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

KELLY DOHERTY,  
*Petitioner,*

vs.

MORROW COUNTY,  
*Respondent,*

and

PORT OF MORROW,  
*Intervenor-Respondent.*

LUBA No. 2002-097

ORDER

20 Before us are petitioner’s request to reconsider our order bifurcating this appeal,  
21 petitioner’s motion to suspend the appeal, and petitioner’s record objections.

22 **BACKGROUND**

23 This appeal involves a comprehensive plan and zoning change to allow the siting of a  
24 speedway and related facilities at the Boardman airport. The same decision is also the  
25 subject of an appeal by the Department of Land Conservation and Development (DLCD) in  
26 LUBA No. 2002-101. The Port of Morrow, the applicant below, has intervened as a  
27 respondent in both appeals.<sup>1</sup> On August 7, 2002, we consolidated the two appeals. The  
28 parties in LUBA No. 2002-101 filed a stipulated motion to suspend that appeal to allow  
29 mediation and also moved to bifurcate the appeals. We granted their motions on September

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<sup>1</sup> Petitioner did not intervene in LUBA No. 2002-101.

1 11, 2002. Petitioner then filed a request to reconsider our order bifurcating the appeals, or,  
2 alternatively, to suspend this appeal as well. Petitioner also filed record objections.

3 **BIFURCATION**

4 Under OAR 661-010-0055, LUBA

5 “may consolidate two or more proceedings, provided the proceedings seek  
6 review of the same or closely related land use decision(s) or limited land use  
7 decision(s).”

8 The purpose of our rule allowing consolidation is to facilitate review of the decisions.  
9 Where it is uncertain whether consolidation will facilitate or complicate our review, the  
10 appeals will not be consolidated. *Davenport v. City of Tigard*, 23 Or LUBA 696 (1992). In  
11 the present case, with the parties in LUBA No. 2002-101 apparently mediating their dispute,  
12 and the applicant wishing to move forward with this appeal, we do not believe keeping the  
13 appeals consolidated would facilitate our review.

14 In arguing for and against consolidation, the parties emphasize how such a disposition  
15 will or will not facilitate their efforts in this appeal. The question, however, is whether  
16 consolidation will facilitate LUBA’s review of the cases. DLCD is apparently concerned  
17 solely with the issue of lodging at the proposed speedway, while petitioner has other  
18 objections to the development. The parties in LUBA No. 2002-101 seek to have all matters  
19 other than speedway lodging resolved by LUBA before adopting a new or amended decision  
20 addressing DLCD’s concerns. Petitioner does not want to expend the time and resources  
21 appealing a decision that will likely be withdrawn, amended, or otherwise rendered moot.

22 ORS 197.805 provides that time is of the essence in our disposition of land use  
23 appeals. Consolidating the cases would not facilitate our speedy resolution of either case and  
24 would likely end up delaying both. Petitioner’s issues will have to be decided at some point,  
25 and we do not believe delaying resolution of those issues over the objection of the applicant  
26 is appropriate. Petitioner’s request to reconsider our order bifurcating the appeal is denied.

1 **SUSPENSION**

2 In the alternative to reconsidering our order bifurcating the appeals, petitioner moves  
3 for an order suspending this appeal. The bases for petitioner’s request are to avoid the time  
4 and expense of challenging a decision that will almost certainly become moot and that  
5 respondent and intervenor-respondent (respondents) are merely “maneuvering” to force  
6 petitioner to expend limited resources. Respondents and DLCD stipulated that LUBA No.  
7 2002-101 should be suspended to allow settlement discussion. Those parties also stipulated  
8 that no action would be taken to amend the appealed decision until the final opinion and  
9 order in this appeal has been issued. As we explained above, the issues likely to be raised by  
10 petitioner will need to be addressed at some point. Furthermore, we do not see that the  
11 “maneuvering” of respondents to attempt to correct all potential problems at once is  
12 inconsistent with the stated legislative policy that “time is of the essence in reaching final  
13 decisions in matters involving land use.” We will not suspend the appeal over the objections  
14 of the applicant.

15 The motion to suspend the appeal is denied.

16 **RECORD OBJECTIONS**

17 Petitioner’s record objections challenge the record submitted by the county on seven  
18 grounds. The county filed a supplemental record that addressed some of petitioner’s  
19 concerns.

20 **A. Record Objection 1**

21 Petitioner asserts that the record does not contain the complete revised application at  
22 Record 14-95. The county responds that the entire revised application is located elsewhere in  
23 the record, beginning at Record 222.

24 Objection 1 is denied.

1           **B.     Record Objection 2**

2           Objection 2 consists entirely of an assertion that, “[t]he adopted findings make  
3 reference to certain figures that are supposed to be attached, yet appear to be missing from  
4 the record.” Petitioner does not identify where in the findings the alleged references are  
5 made or what figures are supposed to be attached.

6           Objection 2 is denied.

7           **C.     Record Objection 3**

8           The supplemental record includes the documents sought by this record objection.

9           Objection 3 is moot.

10          **D.     Record Objection 4**

11          Petitioner asserts that the 1984 ground lease with the state for the Boardman airport  
12 should be in the record because it is discussed in the findings. The county responds that  
13 although the lease was referenced during the local proceedings, it was never placed before  
14 the decision maker or made a part of the record. It is petitioner’s burden to establish that the  
15 lease was made a part of the record, and petitioner has not met that burden. Where the  
16 petitioner offers no basis for questioning the local government’s contention that the disputed  
17 item was not placed before the decision maker, the record objection will be denied. *Weeks v.*  
18 *City of Tillamook*, 23 Or LUBA 662 (1992).

19          Objection 4 is denied.

20          **E.     Record Objection 5**

21          Petitioner asserts that the applicant’s water rights permit should be in the record  
22 because it is referenced in the findings. Again, petitioner makes no demonstration that the  
23 permit was ever placed before the county or otherwise made a part of the record.

24          Objection 5 is denied.

1           **F.       Record Objection 6**

2           The supplemental record includes the documents sought by the record objection.  
3           Objection 6 is moot.

4           **G.       Record Objection 7**

5           Petitioner asserts that the record does not include any oversized exhibits. The county  
6           responds that there are no oversized exhibits other than a number of original tape recordings  
7           of local hearings that are identified in the record table of contents. The tapes were also  
8           specifically described in the county’s September 3, 2002 letter submitting the record and tape  
9           recordings to LUBA. Petitioner does not argue that there are any specific oversized exhibits  
10          other than the tapes missing from the record, and the county asserts that there are not any.  
11          Under our rules, the city is required to serve a copy of the record on petitioner, but the  
12          required service copy of the record need not include “large maps, tapes, or difficult-to-  
13          duplicate documents \* \* \*.” OAR 661-010-0025(2). If petitioner needs to review the  
14          original tape recordings or wishes to obtain copies of those tapes, she may do so at LUBA.

15          Objection 7 is denied.

16          **BRIEFING SCHEDULE**

17          The record is settled as of the date of this order. The petition for review is due 21  
18          days from the date of this order. The response briefs are due 42 days from the date of this  
19          order. The Board’s final opinion is due 77 days from the date of this order.

20          Dated this 20<sup>th</sup> day of November, 2002.

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Michael A. Holstun  
Board Chair