

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

3
4 TERRA HYDR INC, TONQUIN INDUSTRIAL LLC,
5 BOB ALBERTSON, DONNA ALBERTSON,
6 ALBERTSON TRUCKING INC, MARK BROWN,
7 MCCAMMANT PROPERTIES INC, ERIC JOHNSON,
8 BROWN TRANSFER INC, MCGUIRE BROTHERS LLC,
9 STEVE MCGUIRE,
10 *Petitioners,*

11
12 vs.

13
14 CITY OF TUALATIN,
15 *Respondent,*

16
17 and

18
19 METRO,
20 *Intervenor-Respondent.*

21
22 LUBA No. 2013-016

23 ORDER

24 **MOTION TO INTERVENE**

25 Metro moves to intervene on the side of the city. There is no opposition to the
26 motion, and it is allowed.

27 **RECORD OBJECTIONS**

28 Petitioners filed objections to the original five-volume record. In response, the city
29 filed an amended record consisting of nine volumes. In a cover pleading, the city requested
30 that the transcripts and DVDs in Volume 1 of the original record be placed at the end of
31 Volume 9 of the amended record, and that the original five-volume record be “deleted” and
32 replaced with the amended nine-volume record. On June 6, 2013, petitioners filed objections
33 to the amended record. We now resolve the outstanding objections.

34 **A. Deletion of Original Five-Volume Record**

35 Petitioners object to deletion of the original five-volume record, arguing that

1 replacing it with a new nine-volume record makes it difficult for petitioners to determine
2 whether any documents included in the original record were omitted in the amended record.
3 To avoid this problem, petitioners suggest that the original five-volume record simply
4 continue to be part of the record. The city responds that having two records is duplicative
5 and would make it more difficult for the parties and the Board to use the record.

6 As discussed below, petitioners appear to be correct that the original five-volume
7 record submitted to the Board and parties may include documents inadvertently omitted from
8 the amended record. Accordingly, we decline the city's suggestion to "delete" the original
9 five-volume record. The parties may cite to the original record, if necessary. However, to the
10 extent possible, the parties shall cite to the amended record.

11 **B. Omitted Items**

12 **1. Missing Page**

13 The city agrees that page 26 of the Ice Age Tonquin Draft Master Plan is missing
14 from the amended record. The city has supplied Record page 3609A as the missing page.
15 The Board and the parties shall insert page 3609A after page 3609 in the amended record.

16 **2. DVDs and Transcripts**

17 Petitioners object that the amended record does not include the DVDs and transcripts
18 included in the original record. As noted, the city requested that the parties and the Board
19 take the DVDs and transcripts from Volume 1 of the original record and place them into
20 Volume 9 of the amended record. That is an acceptable solution.

21 **3. Transportation System Plan**

22 The challenged decision adopts a revised transportation system plan, but petitioners
23 argue that the amended record does not include the adopted revised plan. Instead, petitioner
24 argues, Amended Record 124 simply provides an electronic link to the revised plan on the
25 city's website. The city responds that the electronic link is adequate and, in any case, a paper
26 copy of the revised transportation system plan is located at Amended Record 2096-2750.

1 We agree with petitioners that providing an electronic link to a document on the city's
2 website is an entirely insufficient means to provide a copy of the document to LUBA and the
3 parties, as required by our rules.¹ As to a paper copy, the document at Amended Record
4 2096-2750 appears to be a draft version dated December 2012. If the amended record
5 includes a paper copy of the revised transportation plan that was adopted by the challenged
6 ordinance, the city does not identify that location.

7 Petitioners note that a document entitled "Revised Tualatin Transportation System
8 Plan Update" and dated February 2013 is located at Amended Record 988 *et seq.* and
9 Original Record 122 *et seq.* However, petitioners argue that it is not clear that this revised
10 plan is the final version that was adopted by the challenged ordinance.

11 The decision challenged in this appeal is Ordinance No. 1354-13, adopted on
12 February 25, 2013, which among other things adopts revisions to the city's transportation
13 system plan. In the original record, a copy of the revised plan follows immediately after the
14 ordinance. Original Record 122 *et seq.* The copy of the revised plan located at Amended
15 Record 988 *et seq.* appears to be identical. As far as we can tell, the revised plan dated
16 February 2013 and located at Amended Record 988 *et seq.* and Original Record 122 *et seq.* is
17 the final plan adopted by the challenged ordinance. Because what appears to be a paper copy
18 of the adopted plan is located in both the original and amended records, this objection is
19 denied.

20 **C. Illegible Items**

21 Petitioners object that the documents at Amended Record 2405-2444 and 4104-4143
22 are illegible, due to the small font. The city responds that the cited record pages are two
23 identical documents, and that while pages 2405-2444 are admittedly difficult to read, pages
24 4104-4143 are legible. The city has supplied 11 by 17 printouts of those pages that are

¹ LUBA's efforts to access the electronic version of the revised plan using the website address at Amended Record 124 have not succeeded.

1 slightly easier to read. We agree with the city that pages 4104-4143, though written in a
2 small font, are legible, and that no further remedial action is necessary.

3 Petitioners also object that pages 816-829 in the amended record are illegible.
4 Although printed in a small font, the font is clear and these pages are legible. These
5 objections are denied.

6 The record is settled as of the date of this order. The petition for review is due 21
7 days, and the response brief due 42 days, from the date of this order. The Board's final
8 opinion and order is due 77 days from the date of this order.

9 Dated this 26th day of July, 2013.

10
11
12
13
14
15
16
17

Tod A. Bassham
Board Member