

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 1000 FRIENDS OF OREGON,
5 *Petitioner,*

6
7 vs.

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9 CLACKAMAS COUNTY,
10 *Respondent,*

11 and

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14 MOLALLA CHRISTIAN CHURCH,
15 *Intervenor-Respondent.*

16
17 LUBA No. 2003-129

18 ORDER

19 **MOTION TO INTERVENE**

20 Molalla Christian Church, the applicant below, moves to intervene on the side of
21 respondent. There is no opposition to the motion, and it is allowed.

22 **RECORD OBJECTIONS**

23 Petitioners objects to the (1) record table of contents; (2) organization of the record;
24 (3) identification of oversize exhibits and audiotapes; and (4) accuracy of a transcript
25 prepared by the county. The county responded by submitting a revised table of contents,
26 revised pages identifying oversize exhibits, and a revised transcript. Petitioner advises us
27 that the record as revised satisfies the third and fourth record objections, but continues to
28 object to the table of contents and the organization of the record. We now resolve those
29 objections.

30 **A. Table of Contents**

31 The bulk of the 650-page record consists of 38 exhibits that are attached to a hearings
32 officer's decision. Some of the exhibits contain a number of separate documents and are
33 extensive in scope. For example, Exhibit 20 to the hearings officer's decision is a lengthy

1 submittal by the applicant encompassing record pages 163 to 498. The revised table of
2 contents identifies Exhibit 20 as the “Applicant’s submittal notebook 11/13/02,” including
3 unspecified “oversize material.” The revised table of contents does not further identify the
4 contents of that exhibit. Similarly, Exhibit 25 spans record pages 503 to 590 and is simply
5 identified as “W. Kellington rebuttal 12/4/02,” including unspecified “color photos.”

6 Both parties acknowledge that Exhibit 20 includes an internal table of contents that
7 lists the separate documents included in that exhibit, at Record 186. Petitioner suggests that
8 the county should revise the record table of contents to incorporate the internal table of
9 contents at Record 186. However, as petitioner notes, what is essential in organizing and
10 indexing the record is that the parties and LUBA can identify and locate documents with
11 reasonable effort. *D.S. Parklane v. Metro*, 33 Or LUBA 848, 858 (1997). While it is
12 somewhat awkward, we see no reason why the parties and LUBA cannot refer to the internal
13 table of contents at Record 186 to locate documents included within Exhibit 20. Similarly,
14 Exhibit 25 contains a discussion of the documents included in that exhibit, from which one
15 can, with reasonable effort, ascertain the identify and location of those documents.

16 If the problems petitioner cites with respect to Exhibit 20 and 25 were replicated more
17 widely throughout the record, or if the size and composition of the record were more
18 unwieldy, we might well agree with petitioner that a more adequate table of contents is
19 necessary to locate documents with reasonable effort. However, under the present
20 circumstances we see no reason to further delay these proceedings by requiring the county to
21 submit another revised table of contents.

22 Petitioner’s objection to the revised table of contents is denied.

23 **B. Record Organization**

24 OAR 661-010-0025(4)(a)(E) requires that the record be organized in inverse
25 chronological order, with the most recent item first. As noted, the record is organized in a
26 series of exhibits that are attachments to a hearings officer’s decision. Petitioner argues that

1 some of the documents included in various exhibits were created or submitted early on
2 during the proceedings below, but are found within exhibits that were submitted relatively
3 late in the proceedings. For example, petitioner notes that a copy of an early planning
4 director decision is located at Record 149, but argues that as a chronological matter it should
5 be located near the end of the 650-page record. As a result, petitioner argues, the record
6 organization does not accurately reflect the chronological progress of the application or
7 proceedings. Petitioner suggests that the record be amended to include additional copies of
8 such documents, in the appropriate chronological place in the record.

9 The county responds, and we agree, that no amendment of the record is warranted.
10 As we stated in *Sequoia Park Condo Assoc. v. City of Beaverton*, 34 Or LUBA 808, 812
11 (1998);

12 “The purpose of OAR 661-010-0025(4) is to facilitate review by requiring
13 that the record be arranged in a coherent order reflecting the chronological
14 progress of the application or proceedings. In the usual course of events,
15 document date and date of entry into the record will generally coincide,
16 allowing organization by document date to fulfill the purpose of OAR 661-
17 010-0025 to facilitate review. Our rule does not require that a local
18 government blindly apply a document date principle of organization when
19 doing so requires separation of documents that were submitted together.
20 Where document date and date of entry into the record conflict as
21 organizational principles, the purpose of OAR 661-010-0025(4) is better
22 served by organizing the record in the order in which documents were
23 received in the proceedings below. * * *”

24 Here, county staff organized the record below into a series of exhibits that were
25 attached to the hearings officer’s decision and apparently provided in that form to the county
26 board of commissioners, the final decision maker in this case. The hearings officer’s
27 decision refers to the exhibits rather than to individual documents. The organization of the
28 record submitted to LUBA thus appears to reflect the actual organization of the record as
29 presented to and used by the parties below. While that organization is not strictly
30 chronological, it is arguably a more accurate and usable reflection of the progression of the
31 proceedings below than a strict chronological order. Certainly, petitioner has not

1 demonstrated that a different record organization, or adding copies of documents already
2 located elsewhere in the record, is necessary to understand that progression and allow
3 meaningful review of the record on appeal.

4 Petitioner's objection to the record organization is denied.

5 **CONCLUSION**

6 The record is settled as of the date of this order. The parties and the Board shall
7 replace pertinent portions of the original record with the revised table of contents and record.
8 The petition for review is due 21 days, and the response briefs is due 42 days, from the date
9 of this order. The Board's final order and opinion is due 77 days from the date of this order.

10 Dated this 31st day of October, 2003.

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Tod A. Bassham
Board Chair