

**27.5.1 LUBA Procedures/Rules – Briefs – Generally.** LUBA will consider arguments in a brief filed by an amicus whose participation at LUBA has been denied, where the respondent’s brief incorporates the arguments in the amicus brief and the respondent’s brief with the incorporated material does not exceed the 50-page limit or otherwise violate any other rule limitation. *Herring v. Lane County*, 54 Or LUBA 417 (2007).

**27.5.1 LUBA Procedures/Rules - Briefs - 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provision that can be read to bar requiring annexation agreements for certain types of development, where petitioners do not cite the intergovernmental agreement provision, there are significant questions regarding whether it would preclude the challenged condition requiring an annexation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).

**27.5.1 LUBA Procedures/Rules - Briefs - 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).

**27.5.1 LUBA Procedures/Rules - Briefs - Generally.** If the argument included in support of an assignment of error clearly alleges that findings are not supported by substantial evidence, the fact that an assignment of error that challenges the adequacy of the city’s findings does not expressly include a substantial evidence challenge does not preclude LUBA review of the substantial evidence arguments that follow that assignment of error. *Neighbors 4 Responsible Growth v. City of Veneta*, 51 Or LUBA 363 (2006).

**27.5.1 LUBA Procedures/Rules – Briefs – Generally.** While LUBA’s practice is to allow replies to responses to a motion to dismiss if limited to new issues raised in the response, LUBA will deny a request to file a reply where the response is exclusively concerned with a jurisdictional issue that LUBA declines to resolve. *Kamp v. Washington County*, 51 Or LUBA 670 (2006).

**27.5.1 LUBA Procedures/Rules – Briefs – 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).

**27.5.1 LUBA Procedures/Rules – Briefs – Generally.** LUBA will strike allegations in a brief accusing opposing party of intentional misrepresentation where there appears to be a factual basis for the opposing party’s statement. *Patterson v. City of Independence*, 48 Or LUBA 155 (2004).

**27.5.1 LUBA Procedures/Rules – Briefs – Generally.** It is consistent with LUBA’s rules to advance in a response brief what corresponds to a cross-assignment of error under Oregon Rules of Appellate Procedure 5.57(2), *i.e.*, an argument that, if the relief sought by the petitioner is granted, LUBA should also reverse or remand a related intermediate ruling of the decision maker. *Knutson Family LLC v. City of Eugene*, 48 Or LUBA 399 (2005).

**27.5.1 LUBA Procedures/Rules – Briefs – Generally.** Parties may facilitate LUBA’s legal research by providing copies of cases, briefs that were filed in other appeals, or other research materials in their briefs. *Milne v. City of Canby*, 46 Or LUBA 213 (2004).

**27.5.1 LUBA Procedures/Rules - Briefs - Generally.** LUBA will not attempt to resolve a largely hypothetical dispute between a petitioner and a county over the degree of incidental social activity that might be permissible at an existing airport in conjunction with any particular activity that the county must allow under ORS 836.616(2). *Landsem Farms v. Marion County*, 44 Or LUBA 611 (2003).

**27.5.1 LUBA Procedures/Rules – Briefs – Generally.** A motion requesting permission to exceed the 50-page limit on briefs imposed by OAR 661-010-0030(2)(b) will be denied where the motion is filed three days before the brief is due and does not state how many additional pages are requested or indicate whether other parties oppose the motion. *Alliance for Responsible Land Use v. Deschutes Cty.*, 40 Or LUBA 561 (2001).

**27.5.1 LUBA Procedures/Rules – Briefs – Generally.** Where a transcript that is attached to a brief in accordance with OAR 661-010-0030(5) shows that a letter signed by petitioners was read to the local decision maker during the proceedings below and that the local decision maker stated that the letter would be made part of the record, the transcript is sufficient to show that petitioners made a written appearance in accordance with ORS 197.830(2) and have standing at LUBA to appeal the local government’s decision. *Waibel v. Crook County*, 40 Or LUBA 67 (2001).

**27.5.1 LUBA Procedures/Rules – Briefs – Generally.** Where a brief includes as an appendix two letters that post-date the challenged decision and are not included in the record, LUBA will grant a motion to strike the letters but will not strike the brief in its entirety. *Willhoft v. City of Gold Beach*, 39 Or LUBA 743 (2000).

**27.5.1 LUBA Procedures/Rules – Briefs – Generally.** LUBA may allow a party to submit a memorandum of additional citations of relevant authority with brief summaries. However, the memorandum will not be considered if it contains additional arguments, replies to issues raised in the response brief, or does not allow other parties adequate time to address the additional citations. *Stockwell v. Benton County*, 38 Or LUBA 621 (2000).

**27.5.1 LUBA Procedures/Rules – Briefs – Generally.** That a brief includes allegations of fact not supported by substantial evidence is not grounds for striking those allegations from the brief. LUBA will, however, disregard allegations of fact that are not supported by the record. *Spiro v. Yamhill County*, 38 Or LUBA 133 (2000).

**27.5.1 LUBA Procedures/Rules – Briefs – 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).

**27.5.1 LUBA Procedures/Rules – Briefs – Generally.** The failure to serve all persons required to be named in the notice of intent to appeal as required by OAR 661-010-0015 is a technical violation of LUBA's rules, when intervenor's only alleged prejudice is that the violation prohibits other parties from contributing resources to support his position. A person need not have intervenor status to contribute to the preparation of a brief, financially or otherwise. *Multi/Tech Engineering v. Josephine County*, 36 Or LUBA 774 (1999).

**27.5.1 LUBA Procedures/Rules – Briefs – Generally.** LUBA will grant a motion to strike documents attached to the petition for review, where those documents are neither part of the record submitted to LUBA nor documents of which LUBA may take official notice. *Friends of Clean Living v. Polk County*, 36 Or LUBA 544 (1999).

**27.5.1 LUBA Procedures/Rules – Briefs – Generally.** Where a brief includes allegations of fact that are not supported by evidence in the record, LUBA will disregard the allegations, but the lack of evidentiary support is not a basis for granting a motion to strike the allegations. *Clackamas Co. Svc. Dist. No. 1 v. Clackamas County*, 35 Or LUBA 374 (1998).

**27.5.1 LUBA Procedures/Rules – Briefs – 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).

**27.5.1 LUBA Procedures/Rules – Briefs – Generally.** Assignments of error in petitions for review filed with LUBA must identify which portions of the challenged land use decision are challenged and why. *Lee v. City of Oregon City*, 34 Or LUBA 691 (1998).

**27.5.1 LUBA Procedures/Rules – Briefs – Generally.** It is the parties' responsibility to identify the evidence in the record that supports their positions. Where parties cite large documents in their entirety, and do not identify where in these documents relevant material is located, LUBA will not search through the documents looking for supporting evidence. *Friends of Bryant Woods Park v. Lake Oswego*, 26 Or LUBA 185 (1993).

**27.5.1 LUBA Procedures/Rules – Briefs – Generally.** Where a decision is challenged on evidentiary grounds, LUBA relies on the parties to provide it with record citations to the supporting or countervailing evidence on which their argument depends. *Spiering v. Yamhill County*, 25 Or LUBA 695 (1993).

**27.5.1 LUBA Procedures/Rules – Briefs – Generally.** It is the practice at LUBA for a party that wishes LUBA to consider a document not in the local record, for one of the purposes listed in ORS 197.830(13)(b) or OAR 661-10-045(1), to attach that document to its brief and explain in its brief why LUBA should consider the document. If another party does not object to LUBA considering the document, the document becomes part of LUBA's record and is considered for the requested purpose. If an objection is made, the party offering the document may file a motion for evidentiary hearing under OAR 661-10-045. *Horizon Construction, Inc. v. City of Newberg*, 25 Or LUBA 656 (1993).

**27.5.1 LUBA Procedures/Rules – Briefs – Generally.** LUBA will not grant motions to strike portions of a brief, based on allegations that the disputed portions are inaccurate or without factual support. Rather LUBA will simply disregard inaccurate or unsupported assertions. *Horizon Construction, Inc. v. City of Newberg*, 25 Or LUBA 656 (1993).

**27.5.1 LUBA Procedures/Rules – Briefs – 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).

**27.5.1 LUBA Procedures/Rules – Briefs – Generally.** LUBA will deny a motion to strike portions of a brief that are alleged to be inaccurate or unsupported by the record. Rather, LUBA will simply disregard inaccurate or unsupported statements. *A Storage Place v. City of Tualatin*, 25 Or LUBA 202 (1993).

**27.5.1 LUBA Procedures/Rules – Briefs – Generally.** In reviewing an evidentiary challenge, LUBA relies on the parties to identify the evidence in the record that supports their positions. *Todd v. Columbia County*, 24 Or LUBA 289 (1992).

**27.5.1 LUBA Procedures/Rules – Briefs – Generally.** LUBA will not consider letters from intervenors-petitioner that "support" the petitioners' petition for review, but do not comply with the requirements of LUBA's rules for an intervenor-petitioner's brief. *Gray v. Clatsop County*, 21 Or LUBA 600 (1991).

**27.5.1 LUBA Procedures/Rules – Briefs – Generally.** A letter stating an intervenor-petitioner "adopts" another party's petition for review as its own brief can satisfy the requirements of OAR 661-10-050(3)(a) for filing an intervenor-petitioner's brief, if (1) the "adopted" petition for review is properly filed, and (2) the intervenor-petitioner's letter is timely filed and served on the other parties. *Gray v. Clatsop County*, 21 Or LUBA 600 (1991).

**27.5.1 LUBA Procedures/Rules – Briefs – 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).

**27.5.1 LUBA Procedures/Rules – Briefs – Generally.** LUBA will not consider a supplemental brief filed after oral argument and 18 days before the final opinion is due, where the supplemental brief was not requested by LUBA and consideration of the arguments presented in the supplemental brief would delay issuance of LUBA's final opinion. *Cecil v. City of Jacksonville*, 19 Or LUBA 621 (1990).

**27.5.1 LUBA Procedures/Rules – Briefs – Generally.** LUBA considers the words spoken at the local government hearings to be part of the record, and will permit parties to attach excerpts from transcripts of such hearings to their briefs, notwithstanding that neither tapes nor transcripts of the local government hearings were submitted to LUBA as part of the record. Other parties may contest the accuracy of such transcript excerpts in their opening brief or in a reply brief. *Columbia Steel Castings v. City of Portland*, 19 Or LUBA 338 (1990).

**27.5.1 LUBA Procedures/Rules – Briefs – Generally.** LUBA will accept a cross petition for review filed after the deadline established under OAR 661-10-075(3) where the cross petitioner (1) was entitled to but did not receive written notice of the challenged decision, (2) received actual notice of the challenged decision eight days after the petition for review was filed and moved to intervene on the side of respondent five days later, and (3) filed a timely response brief with the cross petition for review included. *Smith v. Clackamas County*, 19 Or LUBA 497 (1990).