

SAMPLE RESPONDENT'S BRIEF

Disclaimer: This sample brief is for your information only. The Land Use Board of Appeals (“LUBA” or “the Board”) does not offer this brief for, or otherwise endorse, the substance of the example arguments. This brief is presented only as a sample brief that acceptably complies with the form and format requirements of the Oregon Administrative Rules. See OAR 661-010-0000 through OAR 661-010-0075, current as of May 1, 2024, available online at [Oregon Secretary of State Administrative Rules](#). **Please make sure that your brief complies with OAR 661-010-0035**, current as of May 1, 2024, which specifically lays out the requirements for filing a respondent’s brief with LUBA.

A Note on Citing Rules, Statutes, and Cases:

Rules should be cited in the following form: OAR 123-45-6789.

Statutes should be cited in the following form: ORS 123.456.

Oregon Court of Appeals opinions should be cited in the following form:
John Doe v. XYZ County, 123 Or App 345, 567 P3d 789 (2020).

Oregon Supreme Court opinions should be cited in the following form:
John Doe v. XYZ County, 123 Or 345, 567 P3d 789 (2020).

In accordance with OAR 661-010-0075(8), citations to LUBA decisions shall be in the following form:

Reported Cases: John Doe v. XYZ County, 5 Or LUBA 654 (1981).

Unreported Cases: John Doe v. XYZ County, ___ Or LUBA ___ (LUBA No 80-123, Feb 15, 1981).

Most cases are reported and should be cited properly whenever possible. LUBA’s website includes citations to reported cases. Specific citations to page numbers, where appropriate, should also be included. If you do not have access to an online legal database to find the correct citations and page numbers, the Oregon law school libraries and libraries at county courthouses are often open during certain hours of the day to the general public.

**BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON**

[NAME],

Petitioner,

and

[NAME],

Intervenor-Petitioner,

vs.

[NAME],

Respondent,

and

[NAME],

Intenvenor-Respondent.

LUBA No. _____

RESPONDENT'S BRIEF

[Name], OSB # _____ (if applicable)

[Address]

[Phone Number]

[Email]

*Attorney for Petitioner (or
Petitioner, if unrepresented)*

[Name], OSB # _____

[Address]

[Phone Number]

[Email]

Attorney for Respondent

[Name], OSB # _____

[Address]

[Phone Number]

[Email]

Attorney for Intervenor-Petitioner

[Name], OSB # _____

[Address]

[Phone Number]

[Email]

Attorney for Intervenor-Respondent

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I. PETITIONER'S STANDING

[State whether Respondent accepts or challenges Petitioner's statement of standing and state the basis for any challenge. If Respondent contends that the facts alleged by Petitioner in the support of standing are not true, specify which allegations are contested.]

EXAMPLE: Respondent accepts Petitioner's statement of standing. *Or* Respondent challenges Petitioner's statement of standing because Respondent contests that Petitioner timely filed a notice of intent to appeal under ORS 197.830(1). Petitioner filed their notice of intent to appeal 22 days after Respondent's decision became final. Therefore, the 21-day period set out in ORS 197.830(9) had expired, and Petitioner's notice of intent to appeal was not timely filed.

II. STATEMENT OF THE CASE

[State whether Respondent accepts or challenges Petitioner's statement of the case. If Respondent challenges Petitioner's statement of the case, cite any alleged omissions or inaccuracies. State any additional relevant facts. The statement should be in narrative form with citations to the pages of the record where the facts alleged can be found.]

1 **A. NATURE OF THE LAND USE DECISION AND RELIEF SOUGHT**

2 [Describe the challenged land use decision or limited land use decision.

3 What was applied for? What action did the local government take?]

4 EXAMPLE: Petitioner appeals Respondent's land use decision approving an
5 application for a conditional use permit.

6 [Describe how Respondent requests that LUBA resolve the appeal. LUBA
7 will review the decision and prepare a final order *affirming, reversing, or*
8 *remanding* the decision. See ORS 197.835(1)(a).]

9 EXAMPLE: Respondent requests that LUBA affirm Respondent's decision.

10 **B. SUMMARY OF RESPONSE TO ARGUMENTS**

11 [Provide a brief summary of Respondent's responses to Petitioner's
12 arguments under each assignment of error included in the body of the response
13 below.]

14 **III. LUBA'S JURISDICTION**

15 [State whether Respondent accepts or challenges Petitioner's statement of
16 the Board's jurisdiction and state the basis for any challenge.]

17 EXAMPLE: Respondent accepts Petitioner's statement of the Board's
18 jurisdiction. *Or* Respondent challenges Petitioner's statement of the Board's
19 jurisdiction because Respondent's final decision applied only County Code
20 provisions that do not require interpretation or the exercise of policy or legal

1 judgment. Therefore, Respondent’s decision is not a land use decision, ORS
2 197.015(1)(b)(A), and LUBA does not have jurisdiction to review the challenged
3 decision under ORS 197.825(1).

4 **IV. RESPONSE TO PETITIONER’S FIRST ASSIGNMENT OF ERROR**
5 **[Optional subheading for Response to First Assignment of Error. EXAMPLE:**
6 **“The decision was supported by substantial evidence in the whole record**
7 **because...”]**

8 **A. PRESERVATION OF ERROR**

9 [State whether Respondent accepts or challenges that the issue raised in
10 Petitioner’s First Assignment of Error was preserved in the proceedings below and
11 state the basis for any challenge.]

12 **B. STANDARD OF REVIEW**

13 [State the applicable standard of review.]

14 EXAMPLE: The Board shall reverse or remand a land use decision under
15 review if the Board finds the local government or special district “made a decision
16 not supported by substantial evidence in the whole record.” ORS 197.835(9)(a)(C).
17 Substantial evidence is... *Fictitious Farm v. Legendary Local Gov’t*, 22 Or LUBA
18 564, 568 (1999).

19 **C. ARGUMENT**

20 [State Respondent’s legal argument(s) in response to Petitioner’s First
21 Assignment of Error. Include citations to code provisions, rules, statutes, and cases,
22 where applicable. Include citations to the record, where applicable.]

1 EXAMPLE: Petitioner argues that Respondent’s decision to approve the
2 application was not supported by substantial evidence in whole record because...
3 In supporting that conclusion, Petitioner’s reliance on LUBA’s holding in
4 *Nonexistent Neighbor v. Mythical Municipality*, ____ Or LUBA ____ (LUBA No 50-
5 456, May 23, 2023) is misplaced. In *Nonexistent Neighbor*, LUBA held... *Id.* at
6 585. Unlike in *Nonexistent Neighbor*, here... Rec. 795. Accordingly, Respondent’s
7 decision to approve the application was supported by substantial evidence in the
8 whole record.

9 **V. RESPONSE TO PETITIONER’S SECOND ASSIGNMENT OF**
10 **ERROR**

11 [Optional subheading for Response to Second Assignment of Error.

12 **EXAMPLE: “The decision properly construed the applicable law because...”]**

13
14 **A. PRESERVATION OF ERROR**

15 [State whether Respondent accepts or challenges that the issue raised in
16 Petitioner’s Second Assignment of Error was preserved in the proceedings below
17 and state the basis for any challenge.]

18 **B. STANDARD OF REVIEW**

19 [State the applicable standard of review.]

20 EXAMPLE: The Board shall reverse or remand a land use decision under
21 review if the Board finds the local government or special district “improperly
22 construed the applicable law.” ORS 197.835(9)(a)(D).” The Board shall affirm a
23 local government’s interpretation of its land use regulations, unless the Board

1 determines the local government’s interpretation “is contrary to a state statute, land
2 use goal or rule that the * * * land use regulation implements.” ORS 197.829(1)(d).

3 C. ARGUMENT

4 [State Respondent’s legal argument(s) in response to Petitioner’s Second
5 Assignment of Error. Include citations to code provisions, rules, statutes, and cases
6 where applicable. Include citations to the record where applicable.]

7 EXAMPLE: Petitioner argues that Respondent misconstrued the applicable
8 law in approving the application for a conditional use permit because... As
9 Petitioner notes, County Code (“CC”) CC 12.34.567 implements Goal 21.
10 Petitioner also correctly notes that in *Bogus Business v. Sham Special District* the
11 Supreme Court held that Goal 21 requires... 425 Or 673, 680-82, 234 P2d 122
12 (1984). However, the Supreme Court recently clarified its holding in *Bogus*
13 *Business*, stating... *Invented Industries v. Bunk Burg*, 782 Or 910, 915, 652 P2d
14 321 (2021). Considering *Invented Industries*, Respondent’s interpretation of CC
15 12.34.567 is not contrary to Goal 21. Accordingly, Respondent properly construed
16 the applicable law.

1 **VI. RESPONSE TO PETITIONER’S THIRD ASSIGNMENT OF ERROR**
2 **[Optional subheading for Response to Third Assignment of Error.**
3 **EXAMPLE: “Respondent followed the applicable procedures because...”]**

4 **A. PRESERVATION OF ERROR**

5 [State whether Respondent accepts or challenges that the issue raised in
6 Petitioner’s Third Assignment of Error was preserved in the proceedings below and
7 state the basis for any challenge.]

8 **B. STANDARD OF REVIEW**

9 [State the applicable standard of review.]

10 EXAMPLE: The Board shall reverse or remand a land use decision under
11 review if the Board finds that the local government or special district failed to
12 follow the procedures applicable to the matter before it in a manner that prejudiced
13 the substantial rights of the petitioner. ORS 197.835(9)(a)(B).

14 **C. ARGUMENT**

15 [State Respondent’s legal argument(s) in response to Petitioner’s Third
16 Assignment of Error. Include citations to code provisions, rules, statutes, and cases
17 where applicable. Include citations to the record where applicable.]

18 EXAMPLE: Petitioner argues that Respondent failed to follow the
19 applicable procedures because... However, under CC 34.56.789(2), Respondent
20 was not required to, as Petitioner argues... Even if Respondent was required to...
21 failing to do so did not prejudice Petitioner’s substantial rights because... *Pretend*

1 *Partnership, Inc. v. City of Charade*, 45 Or LUBA 365, 372 (2009). *Imaginary*
2 *Land Friends v. Concocted County*, 567 Or App 201, 222, 780 P3d 101 (2009) is
3 not to the contrary because, unlike in *Imaginary Land Friends*, here... Rec. 564.
4 Accordingly, Respondent did not fail to follow the applicable procedures in a
5 manner that prejudiced Petitioner's substantial rights.

6 VII. CONCLUSION

7 [Provide a brief summary of the above arguments and state or restate the
8 relief sought.]

9 DATED this [#] day of [month], [year].

Respectfully submitted,

Sign Here

[Name], OSB # _____ (if applicable)
Attorney for Petitioner (or
10
11 Petitioner, if unrepresented)

**CERTIFICATE OF COMPLIANCE
WITH BRIEF LENGTH AND TYPE SIZE REQUIREMENTS**

Brief Length

I certify that (1) this brief complies with the word count limitation in OAR 661- 010-0030(2) and (2) the word count of this brief as described in OAR 661-010-0030(2) is _____ words. [OR]

I certify that (1) I do not have access to a word-processing system that provides a word county; (2) this brief complies with the page limitation in OAR 661-010-0030(2); and (3) the number of pages in this brief is _____ pages. [OR]

The board granted a motion to exceed the length limit for this brief. The order granting that motion was dated _____ and permits a brief of up to _____ words [OR] pages. I certify that (1) this brief complies with that order and (2) the word count of this brief (as described in OAR 661-010-0030(2)) is _____ words [OR] the number of pages in this brief is _____ pages.

Type Size

I certify that the size of the type of this brief is not smaller than 14 point for both the text of the brief and footnotes as required by OAR 661-010-0030(2).

DATED this [#] day of [month], [year].

Sign Here

[Name], OSB #_____ (if applicable)
Attorney for Petitioner (or
Petitioner, if unrepresented)

CERTIFICATE OF FILING

I hereby certify that on [date], I filed the original of this **RESPONDENT'S BRIEF** for LUBA No. _____, together with one copy, with the Land Use Board of Appeals, 775 Summer Street, NE, Suite 330, Salem, Oregon 97301-1283, pursuant to OAR 661-010-0075(2)(a)(B), by [method of filing. EXAMPLE: certified mail, return receipt requested].

DATED this [#] day of [month], [year].

Sign Here

[Name], OSB # _____ (if applicable)
Attorney for Petitioner (or
Petitioner, if unrepresented)

CERTIFICATE OF SERVICE

I hereby certify that on [date], I served a true and correct copy of this
RESPONDENT'S BRIEF for LUBA No. _____, by [method of service.

EXAMPLE: first-class mail] on the following:

[Name]
[Address]
*Attorney for Petitioner (or
Petitioner, if unrepresented)*

[Name]
[Address]
Attorney for Intervenor-Respondent

[Name]
[Address]
Attorney for Intervenor-Petitioner

DATED this [#] day of [month], [year].

Sign Here

[Name], OSB # _____ (if applicable)
Attorney for Petitioner (or
Petitioner, if unrepresented)