

**Appendix V.A.1.3. Frequently Asked LUBA Question No. 12
To Oregon Land Use Board of Appeals (LUBA)**

<http://www.oregon.gov/LUBA/pages/faq.aspx>

June 12, 2013

Question 12: How is a LUBA appeal different from the hearings by the local government?

Answer: LUBA is like an appellate court. It is not a political body. This means that LUBA's procedures are more formal and its role is more technical than the role of local government decision makers. When you file a LUBA appeal, you are challenging the *legal sufficiency of the local government's decision* based on the evidence that was before the local government. A LUBA appeal is not an opportunity to present new evidence.

Some important points to remember about LUBA's procedures are:

In order to take part in a LUBA appeal, a person must be either a Petitioner or a Respondent (or an Intervenor on the side of Petitioner or Respondent). There is no informal participation by interested citizens or groups. However, in some circumstances, LUBA may allow the filing of an amicus brief. OAR 661-010-0052.

1. No party may speak privately or informally with a LUBA Board Member about an appeal. If a party sends correspondence to LUBA, a copy must also be sent at the same time to all other parties or their attorneys.
2. LUBA appeals follow steps outlined in LUBA's Rules of Procedure (OAR Chapter 661, Division 10). Failure to meet a deadline can result in dismissal of an appeal.
3. As a general rule, LUBA holds only one hearing in each appeal. The hearing is for legal argument based on the briefs filed by the parties, *not* for the presentation of evidence by witnesses. (See Question 13, step 5). This is a major difference from most local hearings.

Additionally, the legislature has limited LUBA's role in two important ways:

1. The general rule is that LUBA *cannot* consider evidence that was not considered by the local decision makers. Keep this in mind when you present a case to LUBA. The only evidence that LUBA can consider is *the evidence already in the record of the decision*. The exceptions to this rule are listed in ORS 197.835(2)(b) and OAR 661-010-0045(1).
2. LUBA cannot overturn a decision merely because the LUBA Board Members disagree with the decision or think it is unwise. The legislature has listed the types of reasons for overturning an appealed decision in ORS 197.835 (land use decision) and ORS 197.828 (limited land use decision).

Keep these reasons in mind when presenting arguments to LUBA. The reasons include:

1. The local officials failed to follow the correct procedures in making the decision, *and* the procedural error deprived the Petitioner of a substantial right.
2. The local officials failed to follow the correct procedures in making the decision, *and* the procedural error deprived the Petitioner of a substantial right. [**NOTE:** Petitioners' "substantial rights" are the rights to a reasonable opportunity to prepare and submit their cases and a full and fair hearing, *not* the right to a particular outcome.]
3. The decision violates a constitutional guarantee, a state law (*e.g.*, statute, statewide planning goal) or a local law (*e.g.*, comprehensive plan policy, zoning ordinance).
4. The land use decision is not supported by "substantial evidence in the whole record;" or If the decision is a limited land use decision, it is not supported by "substantial evidence in the record." ORS 197.828(2)

[**NOTE:** By law, local decision makers can choose which evidence they wish to believe, so long as the evidence they rely on is "substantial evidence." Substantial evidence is evidence that a reasonable person could rely on to support a conclusion.]