

1 BEFORE THE LAND USE BOARD OF APPEALS
2
3 OF THE STATE OF OREGON
4
5 NORTHWEST DISTRICT NEIGHBORHOOD ASSOCIATION,
6 *Petitioner,*
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8 v.
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10 CITY OF PORTLAND,
11 *Respondent,*
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13 and
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15 NORTHWEST HOUSING ALTERNATIVES, INC.,
16 and BLACKSTONE CENTER GROUP,
17 *Intervenors-Respondents.*
18

19 LUBA No. 2019-003

20 ORDER
21

22 Petitioner challenges a city council decision approving historic resource
23 review for new housing.

24 **MOTION TO INTERVENE**

25 Northwest Housing Alternatives, Inc. (NWhA), the applicant below, and
26 Blackstone Center Group (intervenors) filed motions to intervene on the side of
27 respondent. No party opposes the motions and they are allowed.

28 **RECORD OBJECTIONS**

29 On February 1, 2019, the city transmitted an electronic record to the Board
30 (original record). On February 15, 2019, petitioner filed objections to the record.

1 On March 1, 2019, the city filed a response to the record objections. We now
2 resolve the pending objections.

3 **A. Conceded Objections**

4 In objections A1–A4, petitioner argues that items were improperly
5 excluded from the record. In objection C, petitioner argues that original record
6 pages 2602–03 should be removed from the record. *See* OAR 661-010-
7 0025(1)(b) (the record shall include “[a]ll written testimony and all exhibits,
8 maps, documents or other materials specifically incorporated into the record or
9 placed before, and not rejected by, the final decision maker, during the course of
10 the proceedings before the final decision maker”). The city concedes petitioner’s
11 record objections A1–A4 and C, and agrees to provide a replacement record that
12 includes the items listed in A1–A4, and removes original record pages 2602–03.

13 Accordingly, record objections A1–A4 and C are resolved.

14 **B. February 2018 DAR Meeting Minutes**

15 Prior to submitting the application, NWHHA participated in three Design
16 Advice Request (DAR) hearings before the Historic Landmarks Commission on
17 January 8, 2018, February 26, 2018, and April 23, 2018. Following each hearing,
18 city staff prepared a summary memo, which was provided to NWHHA. The
19 application was submitted on June 15, 2018 and deemed complete on July 5,
20 2018. City staff submitted a copy of a summary memo from the April 23, 2018
21 DAR meeting into the record but did not submit copies of the February 2018
22 DAR meeting minutes.

1 In objection A5, petitioner objects that the February 2018 DAR meeting
2 minutes were placed before, and not rejected by the city council and should
3 therefore be part of the record before LUBA. The city responds that the February
4 2018 DAR meeting minutes were not placed before the city council or otherwise
5 required to be included in the record. Petitioner has not provided any contrary
6 evidence beyond a bare assertion that those minutes were placed before the city
7 council and not rejected. LUBA generally defers to the local government as the
8 custodian of the record, unless petitioner supplies a sufficient reason to decide
9 otherwise. *Curl v. City of Bend*, 55 Or LUBA 719, 725 (2008). Petitioner has not
10 provided a sufficient reason for us to disbelieve the city’s response.

11 Record objection A5 is denied.

12 **C. August 2018 Email Communications**

13 In objection A6, petitioner objects that the record improperly omits August
14 2018 email communications between an individual and a city planner. Petitioner
15 contends that the individual intended that the email communication be included
16 in the official record of the proceeding. Petitioner does not assert that the email
17 communications were ever “placed before” the city council. Petitioner has not
18 met its burden of establishing that a document was made part of the record. *Weeks*
19 *v. City of Tillamook*, 23 Or LUBA 662, 663 (1992).

20 Record objection A6 is denied.

1 **D. Exhibits to Exhibits**

2 In its record objection B, petitioner argues that the city should be required
3 to revise the record table of contents because specific listed items refer to
4 attachments or exhibits, but the attachments and exhibits are not separately listed.
5 *See* OAR 661-010-0025(4)(a)(B)(i) (“Where an item listed in the table of
6 contents includes attached exhibits, the exhibits shall be separately listed as an
7 exhibit to the item.”). The city correctly responds that, “[a]s a general rule, OAR
8 660-010-0025(4)(a)(B)(i) does not require that exhibits to exhibits must be
9 separately listed in the table of contents.” *Fernandez v. City of Portland*, 72 Or
10 LUBA 482, 485 (2015). Petitioner has not provided any reason why we should
11 deviate from that general rule in this appeal.

12 Record objection B is denied.

13 **REPLACEMENT RECORD**

14 Within 21 days after the date of this order, the city shall file and serve a
15 replacement record consistent with this order. LUBA will issue an order settling
16 the record after LUBA receives the replacement record.

17 Dated this 15th day of April, 2019.

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H. M. Zamudio
Board Member