

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

3  
4                   KANDU RANCH LLC., PHILIP PADEN  
5                   and DEBBI PADEN,  
6                   *Petitioners,*

7  
8                   vs.

9  
10                  JACKSON COUNTY,  
11                  *Respondent.*

12                  LUBA Nos. 2015-058/060

13                  ORDER

14  
15                  These consolidated appeals challenge a July 2015 decision by the county  
16                  approving an application from Journey to Completion Center, LLC (Applicant)  
17                  for a residential treatment facility in a dwelling on land zoned exclusive farm  
18                  use. A joint petition for review was filed on September 15, 2015, and the  
19                  deadline for filing the response brief is October 7, 2015. Oral argument is  
20                  scheduled for October 15, 2015.

21                  On September 25, 2015, Applicant filed a motion to file an amicus brief  
22                  pursuant to OAR 661-010-0052(1) and (2).<sup>1</sup> Applicant's motion states that the

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<sup>1</sup> OAR 661-010-0052 provides:

“(1) A person or organization may appear as amicus only by permission of the Board on written motion. The motion shall set forth the interest of the movant and state reasons why a review of relevant issues would be significantly aided by participation of the amicus. A copy of the motion shall be served on all parties to the proceeding.

1 county does not intend to file a response brief and argues that amicus  
2 participation will significantly aid the Board’s review

3 “by providing the Board with a better understanding of the issues  
4 underlying the Amicus application and compliance with state law,  
5 Oregon Administrative Rules, and the Jackson County Land  
6 Development Ordinance. Allowing Amicus participation will  
7 provide for a full and complete discussion of the issues in this  
8 appeal in light of the Respondent’s election not to participate in  
9 this appeal.” Motion to File Amicus Brief 2.

10 Applicant’s motion does not state whether petitioners agree with or oppose the  
11 motion, but does state that the Paden petitioners do not oppose the requested  
12 extension of time if the Board grants the amicus motion.<sup>2</sup> Applicant’s motion  
13 requests that if the Board grants the motion, the Board also allow an extension  
14 of fourteen days from the date the motion is granted in which to file an amicus  
15 brief, and also requests permission to participate in oral argument.

16 We decline to grant Applicant’s motion to appear as amicus. Applicant  
17 was entitled to intervene in the appeal pursuant to ORS 197.830(7)(b)(A) but

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“(2) Appearance as amicus shall be by brief only, unless the Board specifically authorizes or requests oral argument. An amicus brief shall be subject to the same rules as those governing briefs of parties to the appeal, and shall be filed together with four copies. Where amicus is aligned with the interests of the petitioner(s), the amicus brief is due seven days after the date the petition for review is due. In all other circumstances, the amicus brief is due within the time required for filing respondent's brief. No filing fee is required. An amicus brief shall have green front and back covers.”

<sup>2</sup> The petitioner in LUBA No. 2015-058 is KanDu Ranch, LLC and the petitioners in LUBA No. 2015-060 are Philip Paden and Debbi Paden.

1 failed to do so. We have sometimes allowed persons affected by the challenged  
2 decision to participate as amicus where the amicus brief would be the only brief  
3 filed in support of one side's position in the appeal, but only to the extent it  
4 does not frustrate or delay the established briefing schedule. *See Stern v.*  
5 *Josephine County*, \_\_ Or LUBA \_\_ (LUBA No. 2008-171, Order, January 30,  
6 2009) (allowing the applicant to appear as amicus, and file a brief defending  
7 the decision, where otherwise no response brief would be filed and review  
8 would not be delayed); *Coquille Citizens for Responsible Growth v. City of*  
9 *Coquille*, \_\_ Or LUBA \_\_ (LUBA No. 2006-111, Order, September 15, 2006)  
10 (same); and *Krieger v. Wallowa County*, 35 Or LUBA 742, 743 (1998)  
11 (denying amicus participation because it would delay the established briefing  
12 schedule).

13 As noted, the response brief is due on October 7, 2015. Oral argument is  
14 currently scheduled for October 15, 2015, and the deadline for issuing the  
15 Board's final opinion and order is November 11, 2015. Allowing Applicant to  
16 file an amicus brief according to the schedule proposed by Applicant would  
17 delay the established briefing schedule, require rescheduling oral argument,  
18 and require a corresponding extension of the statutory deadline for issuing  
19 LUBA's final opinion and order set out in ORS 197.830(14). For those reasons,  
20 the motion is denied.

21 Dated this 29<sup>th</sup> day of September, 2015.

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Melissa M. Ryan  
Board Member