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

AMANDA FEE,
Petitioner,

vs.

CITY OF ALBANY,
Respondent,

and

SCHNEIDER HOMES, INC.,
Intervenor-Respondent.

LUBA No. 2026-051

FINAL OPINION
AND ORDER

Appeal from City of Albany.

Amanda Fee filed the petition for review and argued on behalf of themselves.

No appearance by City of Albany.

Micheal M. Reeder filed the intervenor-respondent's brief and argued on behalf of intervenor-respondent.

WILSON, Board Chair; BASSHAM, Board Member; ZAMUDIO, Board Member, participated in the decision.

AFFIRMED 10/21/2026

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

Opinion by Wilson.

NATURE OF THE DECISION

Petitioner appeals a city council decision approving site plan review, natural resource impact review, and a tentative replat for a 108-unit multi-family development.

MOTION TO INTERVENE

Schneider Homes, Inc. (intervenor), the applicant below, moves to intervene on the side of respondent. There is no opposition to the motion, and it is granted.

FACTS

The subject property consists of three lots totaling 8.29 acres that are split zoned Mixed-Use Commercial (MUC) and Open Space (OS). The subject property is located south of 53rd Avenue and west of Highway 99E. The MUC portion of the property is approximately 3.75 acres and is located on the eastern side of the property. The western side of the property contains a creek and associated riparian area. Intervenor sought approval for a 108 multi-family dwelling unit development including applications for site plan review, natural resource impact review for the riparian area, and tentative plat review to consolidate the three existing lots into one lot. The planning commission approved the applications, and petitioner appealed the decision to the city council. The city council modified the planning commission's decision and approved the applications. This appeal followed.

FIRST ASSIGNMENT OF ERROR

Petitioner argues that the city's decision "is procedurally invalid and violates due process." Petition for Review 10.[1] Initially, although petitioner raises a "due process" issue, petitioner provides no argument for why "due process" was violated other than the alleged procedural errors. Therefore, any due process argument alleged in petitioner's first assignment of error is denied. *McKay Creek Valley Assoc. v. Washington County*, 19 Or LUBA 421, 432, *aff'd* 104 Or App 690, 803 P2d 753 (1990) (LUBA will only address developed arguments).

Petitioner alleges that the city committed three procedural errors: (1) reopening the matter after initially closing the matter; (2) allowing intervenor a rebuttal opportunity; and (3) not substantively deliberating on petitioner's appeal issues. The planning commission approved the applications. On appeal to the city council, four votes are required to pass a motion. The initial vote to modify and approve the planning commission decision was three to two in favor. Under the city's procedures, this results in no decision and the planning commission decision stands. The city council then concluded the matter and moved on to other business. Later in the city council meeting, in response to suggestions made during the public comment section of the meeting, the city council voted to reopen deliberations on this matter and approved the decision at issue with four

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[1] All references to the Petition for Review are to the Second Corrected Petition for Review.

votes in favor. During the initial portion of the public hearing (when petitioner was present), intervenor was given the opportunity for final rebuttal. During the deliberations, petitioner alleges that the city councilors did not meaningfully engage in discussions of any the appeal issues raised by petitioner. According to petitioner all three of these actions constitute procedural errors.

Initially, intervenor argues that petitioner failed to object to the alleged procedural errors below and therefore the issues are not preserved for appeal. Parties who seek to raise procedural errors on appeal are obligated to object to those alleged errors below, if there is opportunity to do so. *Carrigg v. City of Enterprise*, 48 Or LUBA 328, 334 (2004); *Mazeski v. Wasco County*, 26 Or LUBA 226, 232 (1993). While it is perhaps understandable why petitioner thought the matter had been concluded and left the public hearing, petitioner could have remained at the hearing and had the opportunity to object to the alleged procedural errors. Therefore, we agree that petitioner failed to preserve the issues on appeal.

Even if petitioner had preserved the issues on appeal, petitioners must also explain how an alleged procedural error prejudiced their substantial rights. *Deumling v. City of Salem*, 76 Or LUBA 99, 125, (2017). Substantial rights are the right to an adequate opportunity to prepare and submit one's case and to a full and fair hearing. *Muller v. Polk County*, 16 Or LUBA 771, 775 (1988). Petitioner does not explain how the alleged procedural errors prejudiced her substantial rights. Therefore, petitioner's arguments do not provide a basis for remand.

Finally, even if petitioner had objected below and argued that the alleged procedural errors prejudiced her substantial rights, we agree with intervenor that petitioner does not cite to any applicable procedures that the city allegedly violated in reopening the hearings, allowing applicant rebuttal, or in failing to discuss petitioner's appeal issues in deliberations. Therefore, petitioner fails to establish that the city committed any procedural errors.

The first assignment of error is denied.

SECOND ASSIGNMENT OF ERROR

Petitioner's second assignment of error is that the city council "acknowledged potentially applicable code standard but approved project without resolving whether it applies." Petition for Review 14. According to petitioner, during deliberation at the city council meeting, one of the city councilors questioned the applicability of a code provision. As intervenor points out, there are a number of problems with this assignment of error. Initially, the petition for review does not assert what potentially applicable code provision was not correctly applied or not applied. We will not review insufficiently developed arguments. *Deschutes Development v. Deschutes Cty.*, 5 Or LUBA 218, 220 (1982).

Secondly, the alleged question of whether a code provision applies was only raised in a city councilor's statements – not the city's decision. We generally review the written decision for errors, not statements made by the decision makers during the proceedings. *Rawson v. Hood River County*, 77 Or LUBA 415,

424 (2018). Even if petitioner's assertions were correct, the city councilor's statements would not provide a basis for reversal or remand.

Finally, as intervenor explains, there is no ambiguity regarding the applicability of the code provision that petitioner apparently alludes to, which is Albany Development Code (ADC) 5.070(17)(a). That code provision provides, in pertinent part:

> "In MUC districts *located east of Interstate 5*, new development of Residential Use Categories is only permitted in conjunction with a primary use from the Commercial or Industrial Use Categories unless located in a [Climate Friendly Area (CFA)] overlay district. The new residential use must be in the same building or on the same property as the primary non-residential use." (Emphasis added.)

The statements from the city councilor that petitioner cites question whether the code should be amended to require that residential uses *west* of Interstate 5 should also be required under the code to be combined with commercial or industrial uses. The subject property is *west* of Interstate 5, so ADC 5.070(17)(a) does not apply to require commercial or industrial use of the property as well. While the city could amend its code, the current version of the code does not require the subject property to include a commercial or industrial use. The city did not misconstrue the law or fail to address the applicability of ADC 5.070(17)(a).

The second assignment of error is denied.

THIRD ASSIGNMENT OF ERROR

Petitioner's third assignment of error is that the "[t]raffic analysis is not supported by substantial evidence." Petition for Review 16. Substantial evidence is evidence that 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, 725 P2d 262 (1988).

ADC 2.450 provides the site plan approval criteria. ADC 2.450(9) requires that:

> "The Public Works Director has determined that transportation improvements are available to serve the proposed development in accordance with [ADC] Article 12 or will be available at the time of development."

The city adopted five pages of findings explaining how this approval criterion is satisfied. As best we can tell, petitioner is arguing that the city's findings are not supported by substantial evidence for three reasons: (1) the traffic counts used in the transportation impacts analysis (TIA) were not consistent with the scoping instructions from staff; (2) the TIA was based on incorrect assumptions about ingress and egress to the property; and (3) the city

acknowledged that the TIA was insufficient but did not want to wait until a better study was conducted.

First, petitioner argues that the city's traffic engineer directed intervenor to conduct its traffic study "while school is still in session." Record 1072. Petitioner asserts that the traffic counts were conducted during the summer after the K-12 school year had concluded. According to petitioner, because the TIA was not conducted in accordance with the city's scoping instructions the TIA is not substantial evidence to justify compliance with traffic impact requirements.

Initially, as intervenor points out, inconsistency with scoping instructions is not an independent basis for reversal or remand unless it relates to an approval criterion, and petitioner fails to identify an approval standard that requires strict compliance with scoping instructions. *See Schellenberg v. Polk County*, 22 Or LUBA 673, 679 (1992) (LUBA can only grant relief if a petitioner demonstrates that an applicable approval criterion is violated). Secondly, the TIA traffic counts were conducted while both Linn Benton Community College and Oregon State University were in session. Record 1048. The city's traffic engineer's scoping instructions do not specify what "schools" should be in session for the traffic counts. Finally, the city's detailed findings explain how ADC 2.450(9) is satisfied and petitioner does not specifically challenge those findings. A reasonable person could rely on the TIA and the city's analysis to conclude that ADC 2.450(9) is satisfied.

Petitioner also argues that the TIA was based on inaccurate assumptions about ingress and egress for the property. According to petitioner, the TIA was based upon assumptions that 30 percent of the vehicle trips would access Highway 99E via the adjoining property to the east. While the original TIA was based on that assumption, an updated TIA was prepared which analyzed traffic counts based on all trips accessing Highway 99E from the subject property. Record 1041-51. The city's traffic engineer reviewed and concurred with the updated TIA. The city's findings are based upon the updated TIA showing that with all trips accessing Highway 99E from the subject property ADC 2.450(9) is satisfied. Record 55-59. Petitioner neither acknowledges nor challenges the updated TIA. A reasonable person could rely on the updated TIA and the city's engineer's concurrence with that analysis to find that ADC 2.450(9) is satisfied.

Finally, petitioner argues that the city acknowledged that a more comprehensive traffic study is needed for the area and stated its intention to conduct a study in the future. According to petitioner, a TIA acknowledged to be insufficient is not substantial evidence for demonstrating compliance with ADC 2.450(9). Petitioner's arguments are difficult to follow. As best we can tell, intervenor is correct that petitioner misunderstood the comments made by city councilors. As intervenor explains, one city councilor was asking whether the TIA evaluated emergency evacuation scenarios or routine traffic. Intervenor-Respondent's Brief 27-28. City staff then explained that there were improvements made through a local improvement district to create emergency

access lanes on both sides of 53rd Avenue. At no point did any city councilor or staff member state that a more comprehensive traffic study was needed for the area to evaluate the subject applications.

As intervenor also explains, petitioner could be referring to comments made later in the proceeding regarding whether the proposed development might adversely affect future development of 53rd Avenue. Intervenor-Respondent's Brief 28-29. The "more comprehensive traffic study" could refer to a transportation system plan (TSP) update planned for 2026 which was discussed at the hearing. Any concerns about a future TSP update are not approval criteria for the subject applications. In any event, petitioner has not explained how the TIA relied upon by the city is based upon an inadequate traffic study. As explained earlier, the updated TIA and city engineering conclusions are evidence a reasonable person could rely on to find that ADC 2.450(9) is satisfied. The city's decision is supported by substantial evidence.

The third assignment of error is denied.

FOURTH ASSIGNMENT OF ERROR

Petitioner's fourth assignment of error is that "[u]nconfirmed access easement undermines traffic analysis and approval." Petition for Review 19. This assignment of error suffers from the same problem as petitioner's second argument under the third assignment of error. Petitioner's argument is based on the mistaken premise that the TIA assumes 30 percent of the vehicle trips will access 53rd Avenue through the adjoining property, when in fact the decision

eliminated the initial proposal to allow access through the adjoining property. As explained earlier, the updated TIA is based on all of the trips accessing 53rd Avenue from the subject property. Therefore, petitioner's argument provides no basis for reversal or remand.

The fourth assignment of error is denied.

FIFTH ASSIGNMENT OF ERROR

Petitioner's fifth assignment of error is that "[e]mergency access and neighborhood safety not adequately evaluated." Petition for Review 20. Petitioner's arguments are vague statements about safety concerns, including emergency evacuation for other communities. Petitioner does not identify any specific approval criteria that require an "evaluation of emergency evacuation capacity" or an ability to accommodate "simultaneous evacuation." While petitioner cites broad ADC and Oregon Fire Code provisions, the arguments make no attempt to tie those provisions to emergency access and neighborhood safety. Petitioner's arguments are not sufficiently developed for review and do not provide a basis for reversal or remand. *Deschutes Development*, 5 Or LUBA at 220.

The fifth assignment of error is denied.

SIXTH ASSIGNMENT OF ERROR

Petitioner's sixth assignment of error is that "[n]atural resource impact review not supported by substantial evidence." Petition for Review 22. According to petitioner, a condition of approval requiring Department of State

Lands (DSL) wetland delineation prior to development is an improper deferral. Petitioner also argues that the natural resources impact review does not address indirect impacts from the proposed development.

Condition of approval 21 requires intervenor to obtain DSL concurrence on the submitted wetlands delineation prior to obtaining a development permit. Record 64. Petitioner does not explain what approval criterion requires DSL to concur at this stage of the proceeding or prior to the issuance of a building permit. Petitioner's argument is not sufficiently developed for review and does not provide a basis for reversal or remand. *Deschutes Development*, 5 Or LUBA at 220.

Petitioner also argues that the city's decision fails to address a host of impacts. The alleged impacts that petitioner argues are not addressed include "indirect impacts" from various sources, such as lack of soil testing, contaminant screening, and long-term hydrology monitoring. Petitioner, however, provides no citation to any approval criteria that require consideration of such "indirect impacts." The only approval criteria identified by petitioner are ADC 6.310(A)(3) to (5), but nothing in those approval criteria concern "indirect impacts." The only mention of impacts is ADC 6.310(A)(4), which provides: "Any proposed impacts to significant natural resources will be mitigated per the standards in Section 6.400 and 6.410."

Initially, ADC 6.310(A)(4) concerns "impacts" not "indirect impacts." Secondly, ADC 6.310(A)(4) requires mitigation according to ADC 6.400 and

6.410. There are four pages of findings regarding mitigation pursuant to ADC 6.400 and 6.410. Record 66-69. Petitioner neither acknowledges nor challenges those findings. Petitioner's arguments therefore do not provide a basis for reversal or remand. *Ettro v. City of Warrenton*, 53 Or LUBA 485, 501-502 (2007) (where arguments do not address or challenge findings regarding the issue raised, the assignment of error will be denied).

The sixth assignment of error is denied.

SEVENTH ASSIGNMENT OF ERROR

Petitioner's seventh assignment of error is that "[c]compatibility with adjacent commercial use not demonstrated, and known buffering deficiency was expressly deferred outside the decision." Petition for Review 24.

A. First Subassignment of Error

Petitioner argues that the city's decision that the applications meet the buffering requirements of ADC Table 9.210-1 is not supported by substantial evidence. The applications must comply with all applicable on-site development and environmental standards in ADC Article 9. Table 9.210-1 requires a 10-foot buffer between multiple dwelling units and commercial uses. The city's findings regarding compliance with Table 9.210-1 for the area between the multiple dwelling units and the adjoining commercial use state:

> "According to Table 9.210-1 a 10-foot wide landscape buffer is required between multiple dwelling units and commercial uses. [Intervenor's] submittal did not include landscape details addressing this buffering standard. Buffer areas may be occupied by screening,

> sidewalks, bikeways, landscaping, and approved vegetated post-construction stormwater quality facilities. The March 30, 2026 site plan shows a 10-foot wide bicycle and pedestrian facility bordered by [a] one-and-a-half landscaping strip. The details did not include landscaping details to meet this standard." Record 52.

Petitioner argues that the findings do not demonstrate that the buffering requirement is met. According to petitioner, there is not substantial evidence to support the finding that the buffering standard is satisfied.

Intervenor argues that the landscape plans show a 10-foot walk and bike way and landscaping, as well as play areas and stormwater planters along the property line between the adjoining commercial use. Record 98. Table 9.210-1 merely requires 10 feet of buffering, and as the findings explain, the buffering need not be landscaping. The buffering can also consist of screening, sidewalks, bikeways, or approved vegetated post-construction stormwater quality facilities. As intervenor explains, the 10-foot bicycle and pedestrian facility by itself satisfies the buffering requirement of Table 9.210-1. The fact that the additional, unrequired 1.5-foot landscaping area details were not described (although intervenor argues that they were) does not change the fact that Table 9.210-1 is satisfied and does not provide a basis to reverse or remand the decision. Although the findings are confusing and inartfully phrased, we agree with intervenor that satisfaction of the 10-foot buffering requirement of Table 9.210-1 is supported by substantial evidence.

The first subassignment of error is denied.

B. Second Subassignment of Error

Petitioner argues that the decision fails to demonstrate compliance with the screening requirements of Table 9.210-1 by not requiring a berm between the proposed development and the adjoining commercial use. According to petitioner, the city council discussed requiring a berm but improperly deferred a decision on the berm to a subsequent informal process.

Intervenor explains, however, that a berm is not required. Table 9.210-1 provides the screening and buffering requirements. The table provides the required distance for buffering, in the present case 10 feet, and then notes additional requirements that apply to specific proposed uses and their abutting use or zoning district. For some proposed uses, an "S" is noted indicating that screening is also required.[2] For multiple dwelling units abutting commercial uses there is no "S" noted. Therefore, the present applications were not required to provide screening. Accordingly, petitioner's argument does not provide a basis for reversal or remand.[3]

The second subsassignment of error is denied.

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[2] Screening is a different requirement than buffering.

[3] Additionally, as intervenor points out – even if the screening standards of ADC 9.250 applied, they are satisfied by a 5-foot fence proposed between the uses. ADC 9.250(2).

C. Third Subassignment of Error

Petitioner argues that even if a berm had been required it would be insufficient to provide adequate screening. Initially, as explained earlier, a berm is not required. Therefore, petitioner's argument does not provide a basis for reversal or remand. Even if a berm were required and proposed, ADC 9.250(3) provides that a berm is an acceptable method of screening. That petitioner disagrees with the ADC on what constitutes adequate screening is also not a basis for reversal or remand.

The third assignment of error is denied.

The seventh assignment of error is denied.

EIGHTH ASSIGNMENT OF ERROR

Petitioner's eighth assignment of error is that "[w]indow proximity to sidewalk not evaluated for privacy and design compatibility." Petition for Review 27. Petitioner argues that an architect testified at the public hearing that "windows on the ground floor are 12 inches away from sidewalks" and "privacy is needed as well as safe and efficient parking areas." *Id.* According to petitioner, because no findings address the architect's comments the decision is not supported by substantial evidence.

Petitioner cites ADC 8.200 to 8.305 as the approval criteria that are not supported by substantial evidence due to failing to address the architect's comments. ADC 8.200 to 8.305 provide the design standards for multi-family dwellings and encompass 12 pages of the ADC. Petitioner does not explain which

of the voluminous design standards are implicated by the architect's comments, and we do not see that they are. Petitioner has the responsibility of identifying which approval standards are not supported by substantial evidence. *Schellenberg*, 22 Or LUBA at 679. Furthermore, the findings specifically address the design standards. Record 42-44. Petitioner neither addresses nor challenges those findings. Petitioner's arguments therefore do not provide a basis to reverse or remand the decision. *Ettro*, 53 Or LUBA at 501-502.

The eighth assignment of error is denied.

NINTH ASSIGNMENT OF ERROR

Petitioner's ninth assignment of error is that "[f]uture street extension and long-term transportation planning not addressed." Petition for Review 28. Petitioner argues that the city's TSP contemplates an internal connection between 53rd Avenue and Highway 99E across the subject property. According to petitioner, the applications do not preserve this connection and the findings do not demonstrate compliance with long-term planning obligations, thus, the applications do not comply with ADC 12.090 to 12.110.

Initially, ADC 12.090 to 12.110 encompasses three pages of the ADC and concern topics such as creation of access easements, access to public streets, and street location, width, and grade. ADC 12.100 alone has eleven subsections. Petitioner does not attempt to explain which of these multiple code provisions the decision does not address or is not supported by substantial evidence. Petitioner's

arguments are not sufficiently developed for review. *Deschutes Development*, 5 Or LUBA at 520.

Additionally, the transportation-related findings are discussed under the site plan review approval criteria at Record 55-59. Those findings discuss the extension/internal connector mentioned by petitioner and explain how the proposed development satisfies the applicable approval criteria. Record 57-58. Petitioner neither acknowledges nor challenges those findings. Petitioner's arguments therefore do not provide a basis to reverse or remand the decision. *Ettro*, 53 Or LUBA at 501-502.

Finally, intervenor explains that the findings demonstrate that the proposed development is consistent with the TSP, and petitioner does not challenge those findings. Intervenor-Respondent's Brief 50 (citing Record 58). As intervenor further explains, the TSP does not show any roads planned to run through the subject property. *See* TSP Figure 7-4. The TSP does, however, show a planned extension of 53rd Avenue *east* of Highway 99E (the subject property is *west* of Highway 99E). Therefore, any lack of a connection through the subject property is not inconsistent with the TSP. Petitioner's arguments do not provide a basis for reversal or remand.

The ninth assignment of error is denied.

TENTH ASSIGNMENT OF ERROR

Petitioner's tenth assignment of error is that the "[d]ecision-makers did not have adequate opportunity to review the complete record." Petition for Review

30. Petitioner argues that the city council did not spend enough time deliberating on the decision, including petitioner's arguments.

Petitioner's arguments are derivative of her third argument under the first assignment of error and are denied for the same reasons as explained earlier. Even if petitioner had objected below and had explained how her substantial rights were prejudiced, petitioner does not explain what procedure the city violated. Petitioner cites no code provision or tenet of law that requires a decision maker to engage in any particular amount of depth or time in deliberating on a proposed application.

The tenth assignment of error is denied.

The city's decision is affirmed.

Certificate of Mailing

I hereby certify that I served the foregoing Final Opinion and Order for LUBA No. 2026-051 on October 21, 2026, by mailing to said parties or their attorney a true copy thereof contained in a sealed envelope with postage prepaid addressed to said parties or their attorney as follows:

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Dated this 21st day of October, 2026.

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