

## LUBA Case Summaries December 2024

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● ***Hedin v. City of Portland*, LUBA No 2024-064 (Dec 2, 2024)**  
(Opinion by Zamudio, Board Chair)

Petitioner appealed a city adjustment committee’s decision approving four adjustments to the city’s development standards. Held: Petitioner failed to file their petition for review within the time allowed by OAR 661-010-0030(1) or any extension of that time under OAR 661-010-0067(2). Dismissed.

● ***Sane Orderly Development v. City of Roseburg*, LUBA Nos 2024-055/58 (Dec 10, 2024)**  
(Opinion by Ryan, Board Member)

Petitioner appealed two city council decisions relating to the city’s amendment of its comprehensive plan to add approximately 220 acres to the city’s urban growth boundary (UGB) and to remove approximately 290 acres from the UGB. Held: LUBA lacked jurisdiction over the appeal under ORS 197.825(2)(c)(A) because the challenged ordinance was submitted to the Department of Land Conservation and Development for review pursuant to ORS 197.626. Dismissed.

● ***Kipp v. City of Astoria*, LUBA No 2024-012 (Dec 11, 2024)**  
(Opinion by Rudd, Board Member)

Petitioner appealed a hearings officer’s decision verifying short-term rental (STR) use of a fourplex apartment building as a nonconforming use. Held: The hearings officer misconstrued the term “nonconforming use,” which is defined in the city code as “a use that legally conformed with applicable [d]evelopment [c]ode regulations *when it first occurred*,” by relying on the city code definition of “use, start of,” which provides that the use “need not occur.” Astoria Development Code 1.400 (emphasis added). Under the city code, a nonconforming use has not “first occurred” until the use exists. The hearings officer’s decision that intervenors-respondents have established a vested right to use the entire fourplex apartment building for STR use was not supported by adequate findings or substantial evidence because that conclusion relied, in part, on intervenors-respondents’ development of a parking lot that is inadequately sized to serve the entire fourplex apartment building for STR use, and on investments made after the restrictive zoning effective date. The hearings officer misconstrued the law in failing to apply the city code

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change and discontinuance of nonconforming use provisions to the vested rights analysis. Remanded.

● ***Carroll v. Lane County*, LUBA No 2024-054 (Dec 11, 2024)**  
(Opinion by Rudd, Board Member)

Petitioners appealed a hearings official’s decision denying a legal lot verification and four property line adjustments. Held: The hearings official did not commit procedural error by rejecting as new evidence documents submitted during the time for responsive materials only and petitioners did not establish an independent procedural right to respond to staff memos. The hearings official did not misconstrue the law in concluding that multiple applications, consolidated for review, could be denied because one of the properties was not a legal lot where Lane Code (LC) 13.130(3) requires that “[a]ll properties affected by the proposed adjustment are legal lots pursuant to LC 13.140.” Further, the hearings official’s decision to issue a single decision on the consolidated applications was supported by substantial evidence as petitioners paid one fee, were assigned a single planning number, could have requested the applications be considered separately and did not, and the application itself addressed the property line adjustment criteria based on the single final placement, not as separate moving pieces. The hearings official’s finding that a 1908 deed that left behind a “remainder” did not “create” a lawful lot or parcel for the purposes of ORS 92.017(1) and LC 13.020(5) correctly construed the law and was supported by substantial evidence. Affirmed.

● ***Guay v. Clackamas County*, LUBA No 2024-050 (Dec 12, 2024)**  
(Opinion by Ryan, Board Member)

Petitioners appealed a hearings officer’s decision approving a conditional use permit (CUP) for a dog boarding kennel and a nonconforming use of an existing building, a portion of which will be used for dog kennels, on property zoned Exclusive Farm Use (EFU). Held: The hearings officer’s findings that the dog kennel satisfies the farm impacts test, that the proposed use will not force a significant change in or significantly increase the cost of accepted farm practices on surrounding farm lands, were not supported by adequate findings of substantial evidence because the findings failed to identify the farm uses and practices on surrounding farm lands and failed to address petitioners’ concerns, raised below, concerning potential wastewater impacts to their farming operation. ORS 215.296(1). The hearings officer’s findings that the county CUP compatibility criteria were satisfied regarding wastewater, fencing, and noise were adequate and supported by substantial evidence. Remanded.

● ***Save Stafford Road v. Clackamas County*, LUBA No 2024-057 (Dec 12, 2024)**  
(Opinion by Rudd, Board Member)

Petitioner appealed the county’s issuance of a land use compatibility statement (LUCS) for a transmission line. Held: LUBA did not have jurisdiction over the LUCS under ORS 197.015(10)(b)(H)(iii) because the county’s finding that the issuance of the LUCS will not adversely affect the acknowledged comprehensive plan’s general provisions under OAR 660-030-0070(2)(b) was a finding that the Oregon Public Utilities Commission’s action is compatible with the comprehensive plan, if the identified land use permits are obtained. The LUCS was not

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a significant impacts land use decision under *Marks v. LCDC*, 327 Or App 708, 536 P3d 995 (2023), because ORS 197.015(10)(b)(H)(iii) specifically excludes the decision from the statutory definition of “land use decision.” *McLaughlin v. Douglas County*, 76 Or LUBA 77, 83 (2017). Dismissed.

● ***1000 Friends of Oregon v. City of Hillsboro*, LUBA No 2024-043 (Dec 13, 2024)**  
(Opinion by Ryan, Board Member)

Petitioner appealed the city’s adoption, on remand from LUBA, of an ordinance amending the city’s comprehensive plan text and adopting an Economic Opportunities Analysis. Held: The city adopted the same changes on remand as challenged in *1000 Friends of Oregon v. City of Hillsboro*, LUBA No 2022-103 (Jul 20, 2023). Petitioner’s arguments did not challenge new evidence, but instead were the same as the arguments that were made in the prior LUBA appeal and were therefore waived under ORS 197.622. Affirmed.

● ***CAF Partner Properties, LLC v. City of Jacksonville*, LUBA No 2024-061 (Dec 19, 2024)**  
(Opinion by Rudd, Board Member)

Petitioner appealed a city council decision denying its application to partition a 1.38-acre property containing a historic structure into three parcels. Held: The city misconstrued its partition criteria in applying inapplicable landmark protection and historic dwelling standards to deny the application. Remanded.

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