

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON

3
4 ARTURO BORREGO,)
5)
6 Petitioner,) LUBA No. 94-225
7)
8 vs.) FINAL OPINION
9) AND ORDER
10 CITY OF SHERIDAN,)
11)
12 Respondent.)

13
14
15 Appeal from City of Sheridan.

16
17 Arturo Borrego, Sheridan, filed the petition for review
18 and argued on his own behalf.

19
20 Walter R. Gowell, McMinnville, filed the response brief
21 and argued on behalf of respondent. With him on the brief
22 was Haugeberg, Rueter, Stone, Gowell & Fredricks, P.C.

23
24 HANNA, Referee; LIVINGSTON, Chief Referee, participated
25 in the decision.

26
27 AFFIRMED 10/03/95

28
29 You are entitled to judicial review of this Order.
30 Judicial review is governed by the provisions of ORS
31 197.850.

1 Opinion by Hanna.

2 **NATURE OF THE DECISION**

3 Petitioner appeals from a city council preliminary plat
4 approval for a subdivision.

5 **FACTS**

6 In April 1994, the city approved a preliminary plat for
7 a 10-acre subdivision. Petitioner challenges the storm
8 runoff and drainage system approved by the city.

9 The challenged decision requires that existing areas of
10 runoff be identified and incorporated into a subdivision
11 drainage system. The subdivision drainage system will drain
12 into the existing city drainage system. A portion of the
13 existing city drainage system is an open ditch that crosses
14 the rear of the properties on the west side of Elm Street.
15 Petitioner owns property on Elm Street that is bordered by
16 the drainage ditch.

17 **DECISION**

18 LUBA's rules set forth the required contents of a
19 petition for review:

20 "(3) * * * The petition for review shall:

21 "(a) State the facts that establish
22 petitioner's standing;

23 "(b) Present a clear and concise statement of
24 the case, in the following order, with
25 separate section headings:

26 "(A) The nature of the land use decision
27 or limited land use decision and the
28 relief sought by petitioner;

1 "(B) A summary of the arguments
2 appearing under the assignments of
3 error in the body of the petition;

4 "(C) A summary of the material facts.
5 The summary shall be in narrative
6 form with citations to the pages of
7 the record where the facts alleged
8 can be found.

9 "(c) State why the challenged decision is a
10 land use decision or a limited land use
11 decision subject to the Board's
12 jurisdiction;

13 "(d) Set forth each assignment of error under
14 a separate heading. Where several
15 assignments of error present essentially
16 the same legal questions, the argument
17 in support of those assignments of error
18 shall be combined;

19 "(e) Contain a copy of the challenged
20 decision, including any adopted findings
21 of fact and conclusions of law;

22 "(f) Contain a copy of any comprehensive plan
23 provisions, ordinance or other
24 provisions of local law cited in the
25 petition unless the provision is quoted
26 verbatim in the petition.

27 (4) The petition for review may include
28 appendices containing verbatim transcripts of
29 relevant portions of tapes that are part of
30 the record." OAR 661-10-030 (Emphasis
31 added).

32 The petition for review in this case contains the
33 following items, as listed in the table of contents:

34 "1. List of Interested Parties

35 "2. Issue On Appeal to LUBA

36 "3. Planning Commission Meeting May 9, 1994

- 1 "4. Planning Commission Meeting June 13, 1994
- 2 "5. City Council Meeting September 26, 1994
- 3 "6. Appealing the Planning Commission Meeting
- 4 August 8, 1994
- 5 "7. City Council Meeting September 26, 1994
- 6 "8. Conclusion"

7 The only parts of the petition for review that relate
8 to LUBA's requirements for a petition for review are items 2
9 and 8. In item 2, petitioner describes the issue on appeal
10 as follows:

11 "The City of Sheridan erred in allowing [the]
12 developer * * * to use the drainage area
13 belonging to residents of Elm St. The errors were
14 both procedural and insubstantial [sic]. * * * The
15 petitioner seeks the assistance of LUBA in
16 resolving this matter."

17 In his conclusion, item 8, petitioner asks that "the
18 ditch on the west side of Elm St. be culverted." In the
19 alternative he asks that "the subdivision be halted until
20 the City or [the developer] compensate the residents of Elm
21 St." Petition for Review 14.

22 Between the issue statements and the concluding
23 statements are 10 pages of minutes of local government
24 proceedings. Included in the minutes are four statements,
25 taken from a letter prepared by petitioner's attorney in the
26 local government proceeding, that make specific requests of
27 the city. These four statements are the only indication as
28 to what petitioner may consider to be assignments of error.

29 Respondent used the four statements to formulate

1 assignments of error and then argued against them. During
2 oral argument, petitioner agreed that he would adopt
3 respondent's formulation of the assignments of error as his
4 own. However, petitioner stated that he did not understand
5 the legal arguments that had been raised.

6 In his petition for review as well as in oral argument,
7 petitioner makes no particular reference either to the
8 statements taken from the attorney's letter or to the
9 respondent's formulation of petitioner's possible
10 assignments of error. Petitioner has not articulated legal
11 arguments either to support the four requests made of the
12 city or to address respondent's formulation of petitioner's
13 possible assignments of error.

14 The petition does not comply with even the most basic
15 elements of our rules. The most significant deficiency is
16 the lack of assignments of error and any argument or
17 authority for any assignments of error. Petitioner provides
18 no basis whatever on which we can reverse or remand the
19 challenged decision. See Scholes v. Jackson County, 28 Or
20 LUBA 407 (1994), Camp v. Josephine County, 23 Or LUBA 6
21 (1992), Deschutes Development v. Deschutes Cty., 5 Or LUBA
22 218 ((1982)).

23 The city's decision is affirmed.