

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 LINDA S. FORD, JAMES S. FORD
5 and HOLGER T. SOMMER,
6 *Petitioners,*

7
8 vs.

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10 JACKSON COUNTY,
11 *Respondent,*

12
13 and

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15 JOHN C. HILL and WESLEY S. HILL,
16 *Intervenors-Respondent.*

17
18 LUBA No. 2007-048

19 ORDER

20 **MOTION TO STRIKE**

21 As explained below, the Board issued an order on April 19, 2007, resolving petitioner
22 Sommer's record objections and requiring a supplemental record. On April 20, 2007, the
23 Board received Sommer's reply to the county's response to his objections. On April 23,
24 2007, the Board received the county's motion to strike two paragraphs in that reply.

25 Our rules do not expressly authorize the filing of reply pleadings, or similar rebuttal
26 or surrebuttal pleadings replying to responses to a motion or record objection. While not
27 obligated to do so, LUBA will consider reply pleadings where appropriate and where such
28 consideration will not unduly delay the appeal process. *Cedar Mill Creek Corr. Comm. v.*
29 *Washington County*, 37 Or LUBA 1011, 1017 (2000). Here, we did not consider petitioner's
30 reply in issuing our April 19, 2007 order, and we see nothing in that reply that warrants any
31 further consideration. Because we do not consider that reply, the county's motion to strike is
32 denied, as moot.

1 **MOTION FOR RECONSIDERATION**

2 On April 19, 2007, the Board issued an order requiring the county to submit a
3 supplemental record that includes (1) three documents omitted from the record and (2)
4 minutes of hearings held before the hearings officer, if such minutes exist. The county
5 responded by filing a supplemental record that includes the three omitted documents, but did
6 not include any minutes. On May 4, 2007, the county submitted a second supplemental
7 record that includes two additional documents. No party objects to the contents of either
8 supplemental record.¹

9 In a letter dated April 24, 2007, that accompanied the first supplemental record, the
10 county advised LUBA that “[n]o written minutes exist of the proceedings before the Jackson
11 County hearings officer.” On May 4, 2007, petitioner Sommer (petitioner) filed a request for
12 reconsideration of our April 19, 2007 order, arguing that even if no minutes of the hearings
13 before the hearings officer exist, LUBA should order the county to create such minutes.

14 OAR 661-010-0025(1)(c) provides that record shall include:

15 “Minutes and tape recordings of the meetings conducted by the final decision
16 maker as required by law, or incorporated into the record by the final decision
17 maker. A verbatim transcript of audiotape or videotape recordings shall not be
18 required, but if a transcript has been prepared by the governing body, it shall
19 be included. If a verbatim transcript is included in the record, the tape
20 recordings from which that transcript was prepared need not be included in
21 the record, unless the accuracy of the transcript is challenged.”

22 Petitioner earlier objected to the absence of minutes of hearings before the hearings officer.
23 In our April 19, 2007 order, we sustained that objection, rejecting the county’s response that
24 no minutes are part of the record because “no written minutes of the hearings were submitted
25 into the record.” April 19, 2007 Order at 2. We explained that it is not clear from the
26 county’s response whether no written minutes exist or whether the county meant that minutes

¹ On May 4, 2007, petitioner Sommer filed an objection to the first supplemental record, arguing that the record should include the two documents submitted as part of the second supplemental record. The filing of that second supplemental record moots that objection.

1 exist but they were not submitted into the local evidentiary record, and are thus not part of
2 that record. We stated:

3 “* * *If the county has prepared written minutes of the meetings conducted by
4 the hearings officer as required by law, then those minutes are part of the
5 record, whether or not they were ‘submitted into the record.’ It may be the
6 case that no law requires preparation of written minutes of hearings conducted
7 by a hearings officer, but the county does not assert that. The county must
8 clarify whether minutes exist of the hearings conducted by the hearings officer
9 as required by law. If those minutes exist, the county must include them in
10 the supplemental record.” *Id.* at 2-3.

11 As noted, the county subsequently advised us that “[n]o written minutes exist of the
12 proceedings before the Jackson County hearings officer.”

13 Petitioner now argues that the county is “required by law” to provide minutes of the
14 hearings before the hearings officer, and that if those minutes do not presently exist, LUBA
15 must order the county to create them from the audiotapes of those hearings, which are
16 already in the record.

17 Petitioner does not cite to any law that requires the county to create or provide
18 minutes of hearings before the hearings officer that were conducted in this case. No statute,
19 county code or other authority is cited to us.² In a response to petitioner’s motion, the
20 county asserts that no county code requires that the county prepare minutes of proceedings
21 before the hearings officer. Although it is not clear, petitioner appears to assume that
22 OAR 661-010-0025(1)(c) itself is the source of a requirement that the county create and
23 produce minutes of hearings before the hearings officer. If that is petitioner’s argument, we
24 reject it. OAR 661-010-0025(1)(c) does not impose such a requirement; instead it simply
25 requires that any minutes that are “required by law” be included in the record. If OAR 661-

² We note that ORS 192.650 requires that “public bodies” prepare minutes or recordings of the meetings of their “governing bodies,” the definitions of which do not appear to include hearings officers. ORS 197.610(4). No statute we are aware of requires preparation of minutes of proceedings before a hearings officer. *See Ramsey v. Multnomah County*, __ Or LUBA __ (LUBA No. 2003-113, Order, September 25, 2003, slip op 2)(denying objection that no minutes are provided, where petitioner cites no law that requires preparation of minutes of proceedings before hearings officer, and the county contends there is none).

1 010-0025(1)(c) imposed an obligation for local governments to create minutes of
2 proceedings before the final decision even if such minutes are not required by other law, the
3 rule would be phrased very differently.

4 Petitioner's motion for reconsideration of our April 19, 2007 order is denied.

5 **RECORD**

6 As noted, no party objects to the contents of the supplemental records. The record is
7 settled as of the date of this order. The petition for review is due 21 days from the date of
8 this order. The response brief(s) are due 42 days from the date of this order. The Board's
9 final opinion and order is due 77 days from the date of this order.

10 Dated this 15th day of May, 2007.

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Tod A. Bassham
Board Member