



1 059, Order, August 25, 1998) (denying motion to reconsider order settling the record  
2 based on argument that should have been made in a response to the record objection);  
3 *White Marine Services, Inc. v. City of Portland*, \_\_\_ Or LUBA \_\_\_ (LUBA No. 98-  
4 066, Order on Motion to Reconsider, June 10, 1998) (denying motion that in essence  
5 presents a new, untimely record objection). LUBA will likely reject a motion to  
6 reconsider that consists of such arguments.

7  
8 “A request to reconsider an order settling the record may be appropriate, in our view,  
9 where the party requesting reconsideration argues that LUBA’s order was based on a  
10 significant misunderstanding of the parties’ arguments regarding the record, and the  
11 party seeking reconsideration files a timely request to reconsider that succinctly  
12 identifies and clarifies the alleged misunderstanding. *See Wal-Mart Stores, Inc. v.*  
13 *City of Central Point*, \_\_\_ Or LUBA \_\_\_ (LUBA No. 2004-075, Order, October 22,  
14 2004) (granting reconsideration where LUBA misunderstood the parties’  
15 arguments).”

16 In the present case, petitioners request that we reconsider our resolution of an  
17 objection to the omission of (1) a copy of a August 8, 2008 “land use compatibility  
18 statement” or LUCS, and (2) a set of project details related to that LUCS decision, both of  
19 which the county mailed to petitioners in August 2008. In our February 1, 2010, order we  
20 denied the objection because petitioners did not explain why the particular copies of  
21 documents mailed to petitioners should be in the record, as distinct from the copies of those  
22 documents retained in the county’s files, which were presumably in front of the county  
23 decision maker when he made the decision that is at issue in this appeal.<sup>1</sup> Our order required

---

<sup>1</sup> We stated in the February 1, 2010 order:

“If we understand this objection correctly, petitioners want the record to be supplemented to include the particular version of the 2008 LUCS that was mailed to them on August 8, 2008. That version of the 2008 LUCS is apparently not in the record in LUBA 2009-041, but petitioners attached a copy of that version of the 2008 LUCS to their brief in that appeal. As we explained in our January 10, 2010 order transferring LUBA 2009-041, the copy of the 2008 LUCS that was mailed to petitioners included an attached handwritten note, to which petitioners assigned significance. Slip op 3. That handwritten note is presumably not attached to the county’s copy of the 2008 LUCS that was likely before the planning director when he issued the 2009 LUCS. In any case, petitioners offer no reason to believe that the particular copy of the 2008 LUCS that was mailed to them was ever placed before the planning director in issuing the 2009 LUCS. Similarly, petitioners offer no reason to believe the specific set of Project Details mailed to them was placed before the planning director in issuing the 2009 LUCS, to the extent that set differs from the set included in the record in LUBA 2009-114, which will be made part of this record, pursuant to the objection sustained above. This objection is denied.”

1 the county to include in the amended record the copies of those two documents retained by  
2 the county.

3 In their request for reconsideration, petitioners first seek to clarify that a copy of the  
4 site plan attached to the August 8, 2008 decision will be included in the record under our  
5 order. The amended record filed by the county includes what appears to be the county's  
6 copy of that site plan, at Record 105.

7 Next, petitioners seek to clarify that a copy of a document identified as "PR08-0194  
8 Project Details" is included in the record. As noted, our February 1, 2010 order assumed that  
9 the county's copy of that document would be included in the amended record, pursuant to  
10 resolution of a different objection. The county filed the amended record on February 25,  
11 2010. The table of contents to the amended record does not specifically identify a document  
12 named "PR08-0194 Project Details," although it is possible the document is present in the  
13 record as an unidentified attachment to another document. Petitioners have not filed any  
14 objections to the amended record or advised us that the document is not in the amended  
15 record.

16 Under these circumstances, we deem it best to settle the record and start the briefing  
17 schedule. If petitioners believe that the document identified as "PR08-0194 Project Details"  
18 is not in the amended record, petitioners shall so advise the Board and the county within  
19 seven days of this order. In that case, within 14 days of the date of this order the county shall  
20 transmit to LUBA and serve on petitioner a supplemental record including a copy of that  
21 document. Because petitioners state that they obtained a copy of the document from the  
22 county's files, and thus both parties possess a copy, we see no need to delay the briefing  
23 schedule pending receipt of such a supplemental record, if one is required.

24 The petition for review shall be due 21 days from the date of this order. The  
25 respondent's brief shall be due 42 days from the date of this order. The Board's final opinion  
26 and order shall be due 77 days from the date of this order.

1  
2  
3  
4  
5  
6  
7  
8  
9

Dated this 12<sup>th</sup> day of March, 2010.

---

Tod A. Bassham  
Board Chair