

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 OREGON SHORES CONSERVATION
5 COALITION and RALPH JOHN BAXTER,
6 *Petitioners,*

7
8 and

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10 DAWN VONDERLIN and LARRY VONDERLIN,
11 *Intervenors-Petitioner,*

12
13 vs.

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15 COOS COUNTY,
16 *Respondent,*

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18 and

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20 INDIAN POINT, INC.,
21 *Intervenor-Respondent.*

22
23 LUBA No. 2007-118

24 ORDER ON MOTION
25 TO APPEAR AS AMICUS

26 Caryn Fieger (Fieger) filed a motion for an order allowing her to file an *amicus* brief
27 in this matter. Fieger filed her motion, together with an Amicus Brief, on November 5, 2007.
28 Intervenor-respondent also filed its response brief on November 5, 2007. We have not
29 received a brief from the county. Oral argument in this appeal is scheduled for November
30 20, 2007.

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

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

37 The two requirements under the rule in order to appear as *amicus* are: (1) Fieger must set
38 forth her interest; and (2) Fieger must state reasons why LUBA’s review of the relevant

1 issues would be significantly aided by participation of the *amicus*. *Nelson v. Curry County*,
2 48 Or LUBA 178, 179 (2004).

3 Turning to the second requirement, Fieger states that her participation would
4 significantly aid LUBA's review by "raising additional legal arguments for the Petitioner's
5 Second Assignment of Error." Motion to Appear as Amicus 3. Fieger states that, as *amicus*,
6 she will provide "unique, and as yet, un-addressed arguments for why Coos County erred in
7 approving the development of this RV Park." *Id.* Those arguments appear to restate
8 arguments made below that the provisions of ORS Chapter 90 (Oregon Residential Landlord
9 Tenant Act) apply to the proposed development.

10 LUBA will not remand a decision based on legal arguments that are presented in an
11 *amicus* brief but are not presented by any other party to the appeal. *Concerned Citizens v.*
12 *Malheur County*, 47 Or LUBA 208, 216 (2004). In *Concerned Citizens*, the Oregon Farm
13 Bureau set forth in its *amicus* brief an argument that certain uses should be allowed in
14 exclusive farm use zones without the necessity of an exception to Goal 3. The county did not
15 adopt the Farm Bureau's argument in its decision or in its response brief, and neither did the
16 other parties to the appeal. We held: "[w]e do not believe it is appropriate to remand a
17 county decision based on a legal theory that is not asserted by any of the parties to an
18 appeal." *Id.*

19 Given that Fieger's motion states that her intent in the *amicus* brief is to raise
20 additional legal arguments in support of the petitioner's second assignment of error, and
21 given that we will not remand the county's decision based on arguments in the *amicus* brief
22 that are not asserted by any other parties to the appeal, we do not see how our review of the
23 relevant issues would be significantly aided by Fieger's participation.¹

¹ Fieger states that her interest is that she is the owner of a property that is located approximately 400 yards away from the property that is the subject of this appeal, and the development will impact her enjoyment of her property in various ways. Fieger also states that her interest is in protecting the Bandon Marsh National Wildlife Refuge, located adjacent to the subject property. Because we have determined that Fieger's

1 The motion to appear as amicus is denied.

2 Dated this 8th day of November, 2007.

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Melissa M. Ryan

8 Board Member

participation will not significantly aid our review of the relevant issues, we need not determine whether her interest is sufficient to meet the requirements of the rule.