

1 BEFORE THE LAND USE BOARD OF APPEALS
2
3 OF THE STATE OF OREGON
4

5 DESCHUTES COUNTY FARM BUREAU,
6 CENTRAL OREGON INDUSTRY ADVOCACY,
7 dba CELEBRATE CANNABIS, INC.,
8 COVERED360, INC., GLAS HUIS, INC.,
9 dba GLASS HOUSE GROWN, COLE BREIT
10 ENGINEERING, LLC, McKENZIE CANYON
11 PROPERTIES, LLC, HAPPY HARVESTING, LLC,
12 CANNABIS NATION, INC., AUSTIN DILLING,
13 LINDSEY PATE, EDWIN PRICE,
14 and MICHAEL HAYES,
15 *Petitioners,*
16

17 vs.
18

19 DESCHUTES COUNTY,
20 *Respondent.*
21

22 LUBA No. 2018-136
23

24 ORDER

25 Petitioners appeal a decision by the board of county commissioners dated
26 October 24, 2018 and titled Ordinance No. 2018-012, An Ordinance Amending
27 [Deschutes County Code] Titles 9, 18, and 22 to Refine Standards for the
28 Regulation and Enforcement of Marijuana Production on Rural Lands and
29 Declaring an Emergency. The challenged decision is a post-acknowledgement
30 plan amendment adopted pursuant to the provisions of ORS 197.610 to ORS
31 197.625. On February 13, 2019, the Board received the petition for review. The

1 county's response brief was due on March 21, 2019, pursuant to the parties'
2 stipulated motion for extension of time.

3 **NOTICE OF WITHDRAWAL**

4 On March 4, 2019, 17 days before the date the respondent's brief was due,
5 the Board received from the county a notice of withdrawal of the challenged
6 decision pursuant to ORS 197.830(13)(b) and OAR 661-010-0021(1).¹ The
7 county contends that it has an unqualified right to timely withdraw its decision
8 for reconsideration. While we agree that the county has an unqualified right to

¹ ORS 197.830(13)(b) provides, in part:

“At any time subsequent to the filing of a notice of intent and prior to the date set for filing the record, or, on appeal of a decision under ORS 197.610 to 197.625, prior to the filing of the respondent's brief, the local government or state agency may withdraw its decision for purposes of reconsideration. If a local government or state agency withdraws an order for purposes of reconsideration, it shall, within such time as the board may allow, affirm, modify or reverse its decision.”

OAR 661-010-0021(1) provides:

“If a local government or state agency, pursuant to ORS 197.830(13)(b), withdraws a decision for the purposes of reconsideration, it shall file a notice of withdrawal with the Board on or before the date the record is due or, on appeal of a decision under 197.610 to 197.625, the local government shall file a notice of withdrawal prior to the filing of the respondent's brief. A copy of the decision on reconsideration shall be filed with the Board within 90 days after the filing of the notice of withdrawal or within such other time as the Board may allow.”

1 timely withdraw its decision for reconsideration under ORS 197.830(13)(b), that
2 provision also requires the county to affirm, modify, or reverse its decision
3 “within such time as the board may allow.” Our rules provide that the county’s
4 decision on reconsideration “*shall* be filed with the Board within 90 days after
5 the filing of the notice of withdrawal *or within such other time as the Board may*
6 *allow.*” OAR 661-010-0020(1) (emphases added). In its notice of withdrawal, the
7 county requests 180 days to reconsider Ordinance No. 2018-012. Because that
8 request exceeds the time for filing the county’s decision on reconsideration, we
9 understand the county’s notice of withdrawal to include a motion to extend the
10 time for filing the county’s decision on reconsideration.

11 The county explains that the arguments presented in the petition for review
12 “expand well beyond the objections raised locally,” during the county’s
13 legislative proceeding and that petitioners’ arguments raise complex factual and
14 legal issues. Notice of Withdrawal 2–3. The county argues that it should be
15 afforded additional time to reconsider the decision on withdrawal to fully
16 consider the expanded arguments and further develop the record by obtaining
17 additional evidence and conducting further public hearings, if appropriate. The
18 county asserts that petitioners have taken no position on the county’s request.

19 The legislature has granted LUBA “broad authority to manage the
20 proceedings before it.” *Columbia Riverkeeper v. Clatsop County*, 267 Or App
21 578, 594, 341 P3d 790 (2014); ORS 197.820(4)(a) (directing LUBA to adopt

1 rules governing “[t]he conduct of review proceedings brought before it under
2 ORS 197.830 to 197.845’).” In *Columbia Riverkeeper*, the court explained:

3 “The provision for withdrawal and reconsideration [at ORS
4 197.830(13)(b)] opens the opportunity for the local body to
5 eliminate confusion, clarify findings, change its decision, narrow
6 disputed issues, or, in some instances, eliminate the need for appeal,
7 when that can be done before the parties and LUBA have invested
8 time and resources in the case.” 267 Or App at 594.

9 We recognize that, in this case, the county’s notice of withdrawal was filed
10 after the petition for review was filed and, thus, the petitioners have invested time
11 and resources in the appeal. However, ORS 197.830(13)(b) permits a local
12 government to withdraw a post-acknowledgement plan amendment decision after
13 the petition for review is filed and prior to the filing of the respondent’s brief.

14 The county’s explanation for requesting additional time to reconsider its
15 decision demonstrates that the county is attempting to achieve one or more of the
16 purposes for allowing a decision to be withdrawn for reconsideration: “to
17 eliminate confusion, clarify findings, change its decision, narrow disputed issues,
18 or * * * eliminate the need for appeal[.]” *Id.* Accordingly, the county’s request
19 for an extension of time to provide a copy of the decision on reconsideration is
20 granted. The county shall file and serve a copy of its decision on reconsideration
21 within 180 days of the date of this order.

22 We grant the county’s motion prior to the expiration of the time for
23 petitioners to respond to the motion. Accordingly, petitioners may, within 14 days
24 of the date of this order, file a motion to reconsider our order.

1 **ORAL ARUGMENT**

2 The filing of a notice of withdrawal suspends the appeal proceedings “until
3 a decision on reconsideration is filed with the Board, or the time designated
4 therefor expires, unless otherwise ordered by the Board. If no decision on
5 reconsideration is filed within the time designated therefor, the Board shall issue
6 an order restarting the appeal.” OAR 661-010-0021(2). Accordingly, oral
7 argument, previously scheduled for April 2, 2019, at 1:45 p.m., is cancelled.

8 Dated this 7th day of March, 2019.

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H. M. Zamudio

14 Board Member