

1 BEFORE THE LAND USE BOARD OF APPEALS  
2 OF THE STATE OF OREGON  
3

4 JEFFREY E. BOLY, ARLINGTON HEIGHTS )  
5 NEIGHBORHOOD ASSOCATION, )  
6 NEIGHBORS WEST/NORTHWEST DISTRICT )  
7 COALITION, JERALD M. POWELL, and )  
8 GOOSE HOLLOW FOOTHILLS LEAGUE, )  
9 )

10 Petitioners, )

11 )  
12 vs. )

13 ) LUBA No. 99-071  
14 CITY OF PORTLAND, )

15 )  
16 Respondent, )

17 )  
18 and )

19 )  
20 METRO, )

21 )  
22 Intervenor-Respondent. )  
23

ORDER ON  
RECORD OBJECTION

24 Petitioners object to the record filed by the city in this matter. Under OAR 661-010-  
25 0025(4)(a)(E), the local government record in a LUBA appeal is to "[b]e arranged in inverse  
26 chronological order, with the most recent item first." Petitioners object that the record filed  
27 by the city in this matter does not comply with this requirement.

28 The first three items in the record are all dated April 1, 1999. Record Item 2 is the  
29 challenged hearings officer's decision, and forms the bulk of the record.<sup>1</sup> The hearings  
30 officer's decision lists a large number of attached exhibits. Record 24-25. The documents  
31 identified in the hearings officer's list of exhibits are included in the record in the order they  
32 are listed on that list of exhibits. Record 26-442. However, the exhibits attached to the  
33 hearings officer's decision are not themselves arranged in inverse chronological order. The

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<sup>1</sup>Record Item 1 is a one-page checklist for mailing the hearings officer's decision and Record Item 3 is a three-page summary "Report of the Hearings Officer's Decision." Record 9, 443-45.

1 remaining items in the record, Record Items 4-14, are included in inverse chronological  
2 order.<sup>2</sup>

3 The city argues that the 14 individual record "items" identified in the record table of  
4 contents are arranged in inverse chronological order. Therefore, the city argues, the record  
5 literally complies with OAR 661-010-0025(4)(a)(E), and petitioners' record objection should  
6 be denied.

7 We agree with the city that the record it filed in this matter technically complies with  
8 OAR 661-010-0025(4)(a)(E). We also believe the record in this case complies with the spirit  
9 of OAR 661-010-0025(4)(a). It would complicate the record if LUBA were to require that  
10 individual exhibits to the hearings officer's decision be separated and included in inverse  
11 chronological order. See Sequoia Park Condo Assoc. v. City of Beaverton, \_\_\_ Or LUBA  
12 \_\_\_ (LUBA Nos. 98-055/059, Order on Record Objection, July 20, 1998), slip op 5-6  
13 (requirement for inverse chronological arrangement of record does not require separating  
14 older documents from more recent documents to which they are attached). We explained in  
15 Sanchez v. Clatsop County, 26 Or LUBA 631, 633 (1994):

16 "The primary purpose of the requirement in OAR 661-010-0025(4)(a), and the  
17 other specifications set out in OAR 661-010-0025(4) for records filed with  
18 this Board, is to ensure the record is usable by the parties and that all  
19 documents in the record can be identified and located with reasonable effort."

20 Of course where the bulk of the record is made up of attachments to the challenged  
21 decision, and those attachments are not arranged chronologically, there is a possibility that  
22 individual record items will be difficult to locate. In such cases, our rules do not preclude  
23 local governments from including two copies of such documents in the record. Where this  
24 approach is taken, the document can be included in the record as an exhibit to the decision  
25 and in its appropriate inverse chronological order. We understand petitioners to suggest the  
26 city should be required to follow a variation of that approach in this appeal. Petitioners

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<sup>2</sup>Record Item 14 is undated. Record Items 15 and 16 are audio tapes and photographs that are to be submitted at the time for oral argument, pursuant to OAR 661-010-0025(2).

1 contend the city could make the record more usable, and avoid unnecessary duplication, by  
2 inserting pages in the appropriate chronological spot in the record that cross-reference where  
3 the exhibit actually appears in the record as an exhibit to the hearings officer's decision.  
4 Such a cross-referencing scheme might make the record more usable, but we do not believe  
5 such a modification of the record is required in this case. Considering the size of the record  
6 and the level of detail provided in the record table of contents, we believe the record is  
7 sufficiently "usable by the parties and that all documents in the record can be identified and  
8 located with reasonable effort." Sanchez, 26 Or LUBA at 633.

9 Petitioners' record objections are denied.

10 Dated this 11th day of August, 1999.

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Michael A. Holstun  
Board Chair