

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

3
4 DONALD G. CAMPBELL AND
5 DAWN CAMPBELL,
6 *Petitioners,*

7
8 vs.

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10 COLUMBIA COUNTY,
11 *Respondent,*

12
13 and

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15 DEER POINT MEADOWS, LLC,
16 *Intervenor-Respondent.*

17
18 LUBA No. 2019-112

19
20 ORDER

21 On March 30, 2020, petitioners moved for permission to file a reply brief
22 that exceeds the 1,000-word limit by 3,000 words, for a total of 4,000 words. For
23 the reasons set forth below, petitioners’ motion is denied.

24 OAR 661-010-0039 provides:

25 “A reply brief shall be permitted. A reply brief shall be filed together
26 with four copies within seven days of the date the respondent’s brief
27 is filed. A reply brief shall be confined to responses to arguments in
28 the respondent’s brief, state agency brief, or amicus brief, but shall
29 not include new assignments of error or advance new bases for
30 reversal or remand. A reply brief shall not exceed 1,000 words,
31 exclusive of appendices, unless permission for a longer reply brief
32 is given by the Board. If a party does not have access to a word-
33 processing system that provides a word count, a reply brief is
34 acceptable if it does not exceed four pages. A reply brief must
35 include the certificate of compliance required by OAR 661-010-

1 0030(2)(k). A reply brief shall have gray front and back covers.”

2 Petitioners first argue that a 4,000 word reply brief is warranted in part because
3 both respondent and intervenor-respondent filed response briefs, and the
4 combined total of both briefs is more than 17,000 words, while petitioners’
5 petition for review is limited to 11,000 words pursuant to OAR 661-010-0030(1).
6 We reject that argument as a basis for an overlength reply brief. A reply brief is
7 not intended to function as a supplemental petition for review or to equalize
8 uneven briefing. In fact, OAR 661-010-0039 specifically prohibits a reply brief
9 from functioning as a supplemental petition for review by providing that a reply
10 brief “shall not include new assignments of error or advance new bases for
11 reversal or remand.” The total number of pages of briefing by either petitioners
12 or respondents is not relevant to whether an overlength reply brief is warranted.

13 Next, petitioners identify five “new issues” that petitioners argue “need to
14 be addressed in a Reply [Brief].” Motion 2. OAR 661-010-0039 allows a reply
15 brief to respond to “arguments in the respondent’s briefs[.]” While we agree with
16 petitioners that the response briefs include arguments that may merit a response,
17 petitioners do not explain why a 4,000 word reply brief is necessary to address
18 the arguments that petitioners assert they need to address. In addition, in an order
19 dated March 17, 2020, we allowed an overlength oral argument and gave
20 petitioners an additional five minutes to present their oral argument for a total of
21 20 minutes, some of which may be used to respond to arguments in the response
22 briefs. For those reasons, we deny petitioners’ motion to allow a 4,000-word

1 reply brief, but grant permission for petitioners to file a reply brief that does not
2 exceed 1,500 words. Petitioners' deadline for filing a reply brief not to exceed
3 1,500 words is hereby extended to April 8, 2020.

4 Dated this 1st day of April 2020.

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Melissa M. Ryan
Board Member