BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

THOMAS M. BURKE, TERRY DORVINEN,
DWAIN C. LUNDY, WILSON CULWELL and
LAURIE J. MONICAL,
Petitioners,

vs.

CROOK COUNTY,
Respondent,

and

EAGLE CREST, INC.,
Intervenor-Respondent.

LUBA No. 2003-104

FINAL OPINION
AND ORDER

Appeal from Crook County.

David J. Petersen, Portland, filed the petition for review and argued on behalf of petitioners. With him on the brief was Max M. Miller, Jr., Portland, and Tonkon Torp, LLP.

Jeffrey M. Wilson, County Counsel, Prineville, filed a response brief and argued on behalf of respondent.

Kristin L. Udvari, Portland, filed a response brief and argued on behalf of intervenor-respondent. With her on the brief was Nancy Craven, Bend, and Ball Janik, LLP.

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

REMANDED 02/06/2004

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

Opinion by Holstun.

NATURE OF THE DECISION

Petitioners appeal a county court decision that dismissed their local appeal of a planning commission decision.

FACTS

The county planning commission granted intervenor's request for conditional use approval for a destination resort. The five petitioners in this appeal filed a local appeal of that planning commission decision with the county court. Among other things, the Crook County Zoning Ordinance (CCZO) requires that local appellants include a statement of "standing" and a statement of the "specific grounds for the appeal." CCZO 9.110(9)(A)(1)(d) and (e).[1] The county court found that petitioners Monical, Burke, Lundy and Culwell failed to "indicate" their standing. Record 1. The county court found that petitioner Dorvinen failed to set forth the specific grounds for the appeal. Citing those failures, in a June 18, 2003 letter, the county court dismissed petitioners' local appeal. This appeal followed.

INTRODUCTION

The central legal issue in this appeal is whether the county correctly determined that all five petitioners committed errors in attempting to perfect their local appeal that warrant dismissal of their appeal. Before turning to petitioners' assignments of error, we first set out the relevant CCZO requirements for perfecting a local appeal and briefly discuss the required county appeal form and the attachments that petitioners filed with the completed county appeal form to perfect their local appeal.

A. CCZO 9.110(9)(A)(1) Appeal Requirements

CCZO 9.110(9)(A)(1) sets out a number of requirements for filing a local appeal. The county takes the position that each of the specified requirements is "jurisdictional." Respondent's

[1] We set out the relevant CCZO provisions later in this opinion.

Brief 6. For purposes of this appeal we assume the county is correct in this position. *See Breivogel v. Washington County*, 114 Or App 55, 57 n 2, 834 P2d 473 (1992) (county code "jurisdictional" requirement that a local appeal petition be "signed" held to impose a "mandatory prerequisite[] to an appeal to the governing body"); *Tipton v. Coos County*, 29 Or LUBA 474, *aff'd* 137 Or App 633, 904 P2d 1094 (1995) (where a county code imposes a jurisdictional requirement that a local notice of appeal include allegations of fact that establish the appellant's standing to appeal, failure to allege such facts warrants dismissal of the appeal). CCZO 9.110(9)(A) requires the following to perfect a local appeal:

> "Appeals shall be complete and the appellate body shall have jurisdiction to hear the matter appealed if all the following occur:
>
> "(1) The appeal shall be in writing and shall contain:
>
> "(a) Name and address of the appellant(s);
>
> "(b) A reference to the application title and case number, if any;
>
> "(c) A statement of the nature of the decision;
>
> "(d) A statement of the specific grounds for the appeal, setting forth the error(s) and the basis of the error(s) sought to be reviewed; and
>
> "(e) A statement as to the appellant's standing to appeal as an affected party[.]"

B. The Appeal Form and Attachments

CCZO 9.040 requires use of county forms to perfect a local appeal of a land use decision to the county court.[2] Petitioners provided their name and address as required by CCZO 9.110(9)(A)(1)(a). Record 18-19. The form includes a space where appellants are to identify the file number of the land use application that is being appealed, and petitioners provided that file

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[2] As relevant, CCZO 9.040 provides:

> "Petitions, applications and appeals provided for in [the CCZO] shall be made on forms prescribed by the County. * * *"

1 number as required by CCZO 9.110(9)(A)(1)(b). There is no space on the form for a local
2 appellant to provide the "statement of the nature of the decision," that is required by CCZO
3 9.110(9)(A)(1)(c). However, the disputed local appeal was not dismissed for failure to comply
4 with CCZO 9.110(9)(A)(1)(c). As noted earlier in this opinion, the county court dismissed
5 petitioners' local appeal because it found four of the five petitioners failed to provide the statement
6 of standing required by CCZO 9.110(9)(A)(1)(e) and the remaining petitioner failed to provide the
7 statement of the grounds for appeal that is required by CCZO 9.110(9)(A)(1)(d).

8 The appeal form includes a bold type notice. The relevant part of that notice is set out
9 below:

10 "**EVERY NOTICE OF APPEAL SHALL INCLUDE:**

11 "* * * * *

12 "2. A Statement of the nature of the decision;

13 "a. A statement of the specific grounds for the appeal, setting forth the
14 error(s) and the basis of the error(s) sought to be reviewed; and

15 "b. A statement as to the appellant's standing to appeal as an affected
16 party.

17 "* * * * *

18 "The Notice of Appeal must include the items listed above. Failure to complete all
19 of the above may render an appeal invalid. Any additional comments should be
20 included on the Notice of Appeal." Record 18.

21 The above notice in the county appeal form duplicates the language in CCZO 9.110(9)(A)(1)(d)
22 and (e). The appeal form then provides 15 lines under the following heading: "I/We are appealing
23 the decision for the following reasons: (be specific)[.]" Record 19. In the first of those 15 lines,
24 petitioners wrote "(SEE ATTACHED)." Each petitioner then signed the form.

25 On the morning of June 16, 2003, petitioners submitted the above-described appeal form to
26 the county with a number of attachments: (1) a one-page letter signed by petitioner Burke; (2) two
27 unsigned pages of text that identify a number of alleged errors in the planning commission's decision;

(3) a one-page letter signed by petitioner Dorvinen; (4) a three-page memorandum signed by petitioner Culwell; and (5) a two-page letter signed by petitioner Lundy.

FIRST ASSIGNMENT OF ERROR

Petitioners first argue that it was error for the county to refuse to consider the two unsigned pages of text that identify errors in the planning commission decision and appear at Record 21-22, simply because those pages are unsigned and because they include a fax header indicating they were sent by 1000 Friends of Oregon. We agree with petitioners. As we explained in an earlier order in this appeal:

> "The record includes no reasonable basis for the county to conclude that the two pages that were attached to petitioner Burke's June 15, 2003 letter were unrelated to Burke's statement in support of the appeal and to ignore those pages. To the contrary, it was entirely reasonable for petitioner Burke to assume the county would view those attached pages as part of his statement and it was entirely unreasonable for the county to ignore those pages simply because they are unsigned and have a 1000 Friends of Oregon fax header. At the very most, given the way the county scrutinizes statements that are attached to local appeal forms, the county might have reason to inquire of petitioner Burke whether those two pages were part of his appeal statement only or whether they were intended to constitute an appeal statement that was adopted by all five petitioners." *Burke v. Crook County*, ___ Or LUBA ___ (LUBA No. 2003-104, Order, October 16, 2003), slip op 7-8 (footnotes omitted).

Nothing in the county's or intervenor' brief persuades us that the county had any reasonable basis for concluding that the two pages attached to petitioner Burke's letter were submitted by 1000 Friends of Oregon or any other nonappellant. The county repeatedly refers to the two pages as a "letter."[3] The county's treatment of those pages as a letter submitted by a nonappellant might be plausible if the two pages were actually a letter from 1000 Friends of Oregon. The two pages are not a letter from 1000 Friends of Oregon; they are unsigned and they are not addressed to

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[3] For example, the county argues:

> "While it certainly would have been permissible for any of the Petitioners to have incorporated the two page letter from 1000 Friends by reference, none of the Petitioners specifically did so." Respondent's Brief 5.

1 anyone. They are two unsigned pages of legal argument that happen to have a 1000 Friends of
2 Oregon fax header. The county erred by not considering whether those two pages, in combination
3 with the one-page letter from petitioner Burke to which those pages were attached, were sufficient
4 to provide petitioner Burke's statement of grounds for appeal, as required by CCZO
5 9.110(9)(A)(1)(d).

6 Whether the county erred by not considering those two pages as part or all of the statement
7 of grounds for appeal submitted by the remaining four petitioners presents only a slightly closer
8 question. As noted earlier, in the space where the county's appeal form provides empty lines for
9 identifying the reasons for appeal, petitioners inserted the words "(SEE ATTACHED)." The
10 county's form invites local appellants to "Attach additional sheet(s) for additional comments."
11 Record 19. The two unsigned pages are attached to the appeal form.

12 The peculiar legal significance the county attached to the lack of a signature at the bottom of
13 those two pages and the 1000 Friends of Oregon fax header at the top of those pages is difficult to
14 understand. Two fax headers appear at the bottom of the county appeal form that the applicants
15 submitted, and the county apparently attached no legal significance to those fax headers. Record
16 18-19. No party offers any reason why there must be a signature at the bottom of two pages of
17 legal argument that all petitioners adopted by their notation on the appeal form "SEE ATTACHED."
18 Record 19. Petitioners' signatures on the appeal form itself and the notation on that form that
19 alerted the county that petitioners relied on the attached documents is a legally sufficient means for
20 all petitioners to adopt those two pages. Certainly nothing in the appeal form itself or CCZO
21 9.110(9)(A)(1) imposes the kind of rigid jurisdictional "express incorporation" or "subscription"
22 requirement that the county applied in this case.

23 We remain of the view that the county erred in concluding that those pages were submitted
24 by anyone other than the petitioners who (1) signed the county's appeal form; (2) attached those
25 pages to that appeal form; and (3) expressly noted that they were including attachments. Again,
26 petitioners' signatures on the appeal form itself and their notation on that form to alert the county

that petitioners were relying on the attached documents is a legally sufficient means for all petitioners to adopt those two pages. The county should have considered those two pages in determining whether petitioners complied with the CCZO 9.110(9)(A)(1)(d) requirement that they identify the specific grounds for their appeal.

Petitioners' first assignment of error is sustained.

SECOND ASSIGNMENT OF ERROR

Petitioners contend that the county improperly rejected petitioner Lundy's two-page letter. In our October 16, 2003 order in this matter, we explained that petitioners' initial attempt to file their local appeal on the morning of June 16, 2003 was either *rejected* by the planning director or *withdrawn voluntarily* by petitioners to correct defects noted by the planning director. In either event, petitioners' apparently amended those documents, and the appeal was refiled later that same day. However, the documents that were filed on the afternoon of June 16, 2003, did not include the Lundy letter. We explained our earlier decision not to grant petitioners' motion to allow extra-record evidence or allow them to depose the planning director as follows:

> "The parties characterize the conclusion of the initial meeting between petitioners Burke and Culwell and the planning director somewhat differently. Petitioners clearly take the position that the planning director *rejected* petitioner Lundy's statement. As we noted earlier, the county does not expressly dispute that the Lundy statement was included in the documents that petitioners Burke and Culwell attempted to submit in the morning. It is not clear to us that intervenor and the county dispute that the planning director initially *rejected* the Lundy statement and the other statements that petitioners attempted to file in the morning of June 16, 2003. However, the intervenor's and the county's response and the affidavit can be read to say that petitioners' decision to take the documents and revise and resubmit them later that day was voluntary. If, as petitioners argue, the planning director does not have authority to reject a local appeal for the reasons he gave, it could be important whether the planning director *rejected* the Lundy statement or whether the petitioners took the Lundy statement with them *voluntarily* and simply failed to include the Lundy statement with the document or documents that were filed in the afternoon. However, given the current lack of clarity over whether the parties dispute that the Lundy statement was rejected by the planning director in the morning of June 16, 2003, we do not believe an order allowing petitioners Burke and Culwell and the planning director to be deposed or an order allowing an

evidentiary hearing to receive those depositions or testimony from those parties is warranted." *Burke*, slip op at 5-6 (emphases in original).

It is now clear that intervenor and the county do dispute petitioners' contention that the planning director rejected petitioners' initial attempt to file their appeal. However, petitioners have not renewed their motion that we consider evidence outside the record. We therefore resolve that question based on the record.

The record does not establish that the county *rejected* petitioners' initial attempt to file their appeal. While petitioners certainly may have understood the county planning director to be rejecting their local appeal, it is equally possible that the county planning director was merely pointing out to petitioners that the documents they first attempted to file on the morning of June 16, 2003 were inadequate to comply with the requirements of CCZO 9.110(9)(A)(1). We conclude that petitioners have not demonstrated that the county erroneously rejected their initial attempt to file the appeal on the morning of June 16, 2003. Because the Lundy letter was not included in the documents that petitioners refiled in the afternoon of June 16, 2003, the county did not err in failing to consider that letter as part of petitioners' attempted local appeal.

The second assignment of error is denied.

THIRD ASSIGNMENT OF ERROR

Petitioners contend that the county court refused to consider certain unspecified parts of the three-page Culwell memorandum that appears at Record 24-26, because the county court believed those parts of the Culwell memorandum paraphrased the two unsigned pages with the 1000 Friends of Oregon fax header. Petitioners argue the county erred in this regard.

If the county refused to consider parts of the Culwell memorandum, solely because the memorandum paraphrased the two unsigned pages, we would agree with petitioners that such a refusal would constitute error. As petitioners correctly point out, neither CCZO 9.110(9)(A)(1) nor any other authority cited by any party in this appeal prohibits a local appellant from adopting the

arguments of another.[4] However, it appears to us that the county's refusal to consider the Culwell memorandum was based instead on the county's finding that petitioner Culwell failed to provide the statement of standing that is required by CCZO 9.110(9)(A)(1)(e):

> "* * * Ap[p]ellant Culwell's comments also contain phrasing lifted directly from an unsigned statement with [the] fax header 1000 Friends of Oregon, although 1000 Friends of Oregon is not listed in the appeal petition as an appellant.
>
> "Because the [County] Court has chosen to deny standing to appellants Burke and Culwell, the Court must decide how to treat their individual and apparently unrelated statements of appeal grounds. The Court must also decide how to treat the unsigned comments submitted by a non-appellant.
>
> "* * * The [County] Court also believes that the similar phrasing used by appellant Culwell and non-appellants 1000 Friends indicates a nexus between these documents. *Because the Court has elected to sever Culwell from the appeal, the Court also elects to sever Culwell's comments* * * *." Record 2 (emphasis added).

Although the above language is somewhat ambiguous, it is reasonably clear from the emphasized sentence that the county rejected the Culwell letter, not because parts of that letter paraphrased the two unsigned pages, but rather because the county ultimately concluded that Culwell failed to provide the statement of standing that is required by CCZO 9.110(9)(A)(1)(e). Because the third assignment of error is based on petitioners' mistaken assumption that parts of the Culwell memorandum were rejected because they paraphrased the unsigned pages, it provides no basis for reversal or remand.

The third assignment of error is denied.

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[4] Indeed petitioner Dorvinen expressly incorporated the arguments submitted by petitioner Burke and the county gave effect to that express incorporation in analyzing the appeal with regard to petitioner Dorvinen.

> "Because appellant Dorvinen specifically associates himself with the comments of appellant Burke, the [County] Court elects to proceed with consideration of the appeal grounds raised by both appellants Burke and Dorvinen as if both had been submitted by Dorvinen." Record 2.

FOURTH ASSIGNMENT OF ERROR

Petitioners contend that the county erred in treating the individual letters submitted by petitioners Burke and Culwell separately and as though they were submitted solely on behalf of the person whose name appears at the bottom of the letter.

As we have already pointed out, the appeal form that is used by the county invites multiple local appellants to utilize a single appeal form and to attach documents in support of the appeal. Given that context and the lack of any indication on the form that the county would not consider any unsigned attachments and attribute the statements in any attachment solely to the person who signed at the bottom of any attachments, we agree with petitioners that the approach the county followed in this appeal was erroneous.

The county clearly can make particular requirements for perfecting a local appeal "jurisdictional," in the sense that failures to comply with those requirements will lead to dismissal of the local appeal. *Breivogal*, 114 Or App at 57 n 2. However, dismissal of a local appeal without reaching the merits of the appeal is a harsh sanction. Before the county may impose such a sanction for failure to comply with its requirements for perfecting a local appeal, the county must make it reasonably clear what these jurisdictional or mandatory requirements are and whether the county expects local appellants to follow a particular format in meeting those requirements. Again, the county's appeal form states that documents may be attached to the appeal form to comply with the CCZO 9.110(9)(A)(1)(d) requirement that appellants specify their bases for appeal. The county's appeal form does not say that each petitioner must sign or otherwise indicate that he or she adopts all of the attached documents by signing those documents or expressly adopt those documents in any other way beyond signing the appeal form and indicating on that appeal form that the bases for the appeal are attached. Perhaps more importantly, CCZO 9.110(9)(A)(1)(d) does not require that the "statement of the specific grounds for the appeal" that is required by that subsection of the CCZO must also be individually signed by every appellant who signs the appeal form.

1 Finally, respondent and intervenor note that the appeal form includes the following
2 instruction:

3 "Each party that authorizes the 'Representative' to speak on their behalf must
4 submit a letter stating so, which is signed, dated, and attached to this appeal."
5 Record 19.

6 Respondent and intervenor point out that petitioner Dorvinen expressly authorized petitioner Burke
7 and others to speak for him. Record 23. Other petitioners did not include such written authority.
8 Respondent and intervenor cite the above instruction to bolster their argument that the failure of
9 other petitioners to provide written authorization for others to speak on their behalf further justifies
10 reading their letters in isolation as the author's sole basis for establishing standing and sole
11 explanation for the issues to be raised on appeal.

12 The cited language on the form appears to be concerned with who speaks to the county
13 court at the time an appeal is considered by the county court. We decline to give the instruction the
14 much broader legal effect that the respondent and intervenor argue it should be given. The
15 instruction does not mention appeal form attachments and does not mention any particular
16 requirements that must be followed to ensure that any attachments are attributed to particular
17 petitioners.

18 In deciding whether petitioners adequately specified the grounds for appeal, as required by
19 CCZO 9.110(9)(A)(1)(d), the county should have considered all of the letters and the two unsigned
20 pages that were attached to the appeal form filed by petitioners. The county erred in failing to do
21 so.

22 The fourth assignment of error is sustained.

23 **FIFTH ASSIGNMENT OF ERROR**

24 Under this assignment of error, petitioners challenge the county's finding that petitioners
25 Burke, Lundy and Culwell failed to provide the statement of standing that is required by CCZO
26 9.110(9)(A)(1)(e). In view of our conclusion that the Lundy letter was not included in the
27 documents that were filed by petitioners, it appears that the county is correct in its conclusion that

1 the local appeal included no allegations of fact that establish petitioner Lundy's standing. We limit
2 our consideration of petitioners' standing arguments under this assignment of error to petitioners
3 Burke and Culwell.[5]
4 We do not understand the county to have found that petitioners' statements of standing must
5 be in any particular form, so long as the facts that establish standing under the relevant CCZO
6 provision are alleged in the appeal form or attachments. That appears to be the way the county
7 analyzed petitioner Dorvinen's statement, and we agree with that approach to the standing
8 question.[6] As noted earlier, with the exception of petitioner Dorvinen, the county court found that
9 the letters attached to the appeal form fail to allege or set out the facts that are required to establish
10 each petitioner's standing under CCZO 9.110(6). The county court does not explain why it
11 reached that conclusion. CCZO 9.110(6) provides as follows:

12 "Appeals may be filed only by parties adversely affected by a land use decision as
13 defined in the ORS. For purposes of this section, an adversely affected party shall
14 include any of the following:

15 "A. The applicant or the authorized agent of the applicant;

16 "B. Any resident or property owner within 500 feet of the parcel of land; or

17 "C. Any person or County official testifying at the public hearing or who
18 provided written comments may appeal a Commission decision."

19 CCZO 9.110(6) is ambiguous, and the challenged decision does not include an express or
20 implicit interpretation of CCZO 9.110(6). From respondent's and intervenor's briefs it is clear that

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[5] We do not understand petitioners to challenge the county's decision to deny petitioner Monical's appeal for failure to state facts that establish her standing. On the other hand, we do not understand the county or intervenor to dispute that petitioner Dorvinen's statement of standing complies with CCZO 9.110(9)(A)(1)(e). Accordingly, there is no issue presented in this appeal concerning the adequacy of petitioner Dorvinen's statement of standing.

[6] As noted below in the text, under CCZO 9.110(6) "[a]ny person testifying at the public hearing or who provided written comments may appeal a [Planning] Commission decision." Although petitioners allege in the petition for review that all petitioners appeared during the planning commission proceedings and opposed the application, and would appear to have standing on that basis, only petitioner Dorvinen asserted standing on that basis below in the local appeal documents. Record 23.

they argue that CCZO 9.110(6) should be interpreted differently than petitioners interpret that provision. We turn to that interpretive question first.

The first sentence of CCZO 9.110(6) provides "[a]ppeals may be filed only by parties adversely affected by a land use decision as defined in the ORS." Neither ORS chapter 197 nor the county land use planning statutes at ORS chapter 215 include a definition of "adversely affected."[7] Given the general and nonspecific reference to "ORS" and the land use context in which the reference appears, we conclude the meaning most likely intended is the longstanding meaning of that term that has existed in the land use context at least since LUBA's enabling statute was enacted in 1979. Although the term "adversely affected" likely was likely borrowed from the federal or state administrative procedures act, that term and its frequent companion term "aggrieved" have taken on particular meanings in the land use context. In *Jefferson Landfill Committee v. Marion County*, 297 Or 280, 283, 686 P2d 310 (1984), the Oregon Supreme Court provided the following explanation of the meaning of "adversely affected," as that term was used in LUBA's 1979 enabling act:

> "In the context of section 4(3) [of Oregon Laws 1979, chapter 772, as amended by Oregon Laws 1981, chapter 748, section 35], 'adversely affected' means that a local land use decision impinges upon the petitioner's use and enjoyment of his or her property or otherwise detracts from interests personal to the petitioner. Examples of adverse effects would be noise, odors, increased traffic or potential flooding. *See, e.g.*, *Yamhill County v. Ludwick*, 294 Or 778, 663 P2d 398 (1983) and *Benton County v. Friends of Benton County*, [294 Or 79, 653 P2d 1249 (1982)]."[8]

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[7] However, both of those chapters use the term "adversely affected." ORS 197.830(3), (4)(b) and (5) establish particular deadlines for filing appeals to LUBA of certain land use and limited land use decision that apply to persons who are "adversely affected" by land use decisions and limited land use decisions. ORS 215.416(11)(a)(A) and (C) authorize counties to make permit decisions without first providing a public hearing if, among other things, notice of such decisions is provided and persons who are adversely affected by such decisions are given a right of local appeal.

[8] In contrast, as relevant here, a party is "aggrieved" where (1) a person's interests are recognized by the local decision maker; (2) the person asserts a position on the merits; and (3) the local decision maker renders a decision contrary to that position. *Jefferson Landfill*, 297 Or at 284 (*citing Benton County v. Friends of Benton County*, 294 Or 79, 653 P2d 1249 (1982)).

The above understanding of the term "adversely affected" has been applied in other land use contexts where the term appears. *Wilbur Residents v. Douglas County*, 151 Or App 523, 526-27, 950 P2d 368 (1997), *rev den* 327 Or 83 (1998). Both petitioner Burke and petitioner Culwell allege facts that appear to be directed at establishing that they are "adversely affected," within the meaning of that term as described above. Record 20; 24-26. It appears to us that the facts alleged by petitioners Burke and Culwell are sufficient to establish that they would be "adversely affected" by the development authorized by the challenged planning commission decision, as that term is used in *Jefferson Landfill* and *Wilbur Residents.*

CCZO 9.110(6) is set out above in full in the text. The second sentence of CCZO 9.110(6) provides "[f]or purposes of [CCZO 9.110(6), an adversely affected party shall include any of the following[.]" Three examples of adversely affected parties follow that sentence: (1) the applicant or the applicant's agent; (2) residents or property owners within 500 feet; and (3) persons who testified before the planning commission, orally or in writing. The county and intervenor argue that because petitioners Burke and Culwell do not claim to come within any of the three examples listed after the second sentence, the county correctly determined that they inadequately stated a basis for standing.

The second sentence of CCZO 9.110(6) is also ambiguous. The second sentence of CCZO 9.110(6) does not say "[f]or purposes of CCZO 9.110(6), an adversely affected party shall include, without limitation, any of the following[.]" If it did, it would be clear that the three examples are *not* intended to apply in place of the more subjective understanding of "adversely affected." However, the second sentence of CCZO 9.110(6) also does not say "[f]or purposes of CCZO 9.110(6), adversely affected parties are limited to parties who qualify under one or more of the following[.]" If it did, the interpretation that respondent and intervenor urge in their briefs would likely prevail. With the ambiguity present in CCZO 9.110(6), we conclude the more natural reading of that section of the CCZO is that the second sentence and the examples that follow that sentence provide a nonexclusive list of circumstances that will qualify a person as "adversely affected."

1 CCZO 9.110(6)(A)-(C) do not provide an exclusive list of criteria for identifying adversely affected
2 parties. This construction is particularly appropriate given the jurisdictional significance of the
3 meaning of "adversely affected" in CCZO 9.110(6), with the attendant jurisdictional pleading
4 requirement that the county attaches to CCZO 9.110(9)(A)(1)(e). The county may not adopt a
5 standing requirement that is as ambiguous as CCZO 9.110(6) and then dismiss petitioners' appeal
6 without reaching the merits because, although petitioners alleged facts that appear to show they will
7 be adversely affected by the challenged decision, they did not allege facts that are sufficient to
8 establish their standing under CCZO 9.110(6)(A) through (C).[9]

9 Given our resolution of the key interpretive issue under this assignment of error, an extensive
10 discussion of our decision in *Tipton v. Coos County* and the Court of Appeals' decision in
11 *Breivogel v. Washington County*, which respondent and intervenor cite and rely on, is
12 unnecessary. In both of those cases there was a clear failure on the local appellant's part to
13 recognize and address a local jurisdictional requirement. In *Breivogel*, a signature on the appeal
14 document was a jurisdictional requirement, and petitioners did not sign the appeal document. 114
15 Or App at 58. In *Tipton*, the relevant code limited standing to (1) parties who were entitled to
16 notice of the decision, and (2) persons who were adversely affected or aggrieved. 29 Or LUBA at
17 475 n 1. The petitioners in *Tipton* simply alleged that they were "applicants." The petitioners in
18 *Tipton* were the opponents, not the applicants, and they did not allege that they were entitled to
19 notice or that they were adversely affected or aggrieved. In short, the petitioners in *Tipton* relied on
20 an erroneous and legally irrelevant allegation of fact (that they were applicants), and failed to allege

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[9] It is worth noting that CCZO 9.110(6)(C) would appear to grant standing to persons who clearly might not qualify as "adversely affected" as that term is explained in *Jefferson Landfill*. A person who testified against the proposal before the planning commission might not be affected by the proposal at all, although that person would have standing under CCZO 9.110(6)(C) and would be "aggrieved," as that term is defined in *Jefferson Landfill*. Conversely, that a person might live more than 500 feet from the proposal, and therefore not qualify for standing under CCZO 9.110(6)(B), does not mean that the proposed destination resort will not "adversely affect" that person, if "adversely affect" is given the larger meaning that is described in *Jefferson Landfill*. In short, if the county intended CCZO 9.110(6)(A)-(C) to describe the universe of "adversely affected" persons, CCZO 9.110(6)(A)-(C) can be both more generous and more restrictive than the Oregon Supreme Court's description of "adverse affect" in *Jefferson Landfill*.

1 facts that would establish standing under the relevant criteria (that they were entitled to notice or
2 adversely affected or aggrieved). Neither *Breivogel* nor *Tipton* have any obvious applicability
3 here.

4 Petitioners' fifth assignment of error is sustained in part. Although we reject petitioners'
5 arguments under this assignment of error regarding petitioner Lundy's standing, we agree with
6 petitioners that the county inadequately explained its finding that petitioners Burke and Culwell failed
7 to allege facts that establish that they have standing. Although we tend to agree with petitioners that
8 the Burke and Culwell statements include allegations of fact that are adequate to establish they are
9 "adversely affected," within the meaning of that term as described above, that question is properly
10 addressed by the county in the first instance. Petitioners also repeat their argument that the county
11 should have analyzed the two unsigned pages at Record 21-22 in considering whether petitioner
12 Dorvinen complied with the requirement in CCZO 9.110(9)(A)(1)(d) to specify his grounds for
13 appeal. We have already agreed with petitioners on that point.

14 The fifth assignment of error is sustained in part.

15 **CONCLUSION**

16 Intervenor requests that, if LUBA does not sustain the county court's decision, we "provide
17 an order specifying which of the Petitioners met the jurisdictional filing requirements of CCZO
18 9.110(9) to clarify which individuals are entitled to participate in any remand proceeding conducted
19 by the County Court." Intervenor's Brief 11.

20 At this point, the only possible definitive rulings concern petitioners Monical and Lundy.
21 Petitioners do not challenge the county court's finding that petitioner Monical lacks standing. The
22 only allegations of standing for petitioner Lundy are contained in a document that is not included in
23 the record. Neither petitioner Monical nor petitioner Lundy satisfied all of the jurisdictional
24 requirements of CCZO 9.110(9). If it is necessary under the CCZO to satisfy those jurisdictional
25 requirements to participate in any remand proceeding before the county court that may be

1 necessitated because one or more of the other petitioners did comply with the jurisdictional
2 requirements of CCZO 9.110(9), they may not participate.
3 With regard to petitioner Dorvinen, there is no question that he meets the jurisdictional
4 standing requirement of CCZO 9.110(9)(A)(1)(e). The only question is whether he adequately
5 specified the bases for his appeal. Because the county considered only the letters signed by
6 petitioners Dorvinen and Burke, and did not consider the two unsigned pages at Record 21-22 and
7 the Culwell memorandum at Record 24-26 in considering that question, remand is required. While
8 we tend to agree with petitioners that those documents considered collectively state a number of
9 "specific grounds for appeal," as required by CCZO 9.110(9)(A)(1)(d), that question is properly
10 answered in the first instance by the county court. If the county court concludes that the documents,
11 considered collectively, adequately specify one or more grounds for appeal under CCZO
12 9.110(9)(A)(1)(d), that conclusion will also apply to all other petitioners with standing, for the
13 reasons explained earlier in this opinion.
14 With regard to petitioners Culwell and Burke, their right to participate in any proceedings on
15 remand as appellants also depends on whether they have complied with the requirement in CCZO
16 9.110(9)(A)(1)(e) that they provide an adequate statement of facts to establish that they have
17 standing. The county court must consider whether petitioner Burke's letter and petitioner Culwell's
18 memorandum adequately allege facts that demonstrate that they are adversely affected by the
19 planning commission's decision, consistent with our interpretation of CCZO 9.110(6) in the fifth
20 assignment of error.[10]
21 The county's decision is remanded.

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[10] We do not mean to suggest that the county must limit its consideration of petitioner Burke's and petitioner Culwell's allegations of standing to the letter and memorandum they signed. However, it appears that each petitioner's allegations of facts concerning standing are for the most part personal. Stated differently, with one exception, it does not appear the letters and memorandum allege facts in support of standing for petitioners other than the petitioner who signed the letter or memorandum. Petitioner Dorvinen's letter alleges facts that might have some bearing on petitioner Burke's standing. Record 23. The two unsigned pages do not appear to include allegations of fact that would support a finding of standing for any of the petitioners.