



1           Petitioner appealed a city decision approving a variance from street requirements to a  
2 residential street to serve three properties. The variance granted the applicant a variance to improve  
3 a 200-foot section of the street to a width of 24 feet instead of the standard street requirement of 36  
4 feet. Petitioner submitted a letter to LUBA that was apparently intended to be a petition for review,  
5 but it was so noncompliant with the requirements for petitions for review that we did not even  
6 recognize it as a petition for review. The city filed a response brief attempting to respond to the  
7 letter and also filed a motion to dismiss or to compel petitioner to comply with the requirements for  
8 a petition for review. Petitioner submitted another letter purporting to respond to the motion to  
9 dismiss.

10           We dismissed petitioner’s appeal because the letter was so grossly noncompliant with the  
11 requirements for a petition for review that we had nothing to review:

12           “The letter includes no statement of facts establishing petitioner’s standing, no  
13 statement of the case, no description of the challenged decision or request for relief,  
14 no summary of arguments or material facts, no statement of jurisdiction, no  
15 assignments of error, and no copy of the challenged decision. For that matter, it  
16 also fails to comply with almost all of the specifications for a petition for review  
17 under OAR 661-010-0030(2).” *Gallagher v. City of Myrtle Point*, \_\_\_ Or  
18 LUBA \_\_\_ (LUBA No. 2005-097, September 30, 2005) slip op 3.

19           In particular, we identified the absence of any cognizable basis for reversing or remanding  
20 the decision:

21           “While all of the requirements at OAR 661-010-0030(4) are important, the  
22 requirement that the petition for review include assignments of error supported by  
23 argument is particularly important. *Scholes v. Jackson County*, 28 Or LUBA 407,  
24 409 (1994). Here, the August 15, 2005 letter expresses disagreement with the  
25 proposed street, apparently because petitioner believes the street grade will  
26 exacerbate drainage problems in the area. Not only is there no assignment of error,  
27 but there is no cited basis for reversing or remanding the challenged decision.  
28 Moreover, the challenged decision merely grants a variance to the street width  
29 requirements, allowing a street that is 24-feet rather than 36-feet wide. Petitioner  
30 does not explain what that variance has to do with any drainage problems.” *Id.* at  
31 5.

1 Both letters submitted by petitioner describe alleged drainage problems in the area, and at  
2 no point does petitioner attempt to relate the alleged drainage problems to the variance granted by  
3 the city. Even assuming everything alleged in petitioner's letters is true, that would still not provide  
4 any basis for reversal or remand.

5 In *Young v. City of Sandy*, 33 Or LUBA 817 (1997), the petitioner essentially filed the  
6 legal memorandum submitted below by an attorney as his petition for review before LUBA. The  
7 petitioner did not present any arguments that actually challenged the city's decision or the findings  
8 supporting the decision, and therefore the petitioner "did not present any issues that were open to  
9 doubt, or debatable, or subject to rational, reasonable or honest discussion." *Id.* at 818. We  
10 therefore awarded the city attorney fees because the petitioner had not presented a position that  
11 possessed any merit. Similarly, in *Schaffer v. City of Turner*, 37 Or LUBA 1066 (2000), the  
12 petitioner filed a petition for review that did not articulate a legal basis for reversal or remand, and  
13 we awarded attorney fees against the petitioner.

14 As in *Young* and *Schaffer*, petitioner has not provided any basis for reversal or remand,  
15 and as we noted in our final opinion and order, the letter submitted by petitioner was so grossly  
16 deficient that we did not even recognize it as a petition for review. The city, however, prudently  
17 filed a response brief. Furthermore, petitioner has not responded to the city's motion for attorney  
18 fees in an attempt to identify a reasonable argument that was made in his letters. In our view, no  
19 reasonable attorney would conclude that the arguments made by petitioner possess merit.  
20 Therefore, the city is entitled to its reasonable attorney fees and expenses pursuant to ORS  
21 197.830(15)(b).

22 In awarding attorney fees pursuant to ORS 197.830(15)(b), LUBA is afforded discretion  
23 to determine the amount of attorney fees that is reasonable under the specific facts of the case.  
24 *Young*, 33 Or LUBA at 819. LUBA will look to the factors listed in ORS 20.075(2) for guidance  
25 in determining the amount of an attorney fee award. *Schaffer*, 37 Or LUBA at 1072. In  
26 determining what award of attorney fees is reasonable, we must briefly identify the relevant facts and

1 legal criteria on which we rely. *See McCarthy v. Oregon Freeze Dry, Inc.*, 327 Or 84, 96, *on*  
2 *recons* 327 Or 185, 957 P2d 1200 (1998) (stating principle).

3 While we independently review attorney fee statements for reasonableness, the failure of an  
4 opposing party to contest such statements is at least some indication that the attorney fees sought  
5 are reasonable. *6710 LLC v. City of Portland*, 41 Or LUBA 608, 611 (2002). We have  
6 analyzed the city's attorney fee statement, which seeks recovery of 15.40 attorney hours billed. We  
7 agree with the city that 15.40 hours is a reasonable amount of time to have spent in pursuing this  
8 LUBA appeal.<sup>1</sup> We also agree \$110 an hour is a reasonable hourly rate.

9 The city's motion for attorney fees and expenses in the amount of \$1722 is granted.

10 Dated this 28th day of December, 2005.

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Tod A. Bassham  
Board Member

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<sup>1</sup> We find that the expenses sought by the city, in the amount of \$28.00, are also reasonable.