

LUBA Case Summaries November 2023

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● ***Rosewood Neighborhood Assn. v. City of Lake Oswego* (LUBA No 2023-035, Nov 1, 2023)**
(Opinion by Ryan, Board Chair)

Petitioner appealed a city council decision approving a conditional use permit and site plan review for a school bus depot on a 2.4-acre property zoned Industrial Park. Held: OAR 661-010-0030(4)(d) requires that the petition for review set forth assignments of error, and requires that “[e]ach assignment of error must demonstrate that the issue raised in the assignment of error was preserved during the proceedings below,” or explain why preservation is not required. Petitioner may not, in a reply brief, satisfy its obligation to demonstrate in the petition for review that an issue was preserved. Petitioner did not develop any argument that challenged the city’s interpretation of a local mitigation criterion for conditional uses, or provide any explanation as to why the city’s findings were inadequate to explain why the criterion was met. Affirmed.

● ***1000 Friends of Oregon v. Josephine County* (LUBA No 2023-022, Nov 2, 2023)**
(Opinion by Rudd, Board Member)

Petitioners appealed a decision by the county board of commissioners approving amendments changing a property’s comprehensive plan map and zone map designations from forest resource to rural residential. This appeal followed remand in *1000 Friends of Oregon v. Josephine County*, ___ Or LUBA ___ (LUBA No 2021-116, June 2, 2022). Held: OAR 660-006-0010 requires that the productivity of soils used to identify forest land be determined based upon a hierarchy of data sources set out in detail in that rule. A forester must consider each of the data sources in the rule before proceeding to the next source or resorting to a site-specific survey. Given the county’s findings that future residential development will not rely on urban infrastructure or draw the urban growth boundary or unincorporated community outward, petitioner failed to establish that rural residential zoning that could potentially allow two-acre lots violates Goal 14 (Urbanization). Remanded.

● ***Central Oregon Landwatch v. Deschutes County* (LUBA No 2022-087, Nov 13, 2023)**
(Opinion by Rudd, Board Member)

On remand from the Court of Appeals. Petitioner appealed a county hearings officer’s declaratory ruling that a guest ranch previously approved as a conditional use had been initiated

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on the subject property. In its original decision, LUBA remanded the decision for the county to consider petitioner's arguments on nonconforming uses and abandonment. The Court of Appeals held that the declaratory ruling did not involve nonconforming use standards and so the hearings officer had correctly declined to consider petitioner's arguments regarding nonconforming uses and abandonment, and reversed that part of LUBA's decision. Held: For reasons set out in the court's decision, that assignment of error was denied. Affirmed.

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