

1 BEFORE THE LAND USE BOARD OF APPEALS

2
3 OF THE STATE OF OREGON

4
5 GENE LEYDEN,
6 *Petitioner,*

7
8 and

9
10 WILL, LLC, and JAMES RICHARDI,
11 *Intervenors-Petitioners,*

12
13 vs.

14
15 CITY OF EUGENE,
16 *Respondent,*

17
18 and

19
20 EUGENE CIVIC ALLIANCE,
21 *Intervenor-Respondent.*

22
23 LUBA Nos. 2019-009 and 2019-010

24
25 WILL, LLC,
26 *Petitioner,*

27
28 and

29
30 GENE LEYDEN and JAMES RICHARDI,
31 *Intervenors-Petitioners,*

32
33 vs.

34
35 CITY OF EUGENE,
36 *Respondent,*

37
38 and

1
2 EUGENE CIVIC ALLIANCE,
3 *Intervenor-Respondent.*

4
5 LUBA Nos. 2019-012 and 2019-013

6
7 JAMES RICHARDI,
8 *Petitioner,*

9
10 and

11
12 GENE LEYDEN and WILL, LLC,
13 *Intervenors-Petitioners,*

14
15 vs.

16
17 CITY OF EUGENE,
18 *Respondent,*

19
20 and

21
22 EUGENE CIVIC ALLIANCE,
23 *Intervenor-Respondent.*

24
25 LUBA Nos. 2019-016 and 2019-017

26
27 ORDER

28 **BACKGROUND**

29 The City of Eugene (the city) issued two building permits for an outdoor
30 athletic field and neighborhood center on the same subject property. Those two
31 building permits are for two aspects of one development project. Petitioners
32 challenge the city's issuance of those two building permits in these consolidated
33 appeals.

1 **MOTIONS TO INTERVENE**

2 Eugene Civic Alliance (intervenor), the applicant below, moves to
3 intervene on the side of respondent in LUBA Nos. 2019-012, 2019-013, 2019-
4 016 and 2019-017.¹ No party opposes the motions and they are granted.

5 Gene Leyden moves to intervene on the side of the petitioner in LUBA
6 Nos. 2019-012, 2019-013, 2019-016 and 2019-017. No party opposes the
7 motions and they are granted.

8 Will, LLC moves to intervene on the side of the petitioner in LUBA Nos.
9 2019-009, 2019-010, 2019-016 and 2019-017. No party opposes the motions and
10 they are granted.

11 James Richardi moves to intervene on the side of the petitioner in LUBA
12 Nos. 2019-009, 2019-010, 2019-012 and 2019-013. No party oppose the motions
13 and they are granted.

14 **MOTION TO DISMISS**

15 LUBA received the original record transmittal on February 12, 2019.
16 LUBA received record objections from intervenor-respondent Eugene Civic
17 Alliance on February 27, 2019, which suspended all further deadlines in this
18 appeal pursuant to OAR 661-010-0026(6). The city and petitioners filed
19 responses to the record objections and the city filed a supplemental record. The

¹ In a previous order, LUBA granted intervenor's motion to intervene on the side of respondent in LUBA Nos. 2019-009 and 2019-010.

1 Board's order resolving the record objections is due by April 26, 2019. ORS
2 197.830(10)(a) (LUBA is required to resolve record objections within 60 days of
3 receiving the objection).

4 On March 22, 2019, after transmitting the record and a supplemental
5 record, the city filed a motion to dismiss the appeal, arguing that LUBA lacks
6 jurisdiction over the challenged building permits, because those permits are not
7 land use decisions under ORS 197.015(10)(b)(B), which excepts from LUBA's
8 review "a decision of a local government * * * [t]hat approves or denies a
9 building permit issued under clear and objective land use standards." On March
10 28, 2019, petitioners filed a joint response to the motion to dismiss and a
11 contingent motion to transfer to circuit court.²

12 All deadlines in the appeal are suspended until such time as we rule on the
13 motion to dismiss. OAR 661-010-0065(4). If the Board denies the motion to
14 dismiss, the Board will issue an order resolving the record objections, settling the
15 record, and establishing deadlines for briefing.

16 Dated this 4th day of April, 2019.

17
18
19
20 _____
21 H. M. Zamudio
Board Member

² The pending record objection does not appear to involve the jurisdictional issues raised by the city's motion to dismiss.