

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

3
4 NORTHWEST ENVIRONMENTAL DEFENSE CENTER,
5 350PDX, WILLAMETTE RIVERKEEPER, NANCY HISER,
6 MICHAEL POUNCIL, LAURA FELDMAN, SARAH TAYLOR,
7 SHAWN LOONEY, LAURIE KING, LORENE SCHEER,
8 DEAN HISER, DARISE WELLER, ANN RUTTAN,
9 JAN ZUCKERMAN, DAVE LOONEY, SUSAN BLADHOLM,
10 DIANE MEISENHELTER, DAVE KING, KATRI LAUKKANEN,
11 JOE MILLER, and SARAH HEINECKE,
12 *Petitioners,*

13
14 vs.

15
16 CITY OF PORTLAND,
17 *Respondent,*

18
19 and

20
21 ZENITH ENERGY TERMINALS HOLDINGS LLC,
22 *Intervenor-Respondent.*

23
24 LUBA No. 2025-019

25
26 ORDER

27 Petitioners appeal a city Land Use Compatibility Statement (LUCS) issued
28 to intervenor-respondent Zenith Energy Terminals Holdings LLC (Zenith),
29 concluding that an existing petroleum and renewable fuel facility is a use allowed
30 in a city industrial zone. This appeal is on remand from the Court of Appeals.
31 *Northwest Environ. Defense Center v. City of Portland*, 344 Or App 678, 581
32 P3d 1000 (2025). Before us are petitioners' objections to the record and Zenith's
33 motion to take evidence.

1 **BACKGROUND**

2 A brief summary of the background of this appeal is helpful to resolve the
3 parties' pleadings. We take the following summary of facts from the court of
4 appeals' opinion:

5 “Zenith operates a fossil fuel facility in the city, in an area zoned
6 Heavy Industrial. The facility has a bulk petroleum and renewable
7 fuels distribution terminal and an asphalt refinery. Under the city's
8 land use code, Portland City Code (PCC) 33.920.300, Zenith's
9 facility is categorized as a Bulk Fossil Fuel Terminal.

10 “Zenith operates under Air Contaminant Discharge Permits (ACDP)
11 issued in 2022 by the Oregon Department of Environmental Quality
12 (ODEQ). To obtain those permits, Zenith requested a LUCS from
13 the city using ODEQ's LUCS form, along with an attached written
14 narrative. The city issued the 2022 LUCS[.] * * * No one challenged
15 the 2022 LUCS.

16 “The current case involves Zenith's request for updated permits
17 from ODEQ to cover proposed operational changes to Zenith's
18 facility. As explained by LUBA, ‘the changes include expanding the
19 geographic scope of the [O]DEQ permits to include adjacent land
20 owned by third parties, and installing new equipment to produce
21 sustainable jet fuel.’ To obtain the new permits, Zenith submitted a
22 new ODEQ LUCS form to the city, along with an attached written
23 narrative.” *Northwest Environmental Defense Center*, 344 Or App
24 at 680-81 (brackets in original).

25 On February 3, 2025, the city's interim planning director issued the LUCS
26 (2025 LUCS). Petitioners appealed the 2025 LUCS to LUBA. Prior to the city
27 transmitting the record, we transferred the appeal to Multnomah County Circuit
28 Court because we concluded the 2025 LUCS was not a “land use decision”
29 subject to our jurisdiction. *Northwest Environmental Defense Center v. City of*

1 *Portland*, LUBA No 2025-019 (June 5, 2025). The Court of Appeals reversed
2 and remanded our decision, concluding that the 2025 LUCS was a land use
3 decision subject to LUBA’s jurisdiction. *Northwest Environ. Defense Center*,
4 344 Or App 678. On May 27, 2026, pursuant to the court’s decision, we issued
5 an order resuming this appeal and ordering the city to transmit the record.

6 On June 26, 2026, we received the record. On July 24, 2026, petitioners
7 filed record objections (Record Objections). On August 7, 2026, the city and
8 Zenith (together, respondents) filed separate responses to the record objections
9 (City Response and Zenith Response). Also on August 7, 2026, Zenith filed a
10 motion to take evidence for the purpose of resolving a dispute regarding the
11 content of the record, pursuant to OAR 661-010-0045 (Motion to Take
12 Evidence). On August 21, 2026, petitioners filed a response to the Motion to Take
13 Evidence and reply in support of the record objections (Reply).

14 **MOTION TO TAKE EVIDENCE**

15 “The Board may * * * upon motion or at its discretion take evidence to
16 resolve disputes regarding the content of the record[.]” OAR 661-010-0045(1).
17 The parties do not dispute that the “final decision maker” for the challenged
18 LUCS was the interim planning director. However, petitioners argue that the
19 identity of the final decision maker was unclear to participants during the
20 proceedings, so the scope of the record should be expansive to include all
21 materials related to the LUCS application, regardless of whether those materials
22 were “placed before” the interim planning director “during the course of the

1 proceedings before” the director. OAR 661-010-0025(1)(b). In this situation,
2 petitioners argue, the public’s reasonable expectations should control what is
3 included in the record, *i.e.*, whether documents are properly viewed as having
4 been “placed before” the final decision maker within the meaning of OAR 661-
5 010-0025(1)(b), citing *Home Depot, Inc. v. City of Portland*, 36 Or LUBA 783
6 (1999) (*Home Depot I*). Relatedly, the parties appear to dispute what constitutes
7 the “course of the proceedings before” and the “meetings conducted by” that final
8 decision maker, for the purposes of OAR 661-010-0025(1)(b) and (c). To resolve
9 these disputes, Zenith moves that we take as evidence a declaration of Zenith’s
10 attorney and five exhibits, pursuant to OAR 661-010-0045(1).¹ Zenith’s motion
11 is granted to the extent that we consider evidence attached to Zenith’s motion that
12 is useful in resolving the disputes regarding the content of the record.²

¹ The exhibits include (1) an online news release by the city dated January 13, 2025 and titled “City to host council work session and listening session on Zenith Energy”; (2) a page from the city’s website with information about a January 21, 2025 city council work session, and city staff and Zenith PowerPoint presentations linked on that webpage; (3) a page from the city’s website with information about LUCSs; (4) a page from the city’s website titled “Portland transition: form of government” with information about changes to the city’s form of government; and (5) a page from the city’s website titled “Form of Government Glossary” with definitions of city government roles and processes.

² Petitioners do not object to us taking as evidence Zenith’s exhibits 1 and 2, but object to us taking as evidence exhibits 3 through 5 because, according to petitioners, “Zenith has offered no evidence to suggest that those documents * * * were available to the public during the course of the proceedings that gave rise to the [2025 LUCS,]” and because they were not available, they are not helpful to

1 **CONTENT OF THE RECORD**

2 LUBA’s enabling statutes generally limit LUBA’s review to the local
3 government record. *See* ORS 197.835(2)(a) (“Review of a decision under ORS
4 197.830 to 197.845 shall be confined to the record.”). However, ORS 197.830 to
5 197.845 do not provide any guidance regarding the required content of the local
6 government record. OAR 661-010-0025(1) is LUBA’s attempt to establish
7 minimum standards for what must be included in a record that is filed with
8 LUBA. *Jackson v. City of Portland*, 53 Or LUBA 612, 615 (2007). Relevant here,
9 OAR 661-010-0025(1)(b) and (c) require the record to include:

10 “(b) All written testimony and all exhibits, maps, documents or
11 other materials specifically incorporated into the record or
12 placed before, and not rejected by, the final decision maker,
13 during the course of the proceedings before the final decision
14 maker.

15 “(c) Minutes and tape, CD, DVD or other media recordings of the
16 meetings conducted by the final decision maker, if created by
17 the final decision maker or incorporated into the record by the
18 final decision maker. A verbatim transcript of media
19 recordings shall not be required, but if a transcript has been
20 prepared by the governing body, it shall be included.”

demonstrate what a reasonable member of the public would have believed during the proceedings that gave rise to the 2025 LUCS. Reply 6-7. We decline to deny Zenith’s motion to take evidence as to exhibits 3 through 5 on the basis that those documents were not “available to the public.” We will consider those documents to the extent we determine they are helpful in resolving the dispute regarding the contents of the record.

1 The challenged decision is the 2025 LUCS. The record filed by the city in
2 this appeal is 57 pages and consists of (1) the 2025 LUCS signed by the interim
3 planning director, and (2) Zenith’s written request for the 2025 LUCS with
4 attached exhibits A through D.³

5 Petitioners object that the record omits several items required to be
6 included in the record under OAR 661-010-0025(1)(b). Petitioners arguments for
7 why those items should be included in the record are largely based on petitioners’
8 premise that whether items are “placed before” the final decision maker should
9 turn on the public’s reasonable expectations for what the final decision maker—
10 here, the interim planning director—would have reviewed in processing the
11 LUCS application, citing *Home Depot I*. Petitioners argue that because the
12 identity of the final decision maker was unknown until the LUCS was issued, the
13 record should not be limited to what the interim planning director “physically
14 saw.” Record Objections 3. Petitioners also object that the record omits the
15 minutes and transcripts of a January 21, 2025 city council work session and
16 community listening session, that petitioners argue are required to be included in
17 the record under OAR 661-010-0025(1)(c).

³ The attached exhibits include: (A) ODEQ LUCS application form; (B) Zenith’s compatibility narrative statement; (C) tax parcel map; and (D) 2022 LUCS decision with 2022 LUCS Exhibit 3 (site plan) and 2022 LUCS Exhibit 4 (tank removal site plan).

1 Respondents respond that the majority of the items petitioners identify
2 were not “placed before, and not rejected by the final decision maker, during the
3 course of the proceedings before the final decision maker.” OAR 661-010-
4 0025(1)(b). Respondents also respond that the record should not include any
5 minutes, media recordings, or transcripts of the city council work session or
6 community listening session, because those sessions were not “the meetings
7 conducted by the final decision maker.” OAR 661-010-0025(1)(c).

8 Resolving petitioners’ objections require us first to determine the scope of
9 the LUCS proceeding.

10 **A. Scope of the LUCS Proceedings**

11 The record must include items that were placed before the final decision
12 maker “during the course of the proceedings” before that final decision maker
13 and materials from the “meetings conducted by” the final decision maker. OAR
14 661-010-0025(1)(b), (c). Petitioners and respondents take different views on
15 what constituted the “proceedings” for the 2025 LUCS. Petitioners assert that the
16 2025 LUCS “proceedings” included a January 21, 2025 city council work session
17 and community listening session on Zenith’s operations. Petitioners argue that
18 because the identity of the final decision maker was unclear throughout the
19 process, and the city held those public meetings with the opportunity to comment,
20 the reasonable public expectation was that those meetings were the only
21 opportunities for the public to submit comments on the 2025 LUCS, and that all

1 materials from those meetings, including public comments, would be part of the
2 2025 LUCS record.

3 Respondents respond that those meetings were not part of the 2025 LUCS
4 proceeding, but were rather informational meetings regarding Zenith's general
5 operations in the city, and that any materials submitted to or reviewed by the
6 participants in those proceedings are not part of the 2025 LUCS record.
7 Respondents do not dispute that the interim planning director participated in
8 those sessions.

9 We conclude that the January 21, 2025 city council work session and
10 community listening session were not part of the 2025 LUCS proceeding for
11 purposes of OAR 661-010-0025(1)(b) and (c). As we have previously explained,
12 Zenith operates a fossil fuel facility that consists of a bulk petroleum and
13 renewable fuels distribution terminal and an asphalt refinery, within the City of
14 Portland. The facility operates under a variety of ODEQ permits. As we
15 understand it, Zenith is transitioning its facility from one that mostly handles
16 fossil fuels toward an operation that handles only sustainable fuels. The changes
17 include expanding the geographic scope of the ODEQ permits to include adjacent
18 land owned by third parties, and installing new equipment to produce sustainable
19 jet fuel. The changes, as we understand them, are responsive to city zoning code
20 amendments related to fossil fuel terminals first adopted in 2016 and, after
21 bouncing up and down the appellate ladder, were re-adopted in 2022 and became
22 effective in 2024. The decision in this appeal is the city's 2025 LUCS. The LUCS

1 process began on December 12, 2024, with Zenith’s submission to the city of an
2 ODEQ LUCS form and accompanying narrative requesting the city’s
3 determination regarding the compatibility of the changes with the city’s
4 comprehensive plan and land use regulations. The interim planning director
5 ultimately issued the 2025 LUCS on February 3, 2025.

6 The facility and these changes have also, understandably, drawn public
7 interest. Zenith explains in its motion to take evidence that the purpose of the
8 January 21, 2025 city council work session and community listening session

9 “were not to hear evidence, take comment regarding, influence or
10 decide upon the then-pending LUCS. Rather, they were
11 informational events held to provide newly elected officials and the
12 public with a broader overview of Zenith’s operations and
13 permitting history in the City, as well as long range planning efforts
14 related to zoning code amendments for fossil fuel terminals.”
15 Motion to Take Evidence 4.

16 Exhibit 1 to Zenith’s motion is a January 13, 2025 news release posted by
17 the city on its website titled “City to host council work session and listening
18 session on Zenith Energy.”⁴ The news release states:

19 “The City of Portland’s Community and Economic Development
20 Service Area will hold a work session with the Portland City
21 Council on Tuesday, January 21[, 2025] at 9:30 a.m. to discuss
22 Zenith Energy. The goal of this work session is to develop a shared
23 understanding of Zenith Energy’s Portland Terminal developments;
24 the laws, policies, and processes that impact it; and the City’s role
25 in creating a sustainable community.

⁴ Petitioners do not object to us taking as evidence Zenith’s exhibit 1.

1 “Following the work session, Council will hold a listening session
2 where the public will be able to share comment, beginning at noon.
3 The form to submit verbal or written public comment will open
4 Wednesday, January 15 at 2:00 PM. Submit written comments or
5 sign up to speak at [link provided].

6 “* * * * *

7 “The work session will explore the topic more broadly than the most
8 immediate step in Zenith’s development plans: a request for a new
9 [LUCS] from the City of Portland. The company requested an
10 updated statement on Dec[ember 17, 2024] at the direction of the
11 [ODEQ], to help the state make an informed decision regarding an
12 air quality permit. On December 17, Portland Permitting &
13 Development received Zenith’s latest request and is processing it.

14 “Work sessions are public meetings about a specific topic where
15 information is presented to the [Portland City] Council. Council
16 does not vote or take action at a work session. The public and press
17 may attend work sessions when held in person or watch the live
18 broadcast online or on cable TV. Information on how to view the
19 work session on line can be found here [link provided].” Motion to
20 Take Evidence Ex 1, at 1-2.

21 We conclude that the January 21, 2025 work session and community
22 listening session were not proceedings conducted for the purpose of considering
23 or deciding Zenith’s LUCS application. Although those events concerned Zenith
24 and included information potentially relevant to the subject matter of the LUCS,
25 they were separate informational meetings that occurred in the broader context
26 of public interest in Zenith’s operations and permitting history. We likewise
27 conclude that those sessions were not the “meetings conducted by the final
28 decision maker” within the meaning of OAR 661-010-0025(1)(c). The fact that
29 the interim planning director attended the sessions and participated in them does

1 not make the sessions meetings “conducted by” the interim planning director
2 within the meaning of the rule.

3 **B. “Placed Before”**

4 Determining whether documents have been “placed before” the final
5 decision maker for purposes of OAR 661-010-0025(1)(b) is often problematic.
6 *Wicks v. City of Reedsport*, 28 Or LUBA 739, 740-41 (1994). As used in OAR
7 661-010-0025(1)(b), the term “placed before” is a term of art and does not merely
8 describe the act of setting documents in front of the decision maker. *Home Depot*
9 *I*, 36 Or LUBA at 784-85. We have held that that term may mean something
10 different in the context of a legislative decision, where procedures for compiling
11 an evidentiary record are often less defined, versus a quasi-judicial decision,
12 where such procedures are often more clearly defined. *Witham Parts and*
13 *Equipment Co. v. ODOT*, 42 Or LUBA 589, 593 (2002). The term may also mean
14 something different in the context of a LUCS, as here.

15 We have held that, in the context of a legislative decision, in the absence
16 of established procedures governing how items are submitted into the record,
17 whether items were “placed before” the final decision maker turns on whether
18 the *decision maker’s conduct* regarding those items is such that participants in
19 the proceedings should reasonably expect those items to be included in the
20 record. *Home Depot I*, 36 Or LUBA at 785. That case, however, does not
21 establish that every document relating to the subject matter of a land use decision
22 that a final decision maker may have seen is part of the record. Nor does it stand

1 for the proposition that whether a document is included in the record turns solely
2 on the public’s reasonable expectations. In an order reconsidering *Home Depot*
3 *I*, we further explained that items do not become part of the local record simply
4 because they are “physically present and visible[]” in the hearing room, but that
5 “[s]omething more must be done to place it before the decision maker.” *Home*
6 *Depot, Inc. v. City of Portland*, 37 Or LUBA 994, 996 (1999) (*Home Depot II*).

7 Here, no party points us to, and we are not aware of, any established
8 procedures for admitting items into the record of a LUCS proceeding.
9 Accordingly, we shall determine whether the following items were “placed
10 before” the interim planning director during the course of the LUCS proceeding,
11 as we have interpreted that term in our case law.

12 **RECORD OBJECTIONS**

13 With the scope of the LUCS proceeding and “placed before” standard
14 determined, we turn to petitioners’ specific objections.

15 **A. ODEQ letter to Zenith, dated December 6, 2024**

16 Petitioners argue that the letter, which petitioners allege was the trigger for
17 the LUCS application, was “placed before” the interim planning director because
18 it was referenced in the application, and discussed at the January 21, 2025 work
19 session and listening session at which the interim planning director was present
20 and, accordingly, members of the public would reasonably expect that the interim
21 planning director had reviewed that document.

1 Respondents respond that the letter was not sent or addressed to the interim
2 planning director, it predates the LUCS proceeding, and is not referenced in the
3 2025 LUCS decision. Respondents argue that even if the letter was referenced at
4 the work and listening sessions, mere references to the letter, in sessions that are
5 not part of the proceedings leading to the challenged LUCS, are insufficient to
6 establish that the letter was “placed before” the interim planning director. We
7 agree with respondents.

8 This objection is denied.

9 **B. Emails between Zenith and the city and between city staff and**
10 **the city council, dated December 11 and 12, 2024**

11 Petitioners argue that the emails, which are between Zenith and the city
12 and between city staff and the city council, and which regard the submission of
13 Zenith’s LUCS application, should be included in the record. Respondents
14 respond that petitioners do not contend that the emails were sent to or received
15 by the interim planning director and so petitioners have not met their burden to
16 establish that the emails were placed before the final decision maker. We agree
17 with respondents.

18 This objection is denied.

19 **D. December 16, 2024 forwarding email from city staff with**
20 **attached Letter from the Linton Neighborhood Association,**
21 **dated December 16, 2024**

22 On December 16, 2024, the Linton Neighborhood Association and other
23 community members sent a letter to the then-mayor and mayor-elect, and copied

1 certain city staff, opposing the LUCS application that Zenith had submitted on
2 December 11, 2024. On the same date, December 16, 2024, a deputy city
3 administrator forwarded the letter to city planning staff, including the interim
4 planning director.

5 Petitioners argue first that the city previously agreed in writing to
6 supplement the record with the letter. *See* Reply Ex 2 (city letter). OAR 661-010-
7 0025(1) provides, in part: “Unless the Board otherwise orders, *or the parties*
8 *otherwise agree in writing*, the record shall include at least the following: * * *.”
9 (Emphasis added.) Petitioners explain in their reply that the city subsequently
10 “backtracked” in its response to the record objections, stating that it would
11 supplement the record with those materials only if LUBA so ordered. Reply 2-3;
12 *see also* City Response 7-8 (“If LUBA determines that the [December 16, 2024]
13 letter does not meet the standard [for inclusion in the record], the letter should be
14 excluded from the supplemental record.”). Petitioners argue that the city should
15 not be permitted to backtrack on its written agreement to supplement the record.

16 With respect to the city’s agreement to include the letter in the record, we
17 generally agree with petitioners that the city should not backtrack on its prior
18 written agreement. Time is of the essence in reaching final decisions in matters
19 involving land use and parties have an ongoing obligation to attempt to resolve
20 disputes regarding the content of the record. ORS 197.805; OAR 661-010-
21 0026(1). If the city and petitioners were the only parties, we would likely require
22 the city to include the letter in the record based on the city’s prior written

1 commitment alone. However, petitioners do not argue, and it does not appear to
2 be the case, that Zenith at any point agreed in writing to include the letter in the
3 record. OAR 661-010-0025(1) requires, in this circumstance, the written
4 agreement of all parties. Accordingly, the city's written agreement does not
5 provide a sufficient basis for LUBA to order its inclusion in the record.

6 On the merits, respondents argue that the letter was addressed to persons
7 that the letter-writers could not have reasonably viewed as the decision maker on
8 the LUCS application and includes no express indication that the letter-writers
9 intended that decision maker to consider the letter in reaching a decision on the
10 LUCS application, such as a request to include the letter in the record of that
11 proceeding. Respondents also argue that, while a city deputy administrator
12 forwarded the letter to a number of city staff in several bureaus, including the
13 interim planning director, the administrator's email does not mention the pending
14 LUCS application, and appears to be a simple "see attached" distribution of
15 information for awareness, and not an effort to forward the letter specifically to
16 the interim planning director as the appropriate recipient of public comment on a
17 pending land use application.

18 No party has provided us with a copy of the letter or the email, and we
19 presume respondents accurately characterize the contents and handling of those
20 documents. Petitioners have not contended otherwise. We agree with respondents
21 that petitioners have not demonstrated that the December 16, 2026 letter was
22 submitted or handled in a manner that would indicate an intent to place it before

1 the interim planning director, to be considered as part of the decision on the
2 pending LUCS application.

3 This objection is denied.

4 **E. Email from city staff to other city staff, dated December 20, 2024**

5 Petitioners argue that the December 20, 2024 email, which attaches a
6 newspaper article titled “With Zenith Energy’s Permits on the Line, Critics Urge
7 Strong Government Oversight” and was sent to the interim planning director,
8 among other staff, should be included in the record. Record Objections 5.

9 Respondents respond that the email simply circulated the newspaper article
10 to other city staff as general information, and there is no evidence or argument
11 that the sender of the email intended to place the newspaper article before the
12 interim planning director, to be considered as part of the proceedings on the
13 LUCS application. We agree with respondents. Petitioners argue the content of
14 the newspaper article was “relevant” to the interim planning director’s
15 considerations on the LUCS application. However, whether an item is relevant
16 to a decision maker’s decision has no bearing on whether that item was “placed
17 before” the decision maker “during the course of the proceedings before the final
18 decision maker.” *Adkins v. Heceta Water District*, 22 Or LUBA 826, 828 (1991).

19 This objection is denied.

20 **F. January 21, 2025 city council work session materials**

21 Petitioners argue that the record should include video, audio, meeting
22 materials, speaker notes, minutes, the transcript, and all public comments from

1 the January 21, 2025 city council work session, which the interim planning
2 director attended and at which they presented.

3 The city and Zenith respond that petitioners have not established that any
4 of these materials were placed before the interim planning director under OAR
5 661-010-0025(1)(b), nor do they constitute materials from meetings conducted
6 by the final decision maker under OAR 661-010-0025(1)(c). We agree with
7 respondents.

8 This objection is denied.

9 **G. January 21, 2025 community listening session materials**

10 Petitioners argue that the record should include video, audio, meeting
11 materials, minutes, the transcript, and all public comments for the January 21,
12 2025 community listening session, which petitioners believe the interim planning
13 director attended, viewed a recording of it, and/or received meeting materials
14 regarding.

15 Respondents respond that petitioners have not established that any of these
16 materials were placed before the interim planning director under OAR 661-010-
17 0025(1)(b), nor do they constitute materials from meetings conducted by the final
18 decision maker under OAR 661-010-0025(1)(c). We agree with respondents.

19 This objection is denied.

1 **H. Document titled “C380027_Teams.pdf”**

2 Petitioners describe this document as a compilation of correspondence
3 between city staff, some of which include the interim planning director as a
4 recipient, and which petitioners allege relate to the LUCS application process.

5 Respondents respond that this correspondence between staff, even if
6 relevant to the application, is insufficient to place that communication before the
7 decision maker within the meaning of OAR 661-010-0025(1)(b). *Adkins*, 22 Or
8 LUBA 826. We agree with respondents.

9 This objection is denied.

10 **I. Documents titled “Council Work Session – Zenith Presentation**
11 **Notes and Talking Points.docx” and “DRAFT Zenith Work**
12 **Session Deck.pptx”**

13 Petitioners argue that these documents, which are referenced in the
14 document that is the subject of petitioners’ objection concerning the document
15 “C380027_Teams.pdf,” should be included in the record.

16 Respondents respond that petitioners have not established that any of these
17 materials were placed before the interim planning director under OAR 661-010-
18 0025(1)(b). We agree with respondents.

19 This objection is denied.

20 **J. Document titled “Kuhnhausen_note_from_January_not_**
21 **December.png”**

22 Petitioners describe this document as notes created by the interim planning
23 director during the LUCS application process and argue that those notes should
24 be included in the record.

1 Respondents respond that petitioners have not established that any of these
2 materials were placed before the interim planning director under OAR 661-010-
3 0025(1)(b). The city further responds that hand-written notes are not “minutes”
4 of meetings conducted by the final decision maker for purposes of OAR 661-
5 010-0025(1)(c). *Grabhorn v. Washington County*, 49 Or LUBA 746, 760 (2005).
6 We agree with respondents.

7 This objection is denied.

8 **K. Letter from Breach Collective, dated January 30, 2025**

9 Petitioners argue that the letter from Breach Collective to city staff, dated
10 January 30, 2025, regarding the LUCS application should be included in the
11 record. OAR 661-010-0025(1)(b). The city concedes this objection and responds
12 that it will include the letter in a supplemental record.

13 This objection is resolved.

14 **L. All documents related to the LUCS application submitted to or**
15 **viewed by the interim planning director between December 11,**
16 **2024 and issuance of the 2025 LUCS**

17 The city and Zenith respond that petitioners have not identified with the
18 required specificity the items they claim should be part of the record. OAR
19 661-010-0026(2)(a) (requiring that “omitted item(s) shall be specified, as well as
20 the basis for the claim that the item(s) are part of the record[]”). We agree with
21 respondents.

22 This objection is denied.

1 **M. Minutes and transcripts of the January 21, 2025 city council**
2 **work session and community listening session**

3 Petitioners object that the record does not include the minutes and
4 transcripts of the January 21, 2025 city council work session and community
5 listening session. For the reasons explained above, those sessions were not the
6 “meetings conducted by the final decision maker” on the LUCS application and,
7 therefore, are not required to be included in the record under OAR 661-010-
8 0025(1)(c).

9 This objection is denied.

10 **CONCLUSION**

11 Within fourteen days of the date of this order, the city shall transmit a
12 supplemental record that includes the materials identified in petitioners’
13 objection 11. After we receive the supplemental record, we will issue an order
14 settling the record and establishing a briefing schedule.

15 Dated this 25th day of September 2026.

16

17

18

19 _____
20 Tod A. Bassham

 Board Member