

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

3
4 BRUCE LIGHTHART,
5 *Petitioner,*

6
7 vs.

8
9 POLK COUNTY,
10 *Respondent,*

11
12 and

13
14 PAULA HELSBY,
15 *Intervenor-Respondent.*

16
17 LUBA No. 99-083

18
19 FINAL OPINION
20 AND ORDER

21
22 Appeal from Polk County.

23
24 Bruce Lighthart, Monmouth, filed the petition for review and argued on his own
25 behalf.

26
27 No appearance by respondent.

28
29 Norman R. Hill, Salem, represented intervenor-respondent.

30
31 HOLSTUN, Board Member; BASSHAM, Board Chair; BRIGGS, Board Member,
32 participated in the decision.

33
34 AFFIRMED

03/16/2000

35
36 You are entitled to judicial review of this Order. Judicial review is governed by the
37 provisions of ORS 197.850.

NATURE OF THE DECISION

Petitioner appeals a county decision granting conditional use approval for a community center located in the county’s exclusive farm use (EFU) zone.

MOTION TO INTERVENE

Paula Helsby, one of the applicants below, moves to intervene on the side of respondent. There is no opposition to the motion, and it is allowed.

FACTS

Intervenor-respondent Paula Helsby and Luckiamute Mountain Retreat, Inc. requested conditional use approval for “a non-profit park/community center, on a portion of a 127.5 acre parcel in the [EFU zone].” Record 337. The planning director approved the original application, with conditions, on January 8, 1999. The planning director’s decision includes the following description of the proposal:

“The proposed park/community center would be called the ‘Luckiamute Mountain Retreat Center’ and would be established on approximately 16 acres * * * of the subject property. * * * The applicant is a licensed professional counselor and would serve as the operator of the facility. The * * * facility is intended to serve as meeting space for community and church groups and businesses within Polk County. Overnight stays will generally be limited to 1-2 nights only with an overnight occupancy of between 8 and 32 persons. The facility will also be available for day use. The applicant states that the maximum day use occupancy will be 45 people. No food will be prepared [on-site], as all meals will be catered. When complete in 2001, the facility would consist of 18 yurts which would serve various uses within the park. These yurts would be similar to those used for overnight stays in several Oregon State Parks. Yurts are semi-permanent structures which could be removed if the property is converted to another use.

“The applicant anticipates having four (4) persons as staff serving [as] a gardener, greeter, cleaning person, and bookkeeper. None of the employees will permanently reside on-site. Overnight stays by guests are not expected to begin until summer 2001.

“[T]he facility would be developed in three phases. Phase I * * * would include establishment of a 24-foot diameter hospitality yurt, two (2) 30-foot diameter conference yurts, and one (1) 30-foot diameter dining room/restroom

1 yurt. Phase II * * * includes establishment of an additional 30-foot diameter
2 conference yurt, two (2) 16-foot diameter yurts to be used as a shower/hot tub
3 and as a restroom, and a 24-foot diameter chapel yurt. Phase III * * *
4 includes establishment of eight (8) 20-foot diameter yurts for overnight use
5 and two (2) 24-foot diameter yurts to be used as a shower and as a restroom.”
6 Record 340-41.

7 The planning director’s decision was appealed to the Polk County Board of
8 Commissioners (commissioners). The commissioners approved the request, but imposed a
9 condition prohibiting overnight accommodations.¹ This appeal followed.

10 **INTRODUCTION**

11 Our rules require that a petitioner’s legal arguments be set forth as assignments of
12 error and be supported by legal argument in the petition for review. OAR 661-010-
13 0030(4)(d). At oral argument, petitioner presented a number of arguments that go beyond
14 the issues presented in his petition for review. Although we can appreciate that the statutes
15 and rules that govern appeal and review of land use decisions before LUBA may be difficult
16 for first-time, *pro se* appellants to understand and comply with, our review is limited to the
17 arguments presented in the petition for review. *Day v. City of Portland*, 25 Or LUBA 468,
18 474 (1993); *Jefferson Cty. Co-op v. Jefferson Cty.*, 4 Or LUBA 199, 205 (1981). We also
19 note that our review in this appeal is also difficult because neither the county nor intervenor
20 filed a brief responding to the petition for review.

21 **FIRST ASSIGNMENT OF ERROR**

22 Under ORS 215.283(2), the following public and private uses may be allowed in the
23 EFU zone, subject to the approval standards stated at ORS 215.296:

24 “(c) Private parks, playgrounds, hunting and fishing preserves and
25 campgrounds.
26

¹Other conditions imposed by the commissioners prohibit meetings on the property after 9:00 p.m., limit the maximum number of vehicles at the site to 20, prohibit on-site dishwashing, require that buffers along the north and south boundaries be planted with trees, and require that no amplified sound be allowed to “carry off-site.” Record 21.

1 “(d) Parks, playgrounds or *community centers owned and operated by a*
2 *governmental agency or a nonprofit community organization.*”
3 (Emphasis added.)²

4 The commissioners found that the proposed use may be approved under the ORS
5 215.283(2)(d) provisions for “community centers owned and operated by a * * * nonprofit
6 community organization.” Under his first assignment of error, petitioner argues the proposed
7 use is not a community center.

8 **A. Nonprofit Community Organization**

9 As an initial point, we note that ORS 215.283(2)(d) requires that any “community
10 centers” that are approved under that section must be “owned and operated by a
11 governmental agency or a nonprofit community organization.” We cannot determine from
12 the petition for review whether petitioner disputes that Luckiamute Mountain Retreat, Inc. is
13 a “nonprofit community organization,” within the meaning of ORS 215.283(2)(d). The
14 summary of argument portion of the petition for review can be read to state that the county
15 failed to establish that Luckiamute Mountain Retreat, Inc. qualifies under ORS 215.283(2)(d)
16 as a “nonprofit community organization.”³

²The relevant EFU statutory provisions in this appeal are duplicated in the Polk County Zoning Ordinance (PCZO). Although the county cites the relevant PCZO sections in its decision, we refer to the statutory provisions in this opinion. *Kenagy v. Benton County*, 112 Or App 17, 20 n 2, 826 P2d 1047 (1992). ORS 215.296(1) requires that the county find that a proposed use will not:

- “(a) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or
- “(b) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.”

Petitioner does not assign error to the county’s findings that the application complies with PCZO 136.060(A) and (B), which duplicate ORS 215.296(1)(a) and (b). Record 344-46.

³The summary of argument is as follows:

“The challenged decision fails to explain why the proposed retreat/conference center should be considered a ‘community center’ owned and operated by a ‘community organization.’ The challenged decision explicitly fails to address clearly the extent of the intended clientele for

1 OAR 661-010-0030(4)(b)(B) requires that the petition for review include a statement
2 of the case that includes “[a] summary of the arguments appearing under the assignments of
3 error in the body of the petition.” Even if petitioner’s summary of argument can be read to
4 suggest that the county erred by failing to establish that Luckiamute Mountain Retreat, Inc.
5 qualifies under ORS 215.283(2)(d) as a “nonprofit community organization,” the suggestion
6 is not developed under the summary of argument. More importantly, neither the suggestion
7 nor any argument in support of the suggestion appears in the first or second assignments of
8 error. We therefore conclude that petitioner neither states nor develops the issue sufficiently
9 to warrant review. *Deschutes Development v. Deschutes Cty.*, 5 Or LUBA 218, 220 (1982).
10 We turn to the issue that petitioner does present under his first assignment of error.

11 **B. Community Center**

12 As the county points out in its decision, the relevant statutes, Land Conservation and
13 Development Commission rules, and PCZO provisions do not include a definition of
14 “community centers.” The commissioners adopted the following findings in support of their
15 conclusion that the proposal qualifies as a community center:

16 “The * * * Commissioners find that the requested use (without overnight
17 accommodations) is in fact a ‘Community Center.’ The [Commissioners find]
18 that the proposed use includes a group of building units, to wit, yurts, which
19 will allow for community use for stated educational, social, cultural and/or
20 recreational uses, and will benefit area residents and will be operated
21 primarily by and for local and/or regional residents. Accordingly it is deemed
22 an appropriate conditional use in the EFU Zone (with conditions) pursuant to
23 [ORS 215.283(2)(d)].” Record 21.

24 Petitioner does not specifically challenge the adequacy of the above findings or argue that
25 they are not supported by substantial evidence. OAR 661-010-0071(2)(a) and (b).

the retreat/conference center or the rationale used to designate a Portland-based non-profit corporation as a ‘rural community organization.’” Petition for Review 6-7

1 Petitioner argues that the proposed use, as approved, constitutes a “private retreat
2 center,” not a “community center.”⁴ Petitioner argues that private retreat centers are not
3 permitted in the EFU zone and the county therefore erred in approving the proposed use. We
4 understand petitioner to argue that because the disputed facility is a private retreat center, as
5 a matter of law it cannot also be a community center.

6 While an argument in support of the premise that retreat centers and community
7 centers are mutually exclusive concepts *might* be possible, petitioner does not develop one.
8 In the absence of such an argument, it is not clear to us why the kinds of activities that
9 petitioner concedes could occur at a retreat center could not also occur at a community
10 center. Therefore, the fact that the activities that are proposed for the approved facility might
11 also be carried out at a “retreat center” does not establish, as a matter of law, that the
12 proposed facility is not correctly characterized as a community center.

13 Petitioner’s characterization of the use as a “*private* retreat center,” potentially raises
14 a closer question concerning whether the approved facility is properly viewed as a
15 community center. The approved facility will not be available to anyone on a drop-in basis
16 and is not available to individual members of the public at all. Only groups may use the
17 facility, and a fee is charged for group use. Record 67. While petitioner’s reference to the
18 proposal as a “*private* retreat center” may have been intended as an argument that this aspect
19 of the proposal disqualifies it as a “community center,” within the meaning of ORS
20 215.283(2)(d), that argument also is not sufficiently developed for review. We do not
21 consider the issue further and express no view on its merits. *Deschutes Development*, 5 Or
22 LUBA at 220.

23 The first assignment of error is denied.

⁴Petitioner relies on the fact that the applicant Luckiamute Mountain Retreat, Inc.’s name identifies it as a “retreat,” and dictionary definitions of the term “retreat,” to argue that a retreat center “provides the facilities and services necessary for groups to ‘pray, meditate and study.’” Petition for Review 9.

1 **SECOND ASSIGNMENT OF ERROR**

2 Under his second assignment of error, petitioner argues that the Department of Land
3 Conservation and Development (DLCD) took a position during the proceedings below that
4 the proposal did not qualify as a community center under ORS 215.283(2)(d), and that
5 DLCD's interpretation is entitled to deference by LUBA.

6 Petitioner's second assignment of error is also based on a faulty premise. DLCD did
7 initially oppose the application when it included a proposal for overnight lodging. Record
8 177-80. When that aspect of the proposal was withdrawn, DLCD withdrew its opposition.
9 Record 37-38. Therefore, DLCD did not take a position that the proposed facility does not
10 qualify as a community center.⁵

11 The second assignment of error is denied.

12 The county's decision is affirmed.

⁵In any event, we have previously determined that positions taken by DLCD staff persons regarding the meaning of DLCD rules in local land use proceedings are not entitled to deference by LUBA. *Sensible Transportation v. Washington County*, 28 Or LUBA 375, 377 (1994).