

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

4 HOLLIS LUNDEEN,
5 *Petitioner,*
6

7 vs.
8

9 CITY OF WALDPORT,
10 *Respondent,*
11

12 and
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14 TIDEWATER DEVELOPMENT, LLC,
15 *Intervenor-Respondent.*
16

17 LUBA No. 2019-046
18

19 ORDER

20 Oral argument in this appeal is currently scheduled for September 4, 2019
21 at 1:00 p.m. On August 12, 2019, intervenor-respondent (intervenor) moved to
22 reschedule oral argument to a date after September 12, 2019. In an affidavit
23 attached to its motion, intervenor states that intervenor's attorney will be out of
24 town on a previously scheduled vacation on September 4, and that due to the
25 remote location of the vacation, may be unable to participate by telephone on that
26 date. Pursuant to OAR 661-010-0040(3), intervenor sought consent from the city
27 prior to requesting a change in date for oral argument.¹ The city has consented to

¹ Pursuant to OAR 661-010-0040(3), the party seeking to reschedule oral argument must seek the consent of the other parties prior to moving to reschedule. Implicit in that requirement is an obligation on those parties to attempt to respond

1 changing the date for oral argument. According to intervenor's motion and
2 affidavit, the city's attorney, acting as agent for intervenor's attorney, attempted
3 to contact petitioner between August 6 and August 8, 2019 by phone and email
4 to discuss intervenor's request to reschedule oral argument. As of August 12,
5 2019, the date of intervenor's motion, the city's attorney had not received a
6 response from petitioner.

7 On August 19, 2019, LUBA received petitioner's response to intervenor's
8 motion to reschedule oral argument. Petitioner generally objects to the motion to
9 reschedule, and states, without clarification or specificity, that "petitioner is not
10 able to facilitate or agree to the proposal or changing the schedule as requested
11 by the Intervenor Respondent. It is not possible to reschedule to any alternative
12 date." Objection to Motion 2. Petitioner also takes the position that phone service
13 is available in close proximity to intervenor's attorney's vacation destination and
14 therefore intervenor's attorney could participate by phone.

15 LUBA's consistent practice is to accommodate a stipulated postponement
16 of oral argument. However, where a party objects to a motion to postpone oral
17 argument, the Board has less discretion to grant the motion. We exercise our
18 discretion here and find that attending a previously scheduled family vacation is
19 a reasonable basis for rescheduling oral argument, particularly given the lack of
20 any specific reason given by petitioner for why she is not able to agree to any

to a moving party's requests, so that the moving party may accurately apprise
LUBA of the other parties' positions regarding the request to reschedule.

1 other alternative date.² *Sommer v. Josephine County*, __ Or LUBA __ (LUBA
2 No 2006-033, Order, May 11, 2006) (absent any specific reason from intervenor
3 for objecting to the request to reschedule, beyond objections to the existence of
4 the appeal itself, petitioner's attendance at daughter's college graduation is a
5 reasonable basis to reschedule oral argument).

6 Oral argument is rescheduled to September 24, 2019 at 1:00 p.m. Petitioner
7 shall have an additional fourteen days, until September 12, 2019, to file any reply
8 brief that is allowed under OAR 661-010-0039. Because oral argument has been
9 rescheduled in response to a motion by a party, the deadline for the final opinion
10 in this appeal is extended 20 days. ORS 197.840(1)(b).

11 Dated this 20th day of August, 2019.
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17 Melissa M. Ryan
Board Chair

² In exercising our discretion, we also consider petitioner's apparent failure to respond to the city's attorney's requests, on behalf of intervenor's attorney, to seek her consent to rescheduling oral argument.