

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3  
4 MARK HERRING, LESLIE HILDRETH,  
5 JESSE ULLOA and JOANNE ULLOA,  
6 *Petitioners,*

7  
8 vs.

9  
10 LANE COUNTY,  
11 *Respondent.*

12 LUBA No. 2006-203

13  
14  
15 ORDER ON MOTION  
16 TO APPEAR AS AMICUS

17 Brad Ogle (Ogle), the applicant below, filed a motion for an order allowing him to  
18 file an amicus brief in this matter.<sup>1</sup> Ogle filed its motion, together with a Brief of Amicus-  
19 Respondent, on May 4, 2007. The city also filed its response brief on May 4, 2007.

20 OAR 661-010-0052(1) provides:

21 “A person or organization may appear as amicus only by permission of the  
22 Board on written motion. The motion shall set forth the interest of the movant  
23 and state reasons why a review of relevant issues would be significantly aided  
24 by participation of the amicus. A copy of the motion shall be served on all  
25 parties to the proceeding.”

26 Because Ogle was the applicant below, there is no question that he has an interest in  
27 participating in the appeal. The question is whether his participation would significantly aid  
28 the Board. According to Ogle, his participation will significantly aid the Board because he  
29 “\* \* \* presents legal arguments that respond to the assignments of error asserted by  
30 petitioners. They are based on Amicus’ familiarity with the evidence in the record and the  
31 criteria for the requested plan amendment and zone change. They respond directly to the

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<sup>1</sup> Ogle did not file a timely motion to intervene, and now seeks to file what would essentially be a response brief. *See Herring v. Lane County*, \_\_ Or LUBA \_\_ (LUBA No. 2006-203, Order on Motion to Intervene, January 12, 2007).

1 assignments of error and the arguments set forth in those assignments. \* \* \*.” Motion to File  
2 Amicus Brief 2.

3 In *Cotter v. Clackamas County*, 35 Or LUBA 749 (1998), the applicant below did not  
4 intervene, but attempted to participate as an amicus, arguing that it had a different  
5 perspective on the development of the property than the county and was in a unique position  
6 to brief the issues presented in the appeal. The county also participated in the appeal. We  
7 denied participation as an amicus:

8 “We do not understand how TKC’s ‘different perspective on development of  
9 its property’ would significantly aid in our review of the challenged decision.  
10 Our review is limited to the county’s decision, which approved TKC’s  
11 development request, and does not include abstract questions of how the  
12 development of the property should occur. Thus, TKC’s specific and narrow  
13 interest in the property itself does not provide a basis to conclude that our  
14 review of the relevant issues would be significantly aided by TKC’s  
15 participation. TKC also has not articulated why its perspective of the  
16 county’s approval is ‘unique’ or how its perspective would add to our review  
17 one that is distinct from the county’s.” *Id.* at 750.

18 *Cotter* is identical to the present situation. In the present appeal, the county has filed  
19 a response brief that, we assume, responds to petitioners’ assignments of error and the  
20 arguments set forth in those assignments. We also assume that the county is familiar with the  
21 record and the criteria for the requested approvals. Ogle has not demonstrated that his  
22 participation would significantly aid our review. *See Rose v. City of Corvallis*, 49 Or LUBA  
23 260, 265-66 (2005) (LUBA has significant discretion in determining when amicus  
24 participation will assist the Board).

25 Ogle’s motion to appear as amicus is denied.

26 Dated this 15<sup>th</sup> day of May, 2007.  
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31 \_\_\_\_\_  
32 Melissa M. Ryan  
Board Member