LAND USE CASE LAW UPDATE

or

Select Appellate Musings on Land Use Planning

~ BRIEFING ~

MULTNOMAH COUNTY PLANNING COMMISSION

Jed Tomkins, Assistant County Attorney

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I. <u>PROCESS</u>

A. Impartial Tribunal

***Wal-Mart Stores, Inc. v. City of Hood River,* __ Or LUBA __**
(LUBA No. 2013-009, May 21, 2013)

This case summary is offered as a reminder of the Planning Commission's obligations to provide an *impartial* tribunal in those occasional instances when the Commission holds a quasi-judicial hearing.

Here, LUBA reviewed, for a second time, the City Council's decision on Wal-Mart's application to expand an existing store; LUBA remanded the City's denial due to the following procedural errors:

- One of the City Councilors, McBride, should have disclosed ex parte contacts, but failed to do so, and, consequently, the City failed to give all parties an adequate opportunity to rebut any such ex parte contacts;
- The City invoked the "rule of necessity" prematurely. Described in further detail below, the rule of necessity allows a *biased* judge to render a decision; and
- The City erred when in allowing a *biased* decision maker, McBride, to participate in *deliberations*; the City should have limited McBride's role to *voting* only.

<u>FACTS</u>

The City's Planning Commission held the initial hearing on the application. At that time, McBride was the chair of the Planning Commission. McBride recused herself from the proceedings for three reasons: she had recently opposed a previous application by Wal-Mart; she had ex parte contacts regarding the present application; and she believed she might be biased. After recusing herself, McBride participated in the proceeding *as an individual* and opposed the application. The Planning Commission denied the application; on appeal, the City Council approved the application; and, on further appeal, LUBA found substantive errors and remanded the decision to the City.

Prior to LUBA's remand, McBride was appointed to fill a vacancy on the City Council. On remand, McBride recused herself from the City Council's proceedings on the basis of her recent opposition to the previous application by Wal-Mart referenced above; McBride did not disclose any ex parte contacts. Again, after recusing herself, McBride participated in the proceedings *as an individual* and opposed the application.

On the critical vote of whether to approve Wal-Mart's application on the basis that it had a vested right in the proposed expansion, the Council deadlocked 3-3. Because four votes were required to take action, this vote was not sufficient to take action in response to LUBA's remand.

To resolve the deadlock, the Council invoked the "rule of necessity" (more on this below) to allow McBride to participate and break the deadlock. In agreeing to participate, and in an apparent misunderstanding of the "rule of necessity" (more on this below), McBride stated that she could make an unbiased decision and stated that she was familiar with the record.

Prior to voting, and in apparent misunderstanding of the limitations on her role (more on this below), McBride orally reviewed the position she had taken *as an individual* in these proceedings. McBride then cast the deciding vote to deny the application.

EX PARTE CONTACTS

On appeal to LUBA from the City's remand decision, Wal-Mart challenged the decision on the basis that McBride failed to disclose ex parte contacts and the City failed to give all parties an adequate opportunity to rebut any such ex parte contacts. In addition, and somewhat oddly, Wal-Mart also asserted that McBride was required to disclose her ex parte contacts *even if she would not participate as a decision maker in the matter*.

LUBA found clear indication in the record that McBride had ex parte contacts regarding the application. Taking Wal-Mart's challenges in reverse, LUBA rejected the contention that McBride was required to disclose her ex parte contacts *even if she would not participate in deciding the matter*—that is:

A decision maker need not disclose ex parte contacts with respect to a matter from which the decision maker is recused.

However, LUBA agreed with Wal-Mart that once McBride changed her position and elected to participate as a decision maker, she was obligated to (1) disclose the substance of any ex parte communications on matter as soon as possible after making that election; and (2) give all parties an adequate opportunity to respond to and rebut the substance of those communications—that is:

> **Whether you participate in a proceeding from the outset or join in at some time after commencement of the proceeding, you must:**
>
> 1. **As soon as possible after your participation commences, publicly disclose on the record whether you have, or do not have, ex parte contacts; and**
> 2. **Give all parties an adequate opportunity to respond to and rebut your disclosure.**

RULE OF NECESSITY

On the question of McBride's bias and the rule of necessity, LUBA explained several relevant rules.

First, the overarching rule is that quasi-judicial decision makers are required to be "impartial in the matter"—hence the requirements for such things as disclosure of ex parte contacts, financial interest, prior dealings related to the matter (*e.g.,* prior opposition).

But note, not all circumstances *require* recusal. For instance, ex parte contact *in itself* does not necessarily require recusal; instead, the critical issue is whether, in light of such ex parte contact, the decision maker *actually is* biased.

In contrast, recusal *is almost always required* in certain circumstances, such as when the decision maker has taken a prior position for or against the land use application now before the decision maker. Here, in this case, LUBA found that McBride fell into this category and that her statements that she could be impartial were not supported by substantial evidence (not to mention that, as explained below, her statements completely miss the point of the rule of necessity, which is to allow a *biased* decision maker to render a decision).

The "rule of necessity" provides an exception to the overarching requirement of impartiality by allowing a *biased* judge to render a decision. Under

the "rule of necessity," a judge is not disqualified to try a case because of personal interest in the matter at issue if there is no other judge available to hear and decide the case. This rule is based on the principle that a biased judge is better than no judge at all.

Importantly, one of the essential prerequisites for invoking the rule of necessity is, not surprisingly, the existence of a "necessity"—*i.e.,* a necessity to use a biased decision maker. For instance, there is no necessity to utilize a biased decision maker if such decision maker may be replaced by an alternate, unbiased decision maker, such as where a pool of decision makers is available. In addition, a tie vote itself does not necessarily create "necessity" if there is a possibility that the tie might be broken after further deliberations—which is what LUBA found in this case because the record included statements from two Council members to the effect that they did not yet see a need for McBride to participate.

Lastly, LUBA noted a substantial limitation on the participation authorized under the rule of necessity—while the rule of necessity allows a biased decision maker to *hear* a matter and *render a decision* (*e.g.*, cast a vote), the biased decision maker <u>must not</u> participate in any discussion, debate, or deliberation on the issue to which the bias relates. Consequently, in this case, LUBA found that McBride erred when, as a decision maker, she orally reviewed the position in opposition to the application that she had taken as an individual. Of note, LUBA cites no authority for this "no deliberation" rule other than an analogous provision in the statutes governing conflict of interest. Nevertheless, I recommend that you adhere to this rule for the reasons stated by LUBA:

> "The biased decision maker's *vote* may be necessary, but that biased decision maker's participation in the deliberations is not needed. Indeed if the biased decision maker's contribution to the deliberations persuaded one of the deadlocked councilor's to change his or her vote, the biased decision maker's vote would no longer be unnecessary under the rule of necessity." (Emphasis added).

B. Remand

Central Oregon Landwatch v. City of Bend, __Or LUBA __ (LUBA No. 2013-037, September 12, 2013)

This case presents a common issue in local government proceedings on remand regarding the appropriate *scope* of such proceedings, particularly the scope of the issues that may be raised and addressed on remand.

Local proceedings on remand are not regulated by statute other than a statutory requirement that the local government issue a final decision within 90 days of remand by LUBA—but even this requirement is triggered only upon satisfaction of certain prescribed conditions. ORS 215.435.

A local government may adopt remand procedures that, among other things, establish the scope of such proceedings.

In the absence of local regulation, or when interpretation of the local regulations is required, certain common law rules are available.

One common law rule is that, when a record is reopened on remand, parties may not raise old issues that were resolved in prior proceedings or were not appealed.[1] Importantly, this rule is limited to *quasi-judicial* proceedings and does not apply to *legislative* proceedings.[2]

This case concerns the City of Bend's attempts to amend the Bend Area General Plan (BGP) and to adopt a water public facilities plan pursuant to Statewide Planning Goal 11 (Public Facilities and Services). LUBA remanded the City's first attempt and the present appeal challenges the City's second attempt as, once again, noncompliant with Goal 11 and associated administrative rules.

As a threshold issue, the City argued that petitioners had waived all of the issues they presented on appeal because each of those issues could have been, but were not, raised during the proceedings on the City's first attempt and during the appeal from that first attempt. The City relied on its ordinance regulating remand procedures, which provided, in relevant part, that the record could be re-opened and new issues could be addressed if necessary to comply with the remand, but

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[1] *Beck v. City of Tillamook*, 313 Or 148, 831 P2d 678 (1992).
[2] *Hatley v. Umatilla County*, 256 Or App 91, 111-12, 301 P3d 920 (2013).

"[o]ther issues that were resolved by LUBA or the Appellate Court or that were not appealed shall be deemed to be waived and may not be reopened."

Despite such seemingly helpful language in the City's code, LUBA denied the City's waiver argument. LUBA found that while the remand code clearly applies to quasi-judicial proceedings, the code was ambiguous with respect to its application to the legislative proceedings at issue here—unfortunately for the City, the City had failed to provide any interpretation of its code to which LUBA would have been required to defer. In reviewing the City's remand code, LUBA found that it was nearly identical to, and appeared to be the City's codification of, LUBA's holding in *Beck*, which does not apply to legislative land use decisions. Consequently, LUBA declined to find that the code applied to the City's legislative proceedings on remand.

In parting note, while this case demonstrates the need for clarity and completeness in legislative drafting, consider the complexities that might arise for those jurisdictions, such as Multnomah County, that have not adopted *any* remand procedures. Of course, to the extent that the absence of remand procedures presents "risk," it bears noting that Multnomah County has processed only one remand decision in the last eight years.

Post-post-script, on a related topic, LUBA and the Court of Appeals recently reviewed the local government's authority to withdraw a decision for reconsideration (i.e., a "voluntary remand" of sorts)—the court clarified the point in time after which this unilateral right to reconsider a decision terminates. This topic is "related" in that, like remand, Multnomah County has no local procedures for withdrawal and reconsideration. However, again, the fact of the matter is that no clear need for this authority has been identified, and, moreover, there may be complications in the county availing itself of the withdrawal authority in light of the county's use of hearings officers.

C. <u>Retroactive Ordinances</u>

Recently, the Planning Commission considered a proposal for a dark skies ordinance. A question arose as to whether the ordinance should require *existing* lighting fixtures to come into compliance with the proposed ordinance over time—the answer is "no."

For counties, but not cities, the rule in Oregon is that "[n]o retroactive ordinance shall be enacted * * * ."[3]

"Retroactive ordinances" are those that "take away or impair vested rights acquired under existing laws, create new obligations, impose a new duty, or attach a new disability in respect to the transactions or considerations already past."[4]

To illustrate, an ordinance imposing new billboard standards violated the retroactive ordinance prohibition because it required billboard owners to phase out non-conforming signs over a four-year period.[5]

Similarly, the prohibition is violated by an ordinance that allows a county to revoke a final (i.e., no right of appeal remains) partition approval, even if the approval clearly conflicts with objective statutory requirements.[6]

Of note, the retroactive ordinance prohibition only protects uses *in existence*—the prohibition does not protect uses that *could have been, but were not,* initiated or established. For instance, an ordinance eliminating dwellings as an allowed use in a zone *was not* a "retroactive ordinance" despite the fact that the county had already approved a subdivision in the affected zone—the land owner had not yet applied for any permits for dwellings.[7]

Similarly, the retroactive ordinance prohibition does not prohibit an ordinance that authorizes, and thereby legalizes, a use that was unlawfully established under prior land use regulations. Accordingly, LUBA affirmed an ordinance that authorized accessory structures greater than 1,200sf as a conditional use, which just so happened to get a particular land owner out of a jam.[8]

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[3] ORS 215.110(6).
[4] *Church v Grant County*, 37 Or LUBA 646, 650 (2000).
[5] *Ackerly Communications, Inc. v Multnomah County*, 12 Or. LUBA 283, 285, 288 (1984).
[6] *Church v Grant County*, 37 Or LUBA at 651.
[7] *Schoonover v. Klamath County*, 16 Or LUBA 846 (1988).
[8] *Femling v Coos County*, 34 Or LUBA 328, 331-332 (1998).

D. Finality of Decisions

Whenever the LUBA or the appellate courts issue a decision interpreting a land use regulation, a question arises as to the impact of such decision on existing land use permits that have become final in the sense that no right of appeal remains. While this inquiry requires case-by-case analysis, the inquiry may be informed by the overarching rule that “once the appeal period in which to challenge [a land use decision] under the county's code and state land use review statutes expire[s], the applicant acquire[s] a legitimate expectation under existing laws that any flaws in those decisions are immune from challenge and reconsideration.”[9]

[9] *Church v Grant County*, 37 Or LUBA at 651.

II. SUBSTANCE

A. Home Occupations

Green v. Douglas County

Venue	Result of Review	Date	Citation
County	Approved modification of 2003 Home Occupation Conditional Use Permit (CUP)	2010	n.a
LUBA	Remanded to County	Apr, 2011	LUBA No. 2010-106
ORCA (Or Ct Appeals)	LUBA order reversed and remanded to LUBA	Sept, 2011	245 Or App 430
LUBA	Remand to County to apply ORCA order	Nov, 2011	LUBA No. 2010-106
County	CUP modification revised and re-approved per ORCA order	(?)	n.a.
LUBA	Revised county decision affirmed	Apr, 2013	LUBA No. 2012-092
ORCA	LUBA order affirmed without opinion	Sept, 2013	258 Or App 534

This case illustrates the lengthier, though not atypical, process that many land use applications and decisions go through due to disagreements over the meaning of substantive land use regulations. The table above shows that it took three years to resolve appeals from Douglas County's approval of a modification to a Home Occupation Permit—going up to and back from LUBA and the Oregon Court of Appeals *twice*. To place this in locally relevant context, the appeal from Multnomah County's most recent approval of a farm stand permit is on this same trajectory (likely coming back to the County from the Oregon Court of Appeals).

In addition, this case highlights the struggle between utilizing clear and definite language while also striving to provide that degree of flexibility frequently sought by the public—the benefits of clear and certain language may be offset to some degree by the inherently narrow, prescriptive nature of such language; conversely, the benefits of flexibility afforded through more broad, open language may be offset to some degree by the inherent ambiguity and susceptibility to challenge and appeal of the interpretation and application of such language.

While there are many factors that might give rise to a lengthier land use review process, the language of the land use standards at issue in this case (see below) appear to have played some role—but, as you read through this summary, ask yourself: would you have guessed that this language might prompt a three-year appeal process? You'll see how tricky land use legislation gets so very easily. And note, because the issues on appeal here largely concerned the meaning of *statutory* provisions that regulate home occupations in the EFU, this case could have occurred just as easily in Multnomah County.

The home occupation at issue in this matter is an "event-site" on applicants' 6-acre residential property. A 2003 CUP authorized one event (wedding, reception, reunion, or anniversary) per weekend with applicants' participation in the events largely limited to providing their property with its supporting facilities and the actual production of the events provided by caterers and other contractors. In addition, the events would occur in the dwelling, on the lawn, and in a pavilion and gazebo. In 2010, the applicants sought to modify the 2003 CUP to allow three events per week and to allow additional types of events (bridal showers, luncheons, teas, business meetings, birthday parties, and memorial services). Neighbors appealed the County's approval of the modification.

As relevant to our purposes here, the statutory provisions at issue (ORS 215.448(1)) subjected applicants' home occupation to the following standards, with the emphasized text denoting the points of contention on appeal:

- The home occupation "shall **<u>employ</u>** on the site no more than five full-time or part-time persons;"
- The home occupation "shall be operated **<u>substantially</u>** in the dwelling or other **<u>buildings</u>** normally associated with uses permitted in the zone in which the property is located;" and
- The home occupation "shall not **<u>unreasonably</u>** interfere with other uses permitted in the zone * * *."

Regarding the term "employ," the dispute was whether that term refers only to persons employed *directly* by the applicants (of which there were none) or whether it refers to *all people* required to produce events on the site. The Court of Appeals did not disturb LUBA's holding in its initial decision that the employment limitation broadly applies to *all people* required to conduct a home occupation, whether they are direct employees of the operator of the home occupation, independent contractors, or employees of independent contractors.

Regarding the term "substantially" [in the dwelling or other buildings], the Court of Appeals did not disturb LUBA's holding that the standard required that the home occupation "must be conducted in the dwelling or buildings to a 'large degree,' 'in the main,' or as the 'main part,' compared to the portion that is conducted outside the dwelling or buildings and that the County's finding and condition on remand that 80% of each event would occur in a building satisfied this standard. Of note, the term "substantially" is precisely the type of term commonly used to provide that flexibility in law sought by constituents; the downside is that the use of this term in a land use standard always (or at least almost always) creates an avenue for appeal.

Regarding the term "building," the issue was whether the open-air pavilion and gazebo constituted buildings for purposes of the statute—in the first round, the opponents convinced LUBA that the use of the term "**in** [buildings]" indicated legislature's intent to mean to *enclosed* buildings; the Oregon Court of Appeals disagreed. Question: Find it hard to believe that the meaning of the term "building" had not been settled in Oregon prior to 2013? Guess what, this won't be the last time the meaning of "building" is litigated. Indeed, the meaning of this term was a primary issue on appeal in Multnomah County's recent farm stand case.

Lastly, regarding the term "unreasonably," this issue was resolved in favor of the applicant under a "substantial evidence" analysis, which is not relevant here beyond noting that, like the term "substantially," this term is very useful in providing flexibility in the law, but, consequently, creates an avenue for appeal.

***Stevens v. Island City,* __ Or LUBA __**
(LUBA No. 2013-036, August 7, 2013), *review pending*

In this decision, LUBA remanded the city's approval of a commercial truck maintenance operation as a home occupation in a Low Density Residential Zone. In short, LUBA agreed with the neighbor-opponents, whose residence was located 125 feet from applicants' truck maintenance shop, that the decision failed to establish that the proposal satisfied some fairly simple and objective standards (e.g., the city failed to explain how the home occupations would occupy no more than the 600sf limit when the trucks alone measured 60' x 10').

From the perspective of a legislator, the analysis of the merits of this case is not nearly as intriguing as certain comments offered by one of the LUBA Board Members. Holstun wrote separately from the majority to both decry the absence in city and county codes of prescriptive limitations on the *kinds* of uses that may be proposed as a home occupation and to argue for a more stringent analysis of whether a particular home occupation, such as a commercial truck maintenance operation, is truly secondary to the residential use of the property:

> "City zoning ordinances commonly allow home occupations, and by adopting ORS 215.448, the legislature has authorized all counties to permit them. But neither ORS 215.448 nor most city zoning ordinances that authorize home occupations set any sideboards on the kinds of uses that may be proposed as a home occupation, beyond imposing standards that must be met for approval. As a result, proponents of home occupations have proposed an incredible variety of uses as home occupations. We now add commercial trucking businesses to that list.
>
> "In denying the fifth assignment of error, the majority concludes that the city council could reasonably conclude that, as conditioned, the applicant's commercial trucking business will be secondary to the main use of the property as a residence. On this record, I agree with petitioners that to conclude that the proposed commercial trucking business will be secondary to the property's residential use is preposterous, and that a reasonable person would not conclude on this record that the approved commercial trucking business will 'be secondary to the main use of the property as a residence.' I would sustain the fifth assignment of error." (Internal citations omitted).

B. <u>Gatherings</u>

***Wetherell v. Douglas County,* __ Or LUBA __**
(LUBA No. 2012-051, March 27, 2013)

In Oregon, the authorization of "gatherings" and other large events in the exclusive farm use zone is varied and complex and showing a trend towards increasing variety and complexity. Pursuant to the numerous land use and non-land use statutes addressing this topic, one may now attend harvest festivals and farm-to-plate dinners at farm stands; "special events" at wineries; commercial activities in conjunction with farm use; "agri-tourism and other commercial events or activities that are related to and supportive of agriculture;" outdoor mass gatherings; "extended mass gatherings;" and "other" gatherings.

Under current law, extended mass gatherings are regulated under land use regulations, but "mass" and "other" gatherings are not.

In short, outdoor mass gatherings are described by four parameters: (1) number of participants (more than 3,000 people); (2) duration (more than 24 hours but less than 120 hours); (3) frequency (not more than one gathering every three months); and (4) location (in open spaces and without permanent structures). ORS 433.735(1).

Similarly, a "other" gatherings are described in reference to the first three parameters above: (1) number of participants (fewer than 3,000 people); (2) duration (not more than 120 hours); and (3) frequency (not more than one gathering every three months). ORS 197.015(10)(d).

Lastly, "extended mass gatherings" are described in exactly the same manner as outdoor mass gatherings except that these gatherings are expected to last more than 120 hours. ORS 433.763(1). Again, these gatherings are further distinguished from the other two types of gatherings in that extended gatherings are subject to land use regulations.

The present case illustrates the complexity of regulating special events in the EFU zone. Specifically, this is not the first case in which the threshold issue was simply, "what kind of event is this?" While the question may appear simple, the answer may not be readily apparent—in the present case, LUBA's resolution of the question is approximately nine pages long.

Moreover, substantial consequences flow from the answer to the foregoing question—here, after reviewing the various event categories described above and determining that the "outdoor event" authorized by the county was an "other" gathering, LUBA concluded that *it had no jurisdiction over the county's decision* because such gatherings are not regulated under land use law, but, rather, are expressly omitted from the definition of "land use decision" (i.e., the type of decision over which LUBA has jurisdiction).

In parting note, with much attention focused on wineries and farm stands in recent years, gatherings may be up next for a close look. In the last 20 years, LUBA and the Oregon Court of Appeals have issued 11 decisions concerning gatherings with a third, or four, of those decisions issuing in the last three years. In addition, there is some indication that gathering-related complaints are on the rise. In recent years, common complaints include the following:

- From farmers: complaints about traffic congestion and the impacts of noise on livestock (e.g., adversely affecting milkflow);
- From neighbors & Community Groups: complaints about increased frequency and size of events; complaints about the nature of the events (e.g., increasing occurrence of large-scale pyrotechnic displays, such as the burning of Burning-Man-like effigies); complaints about adverse effects on resources (e.g., impacts to water quality from mud bog racing and sprint boat racing in freshly carved canals);
- From planning officials: maybe these events should be regulated as land uses? Do health and safety regulations go far enough? and
- From event sponsors: health and safety regulations go too far.

C. Farm Stands

Greenfield v. Multnomah County, 259 Or App 687 (2013);
____ Or LUBA ____ (LUBA No 2012-103, June 2013).

Greenfield marks the first appellate review of the meaning of particular provisions of the farm stand law.[10, 11] The holdings in *Greenfield* provide the following guidance:

- The farm stand statute authorizes *only those* structures "designed and used for the sale of farm crops and livestock;"
  - The term "structures" means something built or constructed for temporary or permanent use or occupancy by members of the public and, as such, includes:
    - tents, canopies, portable viewing platforms, food carts, stages, and ticket kiosks;
  - "Promotional activity" as well as the sale of retail incidental items and may occur in farm stand structures, but the statute does not authorize structures to be designed and used solely for such purposes;
    - The sale of retail incidental items and the occurrence of promotional activity is further limited by the statutory 25 percent rule, which limits annual sales from retail incidental items and fees from promotional activity to no more than 25 percent of the total annual sales of the farm stand.
    - The county may require farm stand operators to file an annual statement demonstrating compliance with the statutory 25 percent rule, which limits annual sales from "retail incidental items" and fees from promotional activity to no more than 25 percent of the total annual sales of the farm stand.

[10] ORS 215.283(1)(o) (locally implemented at, *e.g.,* MCC 34.2625(G)).
[11] Two prior decisions address the farm stand law in general. *See Eugene Sand & Gravel v. Lane County*, 189 Or App 21 (2003) (farm stands constitute "agricultural practices" for purpose of evaluating mining-related impact on farm operations under OAR 660-023-0180(4)); *Keith v. Washington County*, __ Or LUBA __ (August 2012, LUBA No. 2011-104) (counties are prohibited from "ministerial" approval (i.e., approval without notice and a right to a public hearing) of farm stand permits).

    - Wholesale sales of farm crops or livestock (i.e., sales other than the retail sale of farm crops or livestock at the farm stand) are not included in the calculation necessary to demonstrate compliance with the 25 percent rule.

- In addition to occurring within a farm stand structure, promotional activity may occur outside of a structure.
- The authorization of "promotional activity" includes authorization of the kind of farm-to-plate dinners that the county has approved in recent years.
    - The dinners the county has approved are designed to promote the sale of farm crops or livestock sold at the farm stand by including a presentation on the farm operation, a tour of the farm, a discussion of the crops and livestock grown on the farm and included in the dinner, and the sale of or opportunity to purchase crops and livestock from the farm stand; and
- The authorization of "promotional activity" includes authorization of the kind of "small-scale gatherings such as birthdays, picnics, and similar activites" that the county has approved in recent years.
    - The small-scale gatherings the county has approved are designed to promote the sale of farm crops or livestock sold at the farm stand by being small and intimate enough that the farm remains the focus of the event and by including farm-themed events and activities such as a tour of the farm, a presentation on the farm operation, the harvesting of farm crops, and the sale of or opportunity to purchase crops and livestock from the farm stand.

Greenfield has been remanded to LUBA, which may, in turn, remand the matter back to the county.