

24.2.3 Standing – Before LUBA – Appearance. Whether an individual “appeared” during the proceedings below and thus has standing to appeal or intervene before LUBA is a mixed question of law and fact that often requires extra-record evidence to evaluate, including the circumstances surrounding whatever action is the basis for the asserted appearance. *Conte v. City of Eugene*, 76 Or LUBA 498 (2017).

24.2.3 Standing – Before LUBA – Appearance. The inclusion of a party’s name and address in a list of residents who “endorse” a report that was prepared by opponents to a project application, which includes a complete list of residents in the project area, and states that “100% of the residents * * * do not support” the project, and designates various individuals as “lead authors” and “supporting authors,” but which does not list the party in question as one of the authors, is not sufficient to constitute an “appearance” for purposes of ORS 197.830(7)(b)(B). The party’s intent regarding the inclusion of her name in the report is irrelevant; to demonstrate an appearance, the party must submit a document or oral testimony that the local government would reasonably recognize as an appearance by that party. *Conte v. City of Eugene*, 76 Or LUBA 498 (2017).

24.2.3 Standing – Before LUBA – Appearance. Where an entity named “Shepherdsfield Ministries” moves to intervene in an appeal to LUBA, but the entity fails to establish that it appeared during the proceedings below under that name, or that it has met the requirements for representational or organizational standing, the entity has not established standing to intervene. *Central Oregon Landwatch v. Deschutes County*, 74 Or LUBA 664 (2016).

24.2.3 Standing – Before LUBA – Appearance. Where it is undisputed that a corporation named “Shepherdsfield Church” appeared during the proceedings below, but the motion to intervene mistakenly identifies the appearing party as “Shepherdsfield Ministries,” LUBA will allow the motion to intervene to be revised to name the correct party as long as the correction does not prejudice the substantial rights of other parties. *Central Oregon Landwatch v. Deschutes County*, 74 Or LUBA 664 (2016).

24.2.3 Standing – Before LUBA – Appearance. For purposes of standing to appeal to LUBA under ORS 197.830(2), a petitioner “appeared” on his own behalf where the petitioner filed the local appeal statement in his own name and the challenged decision identifies petitioner as the local appellant, notwithstanding that the petitioner also appeared on behalf of other persons. *Martin v. City of Central Point*, 73 Or LUBA 422 (2016).

24.2.3 Standing – Before LUBA – Appearance. Where a local government combines proceedings on two related land use matters, and a party moving to intervene in an appeal of one of the resulting land use decisions testified at the combined hearing, that party has appeared in the proceedings before the decision-maker and has standing to intervene in the appeal, even if the party’s testimony did not specifically refer to the decision that was appealed. *Iyer v. Washington County*, 72 Or LUBA 491 (2015).

24.2.3 Standing – Before LUBA – Appearance. An email that was sent to the planning director prior to the date and time that she made her administrative decision on an application, and that included a request that the email be included in the record of the proceeding, is sufficient to

constitute an “appearance” for purposes of satisfying ORS 197.830(2)(b). *Devin Oil Co. Inc. v. Morrow County*, 70 Or LUBA 512 (2014).

24.2.3 Standing – Before LUBA – Appearance. A planning consultant did not “appear” and does not have standing to join in his client’s appeal of a land use decision to LUBA, where the planning consultant’s only appearances during the local land use proceeding were on behalf of his clients. The appearances a planning consultant makes on behalf of his clients are not sufficient to satisfy the ORS 197.830(2)(b) “appearance” requirement for standing to appeal to LUBA. *Warren v. Josephine County*, 67 Or LUBA 74 (2013).

24.2.3 Standing – Before LUBA – Appearance. Where a principal or owner in a corporation appears in a local proceeding by submitting a letter on corporate letterhead, but the letter is phrased in the first person singular and appears to set out the views of the principal in his individual capacity, LUBA will presume that the letter constitutes an individual appearance as well as a representative appearance on behalf of the corporation. *Pliska v. Umatilla County*, 61 Or LUBA 429 (2010).

24.2.3 Standing – Before LUBA – Appearance. Under ORS 197.620(1) there is no requirement that to “participate” in a local government proceeding a person must articulate an individual position on the merits, and joining in a position on the merits asserted by others is not categorically insufficient to “participate.” *Smith v. City of Salem*, 60 Or LUBA 478 (2010).

24.2.3 Standing – Before LUBA – Appearance. A mere statement in favor or opposition to a proposal, without some explanation why the local government should approve or deny the application, does not suffice to present a position on the merits for purposes of ORS 197.620(1). An argument that an existing use plays a significant role in flood mitigation that would be eliminated by the proposed application, while brief, presents an argument that is sufficient to constitute “participation” under ORS 197.620(1). *Smith v. City of Salem*, 60 Or LUBA 478 (2010).

24.2.3 Standing – Before LUBA – Appearance. 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).

24.2.3 Standing – Before LUBA – Appearance. Where a local government failed to provide DLCD with the notice required by OAR 660-041-0030 within the time set forth in the rule, LUBA will not dismiss an appeal on the grounds that DLCD did not make the required appearance, where DLCD’s failure to appear can be attributed to the local government’s failure to provide the notice. *DLCD v. Deschutes County*, 54 Or LUBA 799 (2007).

24.2.3 Standing – Before LUBA – Appearance. Persons who made an appearance during the local government proceedings that led to a city decision that was remanded by LUBA satisfy the ORS 197.830(7)(b) requirement that a person who moves to intervene in a subsequent LUBA appeal of the city’s decision following LUBA’s remand must have “appeared.” The appearance during the initial local government proceedings is sufficient to satisfy the ORS 197.830(7)(b) appearance requirement, and it does not matter that the local government refused those persons’

attempt to appear during the remand proceedings. *South Gateway Partners v. City of Medford*, 53 Or LUBA 593 (2006).

24.2.3 Standing – Before LUBA – Appearance. Where a person attempts but is denied the right to appear during a local government’s proceedings that lead to a land use decision, in a subsequent LUBA appeal that attempt to appear is sufficient to satisfy the ORS 197.830(7)(b) appearance requirement, to allow that person to intervene in the LUBA appeal to assign error to the local government’s refusal to allow a local appearance. *South Gateway Partners v. City of Medford*, 53 Or LUBA 593 (2006).

24.2.3 Standing – Before LUBA – Appearance. Where persons appeared during the local government proceedings that led to a LUBA appeal and remand, that local appearance is sufficient to satisfy the ORS 197.830(7)(b) requirement for an appearance to have standing to intervene in a subsequent LUBA appeal challenging the local government’s decision following the LUBA remand. For purposes of satisfying the ORS 197.830(7)(b) “appearance” requirement, it does not matter that those persons did not file a brief in the first LUBA appeal. *South Gateway Partners v. City of Medford*, 53 Or LUBA 593 (2006).

24.2.3 Standing – Before LUBA – Appearance. LUBA will assume an applicant’s planner has standing to intervene under ORS 197.830(7)(b) on the side of the applicant-petitioner, notwithstanding the planner’s failure to allege in his unopposed motion to intervene that he was also an applicant or made an appearance on his own behalf, where there is no dispute that the petitioner has standing and both petitioner and the planner signed the petition for review. *Gillette v. Lane County*, 52 Or LUBA 1 (2006).

24.2.3 Standing – Before LUBA – Appearance. When on remand a local government conducts an evidentiary hearing regarding a modified application, the local government may not restrict participation in the public hearing to parties to the original LUBA appeal. *Lengkeek v. City of Tangent*, 52 Or LUBA 509 (2006).

24.2.3 Standing – Before LUBA – Appearance. A petitioner appealing a post-acknowledgment plan and land use regulation amendment to LUBA must have “participated” in the proceedings that led to the amendment, whereas a petitioner appealing other kinds of land use decisions only must have “appeared” in the local proceedings. The participation standard is higher than the appearance standard. *Ettro v. City of Warrenton*, 52 Or LUBA 567 (2006).

24.2.3 Standing – Before LUBA – Appearance. Under the first sentence of ORS 197.830(9), which applies to appeals of land use decisions other than post-acknowledgment plan amendments, the 21-day appeal period commences on the date the decision is final. Under the second sentence of ORS 197.830(9), which applies to appeals of post-acknowledgment plan and land use regulation amendments, the notice of intent to appeal must be “filed not later than 21 days after notice of the decision sought to be reviewed is mailed or otherwise submitted to parties entitled to notice under ORS 197.615.” *Ettro v. City of Warrenton*, 52 Or LUBA 567 (2006).

24.2.3 Standing – Before LUBA – Appearance. Where a petitioner files a timely notice of intent to appeal a post-acknowledgment land use regulation amendment within the time prescribed by

the second sentence of ORS 197.830(9) but that petitioner did not participate in the local proceedings that led to the challenged decision, that petitioner does not have standing to appeal under the general standing rule that applies to appeals of post-acknowledgment land use regulation amendments. *Ettro v. City of Warrenton*, 52 Or LUBA 567 (2006).

24.2.3 Standing – Before LUBA – Appearance. Without regard to whether a local government erred in doing so, its refusal to allow a person to appear during a land use hearing obviates the ORS 197.830(2) requirement that a petitioner at LUBA must have appeared below. *Rice v. City of Monmouth*, 52 Or LUBA 780 (2006).

24.2.3 Standing – Before LUBA – Appearance. Where a city’s land use hearing following a remand by LUBA is a continuation of the proceedings that led to the initial, remanded decision, a party’s appearance during the proceedings that led to the initial decision is sufficient to constitute an appearance in the continued proceedings. *Rice v. City of Monmouth*, 52 Or LUBA 780 (2006).

24.2.3 Standing – Before LUBA – Appearance. Where the local record has not yet been filed, and petitioners assert that when filed the record will show that petitioners appeared before the local government, LUBA will deny as premature a motion to dismiss based on the petitioners’ alleged failure to appear. *Sommer v. Josephine County*, 52 Or LUBA 806 (2006).

24.2.3 Standing – Before LUBA – Appearance. Where an individual represents in a letter that is submitted in a local land use permit proceeding that the letter is submitted “on behalf of” an organization, it is reasonable to infer that the individual is authorized to submit the letter for the organization. Unless there is some reason to question that inference, LUBA will assume the letter constitutes an appearance for the organization. *Neighbors 4 Responsible Growth v. City of Veneta*, 51 Or LUBA 363 (2006).

24.2.3 Standing – Before LUBA – Appearance. Where a party seeks an evidentiary hearing to challenge whether an individual who submitted a letter on behalf of an organization in a local land use permit proceeding was in fact authorized to submit that letter on the organization’s behalf, the moving party must provide more than speculation that the individual was not authorized to appear on behalf of the organization. *Neighbors 4 Responsible Growth v. City of Veneta*, 51 Or LUBA 363 (2006).

24.2.3 Standing – Before LUBA – Appearance. Where an individual who submits a letter in a local land use permit proceeding in which he represents that the letter is submitted “on behalf of” an organization, but the letter does not expressly state that the individual is “authorized” to make the written appearance for the organization, that failure and a party’s speculation that such authorization is “implausible” are not sufficient reasons to authorize an evidentiary hearing to consider extra-record evidence regarding whether the individual was actually authorized to appear on behalf of the organization. *Neighbors 4 Responsible Growth v. City of Veneta*, 51 Or LUBA 363 (2006).

24.2.3 Standing – Before LUBA – Appearance. Where a private organization appears during a local land use permit proceeding and later files a LUBA appeal, the fact that the private organization later changes its organizational structure to become a nonprofit corporation does not

mean it is not the same person who appeared during the local land use permit proceeding. *Neighbors 4 Responsible Growth v. City of Veneta*, 51 Or LUBA 363 (2006).

24.2.3 Standing – Before LUBA – Appearance. When ORS 197.620(1) was first adopted, the requirement that a person must have “participated” during the local proceedings that led to adoption of a post-acknowledgment plan amendment required that an appellant have done more than make a bare neutral appearance during the local proceedings. *Century Properties, LLC v. City of Corvallis*, 51 Or LUBA 572 (2006).

24.2.3 Standing – Before LUBA – Appearance. The text, context and statutory history of ORS 197.620(1) and ORS 197.830(2) establish that while a bare neutral appearance will satisfy the standing requirement under ORS 197.830(2) that an appellant must have “appeared,” such a bare neutral appearance will not satisfy the standing requirement under ORS 197.620(1) that an appellant must have “participated.” To have participated under ORS 197.620(2), an appellant must have asserted a position on the merits. *Century Properties, LLC v. City of Corvallis*, 51 Or LUBA 572 (2006).

24.2.3 Standing – Before LUBA – Appearance. For purposes of standing to appeal to LUBA under ORS 197.830(2), petitioner “appeared” on his own behalf, and not only as a representative of the organization that owns property near the subject property, pursuant to ORS 197.830(2), where petitioner filed the local appeal statement in his own name, the challenged decision identifies petitioner as the local appellant, and petitioner made a statement indicating that he was appearing on his own behalf. *Heiller v. Josephine County*, 50 Or LUBA 562 (2005).

24.2.3 Standing – Before LUBA – Appearance. The ORS 197.830(7) “appearance” requirement is not satisfied and a motion to intervene will be denied where movant’s request to participate in local hearing after the close of the record is denied, and movant does not argue that participation was erroneously denied. *Anthony v. Josephine County*, 50 Or LUBA 703 (2005).

24.2.3 Standing – Before LUBA – Appearance. Absent state or local requirements to the contrary, individuals may appear on behalf of other individuals or artificial entities in local land use proceedings. *Neighbors 4 Responsible Growth v. City of Veneta*, 50 Or LUBA 745 (2005).

24.2.3 Standing – Before LUBA – Appearance. Unless some challenge is made and some reason presented to question a person’s claim that he or she is appearing on behalf of another person, an allegation to that effect is sufficient, provided the allegation adequately identifies the person he or she is appearing for. *Neighbors 4 Responsible Growth v. City of Veneta*, 50 Or LUBA 745 (2005).

24.2.3 Standing – Before LUBA – Appearance. A person’s allegation that he is appearing on behalf of a citizen organization’s “membership in [the city] and surrounding area” is not sufficient to constitute an appearance on behalf of individual members of the organization. A more precise delineation of the represented persons is required to identify those persons adequately so that the city or any other party who might have grounds for challenging those appearances could do so. *Neighbors 4 Responsible Growth v. City of Veneta*, 50 Or LUBA 745 (2005).

24.2.3 Standing – Before LUBA – Appearance. A petitioner’s decision to rely on a city website that stated the city council meetings generally are held at 7 p.m. does not excuse the petitioner’s failure to appear at a 6 p.m. hearing on a variance request where, although petitioner was not entitled to written notice of the hearing, the written notice of the variance hearing accurately stated the hearing would begin at 6 p.m. and was provided to all persons who were entitled to written notice of the hearing. *Neighbors 4 Responsible Growth v. City of Veneta*, 50 Or LUBA 745 (2005).

24.2.3 Standing – Before LUBA – Appearance. 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).

24.2.3 Standing – Before LUBA – Appearance. Where a city sends notice of a public hearing to adjacent landowners and other interested parties, advises them that the city council will consider a use determination request, and provides for an opportunity to testify and submit written evidence to the city council at the city council meeting, that meeting constitutes a “hearing” within the meaning of ORS 197.830(3) and, therefore, petitioner must have appeared at that meeting in order to have standing to file an appeal at LUBA, as required by ORS 197.830(2). *Boly v. City of Portland*, 46 Or LUBA 197 (2004).

24.2.3 Standing – Before LUBA – Appearance. The legislature did not contemplate in adopting the standing requirements to appeal to LUBA at ORS 197.830(2) that a local government could “appear” before itself and thereby gain standing to appeal the local government’s own decision to LUBA. *Multnomah County v. Multnomah County*, 46 Or LUBA 365 (2004).

24.2.3 Standing – Before LUBA – Appearance. While it may be possible for a local government to adopt code provisions that allow a department or subdivision within the local government to “appear” before the local government decision maker and establish standing for that department or subdivision to appeal the final land use decision to LUBA for purposes of ORS 197.830(2), the statute does not permit a local government to appeal its own decision and appear before LUBA as both petitioner and respondent. *Multnomah County v. Multnomah County*, 46 Or LUBA 365 (2004).

24.2.3 Standing – Before LUBA – Appearance. Where a city makes a separate, appealable limited land use decision approving a final subdivision plat, a party’s appearance during proceedings that led to the approval of the tentative subdivision plat is not an “appearance” before the local decision maker for purposes of appealing the final subdivision plat decision pursuant to ORS 197.830(2). *6710 LLC v. City of Portland*, 45 Or LUBA 136 (2003).

24.2.3 Standing – Before LUBA – Appearance. A city’s failure to provide notice of a limited land use decision to a neighboring property owner’s attorney does not excuse that property owner’s failure to appear before the local decision maker, where there is no dispute that the city mailed notice of the limited land use decision to the address listed for the property in the tax rolls, pursuant to ORS 197.195(3)(b). *6710 LLC v. City of Portland*, 45 Or LUBA 136 (2003).

24.2.3 Standing – Before LUBA – Appearance. A petitioner alleging standing to appear before LUBA pursuant to ORS 197.830(5) must either point to evidence in the record that shows that petitioner is adversely affected by the decision, or file a motion requesting that LUBA consider evidence not in the record demonstrating that petitioner is adversely affected. *6710 LLC v. City of Portland*, 45 Or LUBA 136 (2003).

24.2.3 Standing – Before LUBA – Appearance. A member of the local governing body who adopted a land use decision is not a person who “appeared” before the local governing body and may not intervene as a party in a LUBA appeal. *Roe v. City of Union*, 45 Or LUBA 736 (2003).

24.2.3 Standing – Before LUBA – Appearance. Under ORS 197.830(2)(b) a petitioner’s appearance before the city planning commission is adequate to constitute an appearance before “the local government;” the petitioner need not have appeared before the city council that rendered the final decision following a local appeal of the planning commission decision. *Thomas v. City of Veneta*, 44 Or LUBA 5 (2003).

24.2.3 Standing – Before LUBA – Appearance. LUBA will reject a challenge to a petitioner’s standing based on an allegation that petitioner appeared below as an agent of the property owner and not on its own behalf, where the only evidence cited to support that allegation is a letter from the property owner that does not authorize petitioner to act as an agent of the property owner; petitioner filed the application leading to the challenged decision; and it is clear from the record that petitioner appeared on its own behalf and not the property owner’s. *Confederated Tribes v. City of Coos Bay*, 42 Or LUBA 385 (2002).

24.2.3 Standing – Before LUBA – Appearance. An organization that appears before a hearings officer and county board of commissioners has standing to appeal the county’s decision to LUBA under ORS 197.830(2), and need not establish that it also meets the test for representational standing under *1000 Friends of Oregon v. Multnomah Co.*, 39 Or App 917, 593 P2d 1171 (1979). *Central Klamath County CAT v. Klamath County*, 40 Or LUBA 111 (2001).

24.2.3 Standing – Before LUBA – Appearance. Where a local government cites no legal requirement that a petitioner must have (1) submitted written opposition to a proposed annexation with a request for public hearing and (2) appeared in person at the public meeting where the city council considered the written opposition and hearing request, LUBA will reject the local government’s argument that both a written and personal appearance are required to exhaust local administrative remedies. *Cape v. City of Beaverton*, 40 Or LUBA 78 (2001).

24.2.3 Standing – Before LUBA – Appearance. ORS 197.830(2), which grants standing to appeal to LUBA if petitioner files a timely appeal to LUBA and appeared during the local proceedings, is not limited to local proceedings that include a public hearing. Where a local government does not provide a public hearing, but provides an opportunity for written appearance, a written appearance is sufficient to confer standing to appeal to LUBA under ORS 197.830(2). *Cape v. City of Beaverton*, 40 Or LUBA 78 (2001).

24.2.3 Standing – Before LUBA – Appearance. Where a transcript that is attached to a brief in accordance with OAR 661-010-0030(5) shows that a letter signed by petitioners was read to the

local decision maker during the proceedings below and that the local decision maker stated that the letter would be made part of the record, the transcript is sufficient to show that petitioners made a written appearance in accordance with ORS 197.830(2) and have standing at LUBA to appeal the local government's decision. *Waibel v. Crook County*, 40 Or LUBA 67 (2001).

24.2.3 Standing – Before LUBA – Appearance. Persons who appeared during local proceedings may intervene in a LUBA appeal on the side of respondent without demonstrating that the appeal will result in any actual damage or harm. *Wynnyk v. Jackson County*, 39 Or LUBA 500 (2001).

24.2.3 Standing – Before LUBA – Appearance. Where a local government procedure requires each participant in a land use proceeding to establish their status as either a party or a witness, and an individual representing an organization at no point advises the local government that she is appearing on her own behalf as well as on behalf of the organization, LUBA will not presume that the individual has appeared on her own behalf for purposes of ORS 197.830(2)(b). *Friends of Douglas County v. Douglas County*, 39 Or LUBA 156 (2000).

24.2.3 Standing – Before LUBA – Appearance. The notice of the date of final hearing required by ORS 197.610(1) (1997) and OAR 660-018-0020(1) safeguard the ability of the Department of Land Conservation and Development and other interested parties to participate in proceedings leading up to decisions amending comprehensive plan and code provisions. The failure of a local government to submit notice at least 45 days before the date stated as the final hearing obviates the appearance requirement of ORS 197.830(2) and ORS 197.610(2)(b), even if another hearing is conducted at least 45 days after the submission of notice. *OTCNA v. City of Cornelius*, 38 Or LUBA 921 (2000).

24.2.3 Standing – Before LUBA – Appearance. Where proceedings are pending before a lower body, a decision of the governing body to decline review of the lower body's decision in advance of that lower body's decision either (1) is not properly viewed as a separate land use decision, making a separate appearance by intervenors unnecessary, or (2) is so integral to the permit decision, that appearing before the planning commission satisfies the ORS 197.830(6) (1997) appearance requirement. *SBA Towers, Inc. v. Linn County*, 37 Or LUBA 1049 (2000).

24.2.3 Standing – Before LUBA – Appearance. An appearance through an attorney during the proceedings before the local government is sufficient to satisfy the appearance requirement as required by ORS 197.830(2). *Dowrie v. Benton County*, 37 Or LUBA 998 (1999).

24.2.3 Standing – Before LUBA – Appearance. Petitioners have standing to appeal an annexation decision to LUBA when they demonstrate that they appeared before the local government during the proceedings leading up to the challenged decision and that they filed a timely notice of intent to appeal with LUBA. *Johnson v. City of La Grande*, 37 Or LUBA 380 (1999).

24.2.3 Standing – Before LUBA – Appearance. Where a city was not obliged to permit petitioners, who resided outside city limits, the opportunity to testify at a hearing that was scheduled to allow city residents an opportunity to comment on a proposed annexation pursuant to ORS 222.120, the fact that the city did permit petitioners to appear and present testimony in

opposition to the annexation is sufficient to satisfy the “appearance requirement” of ORS 197.830(2). *Johnson v. City of La Grande*, 37 Or LUBA 380 (1999).

24.2.3 Standing – Before LUBA – Appearance. Where a local government refuses to consider petitioner’s letters and refuses petitioner’s requests to present testimony during the local proceedings, the appearance requirement of ORS 197.830(2) is obviated. *Hugo v. Columbia County*, 34 Or LUBA 577 (1998).

24.2.3 Standing – Before LUBA – Appearance. Petitioners’ letter to the governing body, entered into the local record after the evidentiary hearing was closed but before the final decision was made, is sufficient to establish that petitioners appeared before the local government, where the governing body accepted the letter into the record and did not expressly exclude it. *Wolverton v. Crook County*, 34 Or LUBA 515 (1998).

24.2.3 Standing – Before LUBA – Appearance. Where a local government provides no prehearing notice of a proposed amendment as required by statute, and thus fails to provide a reasonable description of the nature of the local government’s proposed decision, the exception to the appearance requirement set forth in ORS 197.620(2) applies. *Casey Jones Well Drilling, Inc. v. City of Lowell*, 34 Or LUBA 263 (1998).

24.2.3 Standing – Before LUBA – Appearance. An appeal will be dismissed where petitioner failed to “appear” below and therefore lacks standing to appeal to LUBA. In that circumstance, the LUBA appeal will be dismissed notwithstanding the intervention as a petitioner of a party who did appear below, where that intervenor-petitioner did not also file his own timely notice of intent to appeal. *Waters v. Marion County*, 33 Or LUBA 751 (1997).

24.2.3 Standing – Before LUBA – Appearance. The question of whether intervenor was a proper party in an earlier local proceeding is determined by the local ordinance governing standing and not the ordinance that regulates the content of materials that may be presented in that proceeding. Where a party appeared during the local proceeding, the party has standing at LUBA under OAR 661-10-050. *Evans v. Multnomah County*, 33 Or LUBA 555 (1997).

24.2.3 Standing – Before LUBA – Appearance. Petitioner’s oral statement to the planning director in the planning director’s office does not constitute an “appearance before the local government” that would allow petitioner standing to appeal to LUBA under ORS 197.830(2)(b). *Field v. Grant County*, 32 Or LUBA 346 (1997).

24.2.3 Standing – Before LUBA – Appearance. When a county provides several opportunities for both sides to a dispute to be heard, but does not hold a hearing, as the term is defined in ORS 215.402 and used in ORS 197.830, a petitioner that did not appear earlier has standing to appeal to LUBA under ORS 197.830(3). *Boom v. Columbia County*, 31 Or LUBA 318 (1996).

24.2.3 Standing – Before LUBA – Appearance. A real estate agency employee’s quietly held view, not shared with the local decision makers or the other parties to the local proceedings, that he represents certain persons during those proceedings does not constitute an appearance by those

persons for purposes of determining standing to appeal to LUBA. *Krieger v. Wallowa County*, 31 Or LUBA 96 (1996).

24.2.3 Standing – Before LUBA – Appearance. Where petitioner identifies himself in eight letters to city planners as the representative of the Forest Park Neighborhood Association, but signs one letter with his own name, and expresses views throughout that are both his own and those of the association, petitioner will be treated, for purposes of standing before LUBA, as having appeared personally in the local proceedings before the city. *Rochlin v. City of Portland*, 31 Or LUBA 509 (1996).

24.2.3 Standing – Before LUBA – Appearance. When county provides a hearing on appeal of a planning director's decision made without a hearing, but the hearings officer concludes she lacks jurisdiction over the appeal, the county has not provided a hearing on the decision, and petitioner may appeal to LUBA pursuant to ORS 197.830(3). *Franklin v. Deschutes County*, 30 Or LUBA 33 (1995).

24.2.3 Standing – Before LUBA – Appearance. An appearance by a person before a local government on behalf of an artificial entity does not, of itself, constitute an appearance on behalf of each individual member of that entity. *Ramsey v. City of Portland*, 28 Or LUBA 763 (1994).

24.2.3 Standing – Before LUBA – Appearance. If a person moving to intervene in a LUBA appeal does not contend (1) the local government failed to follow statutorily required procedures in making the challenged decision and such failure prevented movant from being able to appear below, or (2) the local government improperly refused to allow movant to appear below, the appearance requirement of ORS 197.830(6)(b) is not obviated. *Ramsey v. City of Portland*, 28 Or LUBA 763 (1994).

24.2.3 Standing – Before LUBA – Appearance. Petitioners may appeal a legislative post-acknowledgment amendment to LUBA despite failing to appear during the local proceedings if (1) they requested, in writing, notice of the challenged decision and such notice was not mailed to them more than 21 days before they filed the notice of intent to appeal (ORS 197.830(8)); (2) DLCD's notice of the proposed amendment did not reasonably describe the nature of the local government's final decision (ORS 197.620(2)); or (3) published notice of the local hearing did not reasonably describe the final decision (ORS 197.830(3)). *Williams v. Clackamas County*, 27 Or LUBA 602 (1994).

24.2.3 Standing – Before LUBA – Appearance. Local government failure to provide 20 days prior notice of a quasi-judicial land use hearing does not obviate the requirement of ORS 197.830(2)(b) for a local appearance for standing to appeal to LUBA, where petitioner (1) was not entitled to written notice, (2) received oral notice prior to the hearing, (3) attended the hearing, and (4) presented no oral or written testimony before the hearing was closed. *Lester v. City of Eugene*, 26 Or LUBA 453 (1994).

24.2.3 Standing – Before LUBA – Appearance. Where a local government refused to allow a person to appear during the proceedings below, that person has standing to intervene in a LUBA appeal to challenge the local government's determination that he not be allowed to appear.

However, if the person does not successfully challenge the local government's refusal to allow an appearance below, his motion to intervene will be denied. *McKenzie v. Multnomah County*, 26 Or LUBA 619 (1993).

24.2.3 Standing – Before LUBA – Appearance. Where a local government denies a person the right to present testimony on her own behalf, that person “appeared” within the meaning of ORS 197.830(6) and OAR 661-10-050(1), at least for the purpose of challenging the local government's decision to limit testimony. *Sorte v. City of Newport*, 25 Or LUBA 828 (1993).

24.2.3 Standing – Before LUBA – Appearance. Local government proceedings conducted after LUBA remand of the initial local government decision, regarding the same application, are a continuation of the initial local government proceedings. Where a petitioner submitted testimony to the local government at some point during the local proceedings, petitioner “appeared before the local government,” as required by ORS 197.830(2)(b). *DLCD v. Klamath County*, 25 Or LUBA 355 (1993).

24.2.3 Standing – Before LUBA – Appearance. Where a challenged decision does not purport to amend an acknowledged plan or land use regulation, the requirement of ORS 197.610(1) for notice to DLCD of a proposed post-acknowledgment amendment is not applicable. In such circumstances, a local government's failure to give DLCD the notice required by ORS 197.610(1) does not obviate the appearance requirement of ORS 197.830(6)(b) for intervention by DLCD in an appeal before LUBA. *Heceta Water District v. Lane County*, 24 Or LUBA 402 (1993).

24.2.3 Standing – Before LUBA – Appearance. It is not customary for individuals testifying in local land use proceedings to specifically state they are appearing on their own behalf. Where a person submitted written and oral testimony on behalf of an organization of which she is an active member, LUBA will assume the views she offered were her own, as well as the organization's, and therefore will conclude that person “appeared” before the local government. *Terra v. City of Newport*, 24 Or LUBA 579 (1992).

24.2.3 Standing – Before LUBA – Appearance. Where a county has never entered into any cooperative agreements with special districts pursuant to ORS 197.185(2), what such a cooperative agreement might contain is entirely speculative and, therefore, the lack of such an agreement between the county and a district does not render inapplicable the ORS 197.830(6)(b)(B) “appearance” requirement for intervention in an appeal of a district decision. *Adkins v. Heceta Water District*, 22 Or LUBA 840 (1992).

24.2.3 Standing – Before LUBA – Appearance. Under ORS 197.620(1), a person who submitted oral and written testimony while acting as a consultant in the local government proceedings leading to the adoption of a post-acknowledgment comprehensive plan or land use regulation amendment has standing to appeal that amendment to LUBA. *Gray v. Clatsop County*, 22 Or LUBA 270 (1991).

24.2.3 Standing – Before LUBA – Appearance. Where no local hearings are conducted and no notice of the proceeding is provided, it is not possible to appear before the local decision maker and, consequently, it is unnecessary for a potential intervenor to have “appeared” below, as

required by ORS 197.830(6)(b), to have standing to intervene in an appeal to LUBA. *Weeks v. City of Tillamook*, 22 Or LUBA 797 (1991).

24.2.3 Standing – Before LUBA – Appearance. For purposes of establishing standing to intervene in a LUBA appeal under ORS 197.830(6)(a)(B), it is adequate to allege that (1) the persons requesting intervenor status were the property owners below, (2) their signatures or names appeared on the development applications at issue, and (3) the local government held no hearings to enable a more formal appearance. *Tuality Lands Coalition v. Washington County*, 22 Or LUBA 787 (1991).

24.2.3 Standing – Before LUBA – Appearance. Where a city fails to provide the statutorily required notice of hearing and hearing or notice of decision and opportunity for local appeal, the “appearance” and “aggrievement” requirements of ORS 197.830(3) for standing to appeal to LUBA do not apply. *Citizens Concerned v. City of Sherwood*, 21 Or LUBA 515 (1991).

24.2.3 Standing – Before LUBA – Appearance. “Appearance” is not a requirement for standing to appeal the adoption of a moratorium or corrective program to LUBA. *Schatz v. City of Jacksonville*, 20 Or LUBA 565 (1991).

24.2.3 Standing – Before LUBA – Appearance. An appearance in writing before a local government may take the form of a memorandum, letter, petition or other document. However, regardless of the nature of the writing, in order for it to constitute a person’s *appearance* before the local government, it must have been *submitted* to the local government by or on behalf of that person during the course of the proceedings below. *Schatz v. City of Jacksonville*, 20 Or LUBA 546 (1991).

24.2.3 Standing – Before LUBA – Appearance. Petitioner’s submittal of a letter to the planning commission, in which he opposed the subject application, is sufficient to constitute an appearance during the local proceedings within the meaning of ORS 197.830(2)(b). *Cecil v. City of Jacksonville*, 19 Or LUBA 446 (1990).

24.2.3 Standing – Before LUBA – Appearance. Where an organization is the only petitioner in an appeal to LUBA, there is nothing in the record which demonstrates that the *organization* itself appeared before the local government below and the organization does not claim representational standing on behalf of members who did appear below, the organization lacks standing to seek LUBA review of the local government’s decision. *East McAndrews Neigh. Assoc. v. City of Medford*, 19 Or LUBA 390 (1990).

24.2.3 Standing – Before LUBA – Appearance. Where a county finds applicable approval standards are or can be met and grants first stage PUD approval, but includes a condition that (1) final grading and drainage plans be submitted later, and (2) approval of such plans follow a procedure that does not provide notice or an opportunity for further public involvement, the proper way to challenge the county’s decision to proceed in such a manner is to appeal the first stage PUD approval decision. Parties may not fail to challenge that decision and appeal the subsequent approval of the final grading and drainage plans, arguing that such approvals are permits subject to the notice and hearing requirements of ORS 215.416, and that their failure to “appear” or file

an appeal of such approvals within 21 days is excused because of the county's failure to observe such notice and hearing requirements. *J.P. Finley & Son v. Washington County*, 19 Or LUBA 263 (1990).

24.2.3 Standing – Before LUBA – Appearance. Giving oral testimony, during the “oral communication” portion of a regular board of county commissioners meeting, which concerns only the appeal to LUBA of an individual farm dwelling permit, does not constitute an appearance in legislative county code update proceedings. *McKay Creek Valley Assoc. v. Washington County*, 19 Or LUBA 537 (1990).