

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

3
4 VINCENT TADEI, SUSAN TADEI,
5 and PAUL TADEI,
6 *Petitioners,*

7
8 vs.

9
10 CITY OF ASTORIA,
11 *Respondent.*

12
13 LUBA No. 2021-048

14
15 FINAL OPINION
16 AND ORDER

17
18 Appeal from City of Astoria.

19
20 Vincent Tadei, Susan Tadei, and Paul Tadei filed the petition for review.
21 Susan Tadei argued on behalf of themselves.

22
23 Blair Henningsgaard represented respondent.

24
25 RYAN, Board Member; ZAMUDIO, Board Chair; RUDD, Board
26 Member, participated in the decision.

27
28 AFFIRMED 04/06/2022

29
30 You are entitled to judicial review of this Order. Judicial review is
31 governed by the provisions of ORS 197.850.

1 Opinion by Ryan.

2 **NATURE OF THE DECISION**

3 Petitioners appeal a city council decision upholding a Historic Landmarks
4 Commission (HLC) decision approving a new construction permit for a building
5 adjacent to a church.

6 **FACTS**

7 The applicant applied for a new construction permit to construct a 5,030-
8 square-foot structure as an accessory multi-use building to an existing adjacent
9 church facility. On February 9, 2021, the HLC held a public hearing on the
10 application, and, after closing the public hearing, voted to approve the
11 application. Petitioners appealed the HLC's decision to the city council. On April
12 5, 2021, the city council held a public hearing on the appeal and, after closing the
13 public hearing, voted to deny the appeal.

14 This appeal followed.

15 **MOTION TO STRIKE**

16 On January 31, 2022, petitioners filed a petition for review (Original
17 Petition). On February 4, 2022, we issued an order noting that the Original
18 Petition did not contain a certificate of compliance, as required by OAR 661-010-
19 0030(2)(k), or a copy of the findings of fact and conclusions of law adopted by
20 the city council, as required by OAR 661-010-0030(4)(e). We ordered petitioners
21 to file with LUBA and serve on the city a supplemental petition for review
22 containing those items. On February 8, 2022, petitioners filed a supplemental

1 petition for review (Supplemental Petition) that included the items identified in
2 our February 4, 2022 order, as well as additional items, and served the city with
3 the same.¹

4 On February 7, 2022, the city filed a motion to strike the Original Petition
5 for, as relevant here, failure to set forth assignments of error and failure to set
6 forth LUBA's standard of review of the city council's decision. On February 10,
7 2022, we issued an order stating that we would take the motion to strike the
8 Original Petition under advisement.² We consider the Supplemental Petition and
9 conclude that the correct remedy is to affirm the city's decision. *Scholes v.*
10 *Jackson County*, 28 Or LUBA 407, 409 (1994).

¹ The Supplemental Petition is the same as the Original Petition in all material respects, and we refer to them interchangeably in this opinion. Both consist of a cover page; a table of contents; eight pages of text; four excerpts from the record labeled Exhibits A, B, C, and E totaling hundreds of pages; and 22 pages of material that do not appear in the record, labeled Exhibit D. Neither contain a table of authorities, address standing, contain a statement of the case, or address the Board's jurisdiction.

Consistent with our February 4, 2022 order, the Supplemental Petition also contains a certificate of compliance and a copy of the findings of fact and conclusions of law adopted by the city council, and it therefore satisfies OAR 661-010-0030(2)(k) and (4)(e).

² We noted that the city's motion did not request that the deadline for filing the response brief be suspended or extended, or seek dismissal of the appeal.

1 **DECISION**

2 OAR 661-010-0030 sets out the specifications for the petition for review.

3 Under OAR 660-010-0030(4), the petition for review must:

4 “(a) State the facts that establish petitioner’s standing;

5 “(b) Present a clear and concise statement of the case, in the
6 following order, with separate section headings:

7 “(A) The nature of the land use decision or limited land use
8 decision and the relief sought by petitioner;

9 “(B) A brief summary of the arguments appearing under the
10 assignments of error in the body of the petition;

11 “(C) A summary of the material facts. The summary shall be
12 in narrative form with citations to the pages of the
13 record where the facts alleged can be found. Where
14 there is a map in the record that helps illustrate the
15 material facts, the petitioner shall include a copy of that
16 map in the summary of the material facts or attach it as
17 an appendix to the petition.

18 “(c) State why the challenged decision is a land use decision or a
19 limited land use decision subject to the Board’s jurisdiction;

20 “(d) Set forth each assignment of error under a separate heading.
21 Each assignment of error must demonstrate that the issue
22 raised in the assignment of error was preserved during the
23 proceedings below. Where an assignment raises an issue that
24 is not identified as preserved during the proceedings below,
25 the petition shall state why preservation is not required. Each
26 assignment of error must state the applicable standard of
27 review. Where several assignments of error present
28 essentially the same legal questions, the argument in support
29 of those assignments of error shall be combined;

1 “(e) Contain a copy of the challenged decision, including any
2 adopted findings of fact and conclusions of law; and

3 “(f) Contain a copy of any comprehensive plan provision,
4 ordinance or other provision of local law cited in the petition,
5 unless the provision is quoted verbatim in the petition.”

6 The Supplemental Petition does not comply with most elements of our
7 rules. The most significant deficiency is the lack of assignments of error and any
8 argument in support of any assignments of error, and the lack of a cited basis for
9 reversing or remanding the city council’s decision. We have explained that,
10 “[a]lthough each of the * * * requirements [for the petition for review] is
11 important, the requirement of OAR 661-10-030([4])(d) that the petition for
12 review include assignments of error, supported by argument, is particularly
13 important.” *Scholes*, 28 Or LUBA at 409 (citing *Bjerk v. Deschutes County*, 17
14 Or LUBA 187, 194 (1988)). We understand the Supplemental Petition to assert
15 that the proposed new construction is not compatible with surrounding historic
16 structures, but it does not set forth any arguments in support of the assertion.
17 Rather, the Supplemental Petition directs LUBA to exhibits to the petition for
18 review, which include more than two hundred pages of items from the record and
19 more than 20 pages of extra-record items. *See* n 1.

20 More importantly, the city council adopted more than 10 pages of findings
21 in support of its decision to deny the appeal and approve the application. The
22 Supplemental Petition does not address any of the findings the city council
23 adopted or explain why that decision should be reversed or remanded.

1 We agree with the city that the Supplemental Petition fails to comply with
2 OAR 661-010-0030(4)(d).³ Petitioners’ Supplemental Petition provides no basis
3 on which we can reverse or remand the challenged decision. *Borrego v. City of*
4 *Sheridan*, 30 Or LUBA 65 (1995); *Deschutes Development v. Deschutes Cty.*, 5
5 Or LUBA 218, 220 (1982) (“It is not our function to supply petitioner with legal
6 theories or to make petitioner’s case for petitioner.”).

7 The city’s decision is affirmed.

³ The city did not file a response brief in this appeal.