

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

3
4 MARK DAVID, WILLIAM CHAPMAN,
5 MARK WAITS, DAVID SLANSKY, JOAN KRAHMER,
6 SUSAN TOMPKINS and JAMES LUBISCHER,
7 *Petitioners,*

8
9 and

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11 DAN BLOOM,
12 *Intervenor-Petitioner,*

13
14 vs.

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16 CITY OF HILLSBORO,
17 *Respondent,*

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19 and

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21 TUALITY HEALTHCARE,
22 and PACIFIC UNIVERSITY,
23 *Intervenor-Respondents.*

24
25 LUBA No. 2008-023

26 ORDER

27 We issued an order settling the record in this appeal on March 20, 2008. Our order
28 settling the record was based in part on a Supplemental Record that LUBA received on
29 March 14, 2008.

30 On March 26, 2008, LUBA received petitioner David's precautionary record
31 objection. Petitioner objects that pages 923-28 of the Supplemental Record are not in inverse
32 chronological order, as required by OAR 661-010-0025(4)(E).¹ Petitioner argues:

¹ OAR 661-010-0025(4)(E) provides that the record shall:

“Be arranged in inverse chronological order, with the most recent item first. Upon motion of the governing body, the Board may allow the record to be organized differently.”

1 “Pages R. 923-928 are the approved 1-8-08 minutes of the appeal hearing
2 before the City Council. The draft version is contained in the record starting
3 at pages R. 139. Petitioners understand that re-paginating and re-copying the
4 record would be counter to the intent of OAR 661-010-0075 regarding using
5 recycled materials, [and] preventing unnecessary waste. Therefore,
6 petitioners would agree that pages R. 923-928 could be paginated as ‘P138a,
7 P138b, P138c, P138d, P138e, and P138f’, and then inserted behind P138 upon
8 receipt. This would, of course, be accompanied by appropriate changes in the
9 Table of Contents for the record and for exhibit #6.” Petitioners’ Notice of
10 Precautionary Objection to the Supplemental Record 1.

11 There is no possibility of any confusion regarding whether the pages that appear at
12 Supplemental Record 923-28 are the approved minutes for the City Council’s January 8,
13 2008 hearing. Similarly there is no possibility of any confusion that the draft minutes of that
14 January 8, 2008 hearing are Exhibit 6 of the first Volume of the Record and that those draft
15 minutes appear at Record 139-49. Since the table of contents for the Supplemental Record
16 cross references Exhibit 6, the relationship of the two documents is obvious.

17 The corrective action that petitioner David suggests would require additional work by
18 the city, petitioners and LUBA. We might require such action if it would serve a useful
19 purpose. But it would not. Rather than require the city take the corrective action that
20 petitioner David suggests, we exercise our discretion under OAR 661-010-0025(4)(E), and
21 on our own motion we allow the final minutes of the January 8, 2008 hearing to remain
22 where they are. The briefing schedule established in our March 20, 2008 order remains
23 unaffected by the precautionary record objection.

24 Dated this 26th day of March, 2008.
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32 Michael A. Holstun
Board Chair