

## **Appendix V.A.1.4. Frequently Asked LUBA Question No. 13 About Oregon Land Use Board of Appeals (LUBA)**

### **Question 13: What happens after the Notice of Intent to Appeal is filed at LUBA?**

**Answer:** A sequence of steps is followed. There are deadlines for each step. These are outlined below.

Step 1. Filing the Record (OAR 661-010-0025). Within 21 days after the Notice of Intent to Appeal is filed at LUBA, the Respondent (the unit of government that made the land use decision or limited land use decision) must file a copy of the record of the decision with LUBA. The record consists of the materials submitted to, and not rejected by, the decision makers in the course of the local proceedings.

The Respondent must provide a copy of the record to the Petitioner. The Respondent is required to provide a copy of the record to an Intervenor only if the Intervenor requests a copy and reimburses the Respondent for reasonable copying costs.

Step 2. Objections to Record (OAR 661-010-0026). Within 14 days after the record is filed, any party may object to the contents of the record. An objection may assert that the record:

1. is incomplete, *i.e.*, does not include all the materials that were actually submitted to, and not rejected by, the local decision makers; or
2. contains material that was not actually placed before the decision makers.

LUBA's rules govern the procedure for objections to the record. If an objection to the record is filed, the appeal is suspended until the objection is settled by the parties or by an order of LUBA. An objection to the record should be filed only if it is necessary to the merits of your appeal. It may be wasteful to object to a technical error or minor omission from the record if the error or omission is not relevant to your claims or will not help you prevail in the appeal.

Step 3. Filing the Petition for Review (OAR 661-010-0030). Unless an objection to the record is filed, the Petitioner must file a "Petition for Review" (Petitioner's brief) within *21 days after LUBA receives the record from the local government*. If a record objection is filed, the Petition for Review must be filed within 21 days after the date the record is settled by LUBA.

The Petition for Review sets forth the reasons why the land use decision or limited land use decision should be reversed or remanded. In preparing the Petition for Review, keep in mind the bases on which LUBA may reverse or remand a decision (see question 12). LUBA's rules

describe the form and content of a Petition for Review. You can get samples of Petitions for Review from previous cases by calling LUBA.

Unless an extension of time to file the Petition for Review is agreed to in writing by all parties, if you don't file a Petition for Review on time, your appeal will be *dismissed*.

A Petition for Review (like all other documents filed in a LUBA appeal, except the Notice of Intent to Appeal) is "filed" when it is either (1) delivered to LUBA, or (2) mailed to LUBA by first class mail with the U.S. Postal Service. OAR 661-010-0075(2)(a). A Petition for Review (like all other documents filed in a LUBA appeal, except the Notice of Intent to Appeal) must be accompanied by proof of service on the other parties. OAR 661-010-0075(2)(b). A sample Certificate of Service is appended to LUBA's rules.

Step 4. Filing the Respondent's Brief (OAR 661-10-035). Respondent must file a response brief answering the arguments made in the Petition for Review within 42 days after LUBA receives the record from the local government whose decision is being appealed (or within 42 days after the record is settled by LUBA, if a record objection is filed). Requirements for the form and content of the Respondent's Brief are outlined in LUBA's rules. You can get samples of Respondent's Briefs from previous cases by calling LUBA.

Step 5. Oral Argument. After receiving the Petition for Review, LUBA will set a date and time for oral argument. The oral argument is usually scheduled to take place about two weeks after the Respondent's Brief is filed.

Oral argument is a hearing usually held at LUBA's office in Salem. Some or all of the parties may arrange with LUBA to participate by telephone. The hearing usually takes about 60 minutes. The order is:

Brief introduction by a LUBA Board Member.

Petitioner has 30 minutes to stress the key points made in the Petition for Review. No new evidence is allowed. Petitioners may save up to 10 minutes of their allotted time to respond to new issues raised in the Respondent's presentation. This is called "rebuttal."

Respondent has 30 minutes to answer Petitioner's arguments. Petitioner may use up to 10 minutes remaining from the original 30 minutes for rebuttal.

LUBA Board Members may ask questions during oral argument to help them understand the case. Spectators may attend. However, only parties who have submitted written briefs may participate in oral argument.

Because of limited space, please notify LUBA no later than 12 days prior to the oral argument if more than 10 people plan to attend, so alternate room arrangements can be made.

Step 6. Issuance of LUBA's Final Opinion and Order. LUBA does not rule on cases at oral argument. Instead, a written decision is usually issued a few weeks afterward. The final opinion and order will address the issues presented in the Petition for Review, setting forth the reasons for LUBA's ruling. The order will end with one of the following actions:

"Affirm" (uphold) the challenged decision;

"Reverse" (overrule) the challenged decision;

"Remand" the challenged decision (return it to the local government or special district for further action);

"Dismiss" the appeal; or

"Transfer" the appeal to the circuit court per ORS 19.230(4). LUBA will only transfer a decision to the circuit court if it determines the decision is neither a land use decision nor a limited land use decision, and thus is not within LUBA's jurisdiction. To obtain transfer of an appeal to the circuit court, a Motion to Transfer must be filed by the requesting party. This procedure is explained in LUBA's rules. OAR 661-010-0075(11).