

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3 JACKSON COUNTY CITIZENS LEAGUE,

4 *Petitioner,*

5 vs.

6 JACKSON COUNTY,

7 *Respondent.*

8 LUBA No. 99-147

9 ORDER ON RECORD OBJECTION

10 On November 4th, 1999, petitioner filed objections to the record in this appeal. The
11 county has not responded. We now resolve those objections.

12 **OBJECTION 1**

13 Petitioner argues that the record does not include written testimony, photographs and
14 a map submitted during the proceedings before the board of commissioners on August 10,
15 1998. Petitioner explains that during the proceedings below the county referenced the
16 testimony, photographs, and map together as Exhibit 20. The record table of contents states
17 that the county is retaining Exhibit 20 until the date of oral argument, pursuant to OAR 661-
18 010-0025(2).¹ However, petitioner argues, the table of contents describes Exhibit 20 as
19 consisting only of the photographs, and does not mention the written testimony or the map,
20 which are not present or copied elsewhere in the record. Further, petitioner argues, the
21 photographs were mounted on 8 ½ by 11-inch paper with written descriptions, and the county
22 copied similarly mounted photographs and included them in the record. Petitioners submit
23 that the written testimony and map should be included in the record, and that, because the

¹OAR 661-010-0025(2) provides in relevant part:

“* * * The governing body shall, within 21 days after service of the Notice on the governing body, transmit to the Board the original or a certified copy of the record of the proceeding under review. The governing body may, however, retain any large maps, tapes, or difficult-to-duplicate documents and items until the date of oral argument. * * *”

1 photographs are mounted on standard-size paper, and the county copied similar photographs
2 submitted by the applicant, there is no reason to retain those photographs pursuant to
3 OAR 661-010-0025(2).

4 We agree with petitioner that the written testimony, photographs and map submitted
5 as Exhibit 20 should be included in the record. The county should duplicate the mounted
6 photographs as it has done for similar photographs in the record. Objection 1 is sustained.²

7 **OBJECTION 2**

8 Petitioner argues that the minutes of the county planning commission hearing on
9 December 11, 1997, contain no summary of public testimony submitted at that hearing, and
10 thus that those minutes are incomplete. OAR 661-010-0026(3).³ Petitioner describes the
11 substance of oral testimony by the opponents, and explains why that testimony is material to
12 the issues in this case. For example, petitioner explains that opposition testimony by two
13 full-time grape farmers is material to whether the county correctly concluded that the subject
14 property is not suitable for growing grapes. Petitioner asks that the defective minutes be
15 amended to include a summary of that testimony.

16 The minutes of the December 11, 1997 hearing contain a list of persons who testified,
17 but the substance of that testimony is not summarized or otherwise set forth. Record 610.
18 We agree with petitioner that the minutes are defective within the meaning of OAR 661-010-

²Petitioner also argues that a copy of a map transparency submitted into the record during the same proceeding is located on the last page of the record and thus the record is not in inverse chronological order, as required by OAR 661-010-0025(4)(a)(E). However, petitioner does not explain why misplacement of a single page renders use of the record so problematic as to require repagination of the record. *See* OAR 661-010-0005 (Technical violations of LUBA's rules not affecting the substantial rights of the parties shall not interfere with LUBA's review).

³OAR 661-010-0026(3) provides:

“An objection on grounds that the minutes or transcripts are incomplete or inaccurate shall demonstrate with particularity how the minutes or transcripts are defective and shall explain with particularity why the defect is material. Upon such demonstration regarding contested minutes, the Board shall require the governing body to produce a transcript of the relevant portion of the proceeding, if an audiotape recording or other type of recording is available. Upon such demonstration regarding contested transcripts, the Board shall require the governing body to produce a more complete or amended transcript.”

1 0026(3), and that petitioner has established why those defects are material. OAR 661-010-
2 0026(3) requires in this circumstance that the local government provide a transcript of the
3 relevant portion of the proceeding.

4 Objection 2 is sustained.

5 **OBJECTIONS 3 AND 5**

6 Petitioner notes that the county reproduced a series of oversize exhibits in the record
7 in a reduced format. Record 590-93. However, petitioner argues that the reduced format
8 does not adequately depict the subject matter of the exhibits, and therefore the county should,
9 in addition, include those exhibits in the list of items retained by the county until oral
10 argument, pursuant to OAR 661-010-0025(2). In addition, petitioner argues that the item at
11 Record 590, a map reduced in size, is incomplete because some of the writing on that map
12 has been cut off in the process of reduction. Petitioner asks that Record 590 be recopied so
13 as to completely depict the original exhibit.

14 The items at Record 590-93 consist of copies of four maps. The map at Record 590
15 contains hand-shaded areas and written comments that are partially illegible. The maps at
16 Record 591 to 593 do not contain any added material, and are clean copies of the larger
17 originals. With respect to the maps at Record 591 to 593, petitioners do not explain why the
18 reduced-size copies fail to adequately depict the substance of those maps. With respect to the
19 map at Record 590, we agree with petitioner that the reduced copy in the record is
20 inadequate. The county may include the original in the list of exhibits that will be retained
21 until oral argument, or it may provide a complete and legible reduced-size copy, or both, at
22 its option. These objections are sustained, in part.

23 **OBJECTION 4**

24 Pursuant to OAR 661-010-0021(6), the county included in the record of this appeal
25 the record and supplemental record of an earlier decision that was the subject of LUBA No.
26 97-066. That decision was withdrawn for reconsideration pursuant to OAR 661-010-0021.

1 However, petitioner argues that it is unclear whether oversized exhibits that were part of the
2 original record and retained by the county are considered part of this record and whether the
3 county will bring those oversized exhibits to oral argument as required by OAR 661-010-
4 0025(2).

5 The record table of contents in this case lists the original and supplemental records in
6 LUBA No. 97-066 as part of the record in this case. The county retains the originals of those
7 records, including, presumably, any oversized exhibits listed in the table of contents for those
8 records. We agree with petitioner that those oversized exhibits are properly part of the record
9 in the current review proceeding, and that the county must bring them to oral argument
10 pursuant to OAR 661-010-0025(2). However, listing the records in LUBA No. 97-066 in the
11 table of contents of LUBA No. 99-147 is adequate to ensure that oversized exhibits associated
12 with LUBA No. 97-066 are part of this record and, like other exhibits retained by the county
13 pursuant to OAR 661-010-0025(2), will be brought to oral argument. This objection is
14 denied.

15 **OBJECTION 6**

16 Petitioner argues that the copy of the document at Record 446 contains illegible
17 handwriting. We agree with petitioner that the document at Record 446 should be recopied
18 so as to render its contents legible. This objection is sustained.

19 The record will be settled upon receipt of a supplemental record responding to the
20 objections sustained above.

21 Dated this 29th day of December, 1999.

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28 _____
29 Tod A. Bassham
Board Member