

1 Friends of Animals, Inc., whose purposes are adverse to that of the
2 Petitioner." Motion to Take Evidence Into the Record 3-4.

3 As respondent points out in opposing petitioner's motion, it is not clear whether petitioner
4 contends Chairperson Westbrook's error in this matter is an "undisclosed ex parte contact or
5 actual bias" or both.¹

6 According to petitioner's motion, the purposes of CCFOA include "stopping the abuse
7 of animals, spaying, responsible pet ownership, [and] reduction in the number of unwanted
8 animals through spay and neuter programs * * *." Motion to Take Evidence Into the Record

9 2. Dr. Pope, one of the local appellants and an intervenor-respondent in this appeal, is the
10 president of CCFOA; Chairperson Westbrook is the secretary of CCFOA. However, the
11 significance of these facts is not apparent. CCFOA was not a party below and is not a party
12 to this consolidated appeal. Neither does petitioner allege that CCFOA took a position in the
13 local land use proceedings that led to this appeal.

14 Petitioner acknowledges in an affidavit attached to its motion that "Ms. Westbrook
15 disclosed that Dr. Pope was her pets' veterinarian and that she served on a non-profit
16 corporation with him, and tried to limit her ex parte contacts." Affidavit in Support of

¹We do not understand petitioner to allege that Chairperson Westbrook has a conflict of interest in this matter. The alleged facts that petitioner seeks to established are summarized below:

1. Chairperson Westbrook is one of the original incorporators of Clatsop County Friends of Animals, Inc (hereafter CCFOA) and the current secretary and a board member of that organization.
2. Intervenor-respondent Dr. Brad Pope is the president of CCFOA.
3. Chairperson Westbrook did not disclose the above alleged facts during the local proceedings in this matter. Petitioner alleges this lack of disclosure prevented petitioner from asking questions about Chairperson Westbrook's impartiality or possible ex parte contacts in this matter.
4. CCFOA's interests are opposed to petitioner's interests in having the raising of dogs found to constitute animal husbandry.
5. Chairperson Westbrook as a member of CCFOA may have been authorizing payment of money to petitioner's opponents and may have had undisclosed ex parte contacts with those opponents.

Petitioner requests that LUBA authorize petitioner's attorney to issue subpoenas to discover the minutes, membership list and financial records of CCFOA to establish that Chairperson Westbrook has undisclosed financial interests and ex parte contacts in this matter that could provide a basis for reversal or remand.

1 Motion to Take Evidence Into the Record 2. However, petitioner argues that Chairperson
2 Westbrook's disclosure was not sufficient to fully disclose her personal interest in the group
3 or to allow questions about possible ex parte contacts.

4 Petitioner's motion is based solely on Chairperson Westbrook's association with one
5 of the local opponents of petitioner's application and her association with CCFOA. For the
6 reasons explained below, we conclude that neither Chairperson Westbrook's association with
7 CCFOA nor her association with Dr. Pope justify our consideration of evidence outside the
8 record in this appeal.

9 Planning commission members, members of local government governing bodies and
10 other local land use decision makers frequently have personal or business associations with
11 organizations that have views on land use issues. See Eastgate Theater v. Bd. Of County
12 Comm'rs, 37 Or App 745, 752, 588 P2d 640 (1978) ("A county commissioner * * * is
13 expected to be intensely involved in the affairs of the community."); Schneider v. Umatilla
14 County, 13 Or LUBA 281, 284 (1985) ("Inferences of favoritism toward one side or another
15 are insufficient" to disqualify a local land use decision maker.); Gearhard v. Klamath County,
16 7 Or LUBA 27, 35 (1982) (same); Miller v. Portland, 2 Or LUBA 363, 367-68 (1981)
17 (same). Chairperson Westbrook's alleged associations, in and of themselves, are not a
18 sufficient reason for this Board to consider evidence outside the record or to allow
19 petitioner's request for discovery to explore whether those associations may have resulted in
20 improper contacts or bias in this land use proceeding. A petitioner moving to present
21 evidence of ex parte contacts or bias must offer some substantial reason to believe that
22 evidence of such ex parte contacts or bias can be established and that such ex parte contacts
23 or bias would lead to reversal or remand. Pfahl v. City of Depoe Bay, 16 Or LUBA 1073,
24 1074-75 (1988); Lane County School Dist. 71 v. Lane County, 15 Or LUBA 608, 609-10
25 (1987). Petitioner offers no such reason here; petitioner's motion is based entirely on
26 unsupported speculation. Petitioner first speculates that CCFOA, which is not a party and

1 apparently has not taken a position on the disputed application, in fact opposes petitioner's
2 application. Petitioner further speculates that Chairperson Westbrook's membership in
3 CCFOA may have resulted in ex parte contacts and bias or both. Petitioner's speculations
4 based on Chairperson Westbrook's association with CCFOA are not a sufficient basis for
5 LUBA to grant petitioner's motion to take evidence not in the record.

6 Petitioner's allegations that Dr. Pope is president of CCFOA and Chairperson
7 Westbrook's veterinarian are an even more tenuous reason for granting petitioner's motion.
8 Chairperson Westbrook disclosed during the local proceedings that she served on a non-
9 profit corporation with Dr. Pope and disclosed that Dr. Pope was her veterinarian. Petitioner
10 does not explain why it could not have made inquires following Chairperson Westbrook's
11 disclosures during the local proceedings about these associations and contacts to determine
12 whether they may have resulted in any improper ex parte contacts or bias. See Jones v. Lane
13 County, 27 Or LUBA 654, 657 (1994) (failure to object locally to the completeness of a
14 decision maker's ex parte contact disclosure precludes evidentiary hearing at LUBA to
15 present evidence of the ex parte contact); Union Station Bus. Community Assoc. v. City of
16 Portland, 14 Or LUBA 556, 558-59 (1986) (same). Petitioner failed to explore its concerns
17 about ex parte contacts or bias on the part of Chairperson Westbrook during the local
18 proceedings to determine if there was a factual basis for those concerns, and we do not
19 believe our consideration of evidence outside the record is warranted to do so now.

20 Petitioner's motion to take evidence not in the record is denied. Respondent's brief is
21 due 21 days from the date of this order.

22 Dated this 5th day of March, 1999.

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Michael A. Holstun
Board Chair