

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

3
4 ELIZABETH A. GRASER-LINDSEY,
5 *Petitioner,*

6
7 and

8
9 KATHERINE KEHOE and CHRISTINE KOSINSKI,
10 *Intervenor-Petitioners,*

11
12 vs.

13
14 CITY OF OREGON CITY,
15 *Respondent,*

16
17 and

18
19 PATTY JACOBSON,
20 *Intervenor-Respondent.*

21
22 LUBA No. 2007-171

23 ORDER

24 **MOTION TO INTERVENE**

25 Katherine Kehoe and Christine Kosinski separately move to intervene on the side of
26 the petitioner in this appeal. There is no opposition to the motions and they are allowed.

27 **MOTION TO INTERVENE**

28 Patty Jacobson, the applicant below, moves to intervene on the side of the respondent
29 in this appeal. There is no opposition to the motion and it is allowed.

30 **RECORD OBJECTIONS**

31 Petitioner filed an Objection to the Record on October 18, 2007. The city filed a
32 Response to Record Objection and Supplemental Record on October 25, 2007. Petitioner
33 filed an Objection to the Amended Record on November 7, 2007. The city filed a Response
34 to Petitioner's Objection to the Amended Record on November 21, 2007. Petitioner then
35 filed a Response to Respondent's Response to Petitioner's Objection to the Amended Record

1 on December 5, 2007.

2 Based on the above-described documents, it appears that of petitioner's original
3 eleven record objections, only objections 5, 9 and 11 remain unresolved.

4 The city first argues that following its submittal of the Supplemental Record,
5 petitioner failed to confer with the city before objecting to the Supplemental Record, as
6 required by OAR 661-010-0026(1). For the reasons given in petitioner's December 5, 2007
7 response, we reject the city's argument.

8 **A. Objection 5**

9 Intervenor-petitioner Kosinski orally testified before the planning commission on
10 July 23, 2007. Petitioner takes the position that intervenor-petitioner Kosinski submitted an
11 exhibit to the planning commission as part of that testimony on July 23, 2007 and that the
12 city has improperly failed to include that exhibit. The city takes the position that petitioner
13 has not established Ms. Kosinski submitted any written evidence in addition to her oral
14 testimony. Both the city and petitioner have submitted affidavits in support of their
15 respective positions. Both sets of affidavits are believable.

16 The exhibit at issue is entitled "TURNED IN AS TESTIMONY TO OREGON CITY
17 PLANNING COMMISSION BEAVERCREEK RD. CONCEPT PLAN." That exhibit is a
18 listing of Systems Development Charges that are collected by a number of Oregon cities, and
19 the exhibit is attached to petitioner's November 7, 2007 Objection to the Amended Record.
20 The parties simply disagree about whether the exhibit was submitted for inclusion in the
21 record, and the record is not dispositive. For lack of a better alternative, we will accept the
22 city's position, since it is the custodian of the record. *Chauncey v. Multnomah County*, 23 Or
23 LUBA 685, 686 (1992).

24 Objection 5 is denied.

1 **B. Objection 9**

2 In her ninth record objection, petitioner initially argued that the black and white
3 copies of maps that appear at Record 258 and 320 were made from high-quality color
4 originals, which were submitted to the city. The city responded that both maps were
5 submitted as black and white copies. In the exchange of written arguments that followed
6 petitioner’s initial objection and the city’s initial response, petitioner appears to have
7 abandoned her arguments regarding the map that appears at Record 320, but maintains her
8 position regarding the map that appears at Record 258. Petitioner offers proof that she paid
9 for five color copies of that map and a plausible explanation for how the city might have
10 misplaced those color copies. A color copy of that map is attached to petitioner’s Objection
11 to the Amended Record

12 Objection 9 is sustained with regard to the map that appears at Record 258.
13 Objection 9 is denied with regard to the map that appears at Record 320. Rather than delay
14 this appeal further to allow the city to submit a one-page Second Supplemental Record,
15 petitioner may attach a color copy of that map to her petition for review and refer to it to
16 supply any information that may be missing in the black and white copy that appears at
17 Record 258.

18 **C. Objection 11**

19 In her eleventh objection, petitioner complains that “Christine Kosinski’s testimony
20 was transcribed in a vague way.” Objection to the Record 5. We understand petitioner to
21 contend that the minutes of the July 23, 2007 planning commission hearing do not include
22 references to data in the summary of intervenor-petitioner’s testimony. We understand
23 petitioner to argue that intervenor-petitioner’s oral testimony included references to that
24 data.¹ Although she does not say so, we understand petitioner to argue that the city should

¹ The data references apparently have some connection with the exhibit that is the subject of the fifth assignment of error, but we are not sure exactly what the connection is.

1 be required to provide a transcript of the July 23, 2007 planning commission hearing,
2 pursuant to OAR 661-010-0026(3).

3 When a party objects that minutes are inaccurate or incomplete, that party must
4 “demonstrate with particularity how the minutes or transcripts are defective and * * * explain
5 with particularity why the defect is material.” OAR 661-010-0026(3). Petitioner’s original
6 objection to the record did not do. For that reason, objection 11 is denied.

7 In an affidavit that is attached to her December 5, 2007 response, petitioner sets out
8 what she alleges are “the key points Ms. Kosinski made at the July 23, 2007 Planning
9 Commission hearing.” Although petitioner never explains why that missing information is
10 material, if the missing information is material, petitioner may prepare her own transcript of
11 the relevant portion of the July 23, 2007 planning commission hearing and attach that
12 transcript to her petition for review. OAR 661-010-0030(5); *Hammack & Associates, Inc. v.*
13 *Washington County*, 16 Or LUBA 75, 99 n 2, *aff’d* 89 Or App 40, 747 P2d 373 (1987). If
14 any party disputes the accuracy of petitioner’s transcript, that party may prepare and submit
15 its own transcript to correct any inaccuracy.

16 The record is settled as of the date of this order. The petition for review shall be due
17 21 days from the date of this order. The respondent’s and intervenor-respondent’s briefs
18 shall be due 42 days from the date of this order. The Board’s final opinion and order shall be
19 due 77 days from the date of this order.

20 Dated this 16th day of January, 2008.

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Michael A. Holstun
Board Chair