

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 PAUL CONTE and BRYN THOMS,
5 *Petitioners,*

6
7 vs.

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9 CITY OF EUGENE,
10 *Respondent,*

11
12 and

13
14 OAKLEIGH MEADOW CO-HOUSING,
15 *Intervenor-Respondent.*

16
17 LUBA No. 2016-077

18
19 ORDER

20 In an order dated April 7, 2017, LUBA took under advisement petitioner
21 Paul Conte’s (petitioner’s) motion for summary reversal or remand of the
22 decision before us, which grants final planned unit development (PUD)
23 approval. *Conte v. City of Eugene*, __ Or LUBA __ (LUBA No. 2016-077,
24 Order, April 7, 2017). As explained in the order, LUBA recently remanded to
25 the city for further proceedings the city’s tentative PUD approval, which the
26 final PUD approval before us in this appeal is based upon. *Trautman v. City of*
27 *Eugene*, __ Or LUBA __ (LUBA Nos. 2015-076/077, January 31, 2017).

28 The city responds that it agrees that remand would be an appropriate
29 disposition of the appeal of the city’s final PUD approval, to preserve the
30 potential for city reconsideration of the final PUD, based on any changes that

1 are made in the tentative PUD as a result of remand of that decision. In this
2 way, the city argues, intervenor-respondent (intervenor) would not potentially
3 be required to file a new application for final PUD approval. The city argues,
4 however, that there is no basis to reverse the final PUD approval.

5 Intervenor responds that LUBA has no statutory authority to summarily
6 reverse or remand a decision on appeal, without providing the briefing, oral
7 argument and review of the merits contemplated by LUBA's statutes and
8 administrative rules. Intervenor argues that the motion for summary reversal or
9 remand should be denied, and the present appeal should proceed to the merits.

10 Intervenor is correct that LUBA has no express statutory authority to
11 summarily reverse or remand a decision without reviewing the merits. LUBA's
12 rules prescribe the circumstances in which LUBA will reverse or remand a land
13 use decision, almost all of which require a review of some merits.¹ The only

¹ OAR 661-010-0071 provides:

- “(1) The Board shall reverse a land use decision when:
 - “(a) The governing body exceeded its jurisdiction;
 - “(b) The decision is unconstitutional; or
 - “(c) The decision violates a provision of applicable law and is prohibited as a matter of law.
- “(2) The Board shall remand a land use decision for further proceedings when:
 - “(a) The findings are insufficient to support the decision, except as provided in ORS 197.835(11)(b);

1 exception is OAR 661-010-0071(2)(e), which authorizes LUBA to remand a
2 land use decision if “[a]ll parties stipulate in writing to remand.” In the present
3 case, it is clear that not all parties are willing to stipulate to remand.
4 Accordingly, petitioner’s motion for summary reversal or remand is denied.

5 The next event in this review proceeding is to resolve record objections.
6 Absent a request or stipulated motion to suspend this proceeding, LUBA will
7 resolve the record objections in due course.

8 Dated this 9th day of May, 2017.
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12 _____
13 Tod A. Bassham
14 Board Member

“(b) The decision is not supported by substantial evidence in the whole record;

“(c) The decision is flawed by procedural errors that prejudice the substantial rights of the petitioner(s);

“(d) The decision improperly construes the applicable law, but is not prohibited as a matter of law; or

“(e) All parties stipulate in writing to remand.”