

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

3
4 PICULELL PROPERTIES, LLC,
5 *Petitioner,*

6
7 and

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9 SAVE VIDERA OAK MEADOWS and WES VAN WINKLE,
10 *Intervenors-Petitioners,*

11
12 vs.

13
14 CITY OF EUGENE,
15 *Respondent.*

16
17 LUBA No. 2025-020

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19 ORDER

20 **MOTION TO INTERVENE**

21 Save Videra Oak Meadows and Wes Van Winkle (intervenors) move to
22 intervene on the side of petitioner. No party opposes the motion and it is allowed.

23 **RECORD OBJECTIONS**

24 On April 18, 2025, LUBA received the record in this appeal. On May 2,
25 2025, intervenors filed precautionary record objections. Intervenors explain that
26 intervenors' attorney conferred with the city attorney and that the city had agreed
27 to supplement and revise the record. On May 5, 2025, we received from the city
28 a supplemental record and revised record table of contents. As of the date of this
29 order, we have not received any objections to the supplemental record or revised

1 record table of contents. Intervenor's record objections are resolved. The record
2 is settled as of the date of this order.

3 **BRIEFING SCHEDULE**

4 On May 1, 2025, we issued an order approving the parties' stipulated
5 briefing schedule, stipulating that the petition for review and intervenors-
6 petitioners' brief shall be due May 16, 2025, and respondent's brief shall be due
7 June 13, 2025. On May 5, 2025, the Board received intervenors' record
8 objections. OAR 661-010-0026(6) provides:

9 "If an objection to the record is filed, the time limits for all further
10 procedures under these rules shall be suspended. When the objection
11 is resolved, the Board shall issue an order declaring the record
12 settled and setting forth the schedule for subsequent events. Unless
13 otherwise provided by the Board, the date of the Board's order shall
14 be deemed the date of receipt of the record for purposes of
15 computing subsequent time limits."

16 The filing of intervenors' record objections suspended all time limits in this
17 appeal, including the filing deadline for petitioner's and intervenors' briefs.

18 On May 16, 2025, petitioner filed the petition for review, consistent with
19 the stipulated briefing schedule. On May 21, 2025, petitioner filed a Motion for
20 an Order Scheduling Future Events (Petitioner's Motion). Petitioner argues that
21 our order granting the parties' stipulated briefing schedule removed the briefing
22 deadlines from being "under" LUBA's rules. Petitioner's Motion 3-4. Thus,
23 petitioner argues, intervenors-petitioners have missed the deadline for filing their

1 brief and we should not accept any late-filed intervenors-petitioners' brief.¹
2 Petitioner argues that "the correct and equitable way to read the rules would
3 conclude that a party may not stipulate to a scheduling order for petitions and
4 then, on the very next day, unilaterally negate that order with a precautionary
5 record objection, especially where it says the merits of the objection have been
6 resolved." *Id.* In petitioner's view, our order allowing the stipulated briefing
7 schedule controls over the automatic suspension in OAR 661-010-0026(6).

8 LUBA's May 1, 2025, order granted the parties' stipulated request,
9 pursuant to OAR 661-010-0067(2) and (3), for a briefing schedule that varies
10 from the one prescribed in OAR 661-010-0030 and 661-010-0035.² In granting

¹ Petitioner refers to a "cross-petition for review." OAR 661-010-0030(7) allows an "intervenor-respondent who seeks reversal or remand of an aspect of the decision on appeal regardless of the outcome under the petition for review [to] file a cross petition for review that includes one or more assignments of error." As there is no intervenor-respondent in this appeal, we assume for purposes of this order petitioner meant to refer to intervenors-petitioners' brief.

² OAR 661-010-0067(2) and (3) provide:

"(2) Except as provided in this section, in no event shall the time limit for the filing of the petition for review be extended without the written consent of all parties. Written consent may include facsimile signatures. The Board may, on a motion of a party or its own motion, extend the deadline for filing the petition for review to allow time to rule on a motion to dismiss or a motion to take evidence. Written consent to extend the deadline for filing record objections shall automatically extend the deadline for filing the petition for review for the same number of days granted to extend the deadline for filing

1 that request, pursuant to our rules, LUBA did not address the timeline for filing
2 record objections, as the parties did not request that that timeline be adjusted. As
3 the parties' stipulation, and by extension our May 1, 2025 order, did not address
4 the timeline for filing record objections, OAR 661-010-0026 controls and
5 briefing deadlines were suspended by intervenors filing record objections.

6 The petition for review and intervenors' brief shall be due 21 days after the
7 date of this order. The Board has received the petition for review, which is not
8 yet due. If petitioner does not file an amended petition for review within 21 days
9 after the date of this order, then LUBA will assume that petitioner elects to stand
10 on the petition for review filed on May 16, 2025. Respondent's brief shall be due
11 42 days after the date of this order. The final opinion and order shall be due 77
12 days after the date of this order.

13 Dated this 3rd day of June 2025.
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19 H. M. Zamudio
Board Chair

record objections, unless the consenting parties expressly provide
otherwise.

“(3) All other time limits may be extended upon oral or written
consent of all parties, the Board's motion or motion of a party.
Written consent may include facsimile signatures.”