

Appendix V.A.3. LUBA 27.4.1 HEADNOTES
(27.4.1 LUBA Procedures/Rules – Petition for Review – Generally)
FOR ASSIGNMENT OF ERRORS
June 26, 2013

OAR 661-010-0030(4)(d)

OAR 661-010-0030(4)(d) “(4) Contents of Petition: The petition for review shall:”

“(d) Set forth each assignment of error under a separate heading. Where several assignments of error present essentially the same legal questions, the argument in support of those assignments of error shall be combined;”

LUBA HEADNOTES 27.4.1 (see Appendix V.A.3. LUBA) Headnote Index)

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally

(<http://www.oregon.gov/LUBA/docs/headnotes/27.4.1.pdf>)

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. The **OAR 661-010-0030(4)(d)** requirement that petitioners set out each **assignment of error** separately is important. Setting out concise assignments of error helps all parties and LUBA understand the issues that must be resolved, and the importance of **clear assignments of error** increases as the issues become more complex and overlap. *Onsite Advertising Services LLC v. Washington County*, 63 Or LUBA 414 (2011).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. LUBA will not consider an **assignment of error** that is presented only in a footnote. *Falls v. Marion County*, 61 Or LUBA 39 (2010).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. LUBA’s rules requires that argument in support of or in opposition to an **assignment of error** be set forth in the body of the brief, and do not provide for attachment of additional argument in an appendix to a brief, in part to preserve the 50-page brief limit. However, where the brief is 38 pages long and the attached argument is 10 pages, and there is no contention that considering 48 pages of argument in a brief that is otherwise consistent with LUBA’s rules prejudices any party’s substantial rights, LUBA will not strike the attachment. *Barnes v. City of Hillsboro*, 61 Or LUBA 375 (2010).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Where petitioner assigns error under OAR 660-012-0060, arguing that the county inadequately mitigated for the traffic impacts of a proposed destination resort, but petitioner neither **assigns error** to the county’s finding that the destination resort will not “significantly affect” the transportation facilities within the meaning of OAR 660-012-0060 nor challenges the legal reasoning that the county adopted in support of that finding, LUBA will deny the **assignment of error**. *Eder v. Crook County*, 60 Or LUBA 204 (2009).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. A petitioner’s **argument** that a county’s findings concerning variance criteria are inadequate and not supported by substantial evidence provide no basis for reversal or remand, where the county adopted four pages of single-spaced findings addressing the variance criteria and petitioner offers no explanation for why petitioner believes those findings are inadequate or not supported by substantial evidence. *Lulay v. Linn County*, 60 Or LUBA 432 (2010).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Petitioner’s request to file a 55 page petition for review will be denied, where petitioner easily could have included the requested additional **argument** in a petition for review that complied with LUBA’s 50-page limit if petitioner had focused her **arguments** or written the petition for review more concisely. *Graser-Lindsey v. City of Oregon City*, 59 Or LUBA 388 (2009).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Where a petitioner simply **alleges** that a decision that amends a comprehensive plan policy is not consistent with the purposes of comprehensive plan growth management policies or Statewide Planning Goal 14 (Urbanization), but petitioner does not identify any comprehensive plan policy purposes or the allegedly inconsistent requirement of Goal 14, petitioner provides no basis for reversal or remand. *Hildenbrand v. City of Adair Village*, 58 Or LUBA 43 (2008).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Where LUBA sustains an **assignment of error** and remands a county decision, and the county hearings officer adopts approximately two pages of findings on remand addressing that **assignment of error**, it is the hearings officer’s reasoning in rejecting the **assignment of error** that is before LUBA in a subsequent appeal. Where a petitioner merely re-alleges the **assignment of error** and makes no meaningful attempt to challenge the hearings officer’s reasoning in rejecting the **assignment of error**, LUBA will deny the **assignment of error**. *Kipfer v. Jackson County*, 58 Or LUBA 436 (2009).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. **Assignments of error** that consist of a single sentence alleging error and that include no argument explaining why the local government erred in the manner alleged are undeveloped and do not provide a basis for reversal or remand. *Kane v. City of Beaverton*, 56 Or LUBA 240 (2008).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. When the **arguments** presented in support of an assignment of error are so poorly stated and developed that the overwhelming majority of the **assignment of error** cannot reasonably be responded to, LUBA will not require respondents to respond to every disjointed argument presented in the **assignment of error**. *Sommer v. Josephine County*, 54 Or LUBA 507 (2007).

27.4.1 LUBA Procedures/Rules - Petition for Review - Generally. Petitioners’ **arguments** on the merits of an appeal that are included in their notice of intent to appeal are presented prematurely. Petitioners’ arguments on the merits of an appeal are properly presented in their petition for review, after petitioners’ record objections are resolved and after LUBA settles the record. *Robson v. City of La Grande*, 53 Or LUBA 604 (2006).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Where a county finds that the comprehensive plan and zoning map designations for a parcel that is subject to Goal 17 can be amended consistently with the county’s acknowledged Goal 17 program because that Goal 17 program is unaffected by the amendment, an **argument** that “this casual dismissal of Goal 17 cannot provide the basis for the rezoning decision” is not sufficiently developed for review. *Holloway v. Clatsop County*, 52 Or LUBA 644 (2006).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. When the local government limits the scope of review on remand to issues raised in the petition for review before LUBA, those issues include **arguments** made in support of the **assignments of errors**, not merely the text of the **assignments of error** themselves. *Dauenhauer v. Jackson County*, 51 Or LUBA 539 (2006).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. A three-page letter that includes no statement of standing, no statement of the case, no description of the challenged decision or request for relief, no summary of **arguments** or material facts, no statement of jurisdiction, and no assignments of error does not satisfy the requirements of **OAR 661-010-0030(4)** for a petition for review. *Gallagher v. City of Myrtle Point*, 50 Or LUBA 303 (2005).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. LUBA will not allow a petitioner to file an amended petition for review pursuant to OAR 661-010-0030(6), where the original petition for review is so grossly noncompliant with the requirements of **OAR 661-010-0030(4)** that the amended petition would in effect constitute an entirely different petition for review. *Gallagher v. City of Myrtle Point*, 50 Or LUBA 303 (2005).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. LUBA will dismiss an appeal for failure to file a timely petition for review, where the petition for review is a three page letter that is so grossly noncompliant with the requirements of **OAR 661-010-0030(4)** that in effect no petition for review was filed at all. *Gallagher v. City of Myrtle Point*, 50 Or LUBA 303 (2005).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Where an **assignment of error** relies on a comprehensive plan “policy” regarding sanitary sewer service that does not exist, LUBA will not consider whether a proposal violates a comprehensive plan “finding” that may have been the plan provision that petitioner intended to cite, but was not cited by petitioner, where the legal status and meaning of that comprehensive plan finding is not clear. *Oregon Shores Cons. Coalition v. City of Brookings*, 49 Or LUBA 273 (2005).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. LUBA will not consider new evidence presented for the first time in an appendix to a petition for review that addresses the stability standard set out at **OAR 660-033-0130(4)**, where the evidence is used to challenge the reasonableness of a county’s evidentiary decision regarding the number of new dwellings that could be established within the study area and the new evidence is based on a methodology that

was not presented to the county during the local evidentiary proceedings. *Knoche v. Crook County*, 46 Or LUBA 85 (2003).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Where a petitioner’s **challenge** to a conditional use permit allowing 45 cubic yards of fill in a wetland is based on the mistaken premise that the conditional use permit also authorized many more cubic yards of fill that were not placed in wetlands and the fill placed outside the wetlands did not require a conditional use permit, petitioner’s challenge provides no basis for reversal or remand. *Bonnett v. Deschutes County*, 46 Or LUBA 318 (2004).

27.4.1 LUBA Procedures/Rules - Petition for Review - Generally. Although a petitioner’s summary incorporation of **arguments** from one **assignment of error** challenging one decision into another assignment of error that challenges a different decision may present some difficulty in considering the merits of those incorporated argument, LUBA will consider the incorporated arguments. *Barton v. City of Lebanon*, 45 Or LUBA 214 (2003).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Where petitioners’ **assignment of error** is based on the erroneous assumption that a code standard that prohibits home occupations that are “objectionable due to [emissions]” prohibits *any* discernable emissions, and petitioners do not challenge city findings that the emissions that can be expected from a proposed home occupation will not be objectionable, the **assignment of error** provides no basis for reversal or remand. *Roe v. City of Union*, 45 Or LUBA 660 (2003).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Where a local government adopts unchallenged findings explaining that a demonstration that a proposed conditional use complies with all relevant zoning ordinance criteria is also sufficient to establish that the conditional use complies with the comprehensive plan, petitioners’ **challenge** at LUBA that the conditional use is inconsistent with particular comprehensive plan provisions that are not specifically addressed in the conditional use decision provides no basis for reversal or remand. *Roe v. City of Union*, 45 Or LUBA 660 (2003).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. An **assignment of error** that consists entirely of an incorporated argument from another brief is insufficiently developed for review, where the incorporated argument challenges a different code provision for a number of different reasons and the Board must speculate why petitioner believes the code provision at issue violates applicable law. *Home Builders Assoc. v. City of Eugene*, 41 Or LUBA 453 (2002).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Petitioner’s failure to include citations to the record to support factual **allegations** in the petition for review does not provide a basis for dismissing the appeal, where the record citations that are provided by petitioner and the other parties provide an adequate understanding of the material facts. *Cox v. Polk County*, 39 Or LUBA 1 (2000).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Where an argument is suggested only in the summary of argument required by OAR 661-010- 0030(4)(b)(B) and is not

included in an **assignment of error** or in the argument supporting the assignments of error, LUBA will not consider the argument. *Lighthart v. Polk County*, 37 Or LUBA 787 (2000).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Where a petitioner expresses disagreement with a local government about whether a zoning text amendment violates a comprehensive plan policy, without attempting to **demonstrate error in the local government’s findings** that interpret and apply the comprehensive plan policy, petitioner states no basis for reversal or remand. *Marine Street LLC v. City of Astoria*, 37 Or LUBA 587 (2000).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. A petitioner’s **arguments** that a zoning ordinance amendment violates a plan policy discouraging uses that are not water dependent provides no basis for remand, where the challenged decision raises the maximum building height and does not approve any particular use of the property. *Marine Street LLC v. City of Astoria*, 37 Or LUBA 587 (2000).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. An **argument** that a city erred by failing to adopt findings addressing a plan policy that is 22 single-spaced pages long and broken down into many subparts is inadequately developed, where the city adopted findings addressing two parts of the policy and petitioner makes no attempt to explain what other parts of the policy petitioner believes are applicable. *Marine Street LLC v. City of Astoria*, 37 Or LUBA 587 (2000).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. A petitioner’s failure to specify the relief that is requested in the statement of the case, as required by OAR 661-010-0030(4)(b)(A), does not warrant rejection of the petition for review where the relief requested is stated elsewhere in the brief and is apparent from the **arguments** presented in the brief. *Robinson v. City of Silverton*, 37 Or LUBA 521 (2000).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Where a petition for review does not include **assignments of error** as required by OAR 661-010-0030(4)(d), but LUBA can determine the allegations of error from the argument included in the petition for review, LUBA will consider those **allegations of error**. *Freedom v. City of Ashland*, 37 Or LUBA 123 (1999).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. A petitioner’s failure to set out separate **assignments of error**, as required by OAR 661-010-0030(4)(d), does not justify rejecting the petition for review. However, petitioner’s **arguments** must be sufficiently developed to demonstrate that the local government committed an error that warrants reversal or remand under ORS 197.835. *Claus v. City of Sherwood*, 35 Or LUBA 437 (1999).