

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** Documents that are on a medium other than plain printer paper, such that they are not easily copied on a standard office black and white copier are properly omitted from the record that is initially transmitted to LUBA and retained by a local government and separately transmitted to LUBA as part of the record at the time set for oral argument under OAR 661-010-0025(2). *Walker v. Deschutes County*, 54 Or LUBA 752 (2007).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** Documents that are oddly shaped or sufficiently large that they cannot be easily reduced and printed on a standard 8 ½ by 11 inch page by a standard office copier, are properly retained by a local government at the time it initially transmits the record to LUBA and separately transmitted to LUBA as part of the record at the time set for oral argument under OAR 661-010-0025(2). *Walker v. Deschutes County*, 54 Or LUBA 752 (2007).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** The record submitted by a local government must include color copies or black and white copies of any color documents that are on 8 ½ inch by 11 inch pages or on pages that are easily reduced to 8 ½ inch by 11 inch pages by standard office copiers. If black and white copies of color originals are included in the record, the color originals must be submitted at the time set for oral argument in accordance with OAR 661-010-0025(2). *Walker v. Deschutes County*, 54 Or LUBA 752 (2007).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** Under OAR 661-010-0026(1), before filing a record objection, a party is required to consult with the governing body’s legal counsel. Where a party does so and the local government thereafter submits a supplemental record three days after the 14-day deadline for filing record objections expires, the party’s failure to file a record objection provides no basis for rejecting the supplemental record. *Jaffer v. City of Monmouth*, 51 Or LUBA 803 (2006).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** Where a petitioner files a record objection without fulfilling his obligation to attempt to resolve record objections pursuant to 661-010-0026(1), and two recent orders by this Board make it clear that petitioner was aware of the requirement, the record objection will be denied, whether or not that failure resulted in substantial prejudice to a party’s substantial rights. *Ghena v. Josephine County*, 51 Or LUBA 820 (2006).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** LUBA will not summarily deny record objections based on the objectors’ failure to first consult with the local government’s counsel under OAR 661-010-0026(1), where although it appeared that one of the objecting parties consciously violated the consultation requirement, it was not clear that another of the objecting parties was aware of the consultation requirement, and the county had already caused a 77-day delay by filing the record late. *Lindsey v. Josephine County*, 50 Or LUBA 756 (2005).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** The requirement in Statewide Planning Goal 1 (Citizen Involvement) that information “necessary to reach

policy decisions” be made available to the public does not supercede the attorney/client privilege, and LUBA may not require that the record be supplemented to include information that the city redacts based on the attorney/client privilege. *Forest Hills Easement Assoc. v. City of Lake Oswego*, 49 Or LUBA 739 (2005).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** When a local government considers draft findings or minutes during the course of the proceedings but amends the drafts in adopting the final decision and minutes, the draft findings and minutes are still part of the local government’s record. *Bemis v. City of Ashland*, 47 Or LUBA 601 (2004).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** When an applicant on remand modifies the application that led to the remanded decision, the local government proceedings on remand represent a continuation of the original application rather than a new application. Therefore, the local government record that led to the LUBA appeal is properly part of the record on remand unless specifically excluded by the local government. *Ruigliano v. Jackson County*, 47 Or LUBA 628 (2004).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** OAR 661-010-0025(1)(c) does not necessarily require local governments to include in the record minutes of every meeting of the final decision maker where a development proposal is mentioned. *Wal-Mart Stores, Inc. v. City of Medford*, 47 Or LUBA 650 (2004).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** When documents are part of a local government planning file that is physically present and visible at a public hearing, but the local government does nothing to indicate that the documents are meant to be part of the record, then those documents are not properly part of the record. *Naumes Properties, LLC v. City of Central Point*, 45 Or LUBA 708 (2003).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** Where the record that a local government files with LUBA includes black and white copies of color originals, and the city does not indicate that it will provide the color originals at oral argument, parties are free to object to the record. However, such objections should be limited to circumstances where material information is actually lost in the black and white copy. *Oien v. City of Beaverton*, 45 Or LUBA 722 (2003).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** LUBA does not have authority to order that privileged attorney/client communications be made a part of the record in a LUBA appeal. *Dimone v. City of Hillsboro*, 44 Or LUBA 805 (2003).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** LUBA does not have authority to order that a city include as part of the record in a LUBA appeal transcripts or minutes that may have been prepared of executive sessions. *Dimone v. City of Hillsboro*, 44 Or LUBA 805 (2003).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** An objection that a record does not include a city council meeting agenda that identifies petitioners’ LUBA appeal

as the topic of discussion in an executive session held pursuant to ORS 192.660(1), and minutes from that same meeting that show that the executive session was held, will be sustained where petitioners do not ask that the *contents* of the executive session be included in the record. *Martin v. City of Dunes City*, 44 Or LUBA 840 (2003).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** Given the severe consequence that dismissal of an appeal represents, and the ease with which the risk of that consequence can be avoided by filing a record objection or precautionary record objection while record disputes are resolved, a prudent petitioner will always file a record objection or precautionary record objection with any other documents that may be filed to provide notice of the parties’ negotiations concerning the content of the record. *Laurance v. Douglas County*, 44 Or LUBA 845 (2003).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** Duplication of items properly included in the record does not provide a basis for sustaining a record objection. *Laurance v. Douglas County*, 44 Or LUBA 845 (2003).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** Although parties may have additional motivation other than the integrity of the record to file record objections, including delaying the time for filing the petition for review, that does not mean that the record objection is without merit or was filed for the sole purpose of obtaining more time to file the petition for review. *Roberts v. Clatsop County*, 43 Or LUBA 617 (2002).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** A motion requesting summary denial of a record objection because the objecting party failed to make a good faith effort to resolve the record objection prior to filing the record objection will be denied where it is clear that the objecting party worked with the local government to resolve the record objection after the record objection was filed. *Citizens for Resp Area Plng v. City of Wilsonville*, 43 Or LUBA 641 (2002).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** A motion requesting that record objections be denied because the objecting party failed to allege the basis for its belief that each disputed item was placed before the decision maker will be denied, where the record objection makes it reasonably clear that the basis for the record objection is the same for all disputed items. *Citizens for Resp Area Plng v. City of Wilsonville*, 43 Or LUBA 641 (2002).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** As used in OAR 661-010-0025(1)(b), the term “placed before” is a term of art and does not merely describe the act of setting documents in front of the decision maker. Legislative decision making often involves less precisely defined procedures for compiling an evidentiary record than quasi-judicial decision making. *Witham Parts and Equipment Co. v. ODOT*, 42 Or LUBA 589.

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** In an appeal of an environmental assessment prepared as part of a larger state and federal approval process

for proposed highway improvements, it is the nature of the environmental assessment process itself and the reasonable expectations of the parties to that process, rather than the conduct of the decision makers, that determines the scope of the record. *Witham Parts and Equipment Co. v. ODOT*, 42 Or LUBA 589.

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** The record submitted in an appeal of an environmental assessment for a proposed highway interchange properly includes documents that were created or submitted as part of the process to initiate construction of the interchange, where those documents were maintained such that a reasonable person would expect them to be available to the state and federal decision makers who will ultimately approve the interchange project and the documents are in fact available to the final decision makers. *Witham Parts and Equipment Co. v. ODOT*, 42 Or LUBA 589.

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** The mere inclusion of a written decision from another planning action in the record of a subsequent land use decision is not sufficient in itself to incorporate the entire planning file from the earlier decision into the record of the later decision. *Yeager v. Benton County*, 41 Or LUBA 604 (2002).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** OAR 661-010-0025(1)(d) requires that notices provided throughout “the course of the land use proceeding” be included in the record, including notices from lower tribunals. The rule does not apply to notices from separate planning actions, even if those planning actions are relevant to the challenged decision. *Yeager v. Benton County*, 41 Or LUBA 604 (2002).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** Where notice to the city council that an action has been taken by the city administrator is required by a local land use regulation, that notice is properly included in the record as a “notice of proposed action [or] final decision mailed \* \* \* during the course of the land use proceeding” within the meaning of OAR 661-010-0025(1)(d). *Thomas v. City of Turner*, 41 Or LUBA 583 (2002).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** LUBA will not require that documents be included in the record, when the sole argument in support of including the disputed documents in the record is that the documents will provide background or evidentiary justification to support a motion that has yet to be filed. *Thomas v. City of Turner*, 41 Or LUBA 583 (2002).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** Record objections that are presented for the first time in the petition for review will be denied as untimely filed. *Cape v. City of Beaverton*, 41 Or LUBA 515 (2002).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** The filing of a record objection does not automatically suspend resolution of other motions properly before the Board, or prioritize resolution of record objections over other motions. *No Tram to OHSU v. City of Portland*, 40 Or LUBA 588 (2001).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** LUBA will deny a motion to consider evidence not in the record where the dispute between the parties concerns the accuracy or validity of a map that is included in the record rather than whether that map is properly included in the record. Challenges to the accuracy or validity of the map must be made during the local proceedings. *Willhoft v. City of Gold Beach*, 39 Or LUBA 743 (2000).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** OAR 661-010-0026(3) provides a way to correct the minutes of the proceedings of the final decision maker; it does not provide a way to correct incomplete or inaccurate minutes of meetings of lower-level local decision makers that were actually placed before or incorporated by the final decision maker. *Hubenthal v. City of Woodburn*, 38 Or LUBA 916 (2000).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** LUBA's administrative rules are established to promote the speediest practicable review of land use decisions and limited land use decisions. A petitioner's objection to technical violations that do not affect the substantial rights of the parties will be denied, when the particular situation would be better served by permitting technical violations of our rules rather than delaying the appeal to correct the violations. *Lange-Luttig v. City of Beaverton*, 38 Or LUBA 909 (2000).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** Where an objection to the record is made because the county failed to include defective audiotapes of the proceedings before the local decision maker, LUBA will deny the record objection because it serves no purpose to have defective tapes in the record. The deficiency in record keeping may be assigned as error. *Hal's Construction, Inc. v. Clackamas County*, 37 Or LUBA 1037 (2000).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** In the context of a record objection, LUBA will rely on the parties' representations regarding the existence or nonexistence of disputed documents, without requiring proponents or opponents to submit affidavits in support of their position, absent some substantial reason to question those representations. *Rochlin v. City of Portland*, 37 Or LUBA 1005 (1999).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** Implicit in OAR 661-010-0025(3) is the requirement that the local government supply petitioner, at his expense, an *audible* copy of the original audio tape of local proceedings. However, where the local government has attempted three times to provide petitioner with an audible copy, and petitioner does not explain what the local government can do to provide a more audible copy, there is no relief that the Board can order. *Rochlin v. City of Portland*, 37 Or LUBA 1005 (1999).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** LUBA will sustain a record objection on the grounds that certain items were not placed before the decision maker when the city fails to demonstrate that the items were available in such a way as to put a person with some familiarity with the local land use hearings process on notice that the

items were in fact “placed before” the decision maker within the meaning of OAR 661-010-0025(1)(b). *Home Depot, Inc. v. City of Portland*, 37 Or LUBA 994 (1999).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** Where a party objects to the inclusion of certain items in the record because the city did not “place them” before the decision maker, and the local government contends that the items were in the planning files that were brought by city staff to the hearings, but does not demonstrate that the disputed documents were in fact in the staff files and that the actions of the staff are sufficient to show that the files were “placed before” the local decision maker, the items are not part of the record. *Home Depot, Inc. v. City of Portland*, 37 Or LUBA 994 (1999).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** Where the city alleges that city staff brought disputed documents into a hearing room, and that the documents were available for reference by the decision makers, they are “placed before” the decision maker and are therefore properly part of the record, notwithstanding the lack of a more formal presentation. *Home Depot, Inc. v. City of Portland*, 36 Or LUBA 783 (1999).

**27.3.3 LUBA Procedures/Rules – Record – Objections To.** LUBA will reject a supplemental record submitted after the petition for review has been filed, where the city fails to explain why the material in the supplemental record is properly part of the local record, and fails to establish that any “unique circumstances” exist justifying untimely filing of the supplemental record. *Terra v. City of Newport*, 36 Or LUBA 754 (1999).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** The record in one proceeding does not include the record and hearing officer’s decision of a previous conditional use application for a separate but similar use at a different location when the two determinations stem from independent requests, different parties and the decision maker did not rely on that previous decision in approving the current application. *Buckman Community Assoc. v. City of Portland*, 35 Or LUBA 800 (1998).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** OAR 661-010-0025(1)(b) establishes two ways items may be included in the record: items which are “specifically incorporated” and items placed before and not rejected by the final decision maker. *Highlands Condominium Assoc. v. City of Eugene*, 35 Or LUBA 772 (1998).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** Under OAR 661-010-0026(2), substantial prejudice to a party is not a basis for an objection to the exclusion of an item from a record. *Highlands Condominium Assoc. v. City of Eugene*, 35 Or LUBA 772 (1998).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** Late filing of a record objection is a technical violation of LUBA rules and will not provide a basis for denying the record objection, absent prejudice to a party’s substantial rights. *Schaffer v. City of Turner*, 35 Or LUBA 744 (1998).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** Petitioner’s undeveloped claim that certain documents “were placed in the record” is insufficient to allege that the

documents were placed before the local decision maker and not specifically rejected. *Mintz v. Washington County*, 34 Or LUBA 781 (1998).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** Where petitioner objects to the adequacy of the minutes included in the record but fails to demonstrate that the minutes are in fact defective or that the defect is material to the appeal, the objection will be denied. *Mintz v. Washington County*, 34 Or LUBA 781 (1998).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** LUBA's rules do not allow the filing of additional record objections after the initial record objection is filed. *Mintz v. Washington County*, 34 Or LUBA 781 (1998).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** An unsubstantiated assertion that certain documents were placed before the local decision maker is not sufficient where the local government represents that the documents were not placed before the local government or otherwise made part of the record. *Boyer v. Baker County*, 34 Or LUBA 758 (1998).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** A summary of testimony necessarily omits details of that testimony. An objection to a summary of testimony must explain how the summarized testimony is mischaracterized. *Boyer v. Baker County*, 34 Or LUBA 758 (1998).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** Where petitioner identifies several documents in the record where the decision maker refers to a preliminary grading plan, petitioner satisfies his obligation to demonstrate that the preliminary grading plan was placed before the decision maker, notwithstanding that the preliminary grading plan was not included with the original application. *Abadi v. Washington County*, 34 Or LUBA 753 (1998).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** Where petitioner demonstrates that the minutes of a meeting before the local governing body were altered to inaccurately reflect what occurred at that meeting, such minutes are inaccurate, and LUBA will order the governing body to prepare a transcript of relevant portions of the audiotape of that meeting. *ODOT v. City of Mosier*, 34 Or LUBA 742 (1998).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** A record objection filed after the deadline for filing the petition for review does not suspend the deadline for filing the petition for review. *Landwatch Lane County v. Lane County*, 34 Or LUBA 348 (1998).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** Where petitioner contends a document should have been included in the record and the local government does not explain why the document is not included in the record, LUBA will sustain petitioner's record objection. *Murphy Citizens Advisory Committee v. Josephine County*, 33 Or LUBA 882 (1997).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** Petitioner fulfills her obligation to attempt to resolve record objections pursuant to OAR 661-10-026 when, after two hours of waiting at the local government's counsel office, she is denied the opportunity to speak with the government's counsel because she lacks her own legal counsel. *D.S. Parklane Development, Inc. v. Metro*, 33 Or LUBA 848 (1997).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** The fact that a document is relevant to the challenged decision does not, in itself, mean that the document should be included in the local record. *D.S. Parklane Development, Inc. v. Metro*, 33 Or LUBA 848 (1997).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** A good faith attempt to resolve a record objection, as required by OAR 661-10-026(1), should consist of more than a single letter without follow-up. *Casey Jones v. City of Lowell*, 33 Or LUBA 812 (1997).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** The obligation to attempt resolution of record objections under OAR 661-10-026(1) is an ongoing obligation that does not cease when one party files a formal record objection or the period for filing objections expires. *Casey Jones v. City of Lowell*, 33 Or LUBA 812 (1997).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** Where the minutes of the planning commission are included in the record under OAR 661-10-025(1)(b), record objections to those minutes cannot be made pursuant to OAR 661-10-026(2)(c). OAR 661-10-026(2)(c) record objections must be limited to the minutes of the "governing body," as defined in OAR 661-10-010(4). *City of Gresham v. City of Wood Village*, 33 Or LUBA 779 (1997).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** The primary purpose of the specifications set out in OAR 661-10-025(4) for records filed with LUBA is to ensure that the record is usable by the parties and the Board. Where an exhibit in the record contains more than 700 pages unindexed and in no particular order, LUBA will sustain a record objection on the basis that not all documents can be identified and located with reasonable effort. *Mar-Dene Corporation v. City of Woodburn*, 32 Or LUBA 481 (1997).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** When a hearing audio tape is inadvertently destroyed, the city cannot include it in the record. However, the city's failure to include the tape in the record does not require remand unless LUBA cannot perform its review function as a result. *Village Properties, L.P. v. City of Oregon City*, 32 Or LUBA 475 (1996).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** Filing an objection to the record one day after the 10-day period established by OAR 661-10-026(2) is a technical violation of LUBA's rules that will not prevent consideration of the objection unless the local government demonstrates the delay caused prejudice to its substantial rights. *Northwest Environmental Advocates v. City of Portland*, 32 Or LUBA 471 (1996).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** Where a petitioner contends a document missing from the record was widely circulated among "all affected agencies" and "is believed to have been included in the city's record," and the city does not explain why the document was not included in the record, LUBA will sustain petitioner's record objection. *Northwest Environmental Advocates v. City of Portland*, 32 Or LUBA 471 (1996).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** The local record includes not only materials submitted to the local decision maker during the public hearing process, but also other materials placed before the local decision maker prior to adoption of the final decision. Whether the local government satisfied statutory or local ordinance requirements in accepting evidence after the local hearings process does not determine whether those documents were made part of the record. *Nicholson/Keever v. Clatsop County*, 31 Or LUBA 535 (1996).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** Items placed before and made part of the record during the local proceedings are not subject to amendment on appeal to this Board. Local governments may not amend a document in the record in order for it to conform to another document in the record. *Nicholson/Keever v. Clatsop County*, 31 Or LUBA 535 (1996).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** OAR 661-10-026(1) requires parties to attempt to resolve objections prior to filing a record objection with this Board. Lack of adherence to this rule frustrates the timely resolution of all appeals. *Nicholson/Keever v. Clatsop County*, 31 Or LUBA 535 (1996).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** Frivolous record objections may result in the dismissal of an appeal if it is shown the objections are without merit and filed solely for the purpose of obtaining additional time to prepare the petition for review. *Pilate v. City of Banks*, 30 Or LUBA 433 (1995).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** Even if a party specifically asked, in a letter addressed to a local government planner, that the letter be placed in the record, the party will not prevail on a record objection based solely on its expectation that the planner would actually place the letter before the decision maker. *Terrace Lakes Homeowners Assoc. v. City of Salem*, 29 Or LUBA 601 (1995).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** Where petitioner does not explain why she could not have objected to the omission of a particular item in her initial objection to the record, petitioner may not object to the absence of that item for the first time in an objection to a supplemental record submitted by respondent. *Fraser v. City of Joseph*, 29 Or LUBA 575 (1995).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** If a party successfully demonstrates that minutes in the record are inaccurate, and those defects are material to resolution of the appeal, as required by OAR 661-10-026(3), LUBA will require

respondent to submit a transcript of the relevant portion of its tape recordings. If that is impossible, because no such tape recordings exist, there is nothing more LUBA can do to require respondent to correct deficiencies in its minutes. *Friends of Neabeack Hill v. City of Philomath*, 29 Or LUBA 557 (1995).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** The local government record submitted in a prior LUBA appeal, which led to remand of the challenged decision, is properly included in the local government record submitted to LUBA in a subsequent LUBA appeal of the local government's decision on remand. However, objections to the content of the local government record in the prior appeal, which could have been made in the prior appeal but were not, may not be asserted in the subsequent appeal. *East Lancaster Neigh. Assoc. v. City of Salem*, 29 Or LUBA 554 (1995).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** Where petitioner could have discovered the identity of an "oversized exhibit" named in the record by reviewing the record and consulting with the local government, any objection to the local government's decision to retain the "oversized exhibit" until the time of oral argument must be made in a record objection filed during the time allowed by OAR 661-10-026(2). *ONRC v. City of Oregon City*, 29 Or LUBA 90 (1995).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** If a record objection is not supported with evidence that a disputed item was actually received by the decision maker or by a person authorized to receive evidence on the decision maker's behalf, LUBA has no basis for rejecting a representation by respondent that the disputed item was never received and was not placed before the decision maker. *ONRC v. City of Oregon City*, 28 Or LUBA 775 (1994).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** An allegation that the decision maker committed error by accepting a disputed item may provide the basis for an assignment of error, but has no bearing on whether the disputed item is properly part of the record. *ONRC v. City of Oregon City*, 28 Or LUBA 775 (1994).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** An objection that the local record fails to include a "single file" does not adequately identify the items petitioner believes are not included in the local record submitted by the local government. *McCrary v. City of Talent*, 28 Or LUBA 773 (1994).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** OAR 661-10-065(4) simply provides that with the exception of objections to the record and motions for evidentiary hearing, the filing of a motion does not have the legal effect of automatically suspending the deadlines for future events in a LUBA appeal until the motion is resolved. *Friends of Cedar Mill v. Washington County*, 28 Or LUBA 746 (1994).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** If an objector does not demonstrate an alleged defect in minutes in the record is material to the resolution of the appeal, as required by OAR 661-10-026(3), LUBA has no basis for requiring respondent

to submit a verbatim transcript as part of the record. *Champion v. City of Portland*, 28 Or LUBA 730 (1994).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** Where a handwritten document was placed before the local decision maker, and the copy of the handwritten document in the local record is no more illegible than the original document, there is no basis for requiring the local government to prepare a typewritten transcription of the document. *Tylka v. Clackamas County*, 28 Or LUBA 712 (1994).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** In resolving objections to the record, LUBA determines only whether the items in question are properly part of the local government record. Parties who wish to submit evidence outside the local government record to LUBA under ORS 197.830(13)(b) must file a motion for evidentiary hearing pursuant to OAR 661-10-045(2). *Tylka v. Clackamas County*, 28 Or LUBA 712 (1994).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** Where a local government submits a supplemental record while LUBA is in the process of resolving objections to the original record, a party may not reserve its objections to the supplemental record until after LUBA issues an order resolving the objections to the original record. LUBA's rules require that an objection to a supplemental record be filed no later than 10 days after the objecting party receives the supplemental record. *Tylka v. Clackamas County*, 28 Or LUBA 712 (1994).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** Petitioner cannot allege for the first time in the petition for review that a document included in the local record was not actually placed before the local decision maker and, consequently, assign the decision maker's reliance on that document as error. *Bates v. Josephine County*, 28 Or LUBA 21 (1994).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** Where petitioners make an undisputed allegation that they were refused permission to present their "case in chief" to the local government decision maker, and the minutes of the local proceedings in the record contain no mention of petitioners' attempts to present their case or of the local government's refusal to hear it, petitioners adequately identify a material defect in the minutes. *Jackman v. City of Tillamook*, 27 Or LUBA 704 (1994).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** Where petitioner objects to minutes in the record submitted by a local government, but does not identify any approval standards applicable to the challenged decision to which the testimony at issue is relevant, petitioner fails to explain how the alleged defect in the minutes is material, as required by OAR 661-10-026(3). *Tri-County Metro. Trans. Dist. v. City of Beaverton*, 27 Or LUBA 659 (1994).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** The local record consists of those items placed before, and not rejected by, the local decision maker. Where petitioner

contends the applicant asked to withdraw certain documents it submitted to the local decision maker, but does not argue the local decision maker granted that request or otherwise rejected the disputed documents, LUBA has no basis for concluding the documents are erroneously included in the local record. *Murphy Citizens Advisory Comm. v. Josephine County*, 27 Or LUBA 651 (1994).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** A party's failure to attempt to resolve its objections with the local government's counsel prior to filing an objection to the record, as required by OAR 661-10-026(1), is a technical violation of LUBA's rules that does not affect LUBA's review, unless another party explains how the failure prejudiced its substantial rights. *Dorgan v. City of Albany*, 26 Or LUBA 621 (1994).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** The only purpose of an objection to the record is to determine what was included in the local record below, not whether the local government erred in accepting or rejecting evidence. Therefore, LUBA will deny a record objection based on a charge that the local government erred because the disputed items were *not* placed before the local decision maker. *Dorgan v. City of Albany*, 26 Or LUBA 621 (1994).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** In resolving objections to the record, LUBA determines only whether the items in question are properly part of the record. Whether the local government erred by accepting the disputed items, and whether any such error provides a basis for reversal or remand of the challenged decision, are independent questions that go to the merits of the appeal. *Mazeski v. Wasco County*, 26 Or LUBA 226 (1993).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** In resolving objections to the record, LUBA determines only whether items were included in the record below, not whether those items are relevant to an issue raised by petitioner below. *Matrix Development v. City of Tigard*, 26 Or LUBA 606 (1993).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** Objections to the adequacy of minutes of local government meetings in the record provide no basis for LUBA to order the local government to prepare and submit a transcript, if the objector does not explain how the alleged defects in the minutes are material to the appeal. *Wissusik v. Yamhill County*. 26 Or LUBA 601 (1993).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** Where a party objects that a statement is missing from a transcript of local government audiotapes, but no party has reviewed the tapes and can attest that the statement at issue is discernible on the tapes, the record objection will be denied. *Testa v. Clackamas County*, 26 Or LUBA 596 (1993).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** The only purpose of an objection to the record is to determine what was included in the local record below, not whether respondent erred in accepting or rejecting evidence, or whether evidence in the record is accurate. *Testa v. Clackamas County*, 26 Or LUBA 596 (1993).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** Under OAR 661-10-026(3), an objection to the record on the grounds that minutes are incomplete must explain why the defect is material. An objection that minutes are defective because the challenged decision does not correspond to the decision maker's verbal statements does not establish a material defect in the minutes because the challenged decision need not correspond to such verbal statements. *Edwards v. City of Portland*, 25 Or LUBA 809 (1993).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** An objection that minutes included in the local record are defective because they do not reflect that the introduction to a public hearing failed to comply with local code requirements and that new evidence was improperly accepted will be denied, where the objecting party fails to explain how the introduction was defective and fails to identify the disputed new evidence. *Edwards v. City of Portland*, 25 Or LUBA 809 (1993).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** Where an objection that certain documents should be included in the local government record could have been made in a party's initial record objection, the objection may not be raised in a second record objection filed by that party after a supplemental record was submitted. *Edwards v. City of Portland*, 25 Or LUBA 809 (1993).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** The alleged failure of the minutes of a local government's proceedings to specifically identify documents the local government relied upon provides no basis for striking those documents from the record. The function of findings of fact is to identify the evidence relied upon, there is no legal requirement that the minutes perform that function. *McPeck v. Coos County*, 25 Or LUBA 805 (1993).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** Where the respondent includes documents in the record and takes the position that those documents were actually placed before the decision maker during the local proceedings, LUBA relies on the objecting party to offer some reason for questioning respondent's position. *McPeck v. Coos County*, 25 Or LUBA 805 (1993).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** Petitioner's objection that a partial transcript, prepared and submitted by respondent in response to record objections by an intervenor, should be more extensive provides no basis for ordering the local government to provide such an expanded transcript, where petitioner does not explain, as required by OAR 661-10-026(3), why the minutes included in the record are inadequate to provide the desired information. *McPeck v. Coos County*, 25 Or LUBA 805 (1993).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** A general objection to the record requesting that speakers in a transcript be identified, because it would be easier to prepare the petition for review, does not provide a sufficient basis to sustain the objection. A request that a particular speaker in a transcript in the record be identified, because that speaker was a decision maker below and his dialogue establishes the

existence of impermissible ex parte contacts, provides a sufficient basis to sustain that aspect of the record objection. *Derry v. Douglas County*, 25 Or LUBA 790 (1993).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** Where petitioners object that certain items should be included in the local record, but do not contend those items were actually placed before the local decision maker, LUBA will deny the record objection. *Salem Golf Club v. City of Salem*, 25 Or LUBA 768 (1993).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** A request to supplement the record, made during oral argument, causes prejudice to the substantial rights of the opposing party, and the request will be denied. *Burghardt v. City of Molalla*, 25 Or LUBA 43 (1993).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** If an objection to the local record is filed, the time limits for filing the petition for review, respondents' briefs and LUBA's final opinion and order are suspended, regardless of whether the record objection is ultimately sustained or denied. OAR 661-10-026(5). *DLCD v. Klamath County*, 24 Or LUBA 656 (1993).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** Where petitioners object to the adequacy of minutes in the record, and ask that their testimony below be transcribed, but do not identify any approval standards applicable to the challenged decision to which the testimony is relevant, petitioners fail to demonstrate the alleged defect in the minutes is material, and their record objection will be denied. *Neuharth v. City of Salem*, 24 Or LUBA 647 (1993).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** Arguments that testimony is inadequately or inaccurately reflected in the minutes of the local proceedings are inadequate to justify requiring that a local government prepare a transcript of the proceedings. The objecting party must demonstrate with particularity why the defects in the minutes are material. *West Amazon Basin Land Owners v. Lane County*, 24 Or LUBA 597 (1992).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** The presence of blank spots on an audio tape of a public hearing does not provide a basis for allowing the petitioner in a LUBA proceeding to attempt to supply the information that should be reflected on the blank portions of the tape, by an affidavit not placed before the local decision maker. *Giesy v. Benton County*, 24 Or LUBA 586 (1992).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** A party may not fail to object to the record submitted by the local government in a LUBA proceeding and thereafter attach documents to its brief that it believes should be included in the record. *Mercer v. Josephine County*, 23 Or LUBA 608 (1992).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** Where petitioners do not dispute that a document was placed before the local decision maker, but rather contend

they were unaware it had been placed before the decision maker, there is no basis for excluding the document from the local record. *Chauncey v. Multnomah County*, 23 Or LUBA 685 (1992).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** Where petitioner describes with specificity an alleged omission from the transcript and minutes submitted as part of the local record, but does not explain why this alleged omission would affect LUBA's resolution of the appeal, LUBA will not require the local government to supplement the transcript and minutes. *Heiller v. Josephine County*, 23 Or LUBA 672 (1992).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** It is petitioners' burden to establish that disputed items were placed before the local decision maker. Where petitioners object to the record submitted by the local government, but offer no basis for questioning a local government's contention that the disputed items were not placed before the local decision maker, petitioners' record objection will be denied. *Weeks v. City of Tillamook*, 23 Or LUBA 662 (1992).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** A party objecting that minutes in the local record are inadequate must demonstrate with particularity both (1) how the minutes are defective, and (2) why the defect is material. Where petitioners argue that the transcript excerpts they seek to make part of the record are relevant to certain issues they wish to raise in their petition for review, but do not explain why these issues are material to LUBA's resolution of the appeal, the objection will be denied. *Yandell v. City of Salem*, 23 Or LUBA 659 (1992).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** Petitioners' allegation that the job description of the county appeals secretary should be included in the local record is irrelevant to determining whether it is a part of the local record. Where the disputed job description was not placed before the local decision maker, LUBA will not require that it be included in the local record. *Breivogel v. Washington County*, 22 Or LUBA 813 (1991).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** Petitioner's letters to the local government attorney and attempt to contact the local attorney by telephone regarding concerns about the local record, even though accomplished before the local record was filed, are sufficient to satisfy the requirement of OAR 661-10-026(1) that petitioner attempt to resolve record objections with the local government counsel prior to filing a record objection. *Schmaltz v. City of Hood River*, 21 Or LUBA 563 (1991).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** Under OAR 661-10-026(3), objectors must demonstrate with particularity both (1) how minutes are defective, and (2) why the defect is material. To demonstrate that defects in minutes are material, objectors must explain why the alleged inaccuracies or omissions impede their ability to prepare their petition for review or brief or affect LUBA's resolution of the appeal. *Schmaltz v. City of Hood River*, 21 Or LUBA 563 (1991).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** Where petitioners do not explain in their objection to the record why adequate review by LUBA would be prevented by alleged deficiencies in the local government minutes, or how those deficiencies would affect LUBA's resolution of the appeal, petitioners do not demonstrate that the alleged defects are material, and LUBA will not require the local government to prepare a transcript. *Eckis v. Linn County*, 20 Or LUBA 589 (1991).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** Where petitioners argue that local government minutes fail to reflect statements which demonstrate an improper basis for the planning commission's decision, but the appealed decision was made by the city council after *de novo* review, petitioners have not demonstrated that the alleged defect in the minutes will affect LUBA's review of the city council's decision and, therefore, is material. *Hale v. City of Beaverton*, 20 Or LUBA 584 (1991).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** That the local decision maker considered limiting the scope of its proceeding by excluding certain evidence, provides no basis for an objection to the record where all of the evidence that petitioners sought to present was actually accepted by the decision maker. *Stefan v. Yamhill County*, 20 Or LUBA 524 (1990).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** Where a local government represents that the entire record before the local decision maker was submitted to LUBA, and that representation is not rebutted, LUBA will not require the local government to supplement the record. *Rebmann v. Linn County*, 20 Or LUBA 521 (1990).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** Under OAR 661-10-026(3), objectors must demonstrate with particularity both (1) *how* minutes are defective, and (2) *why* the defect is material. To demonstrate that defects in minutes are material, objectors must explain why the alleged inaccuracies or omissions impede their ability to prepare their petition for review or brief or affect LUBA's resolution of the appeal. *Chang v. City of West Linn*, 20 Or LUBA 505 (1990).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** Where petitioner argues that alleged deficiencies in the minutes may be the basis for assertions by respondents that petitioner is foreclosed from raising certain issues on appeal, but petitioner does not explain how those issues are material (i.e. how they would affect LUBA's resolution of the appeal), LUBA will not require the local government to prepare a transcript of the proceedings below. *Chang v. City of West Linn*, 20 Or LUBA 505 (1990).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** Petitioner's detailed descriptions of alleged defects in the minutes in the local record are not sufficient to sustain a record objection, in the absence of an explanation as to how the defects are material. *Interlachen, Inc. v. City of Fairview*, 19 Or LUBA 630 (1990).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** A record objection filed four days late, but before the petition for review is due, will suspend the deadline for

filing the petition for review where respondent makes no attempt to explain how its substantial rights may have been prejudiced by a delay of four days in filing the record objection. *Benjamin v. City of Ashland*, 19 Or LUBA 600 (1990).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** OAR 661-10-026(2) requires that a record objection be filed within ten days following service of the record on the person filing the record objection. Where a party alleges it never received the copy of the record the local government contends was served on the party by mail, and the party thereafter takes prompt action to obtain a copy of the record and advises respondent by mail that he assumes he will have 10 days from the date he actually received the record to file any objections, a record objection filed within 10 days after the party actually received the record is timely. *Benjamin v. City of Ashland*, 19 Or LUBA 600 (1990).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** Where a party objects to the local government's failure to include a document in the record filed with LUBA and argues the document was actually placed before the decision maker during the local proceedings, and respondent does not dispute the party's allegations, LUBA will sustain the record objection and require that the record be supplemented to include the document. *Benjamin v. City of Ashland*, 19 Or LUBA 600 (1990).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** A record objection stating that a transcript utilizes too many "inaudible's" is not sufficient to explain with particularity why the transcripts are defective, as required by OAR 661-10-026(3). *Beck v. City of Tillamook*, 19 Or LUBA 598 (1990).

**27.3.3 LUBA Procedures/Rules – Record – Objections to.** Petitioner's failure to file his record objection until three days after the date required by OAR 661-10-026(2) is a technical violation of LUBA's rules and will not result in rejection of the record objection where the respondent (1) was granted extensions to file the record in the appeal proceeding and related appeal proceedings, and (2) does not allege how it was prejudiced by the late filing of the record objection. *Davis v. City of Bandon*, 19 Or LUBA 507 (1990).