

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

3
4 TIMOTHY B. FARRELL,
5 *Petitioner,*

6
7 vs.

8
9 JACKSON COUNTY,
10 *Respondent,*

11 and

12
13 SABROSO COMPANY,
14 *Intervenor-Respondent.*

15
16 LUBA No. 2001-108

17
18 ORDER

19 Pursuant to ORS 197.815, LUBA occasionally schedules oral argument in LUBA
20 appeals in the jurisdictions in which they arise rather than at LUBA's office in Salem.¹ By
21 letter dated September 5, 2001, we set oral argument in this appeal and one other appeal
22 arising in Jackson County for October 12, 2001, in Medford, Oregon. Pursuant to ORS
23 197.830(14), our final opinion and order in this appeal is due October 25, 2001.

24 In a letter dated September 17, 2001, intervenor-respondent Sabroso Company
25 (intervenor) requested that the oral argument be rescheduled because "[t]he selected date is a
26 date upon which appropriate representatives of the applicant, Sabroso, are not available to
27 attend a hearing due to prior commitments."² In a letter dated September 24, 2001, petitioner
28 objects to intervenor's request that oral argument be rescheduled and argues:

¹ORS 197.815(1) provides:

"The principal office of the Land Use Board of Appeals shall be in the state capital, but the board may hold hearings in any county or city in order to provide reasonable opportunities to parties to appear before the board with as little inconvenience and expense as is practicable. Upon request of the board, the county or city governing body shall provide the board with suitable rooms for hearings held in that city or county."

²Respondent Jackson County advised LUBA that it does not intend to file a brief.

1 “I have already cleared my schedule and taken time off work to accommodate
2 the October 12, 2001 date. Any further schedule changes will cause me a
3 great personal and financial burden. * * *”

4 The Board’s practice in the past has been to first seek the parties’ permission before
5 scheduling oral argument at a location other than the Board’s office in Salem. Through an
6 oversight, that was not done in this case. We regret the oversight. However, rescheduling
7 the oral argument at this time apparently will work a hardship on petitioner, who appears *pro*
8 *se* and has made plans to present oral argument on his own behalf. October 9, 2001 is the
9 only other readily available date for oral argument that would allow us time to issue our final
10 opinion within the statutory deadline. Intervenor’s attorney is not available that date, and we
11 assume that date would also work a hardship on petitioner.

12 Intervenor’s attorney does not argue that he cannot appear at oral argument to present
13 oral argument on behalf of his client, but rather that some representatives of his client cannot
14 attend to observe oral argument. We therefore assume intervenor’s attorney is able to appear
15 and present oral argument on October 12, 2001. What we are required to balance, then, is the
16 apparent hardship that rescheduling the oral argument would have on petitioner, as well as
17 the likelihood that rescheduling oral argument will result in our not being able to issue a final
18 decision within the deadline set by ORS 197.830(14), against the hardship that may result if
19 some of intervenor’s representatives are unable to attend oral argument. We strike that
20 balance in favor of leaving oral argument as scheduled in our September 5, 2001 letter.

21 If the parties are able to agree on a different date for oral argument and agree to
22 extend the statutory deadline for LUBA to issue its final opinion, we will accommodate that
23 agreement and reschedule oral argument. Absent such an agreement, oral argument remains
24 scheduled for October 12, 2001, in Medford, Oregon, as set in our September 5, 2001 letter.³

³If the county’s facilities permit, we will observe our usual practice and allow intervenor’s representatives to listen to oral argument via telephone conference call. If that is not possible, we make an audiotape record of all our oral arguments and will make a copy of the tape of oral argument available immediately after oral argument.

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Dated this 27th day of September, 2001.

Michael A. Holstun
Board Member