

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

3 RALPH and KAREN ECKIS,)
4 FRANK and ANNIE McCOY, and)
5 THE RIDGE DRIVE OPPONENTS,)
6 Petitioners,)
7 vs.)
8 LINN COUNTY,)
9 Respondent,)
10 and)
11 G & G ROCK QUARRY, INC.,)
12 and MERLYN E. BENTLEY,)
13 Intervenors-Respondent.)

LUBA No. 89-005
ORDER ON
OBJECTIONS TO RECORD

13 Petitioners filed objections to the record pursuant to
14 OAR 661-10-026 on March 13, 1989. During a telephone
15 conference on April 19, 1989, the parties agreed that
16 petitioners would supply respondent Linn County with copies of
17 the documents referred to in petitioners' objections as items
18 A2 and A3.¹ Respondent Linn County will supplement the
19 record with items A2 and A3 and, if possible, a copy of the map
20 that is part of a Water Resources Department Ground Water
21 Report referred to in petitioners' objections as item A6.²
22 During the telephone conference, petitioners also agreed to
23 withdraw parts C and D of their objections to the record.

24 Petitioners' only remaining objection concerns a letter
25 from the Department of Environmental Quality to
26 intervenors-respondent's attorney included in the county

1 record. The letter is stamped received by the county on
2 December 27, 1988. Petitioners object to inclusion of this
3 document in the record on the ground that it was submitted to
4 the county "after the record was closed to oral and written
5 testimony on Dec. 8, 1988, with the exception of testimony from
6 DLCD and their referrals being allowed up to December 28,
7 1988." Objections to Record 2. Petitioners argue the letter
8 in fact resulted from a request by intervenors-respondent.

9 The county and intervenors respond that this letter from a
10 state agency is the type of written testimony for which the
11 board of commissioners left the hearing record open until
12 December 28 and, therefore, was submitted prior to the date the
13 record was closed. The county and intervenors also argue that
14 the letter was submitted to the board of commissioners prior to
15 its adoption of a final written order.

16 We have consistently held the record consists of those
17 matters actually placed before the local government decision
18 makers during the proceeding below. Panner v. Deschutes
19 County, 14 Or LUBA 512, 513 (1985); Tichy v. City of Portland,
20 6 Or LUBA 13, 22 (1982). We have also held that the record is
21 not limited to materials submitted to the decision makers prior
22 to the close of the public hearing, but rather includes all
23 materials placed before the decision makers prior to adoption
24 of the final decision. Sellwood Harbor Condo Assoc. v. City of
25 Portland, ___ Or LUBA ___ (LUBA No. 87-079 and 87-080, Order on
26 Consolidation and Objection to the Record, November 25, 1987);

1 Hillsboro Neigh. Dev. Comm. v. City of Hillsboro, 15 Or LUBA
2 628 (1987).

3 In this case, the parties agree, and the record shows, the
4 letter in question was placed before the board of commissioners
5 at its December 28, 1988 meeting, prior to its adoption of the
6 final decision.³ Record 6. We, therefore, deny petitioners'
7 objection to its inclusion of the record.

8 The record will be deemed settled and the briefing schedule
9 will commence when the Board receives the items which the
10 parties agreed would be submitted by respondent Linn County to
11 supplement the record.

12 Dated this 20th day of April, 1989.

13

14

15


Corinne C. Sherton
Referee

16

17

18

19

20

21

22

23

24

25

26

FOOTNOTES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1
These items are described in the objections as follows:

"2. Letter from Mr. Neil Michael to Annie McCoy, dated Feb. 1, 1988

"3. Memorandum of quarry site visit from Mr. Gloege dated May 19, 1988" Objections to Record 1.

2
The report in question, "Water Resources Department Ground Water Report No. 25, Ground Water Resources of the Lower Santiam River Basin, Middle Willamette Valley," minus the map, was submitted by the county as a supplement to the record on April 11, 1989. The county agreed to inform the Board and the parties if it is unable to locate a copy of the map accompanying the report or determines that the map was not actually placed before the county decision makers.

3
The dispute between the parties actually concerns whether the board of commissioners erred in allowing the letter to be submitted at its December 28, 1988 meeting. This issue may be raised by petitioners in an assignment of error in their petition for review, but is irrelevant to determining whether the document is part of the county's record.