



1           Petitioners argue that, absent an express exclusion of the prior record from the remand  
2 proceeding, the local government record in a prior, remanded appeal is properly included in the  
3 remand record. *Murphy Citizens Advisory Committee v. Josephine County*, 33 Or LUBA 882,  
4 889 (1997); *East Lancaster Neigh. Assoc. v. City of Salem*, 29 Or LUBA 554, 555 (1995).  
5 According to petitioners, the local government did not expressly exclude the prior record from the  
6 record on remand, and therefore the prior record is included in the remand record.

7           The county responds that, while the governing body did not expressly exclude the prior  
8 record from the remand record, it limited the issues and evidence during the remand proceedings to  
9 the two bases for remand, and at no time during the remand proceedings did any party request that  
10 the governing body incorporate or consider the prior record. The county also argues that  
11 petitioners have made no showing that the prior record has any relevance to the issues on remand.  
12 According to the county, where the remand issues are narrow and specific, the remand proceedings  
13 are limited to those issues, and there is no request to include the prior record or a showing that the  
14 prior record is relevant to the remand issues, the prior record should not *automatically* be  
15 presumed to be part of the remand record. Rather, the county argues that the presumption should  
16 be reversed: unless there is a clear indication that the prior record was actually included and  
17 considered during the remand proceedings, or at least a showing that the prior record is necessary  
18 to resolve an issue on remand, the prior record should not be included in the remand record.

19           We see no reason to reverse the presumption described in *Murphy Citizens Advisory*  
20 *Committee* and *East Lancaster Neigh. Assoc.* As we explained in the latter case, the initial  
21 proceedings and the proceedings on remand are properly viewed as a single local land use  
22 proceeding. While LUBA's remand may narrow or cut off issues that were resolved or that could  
23 have been raised in an appeal of the initial decision, the complete record of the initial proceeding  
24 may be necessary for LUBA and the Court of Appeals to understand and resolve challenges to the  
25 decision on remand, no matter how narrow the issues on remand and on appeal of the decision on  
26 remand. The county suggests that petitioners' insistence on including the prior record is "an attempt

1 to reintroduce and relitigate issues decided in the prior proceeding.” Response to Objection to  
2 Record 2. However, both parties are surely aware of *Beck v. City of Tillamook*, 313 Or 148,  
3 831 P2d 671 (1992), and its holding that issues that were resolved in an initial appeal to LUBA  
4 cannot be relitigated on appeal of a decision on remand.

5 Under *Murphy Citizens Advisory Committee*, a local government that does not wish to  
6 include the prior record in the remand record may expressly exclude all or part of that prior record.  
7 For whatever reason, the decision maker on remand did not do so in the present case. We do not  
8 understand the county to object that including the prior record involves any significant administrative  
9 burden. Generally, all that is necessary is to list the prior record in the table of contents of the  
10 remand record. OAR 661-010-0025(4)(b). If the local government has not yet retrieved the copy  
11 of the initial record filed with LUBA, and LUBA still retains that record, it may simply inform LUBA  
12 and the parties of that fact. If the local government has already retrieved the copy of the initial  
13 record filed with LUBA, it may send that copy back to LUBA along with the remand record.

14 Petitioners’ third objection is sustained. The county shall file a supplemental record that  
15 includes the material specified in petitioners’ first, second and third objections, along with a new or  
16 amended table of contents. The Board shall advise the parties by letter of the date the supplemental  
17 record is received. The petition for review is due 21 days, and the response brief due 42 days,  
18 from the date the supplemental record is received.

19 Dated this 6th day of October, 2004.

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Tod A. Bassham  
Board Member