice and an opportunity for a local appeal and *de novo* hearing. Because the city will presumably accept evidence during the *de novo* hearing, the record will change, and the city may issue a materially different decision on remand.

Accordingly, it would be premature and advisory for us to reach the merits of the second through eighth assignments of error. We do not reach or address them.

The city's decision is remanded.