

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 CAMPERS COVE RESORT LLC,
5 *Petitioner,*

6
7 vs.

8
9 JACKSON COUNTY,
10 *Respondent,*

11 and

12
13 SOUTHERN OREGON CITIZENS FOR RESPONSIBLE
14 LAND USE PLANNING, SANDY SPEASL,
15 and SHELLEY MORRISON,
16 *Intervenors-Respondents.*

17
18 LUBA No. 2009-117

19
20 ORDER ON MOTION TO APPEAR AS AMICI

21 Jim Salyer, Jodi Salyer, Gary Whittle, Sandi Whittle, Carl Sieg, Jeanette Sieg, Jim
22 Hill, Charlene Hill, John Mytinger, Angie Mytinger, Jeff Feyerman, Jill Feyerman, Rob
23 Collins, Dea Collins, Tom Hazel, Felicia Hazel, Walter Wilkins, Annette Wilkins, Michael
24 Schooler, Robin Schooler, Jeffrey Wells, Julia Wells, Mike Mahar, and Mary Mahar (amici)
25 move to appear as amici and file an amicus curiae brief. Intervenors-respondents
26 (intervenors) object to the motion.

27 This appeal involves a county decision that approved in part and denied in part
28 petitioner’s application for nonconforming use verification and expansion of petitioner’s
29 resort. In relevant part, the decision denied petitioner’s request to expand the resort to
30 include 13 “park model” recreational vehicle units, in addition to the 22 park model units that
31 currently are placed there, pursuant to county-approved permits.¹ Petitioner and amici assert

¹ A park model unit is a pre-manufactured structure of not more than 400 square feet that is designed to be placed on wheels and pulled to a set up location by tractor rig.

1 that in the challenged decision the hearings officer concluded, *sua sponte*, that the 22 existing
2 park model units will require exceptions to Goals 4 (Forest Lands), 11 (Public Facilities), and
3 14 (Urbanization). The amici are owners of the some of the 22 park model units that the
4 decision concluded will require goal exceptions.

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

6 “A person or organization may appear as amicus only by permission of the
7 Board on written motion. The motion shall set forth the interest of the movant
8 and *state reasons why a review of relevant issues would be significantly aided*
9 *by participation of the amicus. * * **” (Emphasis added.)

10 There are essentially two requirements to appear as an amicus: (1) to set forth the
11 interest of the movant; and (2) to demonstrate why LUBA’s review would be significantly
12 aided by participation of the amicus. *Nelson v. Curry County*, 48 Or LUBA 178, 179 (2004).
13 There is no dispute that the amici have an interest in the challenged decision. Intervenors
14 argue, however, that the amici have not established why their participation would
15 significantly aid our review of the relevant issues. Intervenors argue that the amicus curiae
16 brief sets out three assignments of error that are identical to petitioner’s first three
17 assignments of error, and that the arguments in the brief filed by amici are similar and in
18 some cases identical to the arguments in the petition for review.

19 The amici’s motion states:

20 “Amicus are interested in this appeal as they are the owners of 22 park model
21 units at the subject property and would be significantly impacted by a reversal
22 or remand of this decision. Amicus did not have an opportunity to appear
23 before the Hearings Officer as they were not provided notice of the
24 proceedings below. Allowing this Amicus Brief would significantly aid in
25 review of the relevant issues as Amicus have a distinct interest in the 22-Units
26 which may not be thoroughly addressed by the other parties. Allowing this
27 brief will provide for a full and complete discussion of the issues in this
28 appeal. Additionally, Amicus contend that the Board does not have
29 jurisdiction to hear any appeal with regard to the 22-Units and present legal
30 arguments in their brief as to that issue.” Motion to File Amicus Brief 2.

31 A property owner’s “specific and narrow interest” in property is not sufficient, in
32 itself, to show that LUBA’s review would be significantly aided by the property owner’s

1 participation as an amicus. *Cotter v. Clackamas County*, 35 Or LUBA 749, 750 (1998)
2 (denying the applicant’s motion to appear as amicus, where the applicant failed to file a
3 timely motion to intervene, and failed to demonstrate to LUBA that his participation as
4 amicus would significantly aid LUBA’s review). We have sometimes allowed persons
5 affected by the challenged decision to participate as amicus, where the amicus brief would be
6 the only brief filed in support of one side’s position in the appeal, and amicus participation
7 would not delay the review schedule. *See Coquille Citizens for Responsible Growth v. City*
8 *of Coquille*, __ Or LUBA __ (LUBA No. 2006-111, Order, September 15, 2006) (allowing
9 the applicant to appear as amicus, and file a brief defending the decision, where otherwise no
10 response brief would be filed). However, the converse is not necessarily true: that an amicus
11 is aligned with the interests of one party and supports the arguments already advanced by one
12 party is not, in itself, a basis to reject amicus participation.

13 In the present case, petitioner and amici have different property interests in the
14 subject property and despite the similarity in their respective arguments and assignments of
15 error, the positions amici take in this appeal do not simply duplicate those taken by
16 petitioner. Importantly, amici did not receive notice of the proceedings below, and arguably
17 did not have a reasonable opportunity to appear and thereby establish standing to intervene in
18 this review proceeding and to receive notice of the challenged decision. The present case is
19 not one where the applicant or other affected person who could have intervened in the appeal
20 failed to file a timely motion to intervene, and who seeks amicus participation essentially to
21 avoid the consequences of failing to comply with the 21-day deadline to intervene at
22 ORS 197.830(7).

23 Given the similarity between the arguments advanced by petitioner and amici,
24 allowing amici to participate in this appeal may not provide much assistance to LUBA’s
25 review. On the other hand, that same similarity in argument means that amicus participation
26 will likely not significantly delay or complicate LUBA’s review. Because the interests and

1 positions asserted by petitioner and amici are not entirely the same, and allowing amici to
2 participate would require no delay in this review, we grant the motion to participate as amici,
3 and allow the amicus curiae brief.

4 Amici also request permission to participate in oral argument, pursuant to OAR 661-
5 010-0052(2).² However, amici make no effort to explain why their participation in oral
6 argument is warranted, and the request is denied.³

7 Dated this 3rd day of March, 2009.
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11 _____
12 Tod A. Bassham
13 Board Chair

² OAR 661-010-0052(2) provides, in part:

“Appearance as amicus shall be by brief only, unless the Board specifically authorizes or requests oral argument. * * *”

³ In a separate letter, amici request permission for their counsel to listen to oral argument by telephone conference call. Because the county has requested that the county participate in oral argument by a telephone conference call, amici’s request imposes no additional inconvenience to the Board or parties, and the request is granted.