

1 *Creek Valley Assoc. v. Washington County*, we held that an applicant’s withdrawal of an
2 application after a local government decision on the application had been rendered and
3 appealed to LUBA did not render the LUBA appeal moot, where the county code did not
4 specify that withdrawal of a land use application would have that effect on a decision that
5 was rendered and appealed before the application was withdrawn. That is the situation we
6 have in this appeal.

7 Although we adhere to the above, there are two parts of our July 23, 2010 Order that
8 could be misleading, and we issue this order to clarify our July 23, 2010 Order. First, citing
9 *Standard Insurance Co. v. Washington County*, 17 Or LUBA 647, 660, *rev’d on other*
10 *grounds* 97 Or App 687, 776 P2d 1315 (1989) (*Standard Insurance*), our July 23, 2010 Order
11 suggested the county lacks jurisdiction to take action to void the challenged decision while
12 an appeal of that decision is pending before LUBA. We now clarify that this appeal presents
13 a limited circumstance in which the county may take action to void a decision while an
14 appeal of that decision is pending before LUBA. In this case the applicant has withdrawn the
15 application that led to the decision that is before LUBA in this appeal. In that circumstance,
16 we believe the county could, consistent with *Standard Insurance*, adopt a new land use
17 decision that revokes the decision that is before LUBA. That new decision would almost
18 certainly have the effect of rendering the present appeal moot. *See Heiller v. Josephine*
19 *County*, 25 Or LUBA 555-56 (1993) (where applicant withdraws the application and the land
20 use decision on appeal has been rescinded by a separate decision, LUBA will dismiss appeal
21 as moot).

22 Our July 23, 2010 Order also suggested another way the county might be able to
23 quickly terminate this dispute over a partition decision that neither the county nor the
24 applicant wish to defend. We indicated that the county could move for a voluntary remand,
25 and the applicant could withdraw the application and thereby terminate the matter.
26 Unfortunately our July 23, 2010 order also suggested that in moving for a voluntary remand

1 to allow the applicant to withdraw the application, the county would also have to agree to
2 address all of petitioners' assignments of error.³ A number of LUBA cases have held that
3 where a petitioner opposes a motion for voluntary remand, a local government generally
4 must agree to address all of the issues raised by petitioner to successfully move for voluntary
5 remand over a petitioner's objection and adopt a modified decision. *Fenn v. Douglas*
6 *County*, 56 Or LUBA 261, 262 (2008); *Grabhorn v. Washington County*, 50 Or LUBA 510,
7 512 (2005); *Angel v. City of Portland*, 20 Or LUBA 541, 543 (1991). However, even if we
8 assume petitioners in this appeal oppose the county's motion for voluntary remand, in none
9 of those cases was the local government moving for a voluntary remand for the purpose of
10 allowing an applicant to withdraw the application and thereby end the local government's
11 jurisdiction over the application, effectively terminating the matter. We now clarify that
12 when a motion for voluntary remand is filed either for the purpose of allowing an applicant
13 to withdraw its application or after an applicant has withdrawn the application, a local
14 government need not represent that it will address all of the issues presented by a petitioner
15 in order for that motion to be granted.

16 To summarize, the county has two options if it no longer wishes to defend the
17 decision on appeal and wishes to terminate the appeal as expeditiously as possible. First, the
18 county may adopt a new decision that revokes the challenged decision based on the
19 applicant's withdrawal of the application, and after that new decision becomes final and the
20 deadline for filing an appeal of that separate decision to LUBA has expired, the county may
21 then move to dismiss the present appeal as moot. Alternatively, the county may move to
22 remand the challenged decision, based on the applicant's withdrawal of the application.⁴

³ On August 3, 2010, the county submitted a letter to LUBA stating that "the county at this point does not understand the petitioner's issues well enough to be able to represent to the Board in a remand motion that the county will 'address all issues.'"

⁴ According to a letter from the applicant to the county included with the county's motion to dismiss, the applicant withdrew the application on July 8, 2010.

1 Such a remand would be effective to terminate this matter, since the county lost jurisdiction
2 to make a decision on the application once the applicant withdrew the application. *See*
3 *Randall v. Wilsonville*, 8 Or LUBA 185, 189 (1983) (withdrawal of application before a
4 decision on the application is made deprives local government of jurisdiction over the
5 application). If the county does not select one of those options, this appeal must proceed to
6 oral argument and a final opinion on the merits.

7 Oral argument remains scheduled for August 26, 2010 at 11:00 a.m.

8 Dated this 12th day of August, 2010.
9

10
11
12
13
14

Melissa M. Ryan
Board Member