

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 JANET STAHL, JOHN STAHL and
5 ALLISON ASBJORNSEN,
6 *Petitioners,*

7
8 and

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10 PATTIE L. LADD, LES HELGESON,
11 and CHUCK BEASLEY,
12 *Intervenors-Petitioner,*

13
14 vs.

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16 TILLAMOOK COUNTY,
17 *Respondent,*

18
19 and

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21 BEN HATHAWAY and MARY LOU HATHAWAY,
22 *Intervenors-Respondent.*

23
24 LUBA No. 2002-104

25 ORDER

26 Before the Board are several motions to intervene, a motion to deny intervention, and
27 a record objection.

28 **MOTIONS TO INTERVENE**

29 Ben and Mary Lou Hathaway, the applicants below, move to intervene on the side of
30 the county. Pattie L. Ladd, Les Helgeson, and Chuck Beasley move to intervene on the side
31 of petitioners. There is no opposition to these motions, and they are allowed.

32 Petitioners filed their notice of intent to appeal on August 22, 2002. By order dated
33 August 23, 2002, we required petitioners to amend the notice to identify the county as the
34 respondent. The Board received the amended notice on September 3, 2002. On September
35 19, 2002, Oregon Shores Conservation Coalition (Oregon Shores) filed a motion to

1 intervene.¹ The motion is signed by Oregon Shore’s conservation director, who is not an
2 attorney. The motion states that Oregon Shores “will have as their attorney, Michael
3 Manzulli * * * as of October 1, 2002.”

4 Intervenor-respondent move to deny intervention to Oregon Shores, arguing that it is
5 a corporation or other organization, and thus can only appear before LUBA if represented by
6 an attorney. OAR 661-010-0075(6).² According to intervenor-respondent, a motion to
7 intervene filed on behalf of a corporation or organization by someone who is not an attorney
8 must be denied. *Sanchez v. Clatsop County*, 26 Or LUBA 631, 634 (1994). Oregon Shores
9 has not responded to the motion, nor has any attorney made an appearance on its behalf.

10 Once challenged, Oregon Shores has the burden of demonstrating that its motion to
11 intervene should be granted. Given Oregon Shore’s lack of response to intervenor-
12 respondent’s arguments, we see no basis to reject those arguments and grant Oregon Shore’s
13 motion to intervene. Therefore, Oregon Shore’s motion to intervene is denied.

14 **RECORD OBJECTIONS**

15 On October 8, 2002, intervenor-petitioner Chuck Beasley filed objections to the
16 record submitted by the county. Intervenor-petitioner argues that (1) the record is missing a
17 July 24, 2002 document placed before the final decision maker; (2) the table of contents fails

¹ Pursuant to ORS 197.830(7) and OAR 661-010-0050(2), a motion to intervene must be filed within 21 days of the date the notice of intent to appeal is filed with LUBA or within 21 days of the date the amended notice of appeal or original notice of intent to appeal is refiled pursuant to OAR 661-010-0021. No issue is raised here regarding the timeliness of Oregon Shores’ motion to intervene. However, we note that it was not filed within 21 days of the date the notice of intent to appeal was filed with LUBA, and the notice of intent to appeal is not an amended or refiled notice of intent to appeal pursuant to OAR 661-010-0021.

² OAR 661-010-0075(6) provides:

“An individual shall either appear on his or her own behalf or be represented by an attorney. A corporation or other organization shall be represented by an attorney. In no event may a party be represented by someone other than an active member of the Oregon State Bar. In the event someone other than an active member of the Oregon State Bar files a notice of intent to appeal on behalf of a corporation, other organization, or another individual, the individual filing the notice of intent to appeal will be given an opportunity to provide an amended notice of intent to appeal that conforms with this section. If an amended notice of intent to appeal is not filed within the time set by the Board, the Board will dismiss the appeal.”

1 to list the videotapes from two board of commissioners' hearings in this matter; (3) the
2 record is missing a notice indicated on a mailing list at Record 553; and (4) the record
3 contains several duplicative documents and documents out of chronological order, and
4 therefore the record is not arranged in inverse chronological order as required by OAR 660-
5 010-0025(4)(a)(E).

6 On October 28, 2002, the county submitted a supplemental record that responds to
7 objections 1 and 2. The supplemental record appears to satisfy those objections.

8 With respect to objection 3, we understand the county to argue that the mailing list at
9 Record 553 is duplicated at several points in the record, and the notice related to that mailing
10 list is located at Record 573-574. With respect to objection 4, we understand the county to
11 concede to some duplication and apparently misplaced documents, but to argue that the
12 record as a whole is generally in inverse chronological order as required by our rules. That
13 appears to be correct. For example, Record 193 to 265 is a collection of written comments
14 dated from April 17, 2002 to May 7, 2002, that were submitted for consideration prior to a
15 May 15, 2002 hearing before the board of commissioners. The documents within the
16 collection are not internally organized in inverse chronological order; however, the collection
17 as a whole correctly appears at the approximate chronological location in the record where it
18 should appear. The primary purpose of the inverse chronology requirement in OAR 661-
19 010-0025(4)(a)(E) is to ensure the record is usable by the parties and that all documents in
20 the record can be identified and located with reasonable effort. *Sanchez*, 26 Or LUBA at
21 633. Although the record in the present case diverges from the requirements of our rules, we
22 do not see that such divergence hampers the ability of any party to identify and locate
23 documents with reasonable effort. Accordingly, objections 3 and 4 are denied.

24 The record is settled as of the date of this order. The petitions for review are due 21
25 days, and the response briefs are due 42 days, from the date of this order. The Board's final
26 opinion and order is due 77 days from the date of this order.

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Dated this 12th day of November, 2002.

Tod A. Bassham
Board Member