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

CONCERNED CITIZENS OF MALHEUR COUNTY,
Petitioner,

vs.

MALHEUR COUNTY,
Respondent,

and

TREASURE VALLEY RENEWABLE
RESOURCES, LLP,
Intervenor-Respondent.

LUBA No. 2004-008

ORDER ON MOTION TO DISMISS

Intervenor-respondent (intervenor) moves to dismiss this appeal, arguing that petitioner failed to appear below and therefore does not have standing to appeal the county’s decision to LUBA. ORS 197.830(2).¹ According to intervenor, during the proceedings that led to the challenged decision, no party identified themselves as representing petitioner, nor was there any correspondence with petitioner’s letterhead submitted during the local proceedings in this matter.

Petitioner concedes that it did not appear below under the name “Citizens Against Bio-Refinery.” Rather, petitioner states that it appeared below as an unincorporated group of persons known as “Concerned Citizens of Malheur County.” According to petitioner:

¹ ORS 197.830(2) provides, in relevant part:

“* * * [A] person may petition the board for review of a land use decision or limited land use decision if the person:

“* * * * *

“(b) Appeared before the local government, special district or state agency orally or in writing.”

1 “‘Concerned Citizens of Malheur County’ is an informal, unincorporated
2 association. * * * The group hired Okai Law Office to appear on its behalf at the
3 County Court hearings [in] December 2003 and January 2004. * * * During the
4 representation of Concerned Citizens, Okai Law Office assigned the file and billing
5 name ‘Citizens Against Bio-Refinery’ to Concerned Citizens. An error was made
6 during the drafting process and the name ‘Citizens Against Bio-Refinery’ was used
7 in the Notice of Intent to Appeal. * * *” Response to Motion to Dismiss 2.

8 Petitioner asserts the error by petitioner’s attorney is a technical violation of our rules, and asks that
9 we correct the caption to reflect the name of the group as it appeared below.

10 OAR 661-010-0005 provides, in relevant part:

11 “[LUBA’s] rules are intended to promote the speediest practicable review of land
12 use decisions and limited land use decisions, in accordance with ORS 197.805-
13 197.855, while affording all interested persons reasonable notice and opportunity to
14 intervene, reasonable time to prepare and submit their cases, and a full and fair
15 hearing. The rules shall be interpreted to carry out these objectives and to promote
16 justice. Technical violations not affecting the substantial rights of parties shall not
17 interfere with the review of a land use decision or limited land use decision. * * *”

18 We agree with petitioner that the error in the name of the real party in interest is a technical violation
19 of our rules. *See* ORCP Rule 26A (“No action shall be dismissed on the ground that it is not
20 prosecuted in the name of the real party in interest until a reasonable time has been allowed after
21 objection for * * * joinder or substitution of the real party in interest.”) Intervenor concedes that a
22 group known as Concerned Citizens of Malheur County, represented by Okai Law Office,
23 appeared during the local proceedings. March 9, 2004 Motion to Dismiss 3. The correction of the
24 petitioner’s name on the caption to reflect the true name of petitioner does not violate respondents’
25 substantial rights. Accordingly, intervenor’s motion to dismiss is denied.

26 The caption of this appeal is hereby amended to reflect the correct name of petitioner. On
27 March 18, 2004, we issued an order suspending this appeal pending our resolution of intervenor’s
28 motion to dismiss. Accordingly this appeal is reactivated. The parties have 14 days from the date of
29 this order to file objections to the record filed by the county. If no record objections are filed, the
30 petition for review is due 21 days, and response briefs are due 42 days, from the date of this order.
31 The Board’s final opinion and order is due 77 days from the date of this order.

1 Dated this 7th day of April, 2004.

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Anne Corcoran Briggs
Board Member