

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

3   LARRY SOKOL, MARC BLACKMUN,           )  
4   WARREN OLIVER, and CAROLYN JONES,    )  
5                                    Petitioners,                            )  
6                                    vs.    )  
7   CITY OF LAKE OSWEGO,                    )  
8                                    Respondent,                            )  
9                                    and    )  
10   SOCIETY OF THE SISTERS OF THE         )  
11   HOLY NAMES OF JESUS AND MARY,         )  
12                                    Intervenor-Respondent.            )

LUBA Nos. 89-050/89-051

ORDER ON  
RECORD OBJECTIONS

13           Petitioners object that the record filed in this proceeding  
14 does not include the following:

- 15       1.   A video tape of a March 21, 1989 hearing before  
16           the city council;
- 17       2.   Minutes of a May 2, 1989 city council meeting;
- 18       3.   Maps submitted by petitioner Sokol at the  
19           March 21, 1989 city council hearing, including  
20           "wetlands maps," "maps of the development" and  
21           "maps of the West Linn wetland survey;"
- 22       4.   A letter from Bruce Schafer which petitioners  
23           claim responds to misleading statements by  
24           applicant during rebuttal at the March 21, 1989  
25           hearing.

26   Petitioners also object to the minutes of the March 21, 1989  
city council meeting on grounds of inadequacy. Petitioners  
contend those minutes inaccurately reflect statements by two  
city planners.

1           A.    Video Tape

2           Respondent city advised the Board during a June 29, 1989  
3 conference call on the record objections that it will submit  
4 the video tape on the date of oral argument, as permitted under  
5 OAR 661-10-025(2), and will provide petitioners with a copy of  
6 the video tape.<sup>1</sup> Respondent stated that a copy of the video  
7 tape had already been prepared for petitioners and will be made  
8 available to them.

9           The video tape of the March 21, 1989 city council meeting  
10 shall be considered part of the record.

11           B.    May 2, 1989 City Council Minutes

12           Respondent objects to petitioners' request to include the  
13 May 2, 1989 city council minutes in the record, arguing the  
14 city's decision was adopted and became final on April 19,  
15 1989. Respondent also disputes petitioners' contentions that a  
16 city council member discussed, at the May 2, 1989 meeting, his  
17 recollection of his vote on the decision challenged in this  
18 proceeding.

19           The decision at issue in this proceeding is dated, and was  
20 final on, April 19, 1989. That the city council member may  
21 have made statements on May 2, 1989 concerning his vote on a  
22 decision that was final on April 19, 1989 provides no basis for  
23 including in the record of the April 19, 1989 decision the  
24 minutes of the subsequent meeting at which the claimed  
25 statements were made. See McCrystal v. Polk County, 1 Or  
26 LUBA 196, 197. The relevant question is whether the council

1 member's statement was made during proceedings that led to the  
2 appealed decision, and in this case apparently it was not.  
3 This portion of petitioners' record objections is denied.

4 C. Maps Offered By Petitioner Sokol

5 Regarding the wetland maps and other unidentified maps  
6 mentioned during oral argument on the record objections,  
7 respondent contends the maps offered to the city council by  
8 petitioner Sokol were specifically rejected by the city council  
9 and were not accepted as part of the record of the local  
10 proceedings.<sup>2</sup> Respondent distinguishes our decision in  
11 Indian Creek v. City of Lake Oswego, 14 Or LUBA 519 (1985)  
12 where the city council actually accepted the disputed  
13 document. Here, respondent argues it refused to accept the  
14 wetlands map and the other maps offered by petitioner Sokol  
15 and, therefore, those maps are not properly included in the  
16 record, even though they were physically present before the  
17 city council. Klindt v. Hood River County, 4 Or LUBA 125, 126  
18 (1981).

19 During oral argument in this matter, petitioner Sokol was  
20 not clear whether the maps referred to in the record objections  
21 were simply blow-ups of maps already included in the record or  
22 whether they were new maps not properly considered by the city  
23 council in its on the record review. Petitioners do not  
24 contend the city failed to submit the maps in its possession,  
25 and petitioners were unable to describe clearly the maps they  
26 wish added to the record. Because petitioners inadequately

1 identify the maps they wish added to the record, and we have no  
2 reason to question respondent's representation that the maps  
3 were specifically rejected below, petitioners' objection that  
4 the record should be supplemented to include "wetlands maps,  
5 maps of the development, and maps of the West Linn wetland  
6 survey" is denied.

7 D. Bruce Shafer Letter

8 Respondent contends the record does include the Bruce  
9 Schafer letter petitioner refers to. Although the city refused  
10 to consider the letter and the letter is marked "not accepted,"  
11 the city explains the letter was attached to a written  
12 submission by petitioner Sokol and is part of the record.

13 This portion of petitioners' record objection is denied.<sup>3</sup>

14 E. Adequacy of March 21, 1989 City Council Minutes

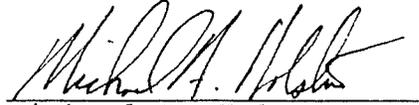
15 Respondent submitted with its response to the record  
16 objections a partial transcript of the testimony by the two  
17 planners that petitioners contend is inaccurately reflected in  
18 the minutes. Respondent states it has no objection to  
19 including the partial transcript in the record and petitioners  
20 state the partial transcript satisfies their objection to the  
21 March 21, 1989 city council minutes.

22 This portion of petitioners' objection is sustained.

23 As the two page partial transcript has already been  
24 submitted to the Board, it will be added to the record  
25 previously submitted by the city. The parties may cite the two  
26 page partial transcript as Supplemental Record 1 and 2.

1 Pursuant to OAR 661-10-025(6), the record is settled as of the  
2 date of this order.

3 Dated this 25th day of July, 1989.  
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8 Michael A. Holstun  
9 Chief Referee  
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FOOTNOTES

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By letter dated June 2, 1989, the city had previously advised the Board that it intended to proceed in this manner, although it did not state in that letter that petitioners would be provided a copy of the video tape.

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2  
Respondent further notes that it does not have the maps petitioners refer to in its possession. According to respondent, all the maps in its possession in this matter either have been submitted or will be submitted at oral argument pursuant to OAR 661-10-025(2).

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3  
Also attached to petitioner Sokol's letter and included in the record submitted by the city is a document entitled "West Linn Wetland Survey Sites." Record 175. We are not sure whether this document is the same as the "West Linn wetland survey" referred to earlier in this order. Respondent argues both the letter and the "West Linn Wetland Survey Sites map" are a part of the record. However, respondent contends the city considered both documents to constitute new evidence and, therefore, properly refused to consider those documents. We agree both documents are part of the record, and we need not determine at this time whether the city correctly refused to consider those documents.