

LUBA Case Summaries September 2024

Note: This information is compiled and made available to the public by the Land Use Board of Appeals (LUBA). These case summaries are provided for public informational use only. These case summaries are not considered part of the Board's opinion and should not be cited as legal authority. Summarized decisions may be subject to judicial review, which may result in all or part of the LUBA decision being invalidated.

The full text of LUBA's Final Opinions can be found at <https://www.oregon.gov/luba/Pages/Final-Opinions.aspx>. LUBA generally posts copies of its decisions online weekly. LUBA generally posts case summaries online monthly.

● ***Rasmussen v. City of Shady Cove* (LUBA No 2024-003, Sept 4, 2024)**
(Opinion by Ryan, Board Member)

Petitioners appealed a city ordinance designating short-term rentals as conditional uses in certain zones. Held: Petitioners requested that this appeal be dismissed. Dismissed.

● ***Oregon Coast Alliance v. City of Bandon* (LUBA No 2024-020, Sept 5, 2024)**
(Opinion by Zamudio, Board Member)

Petitioner appealed a city council decision approving a conditional use permit (CUP) and site plan review for a 110-room hotel, two restaurant spaces, meeting rooms, spa, and 32 villas. Held: Petitioner did not establish a basis for remand where it failed to demonstrate that its substantial rights were prejudiced as a result of an alleged procedural error. The city did not misconstrue a conditional use criterion regarding the adequacy of public facilities and services by not requiring an expert opinion or underlying data documenting the applicant's water and wastewater usage estimates. The city's findings regarding water and wastewater usage, water system capacity, and water availability were supported by substantial evidence. The city erred by deferring determination of compliance with a city conditional use criterion and comprehensive plan policy to a future street vacation proceeding, which does not provide procedural protections equivalent to conditional use review, contrary to *Rhyne v. Multnomah County*, 23 Or LUBA 442 (1992). Remanded.

● ***Franklin-Clarkson Timber Company, LLC v. Lane County* (LUBA Nos 2023-089/090, Sept 10, 2024)**
(Opinion by Ryan, Board Member)

Petitioner appealed a hearings official's denial of a legal lot verification and dismissal of a local appeal. Held: Petitioner requested that these consolidated appeals be dismissed. Dismissed.

LUBA Case Summaries
September 2024

- ***Sester v. Multnomah County* (LUBA No 2024-011, Sept 16, 2024)**
(Opinion by Ryan, Board Member)

Petitioner appealed a letter from the county planning department deeming petitioner's application for an agricultural fill permit incomplete and void. Held: The parties requested that the decision challenged in this appeal be remanded. OAR 661-010-0071(2)(e). Remanded.

- ***St. Timothy's Episcopal Church v. City of Brookings* (LUBA No 2024-005, Sept 17, 2024)**
(Opinion by Ryan, Board Member)

Petitioner appealed a city council decision affirming the planning commission's denial of a local appeal of a notice of abatement issued to petitioner. Held: Petitioner requested that this appeal be dismissed. Dismissed.

- ***1000 Friends of Oregon v. City of Portland* (LUBA No 2023-088, Sept 24, 2024)**
(Opinion by Ryan, Board Member)

Petitioners appealed a commercial building permit issued by the city's Bureau of Development Services for a freight warehouse on property zoned General Employment. Held: The city's decision falls under the building permit exclusion to LUBA's jurisdiction because it was processed under "clear and objective" standards. ORS 197.015(10)(b)(B). The city properly interpreted Portland City Code (PCC) 33.262.100 to mean that the land use standards that applied to the city's review of the building permit application did not include the off-site impact standards at PCC 33.262.050, .060 and .070, which petitioners argued that the city erred in failing to apply. Petitioners did not argue that the off-site impact glare standard that the city did apply, PCC 33.262.080, is not clear and objective. Transferred.

- ***Schulke v. City of Salem* (LUBA No 2024-038, Sept 26, 2024)**
(Opinion by Ryan, Board Member)

Petitioner appealed a city council decision approving an adjustment to a city tree planting standard for a multiple family residential complex. Held: The city's interpretation of the purpose of the tree planting standard was plausible and entitled to deference. ORS 197.829(1); *Siporen v. City of Medford*, 349 Or 247, 259, 243 P3d 776 (2010); *Green v. Douglas County*, 245 Or App 430, 438-40, 263 P3d 355 (2011). A city code provision stating that, where the city code imposes a greater restriction or higher standards than required by an easement, the city code shall control, did not prohibit the city from approving an adjustment that is allowed under the city code. Affirmed.

[End of Document]