

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 CENTRAL OREGON LANDWATCH,

5 *Petitioner,*

6
7 vs.

8
9 DESCHUTES COUNTY,

10 *Respondent,*

11
12 and

13
14 SHEPHERDSFIELD MINISTRIES,

15 *Intervenor-Respondent.*

16
17 LUBA No. 2016-103

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19 ORDER ON MOTION TO INTERVENE

20 On October 27, 2016, intervenor-respondent Shepherdsfield Ministries
21 (intervenor) filed a motion to intervene in this appeal, stating that
22 “Shepherdsfield Ministries” is the applicant and appeared during the
23 proceedings below. On November 14, 2016, petitioner filed a motion to deny
24 intervention, arguing that Shepherdsfield Ministries does not have standing to
25 intervene in this appeal because it is not the applicant and did not appear
26 during the proceedings below. ORS 197.830(7).¹ In our November 17, 2016

¹ ORS 197.830(7)(b) limits intervention in a LUBA appeal:

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

1 order, we provided intervenor an opportunity to respond to petitioner's motion,
2 and suspended the deadlines for the proceedings pending resolution of the
3 disputed motion to intervene. On November 25, 2016, intervenor filed a
4 response to the motion to deny intervenor's motion to intervene. On December
5 7, 2016, petitioner filed a reply to intervenor's response. We now resolve the
6 contested motion to intervene.

7 To have standing to intervene in a LUBA appeal, the movant must either
8 be the applicant or a person who appeared before the local government. ORS
9 197.830(7); *see* n 1. OAR 661-010-0050(2)(c) explains that a motion to
10 intervene shall "[s]tate the facts which show the party is entitled to intervene,
11 supporting the statement with affidavits or other proof[.]"

12 Petitioner's motion to deny the motion to intervene argues that
13 Shepherdsfield Ministries lacks standing to intervene because it did not appear
14 below and is not the applicant. Petitioner argues that pursuant to OAR 661-
15 010-0050(2)(c), intervenor was required, but failed to, provide affidavits or
16 other proof to support the assertion that Shepherdsfield Ministries is "the
17 applicant who initiated the action before the local government[.]" According to

"(A) The applicant who initiated the action before the local
government, special district or state agency; or

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

1 petitioner, the applicants are John and Stephanie Shepherd, and there is no
2 mention of Shepherdsfield Ministries in the record.

3 Intervenor does not dispute that John and Stephanie Shepherd filed the
4 application as individuals, and that at no point during the proceedings below
5 did any person mention “Shepherdsfield Ministries” or expressly make an
6 appearance on behalf of any entity called “Shepherdsfield Ministries.”
7 However, as we understand matters, “Shepherdsfield Ministries” is an informal
8 name that the Shepherds as individuals apparently use for their religious
9 ministry, which is associated with “Shepherdsfield Church,” a domestic
10 nonprofit corporation registered with the State of Oregon.² Intervenor’s
11 Response, Exhibit 2. Intervenor argues that the incorporated entity
12 “Shepherdsfield Church” appeared during the proceedings before the hearings
13 officer, via its attorney. *See* Record 129 (“MEMORANDUM In support of
14 Petitioner Shepherdsfield Church[;]” “I represent Shepherdsfield Church[.]”)

² Intervenor attaches to its response a memorandum submitted below titled “In support of Petitioner Shepherdsfield Church.” Exhibit 1 to Intervenor’s Response; Record 129-159. The memo does not mention Shepherdsfield Ministries, but states that “Shepherdsfield Church” began meeting in 2009, incorporated in the state of Oregon in 2013, and acquired 501(c)(3) status from the Internal Revenue Service in 2016. Intervenor also attaches to its response a copy of the Articles of Incorporation for “Shepherdsfield Church,” which is listed as a domestic nonprofit corporation, with a registered agent and incorporator named John Shephard. The Articles state that there are no members of Shepherdsfield Church.

1 We understand intervenor to argue that the entity “Shepherdsfield
2 Ministries” has organizational standing to intervene on behalf of its members,
3 John and Stephanie Shepherd. However, as petitioner argues, to gain
4 organizational standing, the members of the organization must appear on behalf
5 of the organization during the proceedings below. *Central Klamath County*
6 *CAT v. Klamath County*, 40 Or LUBA 111, 117 (2001). No persons appeared
7 below on behalf of “Shepherdsfield Ministries,” at least by that name.

8 An organization that did not appear during the proceedings below may,
9 nonetheless, intervene in an appeal before LUBA if it satisfies the requirements
10 for *representational* standing. To establish representational standing, the
11 organization must show (1) its members have standing in their own right, (2)
12 neither the claim asserted nor the relief sought requires the participation of
13 individual members of the organization, and (3) the interests the organization
14 seeks to protect are germane to the organization’s purpose. *Tuality Lands*
15 *Coalition v. Washington County*, 21 Or LUBA 611, 618 (1991). Although
16 intervenor does not expressly assert representational standing, intervenor does
17 argue that the Shepherds have standing in their own right as the applicants for a
18 religious use, and that the religious interests Shepherdsfield Ministries seeks to
19 protect are germane to its purpose. Response 3.

20 Petitioner replies that intervenor does not address, and in any case cannot
21 satisfy, the second requirement for representational standing, that the claim
22 asserted does not require the participation of individual members of the

1 organization. According to petitioner, the interests intervenor seeks to protect
2 are that of religious free exercise. However, petitioner argues, religious free
3 exercise claims require the participation of individual members.

4 We agree with petitioner that intervenor has failed to establish that an
5 entity called “Shepherdsfield Ministries” appeared during the proceedings
6 below, and further has failed to plead and establish that all elements of
7 organizational or representational standing are met for that entity to intervene
8 in this appeal.

9 However, it appears to be undisputed that the individuals and applicants
10 John and Stephanie Shepherd, the corporation Shepherdsfield Church, and
11 Shepherdsfield Ministries (an informal organization of some kind) are all
12 closely linked. As long as a motion to intervene is timely filed, technical
13 defects in the motion do not warrant denial when the technical defects are
14 subsequently corrected and no prejudice results. OAR 661-010-0005 (technical
15 violations of LUBA’s rules not affecting the substantial rights of the parties
16 shall not interfere with the review of a land use decision); *Griffin v. Jackson*
17 *County*, 40 Or LUBA 584, 586 (2001); *Columbia Steel Castings Co. v. City of*
18 *Portland*, 19 Or LUBA 479, 481 (1990). In the present case, intervenor’s
19 attorney appeared below on behalf of Shepherdsfield Church. Under these
20 circumstances, intervenor’s apparent mistake in identifying intervenor as
21 Shepherdsfield Ministries, rather than Shepherdsfield Church, as the entity that
22 appeared below is a technical violation of LUBA’s rules. *O’Brien v. City of*

1 *Portland*, 52 Or LUBA 113, 119-20 (2006) (an intervenor’s failure to identify
2 itself correctly in its motion to intervene may require an amended motion to
3 intervene but does not justify denying the motion to intervene that is otherwise
4 timely filed). Petitioner does not argue that allowing the motion to intervene to
5 be amended to correctly identify the name of the party that appeared below
6 would cause prejudice to its substantial rights, and we do not see that it would.

7 Accordingly, within 14 days of the date of this order, intervenor’s
8 attorney may file an amended motion to intervene identifying the movant as
9 “Shepherdsfield Church.” If an amended motion to intervene is not filed within
10 14 days of the date of this order, we will issue an order resolving petitioner’s
11 objection to the original motion to intervene and establishing a briefing
12 schedule.

13 Dated this 21st day of December, 2016.

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Tod A. Bassham
Board Member