

24.2.2 Standing – Before LUBA – Requirement to Establish. LUBA will decline to exercise its discretion to grant petitioners an opportunity on remand from the Court of Appeals to offer additional evidence to establish standing to appeal a land use decision to LUBA under ORS 197.830(3), where petitioners had multiple opportunities in the initial appeal to offer the additional evidence, which was at all times within petitioners’ possession, but failed to do so. *Rogue Advocates v. Jackson County*, 75 Or LUBA 174 (2017).

24.2.2 Standing – Before LUBA – Requirement to Establish. Pursuant to ORS 197.830(4), there are three circumstances under which a petitioner may appeal a local government’s land use decision without a hearing directly to LUBA: (1) if petitioner was not provided notice of the decision; (2) if petitioner was not entitled to notice of the decision but is “adversely affected or aggrieved by the decision”; or (3) if petitioner received notice of the decision, but “the notice did not reasonably describe the nature of the decision.” *Levy v. Jackson County*, 75 Or LUBA 401 (2017).

24.2.2 Standing – Before LUBA – Requirement to Establish. Even though a county’s notice of its decision made without a hearing did not state that “The [] person who is mailed written notice of the decision cannot appeal the decision directly to [LUBA] under ORS 197.830” as required under ORS 215.416(11), such an omission does not constitute a failure to reasonably describe the nature of the decision, and therefore petitioner may not appeal the decision directly to LUBA under ORS 197.830(4)(c). *Levy v. Jackson County*, 75 Or LUBA 401 (2017).

24.2.2 Standing – Before LUBA – Requirement to Establish. A party does not establish that the party “appeared” during the proceedings below where the record of the proceedings that led to the challenged decision includes only evidence of the appearance by that party in a different land use proceeding. *Sommer v. Josephine County*, 58 Or LUBA 505 (2009).

24.2.2 Standing – Before LUBA – Requirement to Establish. LUBA will deny a motion to dismiss based on a petitioner’s failure to allege facts demonstrating her standing to appeal, where the party moving to dismiss alleges facts that demonstrate that petitioner filed a timely notice of intent to appeal and appeared during the local proceedings. *Dobson v. City of Newport*, 47 Or LUBA 267 (2004).

24.2.2 Standing – Before LUBA – Requirement to Establish. When undisputed evidence in the record establishes that petitioner appeared below, and therefore establishes petitioner’s standing before LUBA, the Board will not take evidence outside of the record for purposes of establishing standing before the Court of Appeals, because such evidence will not “affect the outcome” of LUBA’s proceedings, within the meaning of OAR 661-010-0045(2). *Friends of Yamhill County v. Yamhill County*, 41 Or LUBA 247 (2002).

24.2.2 Standing – Before LUBA – Requirement to Establish. LUBA’s rules require that the petition for review “[s]tate the facts that establish petitioner’s standing,” but do not require that such allegations of fact appear in any particular form or any particular portion of the petition for review. *Friends of the Creek v. Jackson County*, 36 Or LUBA 562 (1999).

24.2.2 Standing – Before LUBA – Requirement to Establish. It is petitioner’s responsibility to establish standing. Where the parties stipulate to suspend the appeal proceeding until respondent’s motion to dismiss for lack of standing is resolved, and petitioner does not respond to the motion, LUBA will dismiss the appeal. *Strauss v. Jackson County*, 28 Or LUBA 56 (1994).

24.2.2 Standing – Before LUBA – Requirement to Establish. That petitioners’ allegations of standing were made in their answer to a motion to dismiss, rather than in the petition for review as required by OAR 661-10-030(3)(a), is a technical violation of LUBA’s rules which does not prejudice respondent’s substantial rights where respondent had a full opportunity to respond to petitioners’ allegations in its response brief. *Schatz v. City of Jacksonville*, 21 Or LUBA 214 (1991).

24.2.2 Standing – Before LUBA – Requirement to Establish. After the petition for review is filed, respondents may, in their response brief or in a motion to dismiss, identify disputed allegations of fact, and explain why under their version of the facts petitioners lack standing. Petitioners may then request permission to file a reply brief to respond to respondent’s legal arguments, move for an evidentiary hearing to present facts establishing standing or do both. *Citizens Concerned v. City of Sherwood*, 20 Or LUBA 550 (1991).

24.2.2 Standing – Before LUBA – Requirement to Establish. If a petitioner’s standing to appeal to LUBA on any basis can be established without the necessity of an evidentiary hearing, LUBA will not conduct an evidentiary hearing to enable the petitioner to establish standing to appeal on a different basis. *Lowrie v. Polk County*, 19 Or LUBA 564 (1990).