

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 JAKE KRISHNAN IYER,
5 *Petitioner,*

6
7 vs.

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9 WASHINGTON COUNTY,
10 *Respondent,*

11 and

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14 WEST HILLS DEVELOPMENT COMPANY,
15 *Intervenor-Respondent.*

16
17 LUBA No. 2015-079

18 ORDER ON MOTION TO INTERVENE

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20 West Hills Development Company (West Hills) moves to intervene on
21 the side of the county. Petitioner opposes the motion, arguing that West Hills
22 failed to appear before the county during the proceedings below, and thus lacks
23 standing to intervene pursuant to ORS 197.830(7)(b).¹

¹ ORS 197.830(7)(b) provides in relevant part:

“Persons who may intervene in and be made a party to the review proceedings, as set forth in subsection (1) of this section, are:

“* * * * *

“(B) Persons who appeared before the local government, special district or state agency, orally or in writing.”

1 The challenged decision is Resolution and Order No. 15-112, entitled “In
2 the Matter of Adopting the Bonny Slope West Infrastructure Funding Plan”
3 (the IFP). The IFP was considered in the same proceeding as a companion
4 measure, Ordinance No. 802, a comprehensive plan amendment that adopted
5 the Bonny Slope West subarea of the Cedar Hills-Cedar Mill Community Plan
6 (Ordinance 802). Both Ordinance 802 and the IFP were considered at an
7 October 6, 2015 hearing before the county board of commissioners, as agenda
8 items 5.a and 7.b, respectively. However, the commissioners decided to allow
9 combined testimony on both agenda items, because the IFP is “so integrally
10 related to” Ordinance 802. Minutes, October 6, 2015 meeting, p. 4. A number
11 of persons testified, including petitioner, who argued that the IFP should not be
12 adopted until the county addresses various problems with Saltzman Road.
13 Subsequently, an attorney for West Hills testified at length in favor of
14 Ordinance 802. The attorney also addressed funding issues and Saltzman
15 Road, but did not specifically mention the IFP. *Id.* at 9.

16 In its motion, petitioner argues that West Hills failed to “appear before
17 the local government” within the meaning of ORS 197.830(7)(b)(B), because
18 in its oral testimony West Hills discussed only Ordinance 802, a separate
19 agenda item, and offered no testimony regarding the IFP. Petitioner argues that
20 although the county allowed combined testimony regarding both the IFP and

1 Ordinance 802, the two agenda items remained separate proceedings, and an
2 appearance in the proceeding to consider Ordinance 802 did not constitute an
3 appearance in the proceeding to consider the IFP. Petitioner notes that after the
4 combined testimony the commissioners again segregated the two agenda items,
5 voting to approve the IFP but voting separately to continue the proceeding on
6 Ordinance 802 to October 27, 2015.²

7 West Hills responds, and we agree, that West Hills “appeared before the
8 local government” within the meaning of ORS 197.830(7)(b) in the proceeding
9 before the county on the IFP. Because the county combined the testimony on
10 the two agenda items, West Hill’s testimony during that combined proceeding
11 was sufficient to “appear” during the proceeding on adoption of the IFP, even
12 if West Hills did not specifically refer to the IFP. *See Century Properties, LLC*
13 *v. City of Corvallis*, 51 Or LUBA 572 (2006) (a “bare neutral appearance” is
14 sufficient to “appear” for purposes of the similar appearance requirement at
15 ORS 197.830(2), even if the party offers no testimony). In addition, as West
16 Hills points out, its oral testimony in fact discussed funding for development of

² The October 6, 2015 hearing was the first reading of Ordinance 802. The county adopted Ordinance 802 at the October 27, 2015 meeting, after the second reading. Ordinance 802 was subsequently appealed to LUBA by a third party and is presently pending before LUBA. *Bethany Neighborhood Association v. Washington County* (LUBA No. 2015-090).

1 Bonny Slope West, the subject matter of the IFP, even if that oral testimony did
2 not specifically refer to the IFP. Finally, West Hills points out that its written
3 testimony specifically referred to the IFP. Objection, Exhibit A, p. 2. West
4 Hills has more than adequately demonstrated that it appeared during the
5 proceedings below on the adoption of the IFP.

6 West Hills' motion to intervene is granted.

7 Dated this 3rd day of December, 2015.

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Tod A. Bassham
Board Chair