

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON
3

4 BOB PETERSON and BORIS GEORGEFF,)
5)
6 Petitioners,) LUBA No. 96-003
7)
8 vs.) FINAL OPINION
9) AND ORDER
10 CITY OF PORTLAND,)
11)
12 Respondent.)

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14
15 Appeal from City of Portland.

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17 Norman L. Lindstedt, Portland, filed the petition for
18 review and argued on behalf of petitioners. With him on the
19 brief was Lindstedt & Buono.

20
21 Frank Hudson, Deputy City Attorney, filed the response
22 brief and argued on behalf of respondent.

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

26
27 AFFIRMED 04/23/96

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 Gustafson.

2 **NATURE OF THE DECISION**

3 Petitioners appeal the city's approval of a correction
4 to its comprehensive plan map and zoning map.

5 **FACTS**

6 In 1993 the city amended its comprehensive plan and
7 zoning map to adopt the Albina Community Plan. The subject
8 property, along with all public property surrounding it, was
9 designated Open Space (OS). The subject property is
10 privately owned and, prior to adoption of the Albina
11 Community Plan, it was designated for residential
12 development. Private property directly east of the subject
13 property was previously and continues to be designated for
14 residential development.

15 In 1995, the owners of the subject property learned
16 that their property was designated OS, and contacted the
17 city to have the designation removed. Concurrently, they
18 sought a change in the property tax valuation, based upon
19 the site's OS designation. The city thereafter initiated a
20 zoning map correction on the basis that the subject property
21 was incorrectly identified as public property during the
22 adoption of the Albina Community Plan and that, like the
23 other adjacent private property, the subject property should
24 have retained a residential designation and zone.

25 The Overlook Neighborhood Association appealed the
26 planning bureau's administrative approval to the hearings

1 officer, on the basis that the city had considered only the
2 approval criteria for correcting the zoning map and not
3 those for correcting the comprehensive plan map. The city
4 then issued an amended administrative decision, which
5 addressed criteria for corrections to both the comprehensive
6 plan map and zoning map.

7 The neighborhood association again appealed, arguing
8 that the applicable criteria were not satisfied. On appeal,
9 the hearings officer affirmed the administrative decision.

10 This appeal followed.

11 **MOTION FOR CONTINUANCE**

12 Two days after oral argument on this matter,
13 petitioners moved for a 30-day continuance of the decision
14 to allow petitioners to research the record, and provide
15 this Board with citations to the record and other evidence
16 outside the record to support their position.

17 Support for a party's position must be in the petition
18 for review, and must be based on the record established
19 below. OAR 661-10-030(3)(b); ORS 197.835(2)(a). Our rules
20 do not provide for a continuance following oral argument to
21 allow a party to supplement the petition for review, respond
22 to issues raised in a response brief, or add evidence to the
23 record.¹ See Fechtig v. City of Albany, 27 Or LUBA 480,

¹When new issues are raised in the response brief or, as in this case, another party asserts in the response brief that petitioners have waived their right to raise one or more issues, petitioners may respond to such issues or assertions at oral argument or through a reply brief.

1 aff'd 130 Or App 433 (1994).

2 Petitioner's motion for a continuance is denied.

3 **WAIVER**

4 Petitioners raise five assignments of error. The city
5 maintains that petitioners have waived their right to raise
6 all five assignments for failure to raise them below. The
7 petition for review attaches several letters from the record
8 expressing general opposition to the proposed correction.
9 However, nowhere in the petition for review are there any
10 references to the record to establish that the issues sought
11 to be reviewed were, in fact, raised below. Nor did
12 petitioners provide any references to the record during oral
13 argument to establish that these issues were raised below.²

14 Where a party contends petitioners have waived certain
15 issues, and petitioners neither cite to the local record
16 where those issues were raised nor establish they may raise
17 new issues under ORS 197.835(4), petitioners have waived
18 their right to raise those issues on appeal. Wakeman v.
19 Jackson County, 29 Or LUBA 521 (1995); Pend-Air Citizen's
20 Comm. v. City of Pendleton, 29 Or LUBA 362 (1995).

²Petitioners' attorney noted at oral argument that he had never received the record in this case. Our rules specifically require the local government to provide a copy of the record to LUBA and to all parties. Our records reflect that a letter was mailed to petitioners' attorney to inform him that we had received the record. Had the city failed to satisfy its obligation to provide petitioners with a copy of the record, it was incumbent upon petitioners to make that violation known, and to ensure they had the record for reference in the preparation of their petition for review. Petitioners cannot complain, for the first time at oral argument, that they did not receive the record.

1 Petitioners in this case have not established that
2 during the local proceedings they raised any of the issues
3 they now wish to raise on appeal. Under ORS 197.835(3),
4 they have, therefore, waived their right to raise them now.

5 Moreover, even if petitioners had established that any
6 of the issues addressed in the assignments of error had been
7 raised below, petitioners have not provided sufficient
8 argument to demonstrate the specific errors alleged in each
9 assignment. Rather, petitioners have listed their five
10 assignments of error, then provided a general discussion of
11 the values of open space designations and why they believe
12 the city's decision is incorrect. Petitioners' arguments
13 are insufficiently developed for our review. Camp v.
14 Josephine County, 23 Or LUBA 6 (1992); Deschutes Development
15 v. Deschutes Cty, 5 Or LUBA 218 (1982).

16 The city's decision is affirmed.