

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 OREGON DEPARTMENT OF LAND
5 CONSERVATION AND DEVELOPMENT,

6 *Petitioner,*

7
8 vs.

9
10 DOUGLAS COUNTY,

11 *Respondent,*

12 and

13
14 WEBB BRIGGS LAND COMPANY,

15 *Intervenor-Respondent.*

16
17 LUBA No. 2000-008

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19 ORDER ON RECORD OBJECTIONS

20 The Department of Land Conservation and Development (DLCD) objects to the
21 record filed by the county in this matter.

22 **A. Notice of October 21, 1999 Hearing**

23 DLCD objects that the record does not include (1) a Douglas County Planning
24 Department memorandum providing notice of an October 21, 1999 public hearing and (2) an
25 affidavit of mailing that “memorandum and accompanying service list.” DLCD’s Objections
26 to the Record 1. DLCD states that the memorandum and affidavit will show that DLCD was
27 not provided notice of the October 21, 1999 public hearing. In a March 20, 2000 letter to
28 LUBA, the county responds

29 “[W]ritten notice was not provided to DLCD, but * * * DLCD learned of the
30 hearing * * * and was able to prepare and present evidence at the hearing
31 anyway. The county’s position on this issue would be ‘no harm, no foul.’”

32 The county’s argument concerning any possible legal consequence of its failure to
33 provide notice to DLDC is premature. We do not understand the county to dispute that the
34 memorandum and affidavit exist or that those documents should be included in the record.

1 See OAR 661-010-0025(1)(d) (among other things, local government record includes, notices
2 of hearing and affidavits of mailing). DLCD's record objections concerning the
3 memorandum and affidavit are sustained.

4 **B. Documents From Prior Appeal**

5 DLCD's remaining record objections concern documents that were included in the
6 record filed in *DLCD v. Douglas County*, ___ Or LUBA ___ (LUBA No. 98-018, March 10,
7 1999), a prior appeal of the proposal that is challenged in this appeal. DLCD objects that
8 those documents should be included in the record of this appeal. The notation on page five
9 of the record index in the current appeal indicates an apparent intent to incorporate the record
10 in LUBA No. 98-018 as part of the record in the current appeal, although it does not
11 expressly state that intent as required by OAR 661-010-0025(4)(b).

12 With the understanding that the record filed by the county incorporates the record in
13 LUBA No. 98-018, DLCD's remaining record objections are denied.

14 The record will be considered settled when LUBA receives a supplemental record
15 including the memorandum and affidavit discussed above.

16 Dated this 29th day of March, 2000.

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Michael A. Holstun
Board Member