

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

3
4 BONNIE BRODERSEN,
5 *Petitioner,*

6
7 vs.

8
9 CITY OF ASHLAND,
10 *Respondent,*

11 and

12
13 WILLIAM McDONALD and LYNN McDONALD,
14 *Intervenors-Respondents.*

15
16 LUBA Nos. 2010-038, 2010-056 and 2010-058

17
18 ORDER

19 **MOTION TO INTERVENE**

20 William McDonald and Lynn McDonald (intervenors), the applicants below, move to
21 intervene in LUBA No. 2010-056. There is no opposition to the motion, and it is allowed

22 **MOTIONS TO DISMISS LUBA NO. 2010-038 AND 2010-058**

23 **A. Introduction**

24 In these consolidated appeals, petitioner challenges three related decisions. In LUBA
25 No. 2010-058, petitioner challenges the adoption of Ordinance No. 3007, which adopts new
26 standards for extending certain permit decisions. Ordinance No. 3007 was adopted on March
27 2, 2010. In LUBA No. 2010-038, petitioner challenges a staff decision issued on April 8,
28 2010 to extend a previously granted Physical & Environmental Constraints Review Permit
29 under the new standards adopted in Ordinance No. 3007. In LUBA 2010-056, petitioner
30 challenges a planning commission decision dated June 8, 2010, that grants a new and/or
31 modified Physical & Environmental Constraints Review Permit for the same development
32 that is at issue in the April 8, 2010 decision. Intervenors are the applicants for both permit
33 decisions.

1 The city filed motions to dismiss the appeals of the April 8, 2010 permit extension
2 decision (LUBA No. 2010-038) and Ordinance No. 3007 (LUBA No. 2010-058). For the
3 reasons set out below, we agree with the city that petitioner has not demonstrated that LUBA
4 has jurisdiction over the decisions appealed in LUBA Nos. 2010-038 and 2010-058. We
5 therefore bifurcate those appeals from LUBA No. 2010-056 and, in separate final opinions
6 and orders issued this date, dismiss those appeals.

7 **B. The Appeal of Ordinance No. 3007 (LUBA No. 2010-058) was untimely.**

8 Ordinance No. 3007 is a legislative post-acknowledgement plan amendment (PAPA)
9 that was adopted on March 2, 2010, effective April 2, 2010. Ordinance No. 3007 sets out
10 new standards under which the city can extend certain permit decisions. In particular,
11 Ordinance No. 3007 as adopted adds a new provision to the Ashland Land Use Ordinance
12 (ALUO), codified at ALUO 18.112.035(B):

13 “Notwithstanding any other provision of this Chapter, any zoning permit or
14 planning action having received approval prior to July 1, 2009, and current as
15 of January 1, 2010, shall be granted an additional twelve (12) month extension
16 of time, upon application to the Staff Advisor. This extension is in addition to
17 any other time extension previously granted or that may be granted. The Staff
18 Advisor shall make the timetable adjustment regardless of the original
19 approval authority.” Record 23.¹

20 The parties refer to a permit extension under ALUO 18.112.035(B) as a “recession
21 extension,” because the city’s apparent intent is to grant extensions of certain permits that
22 were unable to proceed due to the national economic recession.

23 On March 17, 2010, the city provided notice of the adoption of Ordinance No. 3007
24 to the Department of Land Conservation and Development (DLCD) and to other persons
25 entitled to notice, pursuant to ORS 197.615(1) and (2). Petitioner does not claim to be
26 entitled to notice of the city’s decision under ORS 197.615(1) and (2).

¹The city filed two records in these consolidated appeals, one for LUBA Nos. 2010-038 and 2010-058, and a second separate record for LUBA No. 2010-056. All citations to the record in this order are to the record in LUBA Nos. 2010-038 and 2010-058.

1 ORS 197.830(9) provides that a notice of intent to appeal a PAPA to LUBA “shall be
2 filed not later than 21 days after notice of the decision sought to be reviewed is mailed or
3 otherwise submitted to parties entitled to notice under ORS 197.615.” Petitioner filed her
4 notice of intent to appeal Ordinance No. 3007 on May 3, 2010, more than 21 days after the
5 date that notice of the adoption of the ordinance was mailed to persons entitled to notice
6 under ORS 197.615. The city therefore moves to dismiss the appeal of Ordinance No. 3007
7 as untimely filed under ORS 197.830(9).²

8 Petitioner responds that the time period to appeal Ordinance No. 3007 was effectively
9 tolled pursuant to ORS 197.830(3), which provides:

10 “If a local government makes a land use decision * * * that is different from
11 the proposal described in the notice of hearing *to such a degree that the notice*
12 *of the proposed action did not reasonably describe the local government's*
13 *final actions*, a person adversely affected by the decision may appeal the
14 decision to the board under this section:

15 “(a) Within 21 days of actual notice where notice is required; or

16 “(b) Within 21 days of the date a person knew or should have known of the
17 decision where no notice is required.” (Emphasis added.)

18 Petitioner also cites to ORS 197.620(2), which specifically applies to appeals of PAPAs and
19 new land use regulations such as Ordinance 3007, and provides:

20 “Notwithstanding the requirements of ORS 197.830(2), the Director of the
21 Department of Land Conservation and Development or any other person may
22 file an appeal of the local government’s decision under ORS 197.830 to
23 197.845, if an amendment to an acknowledged comprehensive plan or land
24 use regulation or a new land use regulation differs from the proposal
25 submitted under ORS 197.610 to such a degree that the notice under ORS
26 197.610 did not reasonably describe the nature of the local government final
27 action.”

² The city also argues that petitioner failed to appear or participate in the proceedings leading up to adoption of Ordinance No. 3007, and therefore lacks standing to appeal the ordinance to LUBA under ORS 197.830(2) or 197.620(1). Because we resolve the motion to dismiss on other grounds, we do not address the standing issue.

1 ORS 197.620(2) refers to ORS 197.830(2), which imposes a standing requirement that limits
2 the right to appeal a land use decision to LUBA to persons who “appeared” during the
3 proceedings below. Thus, where ORS 197.620(2) applies, it obviates the ORS 197.830(2)
4 appearance requirement (as well as, presumably, the slightly different ORS 197.620(1)
5 “participation” requirement). However, unlike ORS 197.830(3), ORS 197.620(2) does not
6 operate to toll or otherwise delay the appeal deadlines set out in ORS 197.830(9). Therefore,
7 in resolving whether petitioner’s appeal of Ordinance 3007 was timely filed, we focus on
8 ORS 197.830(3).

9 The purpose of the “did not reasonably describe” language of ORS 197.830(3) is to
10 excuse from the 21-day appeal deadline in ORS 197.830(9) a petitioner who was *misled* by
11 differences between the proposal described in the notice of hearing and the proposal as
12 approved, and due to that misleading notice the petitioner failed to appear at the hearing and
13 thus become entitled to notice of the decision, and hence gain notice of the 21-day deadline
14 to appeal to LUBA. *Duenweg v. City of Medford*, 60 Or LUBA 1, 9 (2009), *aff’d* 231 Or
15 App 227, ___ P3d ___ (2009); *Ebar v. Harney County*, 59 Or LUBA 201, 205 (2009). If a
16 petitioner did not view the notice of hearing, then the petitioner cannot possibly have been
17 misled by any inadequacies in the notice of hearing. *Duenweg*, 60 Or LUBA at 9, *Ebar*, 59
18 Or LUBA at 205.

19 Applying the “did not reasonably describe” language in ORS 197.830(3) to a
20 *legislative* decision adopting a new land use regulation is somewhat problematic, because in
21 general individual written notice of the hearing is not required for legislative decisions.³ For
22 a legislative PAPA, such as the present decision, the only potential notices of hearing
23 required are (1) the notice of proposed amendment provided to DLCD, and thence to persons

³ One exception not applicable here is Ballot Measure 56 notice under ORS 215.503 or 227.186, which requires individual written notice when a local government adopts an ordinance, even a legislative ordinance, rezoning property.

1 requesting notice from DLCD, pursuant to ORS 197.610(1); and (2) any general publication
2 notice of the hearing the local government provides in a local newspaper pursuant to
3 applicable statutes or local code provisions. *See Miner v. Clatsop County*, 46 Or LUBA 467,
4 478 (2004) (applying ORS 197.830(3) to publication notice of a legislative decision);
5 *Williams v. Clackamas County*, 27 Or LUBA 602, 606 (1994) (applying ORS 197.830(3) to
6 the DLCD notice of proposed amendment and publication notice of a legislative decision).

7 Petitioner does not claim that she was aware of the DLCD notice of proposed
8 amendment or of the original draft of the ordinance, until after this appeal was filed. Nor
9 does she argue that the DLCD notice did not “reasonably describe” the final action. The
10 notice provided to DLCD on December 23, 2009, and that DLCD in turn presumably
11 provided to persons that requested notice under ORS 197.610(1), describes the proposed
12 action in relevant part as follows:

13 “Ordinance revision concerning a ‘Recession’ timetable extension allowance
14 for development activity that was unable to proceed due to the national
15 recession.” Record 99.

16 The DLCD notice advised that the city would hold the first evidentiary hearing on the
17 proposal on February 16, 2010. Attached to that DLCD notice was a proposed draft
18 ordinance (hereafter, the original draft). In relevant part, the original draft automatically
19 granted a one-time 18-month extension to permits approved between January 1, 2006 and
20 July 1, 2009.⁴

21 Petitioner focuses her argument on the newspaper publication notices. On January
22 16, 2010, the city sent out newspaper publication notice of the January 26, 2010 planning

⁴ The original draft provided, in relevant part:

“Notwithstanding any other provision of this Chapter, any zoning permit or planning action approval, or any other land use action approval whatsoever, which was approved by a City of Ashland land use decision-maker between January 1, 2006 and July 1, 2009 * * * is hereby granted a one time eighteen (18)-month extension of time in addition to any other time extensions previously granted or which may be granted. * * *” Record 105.

1 commission hearing on the recession extension ordinance. Record 97. The notice of the
2 planning commission hearing described the proposed ordinance in relevant part as:

3 “[P]roposed revisions include a one time 18-month ‘Recession’ timetable
4 extension allowance for current development activity that was unable to
5 proceed due to the national recession.” Record 97.

6 The notice of planning commission hearing stated that the proposed ordinance is available
7 for review online on the city’s website. Petitioner argues, and the city does not dispute, that
8 the version of the proposed ordinance posted on the city’s website during that time frame and
9 considered by the planning commission on January 26, 2010, is replicated at Record 63-69.
10 In relevant part, that version of the draft ordinance had been modified from the original draft
11 to provide that any permit current as the effective date of the ordinance shall be granted an
12 additional 18-month extension, after a finding by planning staff that two requirements have
13 been met: (1) a change of conditions prevented the applicant from completing the
14 development within the original time limitation, and (2) the applicable regulations have not
15 changed since the original approval. Record 68. We refer to this version of the proposed
16 ordinance as the “modified draft.”

17 The planning commission recommended adoption of the modified draft and
18 forwarded it to the city council. On February 9, 2010, the city provided newspaper notice of
19 the city council hearing on February 16, 2010. As relevant, the notice simply described the
20 ordinance as “concerning timetable extensions,” and noted that copies of the proposed
21 ordinance are on file in the city offices. Record 96. At the close of the February 16, 2010
22 public hearing, the city council voted to move to a second reading at a second hearing, with
23 “staff providing language options” regarding what criteria should apply for an extension and
24 the length of the extension. Record 53.

25 At the following March 2, 2010 hearing, staff proposed several different language
26 options, and recommended that the city council eliminate the discretionary criteria proposed
27 in the modified draft. Record 33. After discussion, the city council voted to decrease the

1 extension period from 18 months to 12 months, and to adopt the staff-recommended
2 language that provides for an extension of any permit approved prior to July 1, 2009, and
3 current as of January 1, 2010, upon application to planning staff, thus eliminating the
4 discretionary criteria proposed in the modified draft. The final ordinance including that
5 language was adopted at the conclusion of the March 2, 2010 hearing.

6 Petitioner contends that the modified draft available on the city's website differed
7 from the final ordinance in allowing a recession extension under *discretionary* criteria, while
8 the final ordinance allows staff to grant a recession extension as a *ministerial*, non-
9 discretionary decision. According to petitioner, that difference in the recession extension
10 language between the modified and final ordinances is significant. Petitioner alleges that she
11 was aware at the time that the city was considering adoption of a recession extension
12 ordinance, and that she "relied upon the City's publication of its proposed Recession
13 Extension Ordinance options," which were found on the city's website. Response to Motion
14 to Dismiss 16. We understand petitioner to claim that she chose not to attend the hearings
15 before the planning commission and city council, and thus become entitled to individual
16 written notice of the decision under ORS 197.615(2)(a), because she had no objection to the
17 modified draft available on the city's website. Petitioner states that she believed that
18 intervenors could not demonstrate compliance with new regulations adopted since 2006, and
19 therefore under the modified draft intervenors' permit could not be extended. Petitioner
20 claims that if she had known that the final ordinance would allow the city to extend
21 intervenors' permit without complying with currently applicable regulations, she would have
22 appeared at the hearings in opposition to the ordinance and thus would have become entitled
23 to notice of the decision under ORS 197.615(2).

24 Because the modified draft on the city's website differed significantly from the final
25 ordinance, petitioner argues, the deadline to appeal Ordinance No. 3007 should be tolled
26 under ORS 197.830(3)(b), to allow a person adversely affected by the decision to appeal

1 within 21 days of the date she “knew or should have known” that the local government
2 adopted the decision. Petitioner alleges that she learned that the city had adopted Ordinance
3 No. 3007 and the differences between the modified draft and the final ordinance, on April 13,
4 2010, less than 21 days from the date she appealed the ordinance to LUBA.

5 The “did not reasonably describe” language of ORS 197.830(3) focuses on
6 differences between the “proposal described in the notice of hearing” and the local
7 government’s “final action.” It does not focus on differences between the underlying
8 *proposal* itself and the final action. In other words, it is irrelevant for purposes of
9 ORS 197.830(3) whether the modified draft available on the city’s website during the
10 planning commission and city council hearings differed from the final ordinance adopted on
11 March 2, 2010. The relevant question is whether the proposal *as described* in the notice of
12 hearing was sufficiently different in nature or scope from the final action such that the notice
13 of hearing “did not reasonably describe” the final action. That is because, as we explained in
14 *Duenweg* and similar cases, the purpose of the “did not reasonably describe” element of
15 ORS 197.830(3) is to toll the appeal deadline for persons who were *misled* by the proposal
16 *described* in the notice of hearing and for that reason did not appear and participate in the
17 hearing.

18 As noted, the notice provided to DLCD and publication notice of the planning
19 commission hearing similarly describe the proposed ordinance to concern a one-time 18-
20 month recession extension allowance for current development permits. Record 97, 99. The
21 final ordinance adopts a 12-month recession extension allowance for current development
22 permits. Other than the 18-month recession extension versus the 12-month recession
23 extension in the final ordinance, the DLCD and planning commission hearing notices appear
24 to accurately, if generally, describe the city’s final action. Petitioner does not argue that the
25 change from an 18-month extension to a 12-month extension is significant enough to support
26 a conclusion that the DLCD or publication notices did not “reasonably describe” the city’s

1 final action, and we do not see that it is. Petitioner identifies nothing in any of the city
2 *notices* that misled her about the nature or scope of the ordinance and resulted in her failure
3 to appear and participate in the city hearings.

4 Instead, petitioner alleges only that she chose not to participate in the hearings on the
5 ordinance based on her understanding of the *modified draft* that was available on the city's
6 website during a certain period of time. As explained, however, the "did not reasonably
7 describe" element of ORS 197.830(3) is concerned with differences between the final action
8 and the *proposal as described in the notice of hearing*, not differences between the final
9 action and one particular version of the proposal that is available in the city's files or on its
10 website at some point in time. The DLCD and publication notices were sufficient to put
11 petitioner and other interested persons on notice that the city is considering an ordinance that
12 would allow the extension of current development permits, potentially including intervenors'
13 2006 Physical & Environmental Constraints Review Permit.⁵ The city's final action does
14 precisely that.

15 In sum, petitioner has not demonstrated that any of the city's notices of hearing "did
16 not reasonably describe" the city's final action, for purposes of ORS 197.830(3). Therefore,
17 ORS 197.830(9) provides the deadline to appeal Ordinance 3007, and because petitioner's
18 appeal of Ordinance 3007 was not filed within the 21-day deadline set out in
19 ORS 197.830(9), LUBA No. 2010-058 must be dismissed as untimely filed.

20 **C. The April 8, 2010 Permit Extension Decision is not a Land Use Decision**

21 Following the effective date of Ordinance No. 3007, intervenors applied for and
22 received a 12-month extension of the 2006 Physical & Environmental Constraints Review
23 Permit, pursuant to the newly adopted recession extension standard codified at ALUO
24 18.112.035(B). The city does not dispute that petitioner's appeal of the April 8, 2010 permit

⁵ Indeed, under the original draft attached to the DLCD notice, the city would have granted an automatic extension to permits approved after January 1, 2006, presumably including intervenors' 2006 permit.

1 extension was timely filed, but argues that the decision was “made under land use standards
2 that do not require interpretation or the exercise of policy or legal judgment,” and therefore
3 the decision falls outside the definition of “land use decision” at ORS 197.015(10)(a).

4 ORS 197.015(10)(a) defines “land use decision” in relevant part to include a final
5 decision that applies a land use regulation, such as ALUO 18.112.035(B). However,
6 ORS 197.015(10)(b)(A) excludes from the definition of land use decision a local government
7 decision “[t]hat is made under land use standards that do not require interpretation or the
8 exercise of policy or legal judgment[.]”

9 Under ALUO 18.112.035(B), “any zoning permit or planning action having received
10 approval prior to July 1, 2009, and current as of January 1, 2010, shall be granted an
11 additional twelve (12) month extension of time, upon application” to city staff. The city
12 argues that there are only two requirements to obtain a permit extension under that language:
13 the permit must be (1) approved prior to July 1, 2009, and (2) “current” as of January 1,
14 2010. According to the city, neither determination requires interpretation or the exercise of
15 policy or legal judgment, and therefore the April 8, 2010 permit extension decision at issue
16 in LUBA No. 2010-038 is not within LUBA’s jurisdiction.

17 Petitioner responds that determining whether intervenors’ 2006 permit is “current as
18 of January 1, 2010” required interpretation and the exercise of legal judgment. In the
19 challenged permit extension decision, staff found that the 2006 Physical & Environmental
20 Constraints Review Permit “was subsequently extended for 18-months through PL-2008-
21 1250, remaining current until February 7, 2010.” Record 4. However, petitioner argues that
22 the 2006 permit has been extended twice, in both cases unlawfully. Because the two prior
23 permit extensions were unlawful, petitioner argues, the 2006 permit in fact expired in 2007
24 and, therefore, the 2006 permit was not “current as of January 1, 2010,” as ALUO
25 18.112.035(B) requires. According to petitioner, staff implicitly interpreted the phrase
26 “current as of January 1, 2010” to take into account all periods of time authorized by

1 previous extension decisions, regardless of whether those previous extension decisions were
2 lawful or not. We understand petitioner to argue that the phrase “current as of January 1,
3 2010” should instead be interpreted to require staff to evaluate the lawfulness of any previous
4 extensions and, if staff concludes that previous extensions were improper, staff should deny
5 the requested extension. Determining whether prior extensions were unlawful, petitioner
6 argues, necessarily requires the exercise of legal judgment.

7 Nothing cited to us in the text or context of ALUO 18.112.035(B) suggests that the
8 city intended that in determining whether a permit is “current as of January 1, 2010” staff
9 must go beyond the facial validity of any previous permit extensions and determine whether
10 those previous final decisions were “lawful.” Petitioner’s proffered interpretation of the
11 phrase “current as of January 1, 2010” simply reads too much into that phrase. It is true that
12 a significant textual ambiguity in an otherwise clear and objective land use standard can
13 bring a decision applying that ambiguous standard outside the two ministerial exclusions to
14 the definition of land use decision, at ORS 197.015(10)(b)(A) and (B). *See Tirumali v. City*
15 *of Portland*, 41 Or LUBA 231, 237, *aff’d* 180 Or App 613, 45 P3d 519 (2002) (code term
16 “finished surface” is susceptible to at least two plausible interpretations, and thus a building
17 permit applying the term does not fall within the exceptions to LUBA’s jurisdiction at
18 ORS 197.015(10)(b)(A) and (B)). However, in the present case petitioner has not established
19 that the phrase “current as of January 1, 2010” is susceptible to more than one plausible
20 interpretation. The phrase cannot reasonably be read to require staff to undertake a legal
21 analysis of whether prior final and unappealed permit extensions were in fact legally correct
22 decisions.

23 Petitioner next argues that ALUO 18.112.035(B) requires interpretation with respect
24 to when the “additional 12-month extension of time” begins, on the date of the permit’s
25 expiration, or on the date staff issues the recession extension. In the challenged decision,
26 staff authorized the extension for a 12-month period beginning the date of the permit would

1 otherwise have expired, which staff found to be February 7, 2010. Record 4. Petitioner
2 argues, however, that ALUO 18.112.035(B) can also be interpreted to authorize a 12-month
3 extension from the date of the staff decision, in this case April 8, 2010. Because ALUO
4 18.112.035(B) is ambiguous or at least silent in this respect, petitioner contends, the term
5 “12-month extension” requires legal interpretation and thus falls outside the
6 ORS 197.015(10)(b)(A) exception.

7 Again, we believe that petitioner is manufacturing an ambiguity that is simply not
8 present in the text or context of ALUO 18.112.035(B). An “additional 12-month extension”
9 from the date of the decision rather than the date of expiration would not be an “additional
10 12-month extension” of the permit, unless the date of decision and the date of expiration
11 happened to coincide. The only way to grant an “additional 12-month extension” to a
12 permit, no more and no less, is to extend it from the date the permit would otherwise expire.
13 Petitioner has not demonstrated that that ALUO 18.112.035(B) is ambiguous on this point or
14 that there are two plausible interpretations of the phrase “additional 12-month extension.”

15 Finally, petitioner argues that application of ALUO 18.112.035(B) to extend the 2006
16 permit required exercise of policy or legal judgment, because on November 6, 2009 city staff
17 approved intervenors’ application to *modify* the 2006 permit. Petitioner appealed that staff
18 approval to the planning commission, and the planning commission’s final decision on June
19 8, 2010 approving the application is at issue in LUBA No. 2010-056. Petitioner obviously
20 believes that the planning commission erred in approving a modification of the 2006 permit,
21 but even assuming that to be the case it is not clear to us what bearing that would have on
22 whether the April 8, 2010 permit extension decision falls within our jurisdiction. To the
23 extent petitioner repeats her argument that staff was required to evaluate the lawfulness of
24 modifying the 2006 permit in determining whether the 2006 permit was “current as of
25 January 1, 2010,” we reject the argument. The April 8, 2010 extension decision does not
26 refer to or rely on the 2009 modification application or any decisions on that application, and

1 we do not understand petitioner's apparent argument that staff necessarily exercised policy or
2 legal judgment in issuing the extension decision under ALUO 18.112.035(B), based on the
3 separate proceeding on the modification application.

4 In sum, petitioner has not established that the April 8, 2010 permit extension decision
5 issued pursuant to ALUO 18.112.035(B) was made under land use standards that require
6 interpretation or the exercise of policy or legal judgment. Therefore, we agree with the city
7 that the April 8, 2010 permit extension decision is excluded from our jurisdiction under
8 ORS 197.015(10)(b)(A).

9 OAR 661-010-0075(11)(c) provides that if LUBA determines that the appealed
10 decision is not reviewable as a land use decision as defined in ORS 197.015(10), the appeal
11 shall be dismissed unless a motion to transfer to circuit court is filed within the time set forth
12 in our rule. Petitioner has not filed a motion to transfer LUBA No. 2010-058 to circuit court,
13 and thus this appeal must be dismissed.

14 **D. Conclusion**

15 For the reasons set out above, we lack jurisdiction over the decisions appealed in
16 LUBA No. 2010-038 (the April 8, 2010 permit extension) and LUBA No. 2010-058
17 (Ordinance 3007). Therefore, LUBA No. 2010-038 and LUBA No. 2010-058 are hereby
18 severed from LUBA No. 2010-056 and, in separate final opinions issued this date,
19 dismissed.⁶

20 Dated this 12th day of August, 2010.

21
22 _____
23 Tod A. Bassham

⁶ The city filed two records in these consolidated appeals, one for LUBA Nos. 2010-038 and 2010-058, and another for LUBA No. 2010-056. Petitioner has filed objections to both records. Because we dismiss the appeals of LUBA Nos. 2010-038 and 2010-058, there is no point in addressing petitioner's objections to the record of those appeals. We will address petitioner's objections to the record in LUBA No. 2010-056 and the city's responses thereto in a separate order.

1 Board Member