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

LANNY J. ROBSON and
JUANITA I. ROBSON,
Petitioners,

vs.

CITY OF LA GRANDE,
Respondent.

LUBA No. 2006-199

ORDER

15 This appeal is not off to a good start. Petitioners are attempting to advance arguments
16 on the merits, in both their notice of intent to appeal and in another motion, before their
17 pending record objections are resolved. And the city planning division secretary and a city
18 planner are attempting to represent the city in this matter. Neither of them is an attorney.

19 LUBA appeals are governed in large part by our rules. As we explain below,
20 petitioners’ arguments on the merits are premature. The arguments they are attempting to
21 advance now are properly presented in their petition for review. The city must be
22 represented by an attorney. The planning secretary and city planner may not represent the
23 city in this appeal.

24 **A. Petitioners’ Arguments on the Merits**

25 Petitioners are individuals and therefore under our rules they may appear *pro se*.
26 OAR 661-010-0075(6). Pursuant to OAR 661-010-0015(3)(f)(A), petitioners’ notice of
27 intent to appeal designates petitioner Juanita Robson as lead petitioner. However, the notice
28 of intent to appeal also includes several pages of what appears to be argument on the merits
29 of this appeal. That argument is premature. On December 4, 2006, petitioners also filed a
30 document captioned “Motion to Use the Current Land Use Code of the City of La Grande

1 Land Development Code Ordinance Number 3047 Series 2006.” That document also
2 advances what appear to be arguments on the merits of this appeal.

3 Petitioners’ arguments on the merits of this appeal are properly presented in their
4 petition for review, after petitioner’s pending record objections are resolved and the record is
5 settled. *See* OAR 661-010-0030 (setting out the specifications, required contents and
6 requirements for filing a petition for review). We strike petitioners’ December 4, 2006
7 motion, on our own motion. We will disregard the argument on the merits that is presented
8 in the notice of intent to appeal, and the city may do likewise. Petitioners will have another
9 opportunity to present any of those arguments, if they wish, at the time they file their petition
10 for review.

11 **B. The City’s Appearances in this Appeal**

12 Under OAR 661-010-0075(6) corporations, including municipal corporations, must
13 be represented by an attorney in a LUBA appeal. While we do not require that the city
14 record of a land use decision be filed by an attorney, any subsequent appearance by a city—
15 after the record is filed—to oppose record objections, oppose any other motions, file motions
16 on the city’s behalf or otherwise appear on behalf of the city must be through an attorney
17 who is admitted to practice in the state of Oregon.

18 On December 1, 2006, petitioners filed objections to the record that was filed by the
19 city in this appeal. On December 7, 2006, in response to those record objections and in
20 response to petitioners’ December 4, 2006 motion, the city filed (1) “Amended Pages to the
21 Record,” (2) a “Response to Objection of the Record,” (3) a “Motion to Deny,” and (4) an
22 “Addendum to the Record.” As we previously noted, those documents are signed and filed
23 by a planning division secretary and a city planner. They are not signed by, and they were
24 not filed by, an attorney. On our own motion we strike all of those documents. Petitioners
25 need not respond to those documents; and to avoid further confusion, we request that they do
26 not do file responses to any of those documents.

1 The city shall have 14 days from the date of this order to respond to petitioners’
2 December 1, 2006 record objections. Because we strike petitioners’ December 4, 2006
3 motion, there is no need for the city to respond to that motion. If the city’s attorney agrees
4 with the city planner’s responses and the city planner’s proposed additions to the record, the
5 city’s attorney may submit the planner’s responses as his own. However, if the city attorney
6 opposes any of petitioners’ record objections, the city should first submit its response to any
7 record objections that it opposes. After any contested record objections are resolved by an
8 order from LUBA, the city will be given an opportunity to submit a single Supplemental
9 Record. Submitting additional pages for inclusion in the record while disputed record
10 objections are unresolved unnecessarily complicates LUBA’s ability to resolve the record
11 objections in a way that results in a record that is usable by all parties and LUBA.

12 **C. Summary and Conclusion**

13 We summarize and list our rulings in this order below:

- 14 1. LUBA will not consider, and the city is not obligated to respond to,
15 arguments on the merits that are presented in petitioners’ notice of
16 intent to appeal.
- 17 2. On our own motion, we strike Petitioners’ December 4, 2006 motion.
18 The city need not file a response to that motion.
- 19 3. On our own motion, we strike the city’s December 7, 2006 filings.
20 Petitioners need not file a response to those filings.
- 21 4. The city’s attorney shall have 14 days from the date of this order to
22 file a response to petitioners’ December 1, 2006 record objections.
23 Once any disputed objections are resolved, LUBA will determine
24 whether a Supplemental Record should be filed by the city.
- 25 5. Once the record is settled, LUBA will establish a briefing schedule so
26 that petitioners may file a petition for review in which they may
27 present their arguments on the merits.

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Dated this 12th day of December, 2006.

Michael A. Holstun
Board Member