

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 ALFRED DAVID DOWRIE,
5 *Petitioner,*

6
7 and

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9 DON HUNTER,
10 *Intervenor-Petitioner,*

11
12 vs.

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14 BENTON COUNTY,
15 *Respondent,*

16
17 and

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19 GERALD D. CORK,
20 *Intervenor-Respondent.*

21
22 LUBA No. 99-169

23 ORDER ON MOTIONS TO INTERVENE

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25 Before the Board are two motions to intervene in this appeal.

26 **MOTIONS TO INTERVENE**

27 **A. Don Hunter**

28 Don Hunter moves to intervene on the side of petitioner. There is no opposition to
29 this motion and it is allowed.

30 **B. Gerald D. Cork**

31 Gerald D. Cork (Cork) moves to intervene on the side of respondent. Petitioner
32 opposes this motion, arguing that Cork did not appear before the local government in the
33 proceedings below, and therefore, does not have standing to intervene in this appeal.

34 Cork is the owner of the property that is subject to this appeal. His motion to
35 intervene alleges that he is the applicant for the non-farm dwelling permit that the board of

1 commissioners approved, and that petitioners appeal. The motion also alleges that Cork
2 appeared before the local government during the proceedings below.

3 ORS 197.830(6) provides in relevant part:

4 “(a) Within 21 days after a notice of intent to appeal has been filed with the
5 board under [ORS 197.830(1)], any person may intervene in and be
6 made a party to the review proceeding upon a showing of compliance
7 with [ORS 197.830(2)].¹

8 “(b) Notwithstanding the provisions of paragraph (a) of this subsection,
9 persons who may intervene in and be made a party to the review
10 proceedings, as set forth in [ORS 197.830(1)], are:

11 “(A) The applicant who initiated the action before the local
12 government, * * *”; or

13 “(B) Persons who appeared before the local government * * * orally
14 or in writing.”

15 We read ORS 197.830(6)(b)(A) to permit an *applicant* to intervene in proceedings
16 before LUBA even if the applicant did not appear before the local government, so long as the
17 applicant’s motion to intervene is filed within 21 days of the date the notice of intent to
18 appeal is filed.

19 Even if Cork was not the applicant, he has standing to intervene. The minutes of the
20 July 13, 1999 meeting of the Benton County Board of Commissioners (commissioners),
21 where the commissioners heard the appeal of the planning commission’s decision, indicate

¹ORS 197.830(1) provides, in relevant part:

“Review of land use decisions * * * under [ORS] 197.830 to [ORS] 197.845 shall be commenced by filing a notice of intent to appeal with the Land Use Board of Appeals.”

ORS 197.830(2) provides, in relevant part:

“* * * [A] person may petition the board for review of a land use decision * * * if the person:

“(A) Filed a notice of intent to appeal the decision as provided in subsection (1) of this section; and

“(B) Appeared before the local government orally or in writing.”

1 that George Heilig, an attorney representing Cork, appeared on Cork’s behalf, and presented
2 testimony to support the application. Record 47. Appearance through an attorney is sufficient
3 to demonstrate that Cork appeared before the local decision maker. *League of Women Voters*
4 *v. Coos County*, 15 Or LUBA 447, 457, n 9 (“The attorney appeared on behalf of petitioners
5 * * * [and] not on his own behalf. His appearance is their appearance.”)

6 Cork’s motion to intervene is allowed.

7 Dated this 21st day of December, 1999.

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Anne Corcoran Briggs
Board Member