

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

3
4 OREGON SHORES CONSERVATION COALITION,
5 *Petitioner,*

6
7 vs.

8
9 CITY OF ROCKAWAY BEACH,
10 *Respondent.*

11
12 LUBA No. 2025-001

13
14 ORDER

15 Petitioner appeals a city decision approving modifications to a planned unit
16 development (PUD).

17 **BACKGROUND**

18 We understand from the appealed decision that in 2008, the city approved
19 an application by Nedonna Development LLC (Nedonna) to create a phased, 28-
20 lot development. The city approved Phase I of the development within one year
21 of the preliminary approval and Nedonna recorded the plat of Phase 1 in 2009. In
22 2024, Nedonna submitted an application to plat Phase 2 and modify the approved
23 final plan. On December 12, 2024, the city approved Nedonna’s application.

24 **MOTION TO APPEAR AS AMICUS**

25 On February 24, 2025, Nedonna filed a motion to appear as amicus on the
26 side of the city. OAR 661-010-0052(1) provides, in part, that “[a] person or
27 organization may appear as amicus only by permission of the Board on written
28 motion. The motion shall set forth the interest of the movant and state reasons

1 why a review of relevant issues would be significantly aided by participation of
2 the amicus.” Nedonna argues that its participation would be helpful to LUBA
3 because it learned on February 21, 2025, that the city does not intend to submit a
4 response to petitioner’s petition for review. Nedonna argues: “The Board’s
5 review of * * * [p]etitioner’s assignments of error would be significantly aided
6 by the participation of [Nedonna] as an amicus because the Board would then
7 have the benefit of having a brief in opposition to [p]etitioner’s assignments of
8 error against which to weigh those assignments.” Motion to Appear as Amicus 2.

9 On March 4, 2025, petitioner filed its opposition to Nedonna’s motion to
10 appear as amicus, arguing that Nedonna missed the deadline to intervene and
11 should not be allowed to appear as amicus. We agree with petitioner.

12 On January 2, 2025, petitioner filed their notice of intent to appeal (NITA)
13 the city decision approving Nedonna’s application. On January 14, 2025,
14 petitioner filed its corrected NITA. OAR 661-010-0050(1) provides that
15 applicants have standing to intervene. “A motion to intervene shall be filed within
16 21 days of the date the [NITA] is filed pursuant to OAR 661-010-0015, or the
17 amended [NITA] is filed or original [NITA] is refiled pursuant to OAR 661-010-
18 0021.” OAR 661-010-0050(2). Although motions to intervene were due no later
19 than 21 days after the NITA was filed, no motions to intervene were filed.¹

¹ The certificates of service attached to the original and corrected NITAs state that they were served on Nedonna and its legal counsel.

1 We agree with petitioner that Nedonna, as the applicant, was entitled to
2 intervene in the appeal pursuant to ORS 197.830(7)(b)(A) and OAR 661-010-
3 0050(1) but failed to do so. As we explained in *VanSickle v. Klamath County*:

4 “The legislature amended ORS 197.830(7) in 1997 to require that
5 LUBA deny motions to intervene that are not filed within 21 days
6 of the date the notice of intent to appeal is filed. In some
7 circumstances, LUBA has allowed a person or organization to
8 appear as amicus if the potential amicus demonstrates that amicus
9 participation would aid, and not delay, LUBA’s review. As we
10 explained in *Central Oregon Landwatch v. Jefferson County*, 62 Or
11 LUBA 530, 533 (2010):

12 ““The typical amicus is a person or organization that has no
13 direct interest in the matter, but is in possession of views or
14 perspectives that may assist LUBA to correctly decide the
15 legal issues. An example in the land use review context is
16 amicus participation by the Farm Bureau or a similar
17 advocacy organization which has a general view or expertise
18 on how state or local land use regulations governing
19 agricultural land should be understood and applied, and
20 whose views or expertise might assist LUBA in interpreting
21 those regulations.’

22 “To preserve the legislative intent in requiring timely intervention,
23 LUBA has generally declined to grant amicus participation to
24 interested parties in the proceedings below who simply missed the
25 deadline to intervene, and who argue only that LUBA’s review
26 would be aided by their participation because they are interested
27 parties. One exception LUBA has recognized is circumstances
28 where the respondent has informed LUBA that it does not intend to
29 file a respon[dent’s] brief. However, even in that circumstance, a
30 movant must still establish that LUBA’s review would be
31 ‘significantly aided’ by the movant’s participation as amicus.” 77
32 Or LUBA 588, 590 (2018) (citations omitted).

1 We concluded in *VanSickle* that our review would not be significantly aided by
2 the applicant's participation as amicus because (1) our review is limited to the
3 record of the proceeding and we will not consider additional evidence submitted
4 by an amicus and (2) the applicant was entitled to intervene and failed to do so.²
5 Similarly, our review of this appeal is limited to the record and allowing Nedonna
6 to participate as amicus in this appeal would effectively allow it to participate as
7 an intervenor-respondent and file what is in substance an intervenor-respondent's
8 brief without meeting the statutory deadline for intervention.

9 The motion to appear as amicus is denied.

10 Dated this 12th day of March 2025.
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16 Michelle Gates Rudd
Board Member

² The county transmitted its record to LUBA on March 6, 2025. The record has not been settled. See OAR 661-010-0026(2).