

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Where a petition for review incorporates another brief by reference, and thereby exceeds the applicable word limit without obtaining prior permission from the Board for an overlength brief, the remedy is that LUBA will disregard, for purposes of the petition for review, the portion of the incorporated brief that exceeds the word limit; LUBA will not disregard the entire brief or treat it as effectively not filed. *Nicita v. City of Oregon City*, LUBA No 2020-037/039 (Feb 9, 2021).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. LUBA will reject a motion to expand the petition for review from the 11,000 words allowed under OAR 661-010-0030(2)(b) to 20,000 words, where the petitioner argues only that the challenged decision is complex, and the respondent and intervenor-respondent could, potentially, file two response briefs that total over 20,000 words. In addition, a motion to expand the petition for review filed the day the petition is due, without attempting to confer with the other parties, does not represent the best practice, which is to file the motion well before the petition is due, after seeking other parties' consent. *Schaefer v. Marion County*, LUBA No 2020-108 (May 17, 2021).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Petitioners' brief violated OAR 661-010-0030(2)(b) where the brief used hyphens in order to omit spacebar breaks and join words and characters that otherwise would not be joined, and included a lengthy block quotation that appeared to be inserted as an image instead of text resulting in a lesser word count as measured by the word-processing system used to prepare the brief. The violation was not technical where LUBA had denied petitioners' prior request to file an overlength brief. Where the word limit was reached somewhere within the third or fourth assignment of error, LUBA did not consider the fourth assignment of error. *Roberts v. City of Cannon Beach*, LUBA No 2020-116 (July 23, 2021).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. LUBA will grant a motion to file an overlength petition for review to exceed the 11,000-word limit in OAR 661-010-0030(2)(b), but not to exceed 18,000 words, where the petitioners' challenges to the appealed decisions involve Goal 3, the appeals are consolidated at LUBA and involve two different decisions that respond to two different LUBA remands, one of the challenged decisions is 78 single-spaced pages and the record is 1,847 pages, the appeals involve relatively complex jurisdictional disputes, one of the challenged decisions is one of the first to apply the Supreme Court's analysis of a particular statute, and the appeals involve a total of 37 petitioners. *Schrepel v. Yamhill County*, 81 Or LUBA 1081 (2020).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Where a petitioner cites over one hundred pages of the record in its preservation of error statement, but the respondents do not argue that the issues were not raised during the local proceeding and the petitioner provides more focused record citations in their reply brief, and where it is evident from the challenged decision itself that the issues were raised during the local proceeding, such failure to adequately specify in the petition for review where the issues were preserved is a technical violation that does not prejudice the respondents' substantial rights. *Nehmzow v. Deschutes County*, 81 Or LUBA 571 (2020).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. LUBA will deny a motion to amend the petition for review to add a new assignment of error challenging one of the decision-

maker's findings where the original petition for review does not fail to comply with OAR 661-010-0030(4); where the petitioners do not explain why they could not have challenged the finding, based on the adequacy of the evidence in the record, in the original petition for review; and where granting the motion would require LUBA to allow additional briefing by the intervenor-respondent, would require LUBA to reschedule oral argument, and would delay issuance of LUBA's final opinion and order. *Dressel v. City of Tigard*, 81 Or LUBA 1001 (2020).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. A petitioner fails to satisfy OAR 661-010-0030(4)(d) or to establish that the issues raised in its six assignments of error were raised as required by ORS 197.763(1) and ORS 197.835(3) where the petitioner broadly cites its submittals into the record during the proceedings before the local government. Such a broad citation is not a technical violation where it interferes with the substantial rights of the parties by improperly shifting the burden to the respondents to review over one hundred pages of the record to determine whether the issues raised in six assignments of error in an overlength, 68-page petition for review have been preserved. *H2D2 Properties, LLC v. Deschutes County*, 80 Or LUBA 528 (2019).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. LUBA will allow an amendment to a petition for review to correct errors or omissions in a petition for review if doing so serves a purpose and will not materially interfere with either respondents' ability to respond to the petition for review or our ability to meet the statutory deadline for our final opinion. Where petitioner attempted to amend his petition for review—by adding allegations to an assignment of error, by adding record and case cites, and by “clarifying and refining text”—23 days after the response briefs were filed and two days before oral argument, and petitioner filed his renewed motion to amend his petition for review on the same date as oral argument, LUBA will deny petitioner's request. To allow such a request would not be fair or promote the speediest practicable review of land use decisions and would materially interfere with respondents' ability to respond to the petition for review. *Nicita v. City of Oregon City*, 78 Or LUBA 1084 (2018).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. When petitioners do not seek relief from any conditions imposed or any aspect of the city's planned unit development (PUD) approval under the general track and LUBA's only option is to affirm, reverse, or remand, the petitioners are asking LUBA to issue what is essentially an advisory opinion regarding the present case. LUBA lacks express statutory or cited judicial authority to issue an advisory opinion on the legal matters presented in the petition and issuing such an advisory opinion would be contrary to one of the express statutory purposes of LUBA's review: that our review should be consistent with “sound principles governing judicial review.” ORS 197.805. *Dreyer v. City of Eugene*, 78 Or LUBA 391 (2018).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Where petitioners' counsel attempts to amend a timely filed Notice of Intent to Appeal (NITA), to add additional petitioners who were mistakenly omitted from the original NITA, but the amended NITA is filed after the time limit set forth in ORS 197.830(9) for filing a NITA before LUBA, petitioners' mistaken omission of the petitioners from the original NITA was not merely a “technical violation” of LUBA's rules at OAR 660-010-0015. The additional petitioners listed in the Amended NITA have

not established that their NITA was filed within the time limit set forth in ORS 197.830(9), and are therefore not parties to the appeal. *Cossins v. Josephine County*, 77 Or LUBA 240 (2018).

7.4.1 LUBA Procedures/Rules – Petition for Review – Generally. LUBA will deny a motion to submit a partial transcript of a planning commission meeting submitted by a petitioner two days after oral argument. Under LUBA’s rules, the time for a petitioner to submit a self-prepared transcript is at the time the petition for review is filed. Submitting a transcript after oral argument prejudices the other parties’ ability to evaluate the accuracy of the transcript. *Conte v. City of Eugene*, 77 Or LUBA 547 (2018).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Where a 64-page petition for review that includes 14,102 words is filed without first seeking LUBA’s permission for an over-length brief, LUBA would normally require that petitioner file an amended petition for review that complies with the OAR 661-010-0030(2)(b) 14,000 word limit for petitions for review. But where the motion to strike or shorten the petition for review is filed concurrently with the response briefs and oral argument has been scheduled, no useful purpose would be served by requiring a shortened petition for review. *Byers Properties, LLC v. Metro*, 77 Or LUBA 557 (2018).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. LUBA will not consider an issue that was not raised in the petition for review and was raised for the first time in a motion that was received by LUBA one day before the statutory deadline for LUBA to issue its final opinion expired. *Rawson v. Hood River County*, 75 Or LUBA 200 (2017).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. A petitioner’s motion to supplement the petition for review, which was filed after oral argument, will be denied. Petitioners have an opportunity to respond to material allegations of fact by respondents that are not supported by the record during rebuttal at oral argument, and LUBA will reject post-oral argument attempts to enhance and expand the arguments in the petition for review. *Rawson v. Hood River County*, 75 Or LUBA 200 (2017).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Where an assignment of error itself can be read to allege that a hearings officer committed a particular analytical error in reviewing an application to alter a nonconforming use, but the arguments that are put forth in support of the assignment of error have nothing to do with that arguable analytical error, petitioners fail to adequately state and develop a challenge to the analytical error. In that circumstance, LUBA will limit its review to the arguments petitioners actually present. *Meyer v. Jackson County*, 73 Or LUBA 1 (2016).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. LUBA will ignore incorporations of assignments of error from other petitions for review that cause the incorporating petition for review to exceed the maximum page limits. *Trautman v. City of Eugene*, 73 Or LUBA 209 (2016).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. An attempt by one petitioner to incorporate procedural assignments of error that are presented in a different petition for review

would not result in remandable error unless the procedural error prejudiced the substantial rights of the petitioner who filed the petition for review that is attempting incorporation, because a petitioner's assertion of prejudice to another person's substantial rights does not provide a basis for remand. *Trautman v. City of Eugene*, 73 Or LUBA 209 (2016).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Where an assignment of error can be read to advance a “literal” interpretation argument, but that argument is not clearly stated and is undeveloped, LUBA will not consider the argument. *Burgermeister v. Tillamook County*, 73 Or LUBA 291 (2016).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Failure to comply with OAR 661-010-0030(4), which requires that the petition for review demonstrate that the issues raised in the assignments of error were preserved during the proceedings below, is not a basis to reject the assignment of error or refuse to consider a reply brief that responds to a waiver challenge, absent a showing that noncompliance with OAR 661-010-0030(4) prejudices other parties' substantial rights or substantially impedes LUBA's review. *Wal-Mart Stores, Inc. v. City of Hood River*, 72 Or LUBA 1 (2015).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Where petitioner does not argue the complexity of an appeal warrants a petition for review with more than 50 pages, and LUBA concludes that petitioner easily could have made the arguments presented in support of petitioner's three assignments of error in a petition for review that complies with the OAR 661-010-0030(2)(b) 50-page limit, LUBA will deny petitioner's request to submit a 53 page petition for review. *Graser-Lindsey v. City of Oregon City*, 72 Or LUBA 25 (2015).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Where a petitioner ignores 13 pages of findings in the local government's final decision that attempt to address the issues the petitioner raised on local appeal, and instead challenges only the findings in the underlying decision that was affirmed by the local government's final decision, the petition for review provides no basis to reverse or remand the local government's final decision. *Dion v. Baker County*, 72 Or LUBA 307 (2015).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Including legal arguments in the summary of material facts in a petition for review, and failing to provide record citations in that summary, are violations of LUBA's rules, but such violations do not warrant striking the summary or other remediable action, absent a showing of prejudice to other parties' substantial rights. *Squier v. Multnomah County*, 71 Or LUBA 98 (2015).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Where the petition for review includes argument in a section of the petition setting out the standard of review, that violation of LUBA's procedural rules does not warrant striking the argument or other remediable action unless there is prejudice to other parties' substantial rights. Absent such prejudice, the better practice is to briefly note the alleged violation in the corresponding section of the response brief and clarify any disputed points raised by the violation. *Squier v. Multnomah County*, 71 Or LUBA 98 (2015).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. LUBA will not consider arguments in footnotes that set out a different legal theory than presented in the assignment of error. *McCaffree v. Coos County*, 70 Or LUBA 15 (2014).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. An assignment of error fails to comply with OAR 661-010-0030(4)(d) if it does not “demonstrate that the issue * * * was preserved during the proceedings below.” *McCaffree v. Coos County*, 70 Or LUBA 15 (2014).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Where a hearings officer provides two independent bases to approve a private street and a petitioner wishes to challenge both bases, it is improper for the petitioner to challenge one of the bases in a footnote to an assignment of error that challenges the other basis for approving the private street. LUBA generally does not consider arguments in footnotes that set out a different legal theory than that presented in the assignment of error itself. *Carver v. Washington County*, 70 Or LUBA 23 (2014).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. LUBA will grant a motion to strike appendices to the briefs that contain materials that are not included in the record if the materials are offered for their evidentiary value. LUBA will not strike portions of the briefs that rely on or cite to the stricken materials but instead will disregard any allegations of material fact that are not supported by the record. *Oakleigh-McClure Neighbors v. City of Eugene*, 70 Or LUBA 132 (2014).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. LUBA’s review is limited to the record filed by the local government. ORS 197.835(2). Where exhibits that are attached to the petition for review are not included in the record and appear to be offered for their evidentiary value, LUBA will grant a motion to strike the exhibits and will disregard any allegations of material fact in the petition for review that rely on the exhibits. *Reading v. Douglas County*, 70 Or LUBA 458 (2014).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Where confusing arguments to LUBA are nevertheless discernable with reasonable effort, LUBA states its understanding of the argument and considers the argument on its merits. *Greller v. City of Newberg*, 70 Or LUBA 499 (2014).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Items rejected from the local record are properly excluded from the record transmitted to LUBA. Where a local government rejects portions of a document, and includes only a redacted version of the document in the record, the petitioner may attach to the petition for review the unredacted document, in support of any of an assignment of error alleging that the local government erred in rejecting the redacted portions. If no party objects, LUBA will consider the attached document for the limited purpose of resolving that procedural assignment of error. If a party objects, the petitioner may file a motion to take evidence to allow LUBA to consider the unredacted document for that same limited purpose. *Port of Umatilla v. City of Umatilla*, 70 Or LUBA 527 (2014).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. LUBA will ignore incorporations of assignments of errors in other petitions for review that cause the incorporating

petition to exceed the maximum page limits. *STOP Tigard Oswego Project, LLC v. City of West Linn*, 68 Or LUBA 360 (2013).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. While incorporation of arguments in another brief in a consolidated appeal is a common practice, such incorporation is permissible only if it does not cause the incorporating brief to exceed the 50-page limit in OAR 661-010-0030(2)(b). Even if such an incorporation does not violate OAR 661-010-0030(2)(b), the incorporation does not allow a person who is party in one appeal to file motions in a consolidated appeal to which the person is not a party. *STOP Tigard Oswego Project, LLC v. City of West Linn*, 68 Or LUBA 539 (2013).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Where the county zoning that applied to recently annexed territory inside a city’s urban growth boundary provided that dwellings were allowed only if the property “was designated for residential use by the city,” and the city took the position in its brief that the property was not designated for residential use, LUBA will assume that the city is correct where (1) petitioners do not argue in their petition for review that property was designated for residential use and (2) petitioners fail to respond to the city’s argument in its brief. *Knaupp v. City of Forest Grove*, 67 Or LUBA 398 (2013).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. OAR 661-010-0030(4)(d) requires that the petition for review “[s]et forth each assignment of error under a separate heading.” However, LUBA will consider alleged errors that are not set out under assignments of error to the extent they can be discerned from the petition for review. *Emmert v. Clackamas County*, 65 Or LUBA 1 (2012).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Where an assignment of error does not challenge the reasoning that led a county to conclude a post-acknowledgment plan amendment would be necessary to mine a particular mineral, an assignment of error that asks LUBA to remand the decision because the decision maker might change its mind about whether the post acknowledgment plan amendment is necessary, based on LUBA’s disposition of another assignment of error, presents no basis for remand. *Mark Latham Excavation Inc. v. Deschutes County*, 65 Or LUBA 32 (2012).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. LUBA will not consider a petitioner’s argument that a vacation decision that was initiated by a city council violates a statutory vacation standard where petitioner omits and fails to address in her petition for review statutory language that suggests the cited statutory standard applies only to vacation decisions that are initiated by petition rather than by city council initiative. *Heitsch v. City of Salem*, 65 Or LUBA 187 (2012).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Under OAR 661-010-0050, an intervenor becomes a party to the appeal on the date the motion to intervene is filed. A petitioner seeking to extend the deadline for filing the petition for review pursuant to OAR 661-010-0067(2) must obtain the written consent of the intervenor and all parties, even if LUBA has not yet issued an order granting the motion to intervene. *Danielson Trust v. Jackson County*, 65 Or LUBA 437 (2012).

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. The failure of a *pro se* petitioner to sign a petition for review does not necessarily mean that that petitioner has “failed to timely file a petition for review” under OAR 660-010-0030(1), with the consequence that that petitioner must be dismissed from an appeal. *Abeel v. City of Portland*, 58 Or LUBA 247 (2009).

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. Petitioners’ failure to include an adequate jurisdictional statement in their petition for review is not a basis for dismissing their appeal, where their dispute about whether the challenged decision is a land use decision is the central dispute and petitioners’ first assignment of error alleges that the appealed decision is a land use decision that is subject to LUBA review. *Zirker v. City of Bend*, 55 Or LUBA 188 (2007).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. A petitioner may not dismiss his attorney after the petition for review has been filed and the time for filing the petition for review has run and then submit a new or amended petition for review. *Taylor v. City of Canyonville*, 55 Or LUBA 681 (2007).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. LUBA will deny a request to resettle the record and restart the deadline for filing the petition for review that is filed on the date the petition for review is due and that is based on a nonmeritorious argument that notes taken by a recording clerk are “minutes” of the proceeding that must be included in the record. *Ford v. Jackson County*, 54 Or LUBA 434 (2007).

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. LUBA will not assume that petitioners meant to rely on an intergovernmental agreement provision that can be read to bar

requiring annexation agreements for certain types of development, where petitioners do not cite the intergovernmental agreement provision, there are significant questions regarding whether it would preclude the challenged condition requiring an annexation agreement and petitioners do not address those questions. *Wickham v. City of Grants Pass*, 53 Or LUBA 261 (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. While it is possible that LUBA might grant a petitioner’s request that a notice of intent to appeal be treated as the petition for review, a petitioner may not wait until over two weeks after the deadline for filing the petition for review has expired to make such a request. *Bleu v. Clackamas County*, 52 Or LUBA 606 (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 an interpretive argument that is presented at oral argument but was not included in the petition for review and was not presented to the local government. *Regen v. Lincoln County*, 49 Or LUBA 386 (2005).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Allowing intervenors-petitioner to belatedly sign the signature page of a timely filed petition for review is not tantamount to allowing a late petition for review. Intervenors’ failure to sign or join the petition for review prior to its filing is at most a technical violation that does not affect our review, absent prejudice to another party’s substantial rights. *Kane v. City of Beaverton*, 49 Or LUBA 512 (2005).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Service of the petition for review by parcel post rather than by first class mail is a violation of OAR 661-010-0075(2)(b)(B). However, unless the slower delivery attributed to parcel post interferes with the respondent’s ability to prepare the response brief, or otherwise prejudices other parties’ substantial rights, that violation does not provide a basis to dismiss the appeal. *Moreland v. City of Depoe Bay*, 48 Or LUBA 136 (2004).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. The date the petition for review is postmarked is not necessarily determinative of the date the petition is “mailed,” for purposes of OAR 661-010-0030(1) and 661-010-010-0075(2)(a)(B). *Mason v. City of Corvallis*, 48 Or LUBA 651 (2005).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Depositing the petition for review postage paid in a postal service deposit box on the date it is due is sufficient to “mail” and hence file the petition for review under OAR 661-010-0075(2)(a)(B), even if the petition for review is postmarked the following day, and even if the petition for review is deposited after the last collection time for that deposit box. *Mason v. City of Corvallis*, 48 Or LUBA 651 (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. Petitioners do not sustain their burden of demonstrating that a petition for review was timely filed, where the only evidence that bears on that question is (1) a postmark dated one day late and (2) an affidavit by petitioners' attorney averring that he arrived at the post office two minutes prior to midnight on the day the petition for review was due, and he was "certain" that he deposited the petition for review with the postal clerk before midnight. *Bollinger v. City of Hood River*, 46 Or LUBA 602 (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. A person who is not an active member of the Oregon State Bar may not sign a petition for review on behalf of individual petitioners. *Roe v. City of Union*, 45 Or LUBA 736 (2003).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Where a petition for review is signed by a person who is not an active member of the Oregon State Bar, LUBA will allow the petition for review to be amended so that petitioners may sign the petition for review on their own behalf or an active member of the Oregon State Bar may sign the petition for review. *Roe v. City of Union*, 45 Or LUBA 736 (2003).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. The practice of attaching maps from the record to the petition for review, to orient the Board as to the subject property or the relevant zoning, is strongly encouraged. However, the Board will strike maps attached to the

parties' briefs that are modified to illustrate a disputed point. *Carver v. City of Salem*, 42 Or LUBA 305 (2002).

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. The requirement at OAR 661-010-0030(1) that LUBA dismiss an appeal where the petition for review is not timely filed implements the statutory policy that “time is of the essence” in land use matters. That the statutes governing LUBA’s review do not provide for dismissal where the petition is untimely filed does not mean that OAR 661-010-0030(1) is inconsistent with LUBA’s governing statutes. *Rookard v. Lane County*, 41 Or LUBA 14 (2001).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Assignments of error that are directed at a decision other than the decision that is the subject of the LUBA appeal provide no basis for reversal or remand. *Robson v. City of La Grande*, 40 Or LUBA 250 (2001).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. The failure of a petition for review to include the jurisdictional statement required by OAR 661-010-0030(4)(c) provides no basis for dismissal where it is clear that the challenged decision is a land use decision, as defined by ORS 197.015(10), because the decision concerns the adoption of comprehensive plan map and zoning map amendments and applies discretionary comprehensive plan amendment criteria and at least one statewide planning goal. *Cape v. City of Beaverton*, 40 Or LUBA 78 (2001).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Where the notice of intent to appeal challenges a governing body’s decision determining that petitioner has no standing to file a local appeal of a planning director’s decision, but the petition for review assigns error only to the planning director’s decision, the petition for review provides no basis to reverse or remand the governing body’s decision. *Doob v. Josephine County*, 39 Or LUBA 301 (2001).

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. After the petition for review is filed, petitioner must respond to allegations that issues that are raised in the petition for review were not raised during the local proceedings. If petitioner fails to do so, those issues are waived. However, petitioner is not initially obligated to specify in the petition for review where the issues that are raised in the petition for review were raised below. *Robinson v. City of Silverton*, 37 Or LUBA 521 (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. LUBA will not review eight audiotapes in the record, where the party relying on testimony in the tapes provides LUBA no assistance in locating the testimony and does not attach partial transcripts of the testimony to its brief. *Turner Community Association v. Marion County*, 37 Or LUBA 324 (1999).

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. LUBA's rules require that the petition for review "[s]tate the facts that establish petitioner's standing," but do not require that such allegations of fact appear in any particular form or any particular portion of the petition for review. *Friends of the Creek v. Jackson County*, 36 Or LUBA 562 (1999).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Petitioner’s failure to cite ORS 215.402 to 215.428 as authority for its position that the challenged decision required notice and an opportunity for a hearing does not require that LUBA reject the assignment of error where (1) it is clear from its brief that respondent was aware that ORS 215.402 to 215.428 require notice and an opportunity for a hearing for land use decisions that constitute “permits” under ORS 215.402(4), and (2) the city argues in its brief that the challenged decision does not constitute a “permit” decision, within the meaning of ORS 215.402(4). *Friends of the Creek v. Jackson County*, 36 Or LUBA 562 (1999).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Where the response brief points out that the petition for review challenges only one of the county’s alternative bases for modifying an approval standard, the response brief has not raised a “new matter” within the meaning of OAR 661-010-0039. A reply brief is not a means to assign error to findings that were not challenged in the petition for review, and arguments in the response brief based on such findings are not new matters warranting a reply brief. *Hard Rock Enterprises v. Washington County*, 36 Or LUBA 106 (1999).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Where a local government’s modification of standards applicable to a planned unit development rests on independent alternative grounds, petitioner’s demonstration of error in one alternative ground provides no basis to reverse or remand the challenged decision where petitioner fails to challenge the other alternative ground. *Hard Rock Enterprises v. Washington County*, 36 Or LUBA 106 (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).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Where petitioners fail to obtain a stipulation from the county to extend the deadline for filing a petition for review pending resolution of a motion, an appeal will be dismissed if the petition for review is not filed within the deadline established by Board rules. *Berry v. Jackson County*, 35 Or LUBA 137 (1998).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Where an allegedly new argument presented by petitioner at oral argument simply reflects a difference in the parties’ understanding of the arguments that are contained in the petition for review, LUBA will consider the argument if it is not fundamentally different from the arguments presented in the petition for review. *Nike, Inc. v. City of Beaverton*, 35 Or LUBA 57 (1998).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Where the petition for review does not identify the ordinance standard that is allegedly violated or what the ordinance requires, petitioners’ argument is not sufficiently developed for LUBA review. *Lodge v. City of West Linn*, 35 Or LUBA 42 (1998).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Petitioner’s own transcript of local proceeding audio tapes is not part of the local record. However, if petitioner prepares a transcript of all or some of the audio tapes and attaches it to her petition for review in support of arguments made in the petition, LUBA will consider the transcript if no objection is made to the transcript’s accuracy or completeness. *D.S. Parklane Development, Inc. v. Metro*, 33 Or LUBA 848 (1997).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. A transcript of local proceedings that is prepared and submitted by petitioner, rather than by the respondent local government, cannot be made part of the local record. However, such a transcript may be attached to the petition for review in support of arguments presented therein. *Trademark Construction Inc. v. Marion County*, 33 Or LUBA 842 (1997).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. LUBA will grant a motion to strike evidence attached to a petition for review where the evidence is neither included in the local record nor properly placed before LUBA through an evidentiary hearing. *St. Johns Neighborhood Assn v. City of Portland*, 33 Or LUBA 836 (1997).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. A 72-page petition for review submitted after our order limiting the petition for review to 75 pages of pica type will not be accepted when it is printed in a 12-point Times typeface, which makes it equivalent in length to about 95 pages in pica type. *City of Gresham v. City of Wood Village*, 33 Or LUBA 801 (1997).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. If a reduced or condensed typeface is used in a brief filed at LUBA, with more than 10 characters to the linear inch and six lines to the vertical inch, the number of pages must be reduced accordingly. No typeface smaller than 12-point may be used in the text of a brief, as opposed to the footnotes, where a 10-point typeface is acceptable. *City of Gresham v. City of Wood Village*, 33 Or LUBA 792 (1997).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. A party challenging a local land use decision must provide some particular basis for showing the decision is subject to remand or reversal. It is not LUBA’s function to make a petitioner’s case. *Purdy v. City of Shady Cove*, 33 Or LUBA 331 (1997).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. A party challenging a local land use decision must provide some particularized basis for showing it to be subject to remand or reversal. *Laurance v. Douglas County*, 33 Or LUBA 292 (1997).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Where a city makes both an initial finding and an alternative finding, and petitioner does not assign error to the initial finding, LUBA will not review the alternative finding. *Hood River Valley Res. Comm. v. City of Hood River*, 33 Or LUBA 233 (1997).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. A petition for review of 75 pages, which is 50 percent larger than LUBA’s rule (OAR 661-10-030(2)(b)) allows, will not be

accepted absent the most extreme circumstances. *Sanders v. Yamhill County*, 32 Or LUBA 501 (1997).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Where, after the petition for review is filed, the Court of Appeals issues a new decision addressing the application of a statute that is the linchpin of one of petitioner’s assignments of error, LUBA will accept a memorandum of additional authorities from petitioner to the extent it interprets the new decision’s effect on the present case. *Still v. Marion County*, 32 Or LUBA 40 (1996).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. The jurisdictional statement required by OAR 660-10-030(2) provides a means for LUBA to determine whether the challenged decision fits within the statutory scope of its jurisdiction. The statement does not limit the issues that may be raised in the body of a petition for review. *Miller v. City of Joseph*, 31 Or LUBA 472 (1996).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. In deciding whether to allow a longer petition for review, LUBA places less importance on the size of the record than on whether several types of land use approvals, involving different sets of approval criteria, are being challenged. *Concerned Citizens v. Jackson County*, 31 Or LUBA 562 (1996).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. The page limitation stated in OAR 661-10-030(2)(b) exists to protect the interest of the Board, as well as the parties, in a concise, well-organized petition for review; and although the fact that a motion for a longer petition for review is unopposed is important to a consideration of the interest of the parties, it will not invariably persuade the Board that a longer petition for review is justified. *Concerned Citizens v. Jackson County*, 31 Or LUBA 562 (1996).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. LUBA’s rules do not allow for a continuance following oral argument to allow a party to supplement the petition for review, respond to issues raised in a response brief, or add evidence to the record. *Peterson v. City of Portland*, 31 Or LUBA 112 (1996).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. LUBA usually will not consider arguments made for the first time at oral argument before the Board. *DLCD v. Polk County*, 31 Or LUBA 69 (1996).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. A petition for review which lacks assignments of error and argument in support thereof does not comply with OAR 661-10-030(3) and provides no basis for reversal or remand. *Borrego v. City of Sheridan*, 30 Or LUBA 65 (1995).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. When the petition for review is not filed within the time established under OAR 661-10-030(1), the appeal will be dismissed and the filing fee and deposit for costs forfeited to the governing body. *Grammon v. City of Cove*, 30 Or LUBA 31 (1995).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. OAR 661-10-067(2) provides that the deadline for filing the petition for review may be extended only with the written consent of all parties. When the parties rely on an oral agreement to extend the petition for review filing deadline, and one party rescinds the oral agreement one day before the petition for review is due to be filed, petitioner’s failure to timely file the petition for review requires dismissal of the appeal. *Bongiovanni v. Klamath County*, 29 Or LUBA 351 (1995).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Petitioners may not make a new challenge to the appealed decision in a reply brief, and thereby effectively add an assignment of error to the petition for review. *Shaffer v. City of Salem*, 29 Or LUBA 592 (1995).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Where the petition for review includes allegations concerning the content of a tape in the record, and respondents object that petitioner failed to attach a transcript of the relevant portions of the tape to the petition for review, LUBA will allow petitioner to submit a transcript in a reply brief, so long as respondents have adequate time to review the tape and transcript prior to oral argument. *Shaffer v. City of Salem*, 29 Or LUBA 592 (1995).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. LUBA will disregard references in a petition for review to items which are neither in the record nor subject to official notice. LUBA cannot take official notice of a local government ordinance if it is not provided with a copy of the ordinance. *Craven v. Jackson County*, 29 Or LUBA 125 (1995).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. LUBA will disregard references in a petition for review to the legislative history of a statute, where such references are supported neither by uncontested verbatim quotes nor by submission of a copy of the legislative history documents referred to. *Craven v. Jackson County*, 29 Or LUBA 125 (1995).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Where petitioner alleges the local government’s notice of public hearing violates local code requirements, but petitioner fails to provide LUBA with the local code requirements allegedly violated, LUBA will deny the assignment of error. *Andrews v. City of Prineville*, 28 Or LUBA 653 (1995).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Arguments that the county should have based its decision on the subject application on statutory provisions, rather than on compliance with local standards, must be presented in a petition for review or cross-petition for review. Such arguments are not properly presented in a respondent’s brief. *Louks v. Jackson County*, 28 Or LUBA 501 (1995).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. A petition for review which lacks assignments of error and argument in support of the assignments of error and merely expresses disagreement with past governmental actions concerning a property fails to comply with OAR 661-10-030(3). *Scholes v. Jackson County*, 28 Or LUBA 407 (1994).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Petitioners generally establish LUBA’s jurisdiction in the petition for review. However, if a respondent moves to

dismiss the LUBA appeal on the basis that the appealed decision is not a land use decision or that the appeal was not timely filed, petitioner's response to the motion to dismiss must establish that LUBA has jurisdiction. *Bowen v. City of Dunes City*, 28 Or LUBA 324 (1994).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. A petitioner at LUBA may not raise an argument for the first time at oral argument or in a post-oral argument memorandum. *DLCD v. Douglas County*, 28 Or LUBA 242 (1994).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. 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).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. If LUBA allows the record to be supplemented after the petition for review is filed, petitioners must be given an opportunity to file a new petition for review. *Salem Golf Club v. City of Salem*, 27 Or LUBA 715 (1994).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Allegations that a local government decision should be reversed for failure to follow local code provisions governing deadlines for holding a public hearing and issuing a final decision are properly presented in the petition for review, not in a motion to reverse. *Sanchez v. Clatsop County*, 27 Or LUBA 713 (1994).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. LUBA will not consider a motion for reversal that includes arguments not contained in the petition for review, where the motion for reversal is filed three weeks after the deadline for filing the petition for review. *Fechtig v. City of Albany*, 27 Or LUBA 480 (1994).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. A transcript of local proceedings that was prepared and submitted by petitioner, rather than by the respondent local government, cannot be made part of the local record. However, petitioner may attach the transcript, or relevant portions thereof, to the petition for review, in support of arguments made therein. *Bates v. Josephine County*, 27 Or LUBA 673 (1994).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Although amending a petition for review to add record citations, correct page numbers and edit for clarity might be allowable under OAR 661-10-030(4), such amendments are not warranted where allowing them would delay an appeal for five days. *Davenport v. City of Tigard*, 26 Or LUBA 649 (1994).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Under OAR 661-10-030(4), LUBA may allow the filing of an amended petition for review to cure failures regarding specifications and content requirements for petitions for review, where doing so would neither materially interfere with respondents' ability to respond to the petition for review nor delay issuance of LUBA's final opinion and order. *Zippel v. Josephine County*, 26 Or LUBA 626 (1994).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Where petitioner’s notice of intent to appeal identifies the challenged decision as the governing body’s decision to dismiss his local appeal, but his petition for review alleges error in the planning commission’s decision to approve the subject application, rather than the governing body’s decision dismissing his appeal, LUBA will affirm the challenged decision. *Churchill v. Tillamook County*, 26 Or LUBA 22 (1993).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Where a request to amend the petition for review to add an assignment of error is delivered to LUBA two days before the final opinion and order is due, the request will be denied as untimely. *Adler v. City of Portland*, 25 Or LUBA 546 (1993).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. A petitioner fails to adequately allege error with regard to a particular code section, where that code section is not identified in petitioner’s assignment of error and a different code section is cited in the argument supporting the assignment of error. *Day v. City of Portland*, 25 Or LUBA 468 (1993).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Where the petition for review alleges the challenged decision applies provisions of a local government plan and land use regulations, it is not fatal to LUBA’s jurisdiction that the petition for review improperly characterizes the decision as a “land use decision” rather than a “limited land use decision.” *Schatz v. City of Jacksonville*, 25 Or LUBA 327 (1993).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. LUBA will not grant a motion to strike portions of a petition for review which are inaccurate or without factual support. Rather, LUBA will simply disregard such portions of the petition. *Mannenbach v. City of Dallas*, 25 Or LUBA 136 (1993).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. OAR 661-10-075(3) allows both respondents and intervenors-respondent to file cross petitions for review. Cross petitions for review are not limited to the issues raised in petitioners’ petition for review; any appropriate issue may be raised. *Reusser v. Washington County*, 24 Or LUBA 652 (1993).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. LUBA has authority to promulgate rules allowing the filing of cross petitions for review by respondents who have not themselves filed timely notices of intent to appeal. *Reusser v. Washington County*, 24 Or LUBA 652 (1993).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. LUBA will not dismiss an appeal simply because the petitioner failed to attach the exhibits to the challenged ordinance to the petition for review. *DLCD v. Coos County*, 24 Or LUBA 137 (1992).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. LUBA will not address issues which are raised by petitioners for the first time at oral argument, and are not included in the assignments of error and supporting argument required to be set out in the petition for review. OAR 661-10-030(3)(b). *Bouman v. Jackson County*, 23 Or LUBA 628 (1992).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Where the petition for review does not contain assignments of error set forth under separate headings, as required by OAR 661-10-030(3)(d), LUBA will only consider those arguments set forth in the petition for review which are stated clearly enough to afford respondents an opportunity to respond. *Heiller v. Josephine County*, 23 Or LUBA 551 (1992).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. LUBA will not grant a motion to file a petition for review in excess of 50 pages simply because (1) several hearings were held below, (2) the challenged decision applies several local code provisions and is supported by lengthy findings, and (3) petitioners intend to challenge local government interpretations of several statutory and code provisions. *Wilson Park Neigh. Assoc. v. City of Portland*, 23 Or LUBA 718 (1992).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Where, on the day the petition for review is due, a petitioner files a brief in excess of 50 pages and a motion for permission to file such brief, the petitioner assumes the risks that its brief will be stricken or that LUBA will not consider the pages in the brief following page 50. *Kaye v. Marion County*, 23 Or LUBA 452 (1992).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. A motion to dismiss does not suspend the time for filing the petition for review. The only events that suspend the time for filing a petition for review in a LUBA appeal are the filing of (1) a motion for an evidentiary hearing, (2) a record objection, or (3) a written stipulation signed by all parties for an extension of time to file the petition for review. *Weeks v. City of Tillamook*, 23 Or LUBA 255 (1992).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Allegations that the challenged decision violates a statewide planning goal and the local comprehensive plan and land use regulations are sufficient to constitute an allegation that the challenged decision is a land use decision under the statutory test, even where such allegations are found in the body of the petition for review, rather than in a separate statement of jurisdiction as required by OAR 661-10-030(3)(c). *Adkins v. Heceta Water District*, 23 Or LUBA 207 (1992).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Petitioners must include sufficient argument in the petition for review to explain the basis for their allegations of error. Petitioners may not fail to make a specific challenge to the findings supporting a decision or the evidentiary support for those findings and rely solely on expressions of disagreement with the challenged decision. *Camp v. Josephine County*, 23 Or LUBA 6 (1992).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Where a petition for review contains no argument in support of petitioner's assignments of error, the assignments of error will be denied. *Camp v. Josephine County*, 23 Or LUBA 6 (1992).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. LUBA will consider arguments expressed in the petition for review that are stated clearly enough to afford the other parties an opportunity to respond. *Silani v. Klamath County*, 22 Or LUBA 735 (1992).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Failure to include a jurisdictional statement in the petition for review, as required by OAR 661-10-030(3)(c), is a technical violation of LUBA’s rules and does not provide a sufficient basis for dismissing the petition for review. However, because petitioner bears the burden of establishing LUBA’s jurisdiction, LUBA will require the petition for review to be amended to include a jurisdictional statement. OAR 661-10-030(4). *Dolan v. City of Tigard*, 22 Or LUBA 820 (1991).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Where the petition for review does not contain separate assignments of error, as required by OAR 661-10-030(3)(d), LUBA will consider the arguments expressed in the petition for review, but only to the extent they allege errors clearly enough to afford the other parties an adequate opportunity to respond. *Eckis v. Linn County*, 22 Or LUBA 27 (1991).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. LUBA’s rules require that petitioners’ assignments of error and argument be in the petition for review. LUBA cannot consider an issue raised by petitioner for the first time at oral argument. *Ward v. City of Lake Oswego*, 21 Or LUBA 470 (1991).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. LUBA will deny a motion to amend the petition for review to add an additional assignment of error, where the motion is filed one day before oral argument. If it were granted, LUBA would have to give respondents additional time to present written and oral argument in response to the additional assignment of error, resulting in delay in issuance of LUBA’s final opinion. *Hale v. City of Beaverton*, 21 Or LUBA 249 (1991).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. That petitioners’ allegations of standing were made in their answer to a motion to dismiss, rather than in the petition for review as required by OAR 661-10-030(3)(a), is a technical violation of LUBA’s rules which does not prejudice respondent’s substantial rights where respondent had a full opportunity to respond to petitioners’ allegations in its response brief. *Schatz v. City of Jacksonville*, 21 Or LUBA 214 (1991).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. No statutory or rule provisions require a petition for review to conform with requirements for pleadings in circuit court proceedings. If a petition for review does not set out facts and legal argument sufficient to persuade LUBA that there is a basis for reversal or remand of the challenged decision, LUBA simply affirms the decision. *Dolan v. City of Tigard*, 20 Or LUBA 411 (1991).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Where an affidavit concerning alleged local procedural irregularities is attached to the petition for review, but is neither part of the local record nor the subject of a motion for evidentiary hearing, and other parties dispute the contents of that affidavit, LUBA cannot consider it. *Forest Park Estate v. Multnomah County*, 20 Or LUBA 319 (1990).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. A document appended to a party’s petition for review or brief becomes part of the record of LUBA’s proceeding. *Wissusik v. Yamhill County*, 20 Or LUBA 246 (1990).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Failure to timely file a petition for review will result in dismissal of the appeal. *Bloomer v. Baker County*, 19 Or LUBA 90 (1990).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Where standing is not an issue, an affidavit attached to the petition for review for the sole purpose of establishing petitioner’s standing is not subject to a motion to strike. *Stefan v. Yamhill County*, 18 Or LUBA 820 (1990).

27.4.1 LUBA Procedures/Rules – Petition for Review – Generally. Where petitioners do not object to the adequacy or completeness of the minutes of local proceedings included in the record and do not attach transcripts to their petition for review, petitioners may not submit partial transcripts of local proceedings for the first time at oral argument. *Walker v. City of Beaverton*, 18 Or LUBA 712 (1990).