

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 SUSAN GARRETT CROWLEY,

5 *Petitioner,*

6
7 vs.

8
9 CITY OF HOOD RIVER,

10 *Respondent,*

11
12 and

13
14 MID-COLUMBIA HOUSING AUTHORITY
15 and COLUMBIA CASCADE HOUSING CORPORATION

16 *Intervenors-Respondents.*

17
18 LUBA No. 2017-071

19
20 ORDER

21 **MOTION TO INTERVENE**

22 Mid-Columbia Housing Authority and Columbia Cascade Housing
23 Corporation move to intervene on the side of the respondent. There is no
24 opposition to the motion and it is allowed.

25 **RECORD OBJECTIONS**

26 On August 7, 2017, petitioner filed objections to the record. On August
27 21, 2017, the city responded, offering to provide a supplemental record to
28 resolve some objections, and disputing others. We now resolve the objections.

1 **A. PowerPoint Presentation**

2 The city agrees that the record should include color copies of a
3 PowerPoint presentation placed before the city council at its May 22, 2017
4 hearing, and offers to include the copies in a supplemental record. This
5 objection will be resolved by the supplemental record.

6 **B. Audio Recordings of Hearings**

7 The city agrees to amend the table of contents to reflect the inclusion of
8 audio recordings of the planning commission and city council hearings and
9 provide the audio recordings to LUBA at oral argument. This objection will be
10 resolved by the amended table of contents.

11 **C. Missing Page**

12 The city agrees to include in a supplemental record a page missing from
13 petitioner's May 11, 2017 testimony, as well as color copies of attachments.
14 This objection will be resolved by the supplemental record.

15 **D. Information Missing from the Table of Contents**

16 The city agrees to amend the table of contents to more accurately ascribe
17 authorship of items at Record B, items 12 and 87. This objection will be
18 resolved by the amended table of contents.

19 **E. Color Documents**

20 The original record includes black and white copies of a number of color
21 originals. The city agrees to provide in a supplemental record color copies of

1 the documents identified by petitioner in her objections.¹ The city declines
2 petitioner's broader suggestion to include color copies of all documents
3 originally submitted in color. We agree with the city that petitioner's general
4 assertion that all black and white copies of color originals should be replaced
5 with color copies is an insufficient basis to require the city to further amend the
6 record, absent identification of specific items and some argument that specific
7 black and white copies fail to provide material information present in the color
8 originals. This objection will be resolved by the supplemental record the city
9 has agreed to transmit.

10 **F. Minutes of City Council May 22, 2017 Meeting**

11 Petitioner argues that the minutes of the City Council's May 22, 2017
12 meeting, at Record A 127, erroneously characterize petitioner as reaffirming
13 testimony by an advocate of the proposed rezoning, when in fact petitioner
14 argues that her testimony did not do so. To illustrate the erroneous
15 characterization, petitioner attaches a self-prepared transcript of the relevant
16 portion of the audio recording of the meeting. Petitioner argues that the
17 minutes should be corrected to comport with the audio recording.

18 OAR 661-010-0026(3) provides:

¹ These include Record B pages 27, 29, 31-32, 43-44, 49-53, 102-05, 107, 122-27, 163, 145-46, 150-52, 154, 156-57, 165-67, 182, 206, 280, 351-56, 390-91, 466, 471, 491, 494-95, 497, 504-07, 558-60, 575, 616-17, 618, 620-36, 638-40, 642, 648-49, 669-70, 673, 700-01, 709-11, 713-14, 721, 725-26, 728-29, 758-71, 776, 808, 810, and 812-13.

1 “An objection on grounds that the minutes or transcripts are
2 incomplete or inaccurate shall demonstrate with particularity how
3 the minutes or transcripts are defective and shall explain with
4 particularity why the defect is material. Upon such demonstration
5 regarding contested minutes, the Board shall require the governing
6 body to produce a transcript of the relevant portion of the
7 proceeding, if an audiotape recording or other type of recording is
8 available. Upon such demonstration regarding contested
9 transcripts, the Board shall require the governing body to produce
10 a more complete or amended transcript.”

11 The city responds that petitioner has not demonstrated with particularity why
12 any defect in the minutes is material. While the minutes arguably misrepresent
13 that petitioner agreed with a position taken by an advocate of the proposed
14 rezoning, petitioner offers no explanation for why any such misrepresentation
15 might be a material issue in this appeal.² Petitioner has not established any
16 reason to delay settling the record to correct immaterial defects in the minutes.
17 This objection is denied.

18 **G. Website Material**

19 Petitioner states that before the planning commission an opponent
20 requested that the contents of a website be added to the record. Petitioner
21 objects that the contents of the website are missing from the record.

22 The city responds that the opponent did not provide the planning
23 commission with copies of the website content, and that the opponent’s

² To the extent the exact wording of petitioner’s testimony becomes a material issue in this appeal, petitioner is free to direct LUBA to the relevant portions of the audio recording, or attach the partial transcript she prepared to her petition for review.

1 apparent request to incorporate that content into the record by reference is not a
2 sufficient basis to include the referenced material in the record. We agree with
3 the city. Under OAR 661-010-0025(1)(b), only the final decision-maker can
4 ‘specifically incorporate[]’ items into the record by reference. Other
5 participants’ attempts to incorporate items into the record by reference are
6 ineffective. This objection is denied.

7 **I. Conclusion**

8 The city shall submit the supplemental record including the items and
9 revised table of contents discussed under Objections A through E. On receipt
10 of the supplemental record and revised table of contents, LUBA shall issue an
11 order settling the record and establishing a briefing schedule.

12 Dated this 25th day of August, 2017.

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17 _____
18 Tod A. Bassham

 Board Member