

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

NORBERT J. VOLNY, JOAN VOLNY,)
NORBERT A. VOLNY and SBV SALES, INC.,)
Petitioners,)

and)

TIMOTHY L. ROBINSON, JILL C. LANG,)
LYNN M. PICKNEY, RICHARD C.)
ROBINSON, JR., HARVEY M. WATT,)
MARCIA ROSE, WILLIAM G. ELLIS and)
BETTY ELLIS, Co-Trustees of the William and)
Betty Ellis Revocable Trust u/t/a dated October)
8, 1990, DONALD O. CARLSON, SHIRLEY)
J.T. CARLSON, RICHARD L. CARLSON,)
SCOTT D. CARLSON, JILL M. CARLSON,)
RANDIE S. CARLSON, TONI M.)
CARLSON, GLADYS STEINLICHT,)
LEONARD PEVERIERI, and KENT COUCH,)

Intervenors-Petitioner,)

vs.)

CITY OF BEND,)

Respondent.)

NORBERT J. VOLNY, JOAN VOLNY,)
NORBERT A. VOLNY and SBV SALES, INC.,)

Petitioners,)

and)

TIMOTHY L. ROBINSON, JILL C. LANG,)
LYNN M. PICKNEY, RICHARD C.)
ROBINSON, JR., HARVEY M. WATT,)
MARCIA ROSE, WILLIAM G. ELLIS and)
BETTY ELLIS, Co-Trustees of the William and)
Betty Ellis Revocable Trust u/t/a dated October)
8, 1990, DONALD O. CARLSON, SHIRLEY)

LUBA No. 98-210

ORDER ON
RECORD OBJECTION

LUBA No. 98-215

1 J.T. CARLSON, RICHARD L. CARLSON,)
 2 SCOTT D. CARLSON, JILL M. CARLSON,)
 3 RANDIE S. CARLSON, TONI M.)
 4 CARLSON, GLADYS STEINLICHT,)
 5 LEONARD PEVERIERI, and KENT COUCH,)
 6)
 7 Intervenor-Petitioner,)
 8)
 9 vs.)
 10)
 11 DESCHUTES COUNTY,)
 12)
 13 Respondent.)
 14

15 On March 2, 1999, this Board issued an order noting that it had received what
 16 appeared to be both sets of records in this consolidated appeal, thus resolving petitioners'
 17 precautionary record objection. On March 16, 1999, petitioners filed eight objections to the
 18 consolidated record, arguing that the record did not contain certain items.

19 The county responds that each of petitioners' objections relates to items or documents
 20 within the possession of the city. The city responds by submitting a supplemental record that
 21 responds to objections 1 and 3 through 8. With respect to objection 2, which relates to tape
 22 recordings of hearings before the city council, the city argues that it is not required by law to
 23 make tape recordings of its meetings and thus is not required to include such tape recordings
 24 in the local record filed with LUBA.

25 On April 22, 1999, petitioners filed four objections to the supplemental record filed
 26 by the city, arguing that the supplemental record does not contain certain items requested in
 27 the original objection to the record. We now address any unresolved objections in both sets
 28 of record objections.

29 **Objection 1 (Transportation Plans)**

30 Petitioners' original objection 1 requested all transportation system plans in existence
 31 from 1993 to 1998. The city responded by submitting two street policies in the supplemental
 32 record. Petitioners now object that the supplemental record does not contain certain

1 identified maps and transportation documents. Petitioners do not argue that the identified
2 maps and documents were submitted into the record below, only that the maps and
3 documents constitute official city transportation plans that the decision makers must have
4 relied upon. The city responds by identifying the location of certain requested maps and
5 documents in the original record, and denying the existence of others.

6 We agree with the county that the requested transportation plans and maps, to the
7 extent they exist, are legislative enactments that need not be included in the record, but which
8 the Board may take official notice of pursuant to OEC 202.¹ Sunburst II Homeowners v.
9 City of West Linn, 18 Or LUBA 695, 698 (1990). However, because petitioners do not claim
10 that the disputed plans and documents were placed before the final decision maker to be
11 included in the local record, this record objection is denied.

12 **Objection 2 (Hearing Tapes)**

13 Petitioners' original and supplemental objection 2 relate to the absence of tape
14 recordings of relevant city council hearings from the record and supplemental record. The
15 city responds that LUBA's rules do not require it to submit such tape recordings, because
16 such recordings are not "required by law." Response to Petitioners' Objection to the
17 Supplemental Record 3. The city presumably refers to OAR 661-010-0025(1)(c), which
18 requires in relevant part that

19 "The [local government] record [in a LUBA appeal] shall include at least the
20 following:

21 "* * * * *

22 "(c) Minutes and tape recordings of the meetings conducted by the final
23 decision maker as required by law. * * *"

¹It is generally the responsibility of the respondent to ensure that LUBA has before it a complete and current set of relevant legislative enactments (comprehensive plan, zoning ordinance, functional plans, etc.) prior to oral argument. Any such enactments already included in the record or supplemental record need not be submitted separately.

1 The city is incorrect. In Ramsay v. Linn County, 29 Or LUBA 559, 560 (1995), we noted the
2 ambiguity in the text of OAR 661-010-0025(1)(c), but interpreted that rule to require that the
3 local government include in the record any tape recordings of meetings conducted by the
4 final decision maker, regardless of whether the local government was required under statute
5 to record those meetings. Consequently, we agree with petitioners that the city must include
6 any tape recordings of relevant hearings conducted by the city council in the record. The city
7 shall do so by listing those tapes, if any, on a revised table of contents for the supplemental
8 record, and bringing the tapes to oral argument, pursuant to OAR 661-010-0025(3) and
9 (4)(a)(B).

10 This record objection is sustained.

11 **Objection 7 (Exhibits)**

12 Petitioners' original objection 7 requests that the city include in the record all exhibits
13 placed before the city council on October 14, 1998. The city included those exhibits its
14 supplemental record, but did not list them separately in the table of contents. Petitioners now
15 argue, and we agree, that the city must list the exhibits separately on a revised table of
16 contents for the supplemental record, pursuant to OAR 661-010-0025(4)(a)(B).

17 This record objection is sustained.

18 **Objection 8 (Plan Revisions)**

19 Petitioners' original objection 8 requested that the record be supplemented with plan
20 revisions made between the October 14, 1998 hearing and the city's adoption of the Final
21 Bend Area Plan on November 18, 1998, as described in a November 18, 1998 memorandum,
22 which petitioners also requested be included in the record. The city responded that the plan
23 revisions are in the record at Record 238. Petitioners continues to object to the absence of
24 the November 18, 1998 memorandum. The city responds that the memorandum was
25 inadvertently omitted from the supplemental record, and offers to submit a copy of that
26 memorandum.

1 This record objection is sustained.

2 In submitting the revised table of contents required above, the city should also revise
3 the table of contents to list the November 18, 1998 memorandum. Further, the November 18,
4 1998 memorandum must be submitted as a second supplemental record, so that the parties
5 and the Board have a means of citing to it.

6 The record will be settled when the Board receives from the city a revised table of
7 contents and second supplemental record responsive to the record objections sustained above.

8 Dated this 11th day of May, 1999.

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Tod A. Bassham
Board Member