

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3  
4 NO TRAM TO OHSU, LAWRENCE BECK and  
5 SEAN BRENNAN,  
6 *Petitioners,*

7  
8 vs.

9  
10 CITY OF PORTLAND,  
11 *Respondent,*

12 and

13  
14 OREGON HEALTH SCIENCES UNIVERSITY  
15 *Intervenor-Respondent.*

16  
17 LUBA No. 2001-125

18  
19 ORDER

20 **MOTION TO INTERVENE**

21 Oregon Health Sciences University moves to intervene on the side of respondent in  
22 this appeal. There is no opposition to the motion, and it is allowed.

23 **MOTION TO EXTEND TIME TO FILE RESPONSE**

24 The decision challenged in this appeal is a city council resolution directing various  
25 city bureaus to develop a “Marquam Hill Plan.” Notice of Intent to Appeal 1. Respondent  
26 filed the record in this case on August 17, 2001. On August 22, 2001, respondent filed a  
27 motion to dismiss this appeal, arguing that the challenged decision is neither a statutory nor  
28 significant impact land use decision subject to the Board’s jurisdiction.

29 On August 27, 2001, petitioners filed objections to the record, arguing that the record  
30 should be supplemented with a number of other documents that petitioners allege are  
31 properly part of the record. On August 30, 2001, petitioners filed the instant motion,  
32 requesting an extension of time to file a response to the city’s motion to dismiss, until such

1 time as the Board resolves petitioners' record objections. The motion states that respondent  
2 is not willing to stipulate to the requested extension.

3 OAR 661-010-0065(2) provides that a party opposing a motion may file a response  
4 within 14 days of the date of service of the motion. OAR 661-010-0026(6) provides in  
5 relevant part that "[i]f an objection to the record is filed, the time limits for all further  
6 procedures under these rules shall be suspended." Petitioners characterize their motion for an  
7 extension of time as precautionary, because in their view the 14-day deadline at OAR 661-  
8 010-0065(2) was automatically suspended when petitioners filed their record objections,  
9 pursuant to OAR 661-010-0026(6). In the alternative, petitioners argue that resolving the  
10 record objections is necessary to resolving the motion to dismiss, because "[m]uch of what  
11 was requested to be in the record will assist petitioners in demonstrating the subject decision  
12 is subject to LUBA's jurisdiction." Motion for Extension of Time 2.

13 Although petitioners couch the request in terms of an extension of time to file a  
14 response, the gravamen of that request is that the Board suspend resolution of the city's  
15 motion to dismiss until it resolves petitioners' record objections. We disagree that OAR 661-  
16 010-0026(6) has the effect of prioritizing record objections over other matters properly  
17 before the Board, or that it prohibits the Board from resolving the motion to dismiss filed in  
18 this case without first resolving petitioners' record objections.

19 Petitioners have not demonstrated a sufficient reason for the Board to suspend its  
20 consideration of the motion to dismiss until the record objections are resolved. Petitioners do  
21 not explain why any of the numerous documents they allege belong in the record might be  
22 useful in responding to the motion to dismiss or to the Board's consideration of that motion.  
23 Even if any of the cited documents were relevant to the jurisdictional issue, that would not  
24 make it necessary to first resolve petitioners' record objections. Generally, LUBA may  
25 consider evidence outside of the local record for the limited purpose of resolving

1 jurisdictional disputes. *Neighbors for Sensible Dev. v. City of Sweet Home*, 39 Or LUBA  
2 766, 771 (2001).

3 Petitioners' motion for an extension of time until the record objections are resolved is  
4 denied. Petitioners may nonetheless submit, within seven days of the date of this order, a  
5 response to the city's motion to dismiss.

6 Dated this 5th day of September, 2001.

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Tod A. Bassham  
Board Member