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

ELIZABETH GRASER-LINDSEY,
Petitioner,

vs.

CLACKAMAS COUNTY,
Respondent,

and

DANIELLE MAN and ENOH MAN,
Intervenors-Respondents.

LUBA No. 2022-033

FINAL OPINION
AND ORDER

Appeal from Clackamas County.

Elizabeth Graser-Lindsey filed the petition for review and reply brief and argued on behalf of themselves.

Nathan K. Boderman filed a joint response brief and argued on behalf of respondent. Also on the brief was Stephen Madkour, County Counsel.

Andrew H. Stamp filed a joint response brief and argued on behalf of intervenors-respondents. Also on the brief was Andrew H. Stamp, P.C.

RYAN, Board Chair; ZAMUDIO, Board Member, participated in the decision.

RUDD, Board Member, did not participate in the decision.

AFFIRMED 02/13/2023

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

Opinion by Ryan.

NATURE OF THE DECISION

Petitioner appeals a board of county commissioners' decision approving a zoning map amendment to remove the historic landmark overlay zone designation from a property.

BACKGROUND

Statewide Planning Goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces) requires local governments to identify and designate historically significant properties. Clackamas County Comprehensive Plan (CCCP) Chapter 9 implements Goal 5, and CCCP Policy 9.C.4 provides that the county's program to protect historically significant properties is to zone properties, that the county has determined are significant under the evaluation criteria in the county's Zoning and Development Ordinance (ZDO), using three historic overlays. The subject property is zoned with the Historic Landmark (HL) overlay.

The county has adopted criteria for evaluating historic resources at ZDO 707.02(B). As we explain in more detail below, ZDO 707.02(B) evaluates a site based on specific architectural, environmental and historic association criteria. ZDO 707.02(B) requires a site or structure to receive a minimum of 40 points out of a possible 106 points to be considered for HL overlay status.

In 1990, the county applied the criteria in ZDO 707.02(B) to the subject 56.22-acre property that is zoned Rural Residential/Farm Forest 5-Acre and

located in the Beavercreek area of the county. We refer to that decision as the Original Decision. At that time, the property included a house that was constructed in 1905, a garage, and a water tower. The property received a total of 41 points, more than the minimum 40 required, and the county designated the subject property as significant and applied the HL overlay to the subject property. Record 21.

Intervenors-respondents (intervenors) purchased the property in 2006. Significant deterioration of the house and water tower has occurred since the HL overlay zone was added to the property in 1991. The garage is no longer on the property.

OAR 660-023-0200(9) authorizes a local government to remove a historic resource from its list of significant historic resources under certain circumstances.[1] As relevant in this appeal, OAR 660-023-0200(9)(b) authorizes a local government to remove protection from a previously designated resource:

> "Except as provided in subsection (a), a local government may only remove a resource from the resource list if the circumstances in paragraphs (A), (B), or (C) exist.
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> "(A) The resource has lost the qualities for which it was originally recognized; [or]

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[1] OAR 660-023-0200(9)(a) implements ORS 197.772, which allows certain property owners to compel delisting of a previously listed resource, as explained in *Lake Oswego Preservation Society v. City of Lake Oswego*, 360 Or 115, 117 (2016). ORS 197.772 is not at issue in this appeal. There is no dispute that the property does not qualify for compelled delisting pursuant to ORS 197.772.

> "(B) Additional information shows that the resource no longer satisfies the criteria for recognition as a historic resource or did not satisfy the criteria for recognition as a historic resource at time of listing[.]"

In 2021, intervenors applied to the county for a zone change to remove the HL overlay. The county's Historic Review Board (HRB) held a hearing and at the conclusion voted to recommend removing the HL overlay to the board of county commissioners. The board of county commissioners held a hearing on the application and at the conclusion voted to approve the application to remove the HL overlay.

Petitioner appealed the board of county commissioners' decision, and the county subsequently withdrew the decision for reconsideration pursuant to ORS 197.830(13)(b) and OAR 661-010-0021. The county timely filed its reconsidered decision approving the application to remove the HL overlay and petitioner timely appealed that decision.

PENDING MOTIONS

A. Petitioner's Motion to Take Evidence

Petitioner filed their petition for review and attached as appendices materials not included in the record, and contemporaneously filed a motion to take evidence not in the record under OAR 661-010-0045. LUBA may take evidence not in the record in

> "the case of *disputed factual allegations* in the parties' briefs concerning unconstitutionality of the decision, standing, ex parte contacts, actions for the purpose of avoiding the requirements of ORS 215.427 or 227.178, *or other procedural irregularities not*

> *shown in the record and which, if proved, would warrant reversal or remand of the decision.*" OAR 661-010-0045(1) (emphases added).

A motion to take evidence must include a statement "explaining with particularity what facts the moving party seeks to establish, how those facts pertain to the grounds to take evidence specified in [OAR 661-010-0045(1)], and how those facts will affect the outcome of the review proceeding." OAR 661-010-0045(2)(a). It is the movant's burden to demonstrate a sufficient basis for LUBA to take evidence outside the record.

Petitioner first seeks for LUBA to consider preapplication conference materials relating to potential development of the subject property. In the motion to take evidence, petitioner alleges that these items will demonstrate that the county provides assistance to persons who have questions about development options for their property, and argues that that assistance violates laws specified in the motion.

Intervenors respond, and we agree, that petitioner has not established a basis for LUBA to consider the items. First, petitioner acknowledges that the county and intervenors (together, respondents) do not dispute that the county provided preapplication assistance to intervenors. Motion to Take Evidence 5. Accordingly, there is no "disputed factual allegation" in the briefs. Response to Motion to Take Evidence 12. Second, in the petition for review petitioner does not allege that the county committed a procedural error in providing preapplication assistance regarding potential development options for the subject

property.[2] Accordingly, even if there were "disputed factual allegations" in the petition for review or response brief, absent an assignment of error in the petition for review that alleges a "procedural irregularity" or procedural error in providing that preapplication assistance, our consideration of the items would not provide a basis for reversal or remand of the decision.

Petitioner also seeks for LUBA to consider photographs that petitioner describes as "higher-quality copies of two 1990 pictures in the record." Motion to Take Evidence 6. However, petitioner does not establish any basis for LUBA to consider extra record evidence, particularly evidence that was not presented to the decision maker. Evidentiary proceedings before LUBA do not provide a mechanism to add to the local record evidence that could have been, but was not, submitted during the course of the local proceedings. *St. Johns Neighborhood Assn. v. City of Portland*, 33 Or LUBA 836, 838 (1997).

The motion to take evidence is denied.

B. Intervenors' Motion to Strike Portions of the Petition for Review

Intervenors move to strike petitioner's fourth assignment of error because, according to intervenors, petitioner's citations to other sections of the petition for review to incorporate arguments in the referenced sections violates the word

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[2] Petitioner does allege in the petition for review that the county committed a procedural error that prejudiced their substantial rights when it did not include laws that petitioner alleges apply to the application in its notices of hearings. Petition for Review 31.

limits in OAR 661-010-0030(2)(b). Petitioner responds, and we agree, that their incorporation of other arguments presented elsewhere in a brief does not violate OAR 661-010-0030(2)(b).

C. Intervenors' Motion to Strike Portions of the Reply Brief

Petitioner filed a reply brief. OAR 660-010-0039 provides as relevant here that a reply brief is limited to 1,000 words, but that *"[i]f a party does not have access to a word-processing system that provides a word count*, a reply brief is acceptable if it does not exceed four pages." (Emphasis added.) The certificate of compliance attached to the reply brief certifies that "the number of pages of this brief is 4 pages."

Intervenors argue the page limit option is only available "if a party does not have access to a word-processing system that provides a word count," and point out, correctly, that the certificate of compliance attached to the petition for review certifies that the petition is "10,885 words." Motion to Strike Reply Brief 2. Thus, intervenors argue, petitioner has access to a word-processing system that provides a word count. Intervenors allege that the reply brief contains 1201 words. Intervenors move to strike the last page of petitioner's reply brief.

Petitioner filed a response to the motion to strike. Petitioner's response does not state or take the position that petitioner "does not have access to a word-processing system that provides a word count." Accordingly, petitioner may not reply on the four-page limit, which is conditionally allowed "*if* a party does not have access to a word-processing system that provides a word count."

Intervenors' motion to strike is granted, and we strike the last page of petitioner's reply brief.

FIRST, SECOND, AND THIRD ASSIGNMENTS OF ERROR

Petitioner's first, second, and third assignments of error include related and overlapping arguments that we address here together.

A. Applicable Laws

In overlapping arguments under the first, second, and third assignments of error, petitioner argues that the county improperly failed to apply ORS 358.605, introductory language of Goal 5, OAR 660-023-0200(7), various provisions of ZDO 707, and ZDO 1004.02(B) to the application to delist the property. According to petitioner, the county was required and failed to apply all of these laws when it considered the application to delist the property.

1. Waiver

Respondents respond, initially, that petitioner failed to raise an issue regarding the applicability of ORS 358.605, OAR 660-023-0200(7), ZDO 707.01, ZDO 707.04, ZDO 707.06, or ZDO 1004.02(B) with the specificity that is required under ORS 197.797(1) to notify the county and intervenors that they needed to address them. Before turning to respondents' argument, we explain the "raise it or waive it" principles in ORS 197.797(1) and ORS 197.835(3).

ORS 197.797(1) provides:

> "An issue which may be the basis for an appeal to [LUBA] shall be raised not later than the close of the record at or following the final evidentiary hearing on the proposal before the local government.

> Such issues shall be raised and accompanied by statements or evidence sufficient to afford the governing body, planning commission, hearings body or hearings officer and the parties an adequate opportunity to respond to each issue."

ORS 197.835(3), which addresses LUBA's scope of review, provides that "[i]ssues shall be limited to those raised by any participant before the local hearings body as provided by ORS 197.195 or 197.797, whichever is applicable." As the court of appeals has explained, "those statutes comprise a so-called 'raise it or waive it' requirement, whereby before an issue may be raised to LUBA it must first have been raised before the local government along with statements and evidence sufficient to allow the government and parties to respond to it." *Pliska v. Umatilla County*, 240 Or App 238, 244, 246 P3d 1146 (2010), *rev den*, 350 Or 408, 256 P3d 121 (2011).

When attempting to differentiate between "issues" and "arguments," there is no "easy or universally applicable formula." *Reagan v. City of Oregon City*, 39 Or LUBA 672, 690 (2001). While a petitioner is not required to establish that a precise argument made on appeal was made below, that does not mean that "any argument can be advanced at LUBA so long as it has some bearing on an applicable approval criterion and general references to compliance with the criterion itself were made below." *Id.* (emphasis omitted). A particular issue must be identified in a manner detailed enough to give the decision-maker and the parties fair notice and an adequate opportunity to respond. *Boldt v. Clackamas County*, 107 Or App 619, 623, 813 P2d 1078 (1991); *see also Vanspeybroeck v. Tillamook County*, 221 Or App 677, 691 n 5, 191 P3d 712 (2008) ("[I]issues

[must] be preserved at the local government level for board review * * * in sufficient detail to allow a thorough examination by the decision-maker, so as to obviate the need for further review or at least to make that review more efficient and timely.").

In the petition for review, petitioner cites Record 258, 261, 267-271, 300 - 303, 389, 407-408, and 433-34 as having preserved the issues. We have reviewed the cited record pages, and nothing in those pages raises any issue regarding the applicability of ORS 358.605, OAR 660-023-0200(7), ZDO 707.01, ZDO 707.04, ZDO 707.06, or ZDO 1004 at all.

Also in the petition for review, petitioner cites ORS 197.835(4)(a), which provides:

> "A petitioner may raise new issues to [LUBA] if:
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> "(a) The local government failed to list the applicable criteria for a decision under * * * [ORS] 197.797(3)(b), in which case a petitioner may raise new issues based upon applicable criteria that were omitted from the notice. However, [LUBA] may refuse to allow new issues to be raised if it finds that the issue could have been raised before the local government[.]"

ORS 197.797(3)(b), in turn, requires that the notice of hearing "[l]ist the applicable criteria from the ordinance and the plan that apply to the application at issue." Record 297-98 is the notice of hearing before the board of county commissioners. Petitioner argues that ORS 358.605, OAR 660-023-0200(7), ZDO 707.01. ZDO 707.04, ZDO 707.06, or ZDO 1004 are "applicable criteria" for the delisting application, and because the county failed to list them in the

notice of hearing, pursuant to ORS 197.835(4)(a) petitioner may raise new issues regarding compliance with these provisions before LUBA.

ORS 197.835(4) provides that LUBA has the discretion to refuse to allow new issues to be raised if it finds that the issue could have been raised before the local government. Petitioner does not explain why they could not have raised the issues raised in the first, second and third assignments of error regarding ORS 358.605, OAR 660-023-0200(7), ZDO 707.01. ZDO 707.04, ZDO 707.06, and ZDO 1004 during the proceedings before the county, in which petitioner participated at every level. Record 257-65, 386-425. Accordingly, we decline to allow petitioner to raise the unpreserved issues regarding ORS 358.605, OAR 660-023-0200(7), ZDO 707.01. ZDO 707.04, ZDO 707.06, and ZDO 1004 that are presented for the first time in the first, second and third assignments of error at LUBA.

In the alternative, and as respondents also recognize, the success of petitioner's argument that ORS 197.835(4)(a) allows them to raise new issues is also somewhat dependent on petitioner prevailing in their argument that ORS 358.605, OAR 660-023-0200(7), ZDO 707.01, ZDO 707.04, ZDO 707.06, and ZDO 1004 are criteria that apply to the application. Respondents respond that ORS 358.605, OAR 660-023-0200(7), ZDO 707.01, ZDO 707.04, ZDO 707.06, and ZDO 1004 are not "applicable criteria" that apply to the application.[3] For the

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[3] ORS 358.605, entitled "Legislative Purpose," provides:

"(1) The Legislative Assembly declares that the cultural heritage of Oregon is one of the state's most valuable and important assets, that the public has an interest in the preservation and management of all antiquities, historic and prehistoric ruins, sites, structures, objects, districts, buildings and similar places and things for their scientific and historic information and cultural and economic value, and that the neglect, desecration and destruction of cultural sites, structures, places and objects result in an irreplaceable loss to the public.

"(2) The Legislative Assembly finds that the preservation and rehabilitation of historic resources are of prime importance as a prime attraction for all visitors, that they help attract new industry by being an influence in business relocation decisions and that rehabilitation projects are labor intensive, with subsequent benefits of payroll and of energy savings, and are important to the revitalization of deteriorating neighborhoods and downtowns.

"(3) It is, therefore, the purpose of this state to identify, foster, encourage and develop the preservation, management and enhancement of structures, sites and objects of cultural significance within the state in a manner conforming with, but not limited by, the provisions of the National Historic Preservation Act of 1966 (P.L. 89-665; 54 USC 300101 et seq.)."

OAR 660-023-0200(7) provides:

"Historic Resource Protection Ordinances. Local governments must adopt land use regulations to protect locally significant historic resources designated under section (6). This section replaces OAR 660-023-0050. Historic protection ordinances should be consistent with standards and guidelines recommended in the Standards and Guidelines for Archeology and Historic Preservation published by the U.S. Secretary of the Interior, produced by the National Park Service."

ZDO 1004.02(B) provides the following historic protection standards:

reasons explained in the Joint Response Brief at 8-9 and 12-18, we agree with respondents that ORS 358.605, OAR 660-023-0200(7), ZDO 707.01, ZDO 707.04, ZDO 707.06, and ZDO 1004 are not criteria that apply to the application.

2. Goal 5

Also in the first, second, and third assignments of error, petitioner argues that the county erred in failing to apply the following language of Goal 5 to the application:

> "To protect natural resources and conserve scenic and historic areas and open spaces.
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> "Local governments shall adopt programs that will protect natural

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> "All developments shall be planned, designed, constructed, and maintained to assure protection of any designated historic or cultural resource on or near the site. Restrictions on development may include:
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> "1. Clustering of buildings and incorporation of historic-cultural resources into site design in a manner compatible with the character of such resources.
>
> "2. Limitations on site preparation and grading to avoid disturbances of areas within any historic or archaeological sites, monuments or objects of antiquity.
>
> "3. Provision of adequate setbacks and buffers between the proposed development and the designated resources."

ZDO 707.01 sets out the purpose of ZDO 707, the ZDO chapter governing Historic Landmarks, Historic Districts, and Historic Corridors. ZDO 707.04 sets out permitted and conditional uses of Historic Landmarks, and ZDO 707.06 sets out the review process for Historic Landmarks.

> resources and conserve scenic, historic, and open space resources for present and future generations. These resources promote a healthy environment and natural landscape that contributes to Oregon's livability."

We reject petitioner's argument. Goal 5 does not generally impose decisional criteria that are independent of the criteria set out in OAR 660-023-0000 to OAR 660-023-0250. *No Tram to OHSU v. City of Portland*, 44 Or LUBA 647, 671 (2003). Respondents respond, and we agree, that OAR 660-023-0200(9) is a rule that implements Goal 5 and allows the county to remove a property from its historic resources list if the circumstances detailed in the rule are met.

B. Procedural Issues

In overlapping arguments under the first and third assignments of error, petitioner also argues that the county committed a procedural error that prejudiced petitioner's and the public's substantial rights in failing to list the same laws detailed above in the notices of hearing. Petition for Review 7, 30 (citing Record 14-35, 188-97, 297, 371, 433-34).[4] The success of petitioner's argument is dependent on the success of their argument that the laws detailed above apply. Having concluded that the laws detailed above do not apply to the application to delist the property, we also conclude that the county did not commit a procedural error in failing to list them.

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[4] Petitioner references Record 14 to "end." Petition for Review 7. We understand petitioner to mean the end of the document at Record 14 to 35, and not the end of the entire record.

C. OAR 660-023-0200(9)(b)

We repeat OAR 660-023-0200(9)(b) here:

> "Except as provided in subsection (a), a local government may only remove a resource from the resource list if the circumstances in paragraphs (A), (B), or (C) exist.
>
> "(A) The resource has lost the qualities for which it was originally recognized; [or]
>
> "(B) Additional information shows that the resource no longer satisfies the criteria for recognition as a historic resource or did not satisfy the criteria for recognition as a historic resource at time of listing[.]"

We first note here, as respondents note in their brief, that subsection (A) and the first part of subsection (B) appear to overlap, because both address a situation in which something about the qualities of the historic resource that led it to be originally recognized has changed, and the result is that the resource "has lost" those qualities or, based on "additional information," it "no longer satisfies" the criteria for recognition.

The second part of OAR 660-023-0200(9)(b)(B) – "or did not satisfy the criteria for recognition as a historic resource at time of listing" – applies when "additional information" shows that the property "did not satisfy the criteria for recognition as a historic resource at time of listing." The second part of (B) appears to allow, and perhaps even require, the county to evaluate the original listing decision anew if "additional information" is presented with a delisting application or during the proceedings on an application to demonstrate that the original listing was erroneous "at the time of listing." The verb tense "did not

allow" together with the temporal phrase "at the time of listing" suggests a look-back process. That look back evaluation could result in a determination that the original score was erroneous.

The county adopted findings that concluded that delisting the property was authorized under OAR 660-023-0200(9)(b)(A) and the first part of (B). Record 15. The county found that the property "has lost the qualities for which it was originally recognized" because the farmhouse has been both altered from its original construction and it, as well as the water tower, have "seriously deteriorated in condition." *Id.* The county also found that because of the deteriorated condition of the structures, pursuant to the first part of OAR 660-023-0200(9)(b)(B), the property "no longer satisfies the criteria for recognition." *Id.* We do not understand the county to have concluded that delisting was appropriate under the second part of OAR 660-023-0200(9)(b)(B), discussed above.

We understand petitioner's third assignment of error to first argue that the county improperly construed OAR 660-023-0200(9)(b)(A) and (B) to authorize the county to approve delisting the property. Petitioner maintains that intervenors' neglect or, in the alternative, "deliberate destruction," caused the historic features of the property to be lost and caused the property to no longer satisfy the criteria for recognition. Petition for Review 25, 28. According to petitioner, the rule applies only in situations in which the qualities of a historic resource are "lost" and "no longer satisfy" the criteria due to natural events such

as "volcanic eruption, tornado or wildfire," and not what petitioner characterizes as "irresponsible and/or illegal behaviors such as neglecting 'the normal responsibilities of property owners[.]'"[5] Petition for Review 25 (internal citation omitted). Petitioner argues that the rule must be interpreted "so as not to undo Goal 5 and its preservation goal for designated historic resources or not create a loophole around the county's program for historic preservation" that would allow negligent deterioration of the resource that could lead to it to be delisted. Petition for Review 23.

Respondents respond, and we agree, that the plain language of the rule provides no support for petitioner's interpretation. The rule was adopted to provide express authority where none previously existed for local governments to choose to allow delisting under specified circumstances. The language of the rule gives local governments the authority to delist a property otherwise protected under a Goal 5 program if the resource qualities are "lost" or the property "no longer satisfies the criteria[,]" but does not otherwise cabin the local governments' discretion over how to determine if the resource qualities are lost

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[5] We note that nothing in the ZDO or state law requires a property owner to maintain its designated historic property in any particular condition. *See King v. Clackamas County*, 72 Or LUBA 143, 152 (2015) ("the preservation of historic resources depends heavily on the voluntary efforts and financial resources of property owners.").

or the property no longer satisfies the criteria.[6] OAR 660-023-0200(9)(b)(A), (B). Petitioner's interpretation of the rule would require us to insert words into the rule that are not a part of the rule, to say something to the effect of "lost due to natural events," or "lost but not due to neglect or deliberate action." (Underscoring for emphasis). We cannot insert what has been omitted. ORS 174.010. Absent any other argument to support petitioner's interpretation, we agree with respondents that the rule provides the county with the authority to delist the property if the circumstances in the rule are met and allows the county discretion in the method used to make that determination.

In another portion of the third assignment of error, we understand petitioner to argue that some factual findings regarding the condition of the structures on the property are not supported by substantial evidence in the record. Petitioner also asserts these challenges in the fourth assignment of error. We address those challenges in our resolution of the fourth assignment of error.

The first, second, and third assignments of error are denied.

FOURTH ASSIGNMENT OF ERROR

In the fourth assignment of error, petitioner argues that the county's decision approving delisting of the property is not supported by substantial

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[6] The administrative rule history provided by respondents explains that the Land Conservation and Development Commission (LCDC) specifically adopted the rule to allow local governments to delist properties that had previously been recognized for their historic qualities. Joint Response Brief App, at 31-32.

evidence in the whole record. ORS 197.835(9)(a)(C). Substantial evidence is evidence a reasonable person would rely on in making a decision. *Dodd v. Hood River County*, 317 Or 172, 179, 855 P2d 608 (1993). In reviewing the evidence, LUBA may not substitute its judgment for that of the local decision maker. Rather, LUBA must consider all the evidence to which it is directed, and determine whether based on that evidence, a reasonable local decision maker could reach the decision that it did. *Younger v. City of Portland*, 305 Or 346, 358-60, 752 P2d 262 (1988).

As explained above, ZDO 707.02(B) includes criteria for evaluating the historic significance of a property:

> "Historic Landmark: A site, structure, or object may be zoned Historic Landmark if it is listed on the National Register of Historic Places, or if it is rated as significant under the County's procedure for evaluating historic resources under the specific architectural, environmental, and historic association criteria. A site or structure must receive a minimum of 40 points under the following criteria to be considered for Historic Landmark status[.]" (Underscoring omitted.)

As noted, in the Original Decision, the property received 41 total points. Record 21. In the present decision, the board of county commissioners applied all of the criteria to consider whether the resource no longer met the criteria, and calculated a total score of 32 points. Record 34. For five criteria, ZDO 707.02(B)(1)(a), (1)(d), (2)(a), (2)(b), (2)(c), and (2)(d), the board of county commissioners assigned a lower score than was assigned in the 1990 listing decision. Record 21-22. Accordingly, the board of commissioners concluded, pursuant to the first part

of OAR 660-023-0200(9)(b)(B), that the property "no longer satisfies the criteria for recognition." Record 34 ("[t]he Board finds that the site no longer meets the sufficient number of evaluation criteria points for protection as a Clackamas County Historic Landmark."). For the remaining criteria, they did not change the score assigned in the 1990 decision. Petitioner challenges the county's scores assigned under ZDO 707.02(B)(1)(a), (1)(d), (2)(a), (2)(b), (2)(c), and (2)(d), as well as its score regarding ZDO 707.02(B)(3)(a), which remained the same as the score assigned in 1990 – zero.

A. ZDO 707.02(B)(1)(a)

ZDO 707.02(B)(1)(a) allows the county to assign up to 10 points if a property "is an early (50 years or older), or exceptional, example of a particular architectural style, building type, or convention." The board of county commissioners concluded that the resource warranted two points under this criterion. Record 22-24. We understand petitioner to argue that the property is "50 years or older" and therefore the board of commissioners' findings that the structures are not of an "early design" are inadequate to explain why the county assigned two points for this criterion. Record 22. The board of commissioners adopted two pages of findings explaining why it assigned two points for criterion (1)(a), concluding, in essence, that the property merits two points because the house "continues to present the essential form of a vernacular style dwelling with little detailing," but the house is so deteriorated that anything that evidenced a particular architectural style has been replaced or removed. Record 22. Petitioner

does not challenge any of those findings. Accordingly, petitioner has not established a basis for reversal or remand based on the assignment of two points for criterion (1)(a).

B. ZDO 707.02(B)(1)(d)

ZDO 707.02(B)(1)(d) allows the county to assign up to seven points if a property "retains, with little or no change, its original design features, materials, and character." Intervenors' consultants provided photographs of the water tower and farmhouse and a report regarding the condition of both, which demonstrated the degraded condition of both.[7] Petitioner argued to the board of county commissioners that based on their examination of the house and water tower from the right of way, the house is in "remarkably good repair." Record 26 (quoting petitioner's testimony before the HRB). The board of commissioners assigned four points for this criterion, concluding that the deterioration to the water tower in losing the third story and its operative elements, along with dry rotted wood, and deterioration of the farmhouse merited that number of points.[8]

We understand petitioner to argue that the board of commissioners' score of four points is not supported by substantial evidence in the whole record. Petition for Review 45. Petitioner's argument is difficult to follow, and includes vague references to other sections of the petition for review without identifying

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[7] The garage that was on the property in 1990 no longer exists. Record 26.

[8] The Original Decision assigned five points for this criterion. Record 26.

page numbers for where the arguments are located. As noted in our resolution of intervenors' motion to strike parts of the petition for review, we will address arguments included in a brief to the extent we can understand them, and we will not search the brief to make a party's argument for them. *Deschutes Development v. Deschutes Cty.*, 5 Or LUBA 218, 220 (1982)

We understand petitioner to disagree with the evidence introduced by intervenors and their consultants that the board of commissioners relied on to assign four points to this criterion. However, we have no trouble concluding that that evidence is evidence a reasonable person could rely on to conclude that four points was appropriate based on the condition of the property. Accordingly, petitioner has not established a basis for reversal or remand based on the assignment of four points for criterion (1)(d).

C. ZDO 707.02(B)(2)(a)

ZDO 707.02(B)(2)(a) allows the county to assign up to 10 points if a property is "a conspicuous visual landmark in the neighborhood or community." The board of county commissioners assigned three points for this criterion.[9] The board of commissioners first interpreted the word "conspicuous" to mean "'[o]bvious to eye or mind: plainly visible * * * attracting or tending to attract attention.'" Record 28. The board of county commissioners concluded that the structures are not conspicuous because they are not easily visible from the road

[9] The Original Decision assigned five points for this criterion. Record 28.

due to mature trees and vegetation along the road, and that the water tower is shorter after the collapse of the third floor. The board of county commissioners also concluded that the structures are "no longer visually attractive." *Id.* The board of commissioners relied on intervenors' consultants' testimony that the buildings are not easily visible or evident from the public right of way, and concluded that intervenors' consultants' evidence was more credible than petitioner's testimony. Record 29.

Petitioner disagrees with the board of county commissioners' decision to assign three points for this criterion. We have no trouble concluding that the board of county commissioners' decision to assign three points for criterion (2)(a) is supported by substantial evidence in the whole record. Accordingly, petitioner has not established a basis for reversal or remand based on the assignment of three points for criterion (2)(a).

D. ZDO 707.02(B)(2)(b)

ZDO 707.02(B)(2)(b) allows the county to assign up to four points if a property "is well-located considering the current land use surrounding the property, which contributes to the integrity of the pertinent historic period." The board of commissioners assigned a score of two points for this criterion.[10] The board of commissioners concluded that the property is surrounded by low density

[10] The Original Decision assigned three points for this criterion. Record 21-22.

suburban single family residential housing, which is "clearly at odds with the early 1900s rural, large acreage character." Record 30. Petitioner does not challenge those findings, but rather argues that nothing has changed to warrant a decrease from three points in the Original Decision to two points in the challenged decision, and therefore the decision to assign two points is not based on substantial evidence. However, petitioner does not dispute that the property is surrounded on three sides by residential lots that range from .4 acres to three acres in size. Record 30. Accordingly, the board of commissioners' decision is supported by substantial evidence in the whole record. Petitioner has not established a basis for reversal or remand based on the assignment of two points for criterion (2)(b).

E. ZDO 707.02(B)(2)(c)

ZDO 707.02(B)(2)(c) allows the county to assign up to 10 points if a property "consists of a grouping of interrelated elements including historic structures, plant materials and landscapes, viewsheds and natural features." The board of commissioners assigned four points for criterion (2)(c).[11] The board of commissioners found that some of the interrelated buildings mentioned in the Original Decision, including the house, water tower, cellar, and garage, were significantly deteriorated or partially collapsed, and the deteriorated dwelling and water tower "are the only remaining evidence of a farm complex." Record 30. In

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[11] The Original Decision assigned seven points for this criterion. Record 30.

particular, the board of commissioners noted that "the water tower has deteriorated to the point where it no longer serves as an 'interrelated element' of the overall site." *Id.* Petitioner challenges some parts of the findings that summarize intervenors' arguments, but does not otherwise challenge the board of commissioners' ultimate finding that the property merits four points for the criterion. Accordingly, petitioner's arguments challenging the score for criterion (2)(c) provide no basis for reversal or remand.

F. ZDO 707.02(B)(2)(d)

ZDO 707.02(B)(2)(d) allows the county to assign up to seven points if a property is "an important or critical element in establishing or contributing to the continuity or character of the street, neighborhood, or community." The board of commissioners assigned four points for criterion (2)(d).[12] Record 31. The board of commissioners concluded:

> "In 1990, the County HRB assigned a score of 5 points, but thirty years of wear, weathering, and neglect have reduced the condition of the site to the point that it no longer contributes much to the character of the changing Beavercreek community. See pictures in the record and the September, 2021 report from AKS Engineering and Forestry related to the site and the conditions of the buildings. *See also* remarks by the chair of the Board of Commissioners, stating the site is an 'eyesore' with buildings that are 'falling down.' Public hearing, February 9, 2022, at minute 49.00-50.00.
>
> "The capacity of the site to contribute to the continuity of character in the Beavercreek area has been diminished significantly as the

[12] The Original Decision assigned five points for this criterion. Record 31.

> identifiable structures on the property have deteriorated and the neighborhood becomes increasingly rural residential, with smaller parcels and much less commercial agriculture. Thus, the Board finds 4 is an appropriate rating." Record 31.

Petitioner argues that the board of commissioners' assignment of four points for criterion (2)(d) "violates the intent of [Statewide Planning] Goal 1 [(Citizen Involvement)]," because "[t]he Hamlet of Beavercreek, acting as a county Goal-1 citizen-involvement [community planning organization (CPO)], told the county it wanted the [h]istoric [l]andmark to remain." Petition for Review 44-45. Petitioner argues that the findings "fail to explain why the community's official input on what establishes or contributes to its own character should be ignored[.]" *Id.*

Petitioner does not challenge the board of commissioners' explanation for assigning four points for criterion (2)(d), or otherwise explain why the board of commissioners was required to either defer to the Beavercreek CPO's position, or adopt findings explaining its rejection of that position. More importantly, petitioner does not explain why Goal 1 (Citizen Involvement) applies at all to the decision, and does not identify where any issue regarding compliance with Goal 1 was preserved below. Accordingly, petitioner's arguments challenging the score for criterion (2)(d) provide no basis for reversal or remand.

G. ZDO 707.02(B)(3)(a)

ZDO 707.02(B)(3)(a) assigns up to 10 points if a property "is associated with the life or activities of a person, group, organization, or institution that has made a significant contribution to the community, state, or nation." During the

proceedings before the county, petitioner presented evidence that George Marshall, a person who made a significant contribution to the community, held title to the property at some time after 1850, before the property was purchased by Muralt in 1893 and before the house was constructed in 1905. Record 307-310. Petitioner also presented evidence that Shockley owned the property between 1910 and 1921, after the house was built, and argued that the Shockleys were persons who made a significant contribution to the community because three roads in the area are named for members of the Shockley family. Record 310. Petitioner argued that criterion (3)(a) warranted a score of 10 points, the maximum. Petitioner argues that the board of commissioners' decision to assign zero points for criterion (3)(a) is not supported by substantial evidence in the record.

The board of county commissioners evaluated the evidence presented by petitioner, and considered the staff's and the HRB's recommendations, and adopted findings explaining its decision to assign the property a score of zero points for this criterion.[13] The board of commissioners concluded that no evidence in the record established that Marshall had any association with the existing house, which was built in 1905, long after Marshall died in 1887. Lacking any association with the house, the board of commissioners concluded

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[13] This was the same score assigned in 1990. Record 32.

that a score of zero was appropriate. Petitioner disputes that evidentiary call. Petition for Review 38.

In the Original Decision, the county assigned a score of zero for this criterion. In the challenged decision, the county assigned a score of zero for this criterion. Accordingly, we note first that because the Original Decision did not find any basis under criterion (3)(a) for a HL designation, the board of county commissioners did not find that the resource "no longer meets" criterion (3)(a), within the meaning of the first part of OAR 660-023-0020(9)(b)(B). Because the property never met criterion (3)(a) in the Original Decision, the board of commissioners was not required to consider petitioner's evidence that criterion (3)(a) warranted a score of 10 points. However, the board of commissioners did consider petitioner's evidence, and adopted findings explaining why it did not consider that evidence particularly persuasive. We have no trouble concluding that a reasonable person could reach the conclusion that the board of commissioners reached. Accordingly, petitioner's arguments challenging the score for criterion (3)(a) provide no basis for reversal or remand.

The fourth assignment of error is denied.

The county's decision is affirmed.