

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 MOUNTAIN WEST INVESTMENT CORP.,
5 *Petitioner,*

6
7 and

8
9 MILTON ROBINSON,
10 *Intervenor-Petitioner,*

11
12 vs.

13
14 CITY OF SILVERTON,
15 *Respondent,*

16
17 and

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19 NORTH WATER STREET, LLC,
20 *Intervenor-Respondent.*

21
22 LUBA No. 2000-093

23 ORDER

24 Before us are Milton Robinson's motion to intervene, motion to consolidate and
25 bifurcate, and objections to the record filed in this appeal.

26 **MOTION TO INTERVENE**

27 Milton Robinson (intervenor-petitioner) moves to intervene on the side of petitioner.
28 There is no opposition to the motion, and it is allowed.¹

29 **MOTION TO BIFURCATE AND CONSOLIDATE**

30 OAR 661-010-0055 provides:

¹We note that intervenor-petitioner filed his motion to intervene on August 17, 2000, two days after being served with a copy of the notice of intent to appeal by petitioner, but 56 days after the notice of intent to appeal was filed with LUBA. As we explained in our order dated August 31, 2000, the failure to serve parties who are entitled to notice under OAR 661-010-0015 tolls the time for filing a motion to intervene. *Mountain West Investment Corp. v. City of Silverton*, ___ Or LUBA ___ (LUBA No. 2000-093, Order, August 31, 2000). Accordingly, intervenor-petitioner's motion to intervene is timely filed.

1 “The Board, at the request of any party or on its own motion, may consolidate
2 two or more proceedings, provided the proceedings seek review of the same
3 or closely related land use decision(s) or limited land use decision(s).”

4 Intervenor-petitioner moves to consolidate LUBA No. 2000-093 with LUBA No. 2000-113.
5 LUBA No. 2000-113 is currently consolidated with LUBA No. 2000-114. Intervenor-
6 petitioner also moves to bifurcate LUBA No. 2000-113 from LUBA No. 2000-114, and to
7 consolidate LUBA No. 2000-075 with LUBA No. 2000-114. According to intervenor-
8 petitioner, the consolidations and bifurcation will facilitate review of the city’s decisions in
9 this circumstance, where LUBA Nos. 2000-093 and 2000-113 involve appeals of a lot line
10 adjustment and LUBA Nos. 2000-075 and 2000-114 involve appeals of a design review on
11 the same property.

12 Intervenor-respondent objects to the motion, arguing that the appeals are better
13 viewed as decisions involving the same levels of review, in that LUBA Nos. 2000-113 and
14 2000-114 both involve letter decisions by the planning director denying local appeals of the
15 challenged decisions.

16 We allow consolidations of appeals where consolidation facilitates review of those
17 decisions. Motions to consolidate closely related decisions will be denied where it is
18 uncertain whether consolidation will facilitate or complicate LUBA’s review of the
19 challenged decision. *Davenport v. City of Tigard*, 23 Or LUBA 696 (1992). It is not apparent
20 to us that consolidation and bifurcation in the manner intervenor-petitioner suggests will
21 facilitate our review of these appeals. Therefore, intervenor-petitioner’s motion is denied.

22 **RECORD OBJECTIONS**

23 OAR 661-010-0026(2) provides, in relevant part:

24 “An objection to the record or an objection to an amendment or supplement to
25 the record shall be filed with the Board within 14 days of the date appearing
26 on the notice of record transmittal sent to the parties by the Board. * * *”

27 OAR 661-010-0025(2) requires that the record be filed within 21 days of the date the notice
28 of intent to appeal is filed with LUBA. In this case, the record was filed on August 14, 2000.

1 On August 28, 2000, intervenor-respondent filed a motion requesting additional time to
2 review the record. In our August 31, 2000 order, we treated intervenor-respondent's request
3 as a precautionary record objection, and allowed an additional 14 days for intervenor-
4 respondent either to file an amended record objection, detailing its objections, or to inform
5 the Board that the record was in order. A copy of the August 31, 2000 order was mailed to
6 intervenor-petitioner's attorney. On September 7, 2000, we issued an order settling the
7 record. Again, intervenor-petitioner's attorney was sent a copy of the order.

8 Intervenor-petitioner filed his record objections with the Board on September 20,
9 2000. Intervenor-petitioner explains that because he did not receive a copy of the record from
10 the city until September 12, 2000, intervenor-petitioner should be allowed additional time to
11 file his record objections.

12 OAR 661-010-0005 provides, in relevant part, that LUBA's rules are
13 "intended to promote the speediest practicable review of land use decisions
14 and limited land use decisions, in accordance with ORS 197.805-197.855,
15 while affording all interested persons reasonable notice and opportunity to
16 intervene, reasonable time to prepare and submit their cases, and a full and
17 fair hearing. The rules shall be interpreted to carry out these objectives and to
18 promote justice. Technical violations not affecting the substantial rights of
19 parties shall not interfere with the review of a land use decision or limited land
20 use decision. * * *"

21 Intervenor-petitioner has not demonstrated why his failure to obtain a copy of the
22 record before September 12, 2000, justifies a further delay in this appeal. Therefore,
23 intervenor-petitioner's record objections are rejected as untimely.

24 The record is settled as of the date of this order. The petitions for review are due
25 within 21 days of the date of this order and response briefs are due within 42 days of the date
26 of this order.

27 Dated this 28th day of September, 2000.
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Anne Corcoran Briggs
Board Member