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BEFORE THE OREGON PUBLIC UTILITY COMMISSION

PUBLIC UTILITY COMMISSION OF OREGON,

Complainant,

v.

VCI COMPANY f/k/a STAN EFFERDING and STANLEY JOHNSON d/b/a VILAIRE, and VCI COMPANY, a Washington corporation,

Defendants.

Docket No. UM1288

RESPONSE TO PUBLIC UTILITY COMMISSION OF OREGON'S MOTION TO STRIKE

It is unclear what complainant is attempting to accomplish by moving to strike defendants' objections to the admission of evidence filed on October 9, 2007. The Commission had already admitted the exhibits, *ex parte*, on September 26, 2007, and the Commission has not yet ruled on defendants' motion to set the order aside. Technically, there is nothing to object to until the order is set aside.

The filing of the objections was purely a precaution for purposes of noting the objections on the record should there be an appeal. It was not filed on October 8, 2007, but instead on October 9, because October 8 was Columbus Day, a federal holiday but apparently not a State of Oregon holiday.

Regardless, complainant points to absolutely no prejudice as a result of the objections being filed on October 9, 2007, and therefore there are no grounds to strike the objections.<sup>1</sup> *See*

<sup>1</sup> Complainant cites to ORCP 21E as the grounds to strike. However, this particular rule applies to "pleadings" as opposed to "motions" and lists the specific grounds for striking improper allegations there not applicable to the present case.

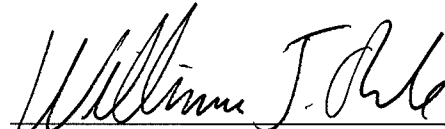
1 e.g., *In re Pacific Corp.*, UE 111, Order No. 00-091 (Feb. 14, 2000) (“The Commission is  
2 reluctant, however, to strike a motion based on an alleged technical deficiency); *Century 21*  
3 *Properties, Inc. v. City of Tualatin*, 15 Or. LUBA 605 (Nov. 7, 1986) (copy attached) (Based on  
4 objections filed one day late, “[r]espondent does not allege how it is prejudiced by the tardy  
5 filing of this record objection. We will allow the filing.”).

6 Complainants’ motion should be denied.

7 Dated this 22<sup>nd</sup> day of October, 2007.

8 SCHWABE, WILLIAMSON & WYATT, P.C.

9  
10 By:



11 William J. Ohle, OSB #913866  
12 wohle@schwabe.com  
13 Facsimile: 503.796.2900


14 Of Attorneys for VCI Company  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 22<sup>nd</sup> day of October 2007, I served the foregoing  
RESPONSE TO PUBLIC UTILITY COMMISSION OF OREGON'S MOTION TO STRIKE on  
the following party at the following address:

David B. Hatton  
Assistant Attorney General  
1162 Court Street NE  
Salem, OR 97301-4096  
David.Hatton@state.or.us

by electronic filing, emailing and mailing to him a true and correct copy thereof, certified by me  
as such, placed in a sealed envelope addressed to him at the address set forth above, and  
deposited in the U.S. Post Office at Portland, Oregon, on said day with postage prepaid.

  
\_\_\_\_\_  
William J. Ohle

LEXSEE 15 OR. LUBA 605

**CENTURY 21 PROPERTIES, INC., an Oregon Corporation, and DAVID  
ORINGDULPH, Petitioner, vs. CITY OF TUALATIN, Respondent, and  
BRIDGEPORT DEVELOPMENT, LTD., Intervenor**

**LUBA No. 86-065**

**OREGON LAND USE BOARD OF APPEALS**

*15 Or. LUBA 605; 1986 Ore. Land Use Bd. App. LEXIS 75*

**November 7, 1986**

**JUDGES:** **[\*\*1]** John T. Bagg, Referee

**1. LUBA Procedures/Rules - Time Limits - Failure to Comply.  
LUBA Procedures/Rules - Record - Objections to.**

Respondent's complaint that petitioner's objection to record was not timely will not be sustained without a showing of prejudice to respondent as a result of tary filing. See OAR 61-10-005.

**OPINIONBY:** John T. Bagg

**OPINION:**

**[\*605]**

**ORDER ON OBJECTION TO RECORD**

Petitioner objects to the record submitted by the City of Tualatin. Specifically, petitioner complains about inclusion of the following items:

"1. Inclusion of the June 7, 1983 staff report on 'Fox Hill' and a preliminary subdivision map for the subdivision.

"2. portions of the Tualatin City Council minutes of June 13, 1983 and Tualatin Resolution 1282-83, both apparently relating to the preliminary plat of 'Fox Hill'.

"3. the Staff Report dated June 25, 1986 and Preliminary plat of 'Fox Hill II'.

"4. portions of the minutes of Tualatin City Council and Tualatin Resolution No. 1566-85, approving the preliminary plat of 'Fox Hill II'.

Petitioner also complains that minutes of the Tualatin City Council meeting of July 28, 1986, were erroneously not included in the record.

Respondent City of Tualatin answers that **[\*\*2]** - the objection must be denied because it was not filed in a timely manner. OAR 661-10-025(3)(d) requires that objections to a record be filed within 10 days following service of the record. Service of this record occurred on September 8, 1986, and the objection was received by this Board on September 29, 11 days after the last day to file objections to the record under our rule. **[\*606]**

[PG 606][HEADNOTE 1] Petitioner's attorney responds that his office recently moved, and the motion was inadvertently incorrectly addressed. Respondent does not allege how it is prejudiced by the tardy filing of this record objection. We will allow the filing. Our rules provide that

"Technical violations of these rules which do not affect substantial rights or interests of parties or of the public shall not interfere with the review of the petition." OAR 661-10-005.

We turn now to petitioners objections.

It is our understanding that the city recently submitted the minutes of July 28, 1986 city council meeting for inclusion in the record of this case. Therefore, petitioner's objection is satisfied.

Petitioner's complaint about inclusion of various reports about the Fox Hill Subdivisions is [\*\*3] denied. At the city council meeting of July 14, 1986, and as part of the council's deliberation on this case, the city attorney addressed the council about the record of the "Fox Hill" subdivision. At that time, the following exchange took place between Mr. Pilliod, the city attorney, and Ms. Thielke, the mayor.

Pilliod "Madame Mayor, before you get into that, I had one request before you close the hearing. I wasn't sure to what extent there might be questions about it, so I brought along the staff report, the resolutions and copies of the preliminary plats for the original Fox Hill Subdivision and the Fox Hill II Subdivision, as well as the Council tape for the Fox Hill II Subdivision, should anybody really be interested in delving into the wherefores and the whys and so forth of what - what was decided earlier. Just wanted to make that clear for the record if there's - if there's someone who would like to try to refresh their memory of what happened then."

Thielke "Are you saying that we shouldn't close the hearing at this point?"

Pilliod "No, I just wanted to make that available for the record."

Thielke "Thank you. Then we may close it, right? Okay. Sure." Record at 154 (emphasis [\*\*4] added). [\*607]

[PG 607]This exchange shows that Mr. Pilliod placed the documents about the Fox Hill Subdivision before the mayor, and she accepted them for review.

We note also the comment of a council member, Richard Devlin at the July 14 meeting. It too suggests that the information on both the Fox Hill I and Fox Hill II Subdivisions was before the council for review. Mr. Devlin stated:

"I have all of the material in front of me except for the tape of the Council session and having reviewed it for Fox Hill I and Fox Hill II. To [sic, to]...." Record at 154.

We conclude, therefore, that objections 1-4 must be denied. The record is settled as of November 7, 1986.

Dated this 7th day of November, 1986.