

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

3
4 RON MANNING,
5 *Petitioner,*

6
7 vs.

8
9 MARION COUNTY,
10 *Respondent.*

11
12 LUBA No. 2002-141

13 ORDER ON RECORD OBJECTIONS

14 We take the following facts from the record. The challenged decision is Ordinance
15 1160, an ordinance approving comprehensive plan designations and zoning for certain
16 properties removed from the City of St. Paul’s urban growth boundary. The county’s
17 decision follows LUBA’s remand of a similar ordinance, Ordinance 1152. *Manning v.*
18 *Marion County*, 42 Or LUBA 56 (2002). Our remand was limited to requiring the county to
19 adopt additional findings to address the appropriate comprehensive plan designation and
20 zoning for petitioner’s property, one of a number of properties affected by Ordinance 1152.

21 The county board of commissioners decided at a May 22, 2002 public meeting that no
22 hearings would be held on remand, but that instead county staff would be directed to prepare
23 additional findings to respond to LUBA’s decision. The county is apparently in periodic
24 review. Parties unrelated to the present appeal filed objections to Ordinance 1152 with
25 Department of Land Conservation and Development (DLCD), arguing that the county had
26 designated and zoned property other than petitioner’s in a manner that violated certain
27 statewide planning goals. On June 24, 2002, DLCD remanded Ordinance 1152 to the county
28 to address a number of issues. Record 81-89. The bulk of DLCD’s order involves other
29 properties that were redesignated and rezoned under Ordinance 1152. However, the DLCD
30 order also cites LUBA’s finding that Ordinance 1152 did not contain adequate findings
31 regarding the appropriate plan designation and zoning for petitioner’s property. The order

1 concludes that, as a result of LUBA's remand, Ordinance 1152 did not comply with
2 Statewide Planning Goal 2 (Land Use Planning). Record 86.

3 On July 17, 2002, the commissioners issued an order directing staff to prepare
4 findings responding to DLCD's remand. On October 2, 2002, the commissioners conducted
5 a public meeting at which they voted to adopt an ordinance responding to LUBA's and
6 DLCD's remands. On October 4, 2002, the commissioners adopted Ordinance 1160.
7 Exhibit B of Ordinance 1160 contains findings addressing petitioner's property. Other
8 exhibits address other properties. This appeal followed.¹

9 The record filed by the county contains a number of documents related to periodic
10 review and the county's proceedings on remand in response to the DLCD order. Petitioner
11 objects to inclusion of any documents that do not relate to his property. The county responds
12 that both LUBA and DLCD remanded Ordinance 1152, the county addressed the substantive
13 issues included in both remands in a single proceeding, and the county issued a single
14 decision, supported by a single record, in response to both remands. While the record
15 contains material that does not directly relate to petitioner's property, the county argues, the
16 entire record is the record of the county's decision on remand from LUBA.

17 We agree with the county. The challenged decision is a single ordinance that
18 addresses a number of different properties. Materials placed in front of the final decision
19 maker with respect to any of the properties affected by the decision are part of the record,
20 absent an order of the Board or agreement of the parties otherwise.² The parties clearly have

¹ The foregoing prompts a question regarding the scope of our review authority over Ordinance 1160. LUBA's jurisdiction does not include those matters over which the Land Conservation and Development Commission (LCDC) has review authority. ORS 197.825(2)(c). LCDC has exclusive jurisdiction to review the evaluation, work program, and all work program tasks for compliance with the statewide planning goals. OAR 660-025-0040(1). LUBA has exclusive jurisdiction over land use decisions described in OAR 660-025-0040(1) for issues that do not involve compliance with the statewide planning goals. OAR 660-025-0040(2). Thus, the types of issue that we may address in an appeal of Ordinance 1160 do not include issues related to compliance with statewide planning goals. *DLCD v. City of McMinnville*, 40 Or LUBA 591, 599 (2001). No question concerning our scope of review is presented in petitioner's record objection or the county's response to those objections.

² OAR 661-010-0025(1) defines the content of the record before LUBA, and provides, in relevant part:

1 not agreed that certain portions of the record may be removed. While much of the material in
2 the record may have no bearing on petitioner's property, and probably will have no bearing
3 on any issue in this case, that is not a basis to conclude that that material is not part of the
4 record.

5 The record objection is denied. The record is settled as of the date of this order. The
6 petition for review is due 21 days, and the response brief due 42 days, from the date of this
7 order. The Board's final opinion and order is due 77 days from the date of this order.

8 Dated this 20th day of February, 2003.
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Tod A. Bassham
Board Chair

“Contents of Record: Unless the Board otherwise orders, or the parties otherwise agree in writing, the record shall include at least the following:

- “(a) The final decision including any findings of fact and conclusions of law;
- “(b) All written testimony and all exhibits, maps, documents or other written materials specifically incorporated into the record or placed before, and not rejected by, the final decision maker, during the course of the proceedings before the final decision maker.”