

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

3
4 LOGAN RAMSEY,
5 *Petitioner,*

6
7 vs.

8
9 MULTNOMAH COUNTY,
10 *Respondent.*

11
12 LUBA No. 2002-157

13 ORDER ON RECORD OBJECTIONS

14 In *Ramsey v. Multnomah County*, ___ Or LUBA ___ (LUBA No. 2001-171,
15 September 17, 2002), we remanded Multnomah County Ordinance 967. This appeal
16 concerns Multnomah County Ordinance 997, which readopts Ordinance 967 and a number of
17 other county ordinances.¹ On January 6, 2003, petitioner filed four objections to the record
18 that was filed by the county in this appeal.

19 In response to petitioner's January 6, 2003 record objections, the county submitted a
20 supplemental record. The supplemental record includes a transcript of the relevant portion of
21 the October 31, 2002 Multnomah County Board of Commissioners' meeting at which it
22 adopted Ordinance 997. The supplemental record table of contents indicates that the audio
23 tapes of that meeting will be brought to oral argument in this appeal. The parties agree that
24 the supplemental record resolves petitioner's first and second record objections. The parties
25 disagree about how to resolve petitioner's third and fourth objections.

26 **A. Compact Disk**

27 Ordinance 997, which identifies but does not include or attach all the ordinances that
28 it readopts, appears at Record 31-35. Record item three is a compact disk that includes

¹ Ordinance 967 was remanded because the county did not provide the prior published notice that ORS 215.060 requires. Apparently Ordinance 997 readopted ordinance 967, and other ordinances as well, due to concerns that those other ordinances were also adopted without published notice. Record 14.

1 copies of all the ordinances that were readopted by Ordinance 997.² The parties' positions
2 concerning the CD are less than clear. Petitioner appears to argue in his third record
3 objection that the CD was not placed before the board of commissioners when it adopted
4 Ordinance 997, and for that reason it is not part of the record under OAR 6661-010-
5 0025(1)(b).³ The county's entire response to this objection is as follows:

6 "The CD is the equivalent of a paper copy of the attachments to Ordinance
7 No. 997. The use of a CD is a discretionary cost-savings administrative
8 decision. The Clerk of the Board, after announcing this agenda item * * *
9 stated: 'Copies of the complete ordinance are available at the back counter.'
10 This is in compliance with County Charter and Board [of County
11 Commissioner] Rules that state: 'A proposed ordinance may be read by title
12 only if copies of the ordinance are available to the public at the meeting.'"
13 Multnomah County's Response to Record Objection 2.

14 Based on the parties arguments, the above-quoted statement that "[c]opies of the complete
15 ordinance are available at the back counter" could mean at least three different things: (1) a
16 paper copy of the five-page Ordinance 997, which lists but does not include the numerous
17 readopted ordinances, is available at the back counter; (2) a paper copy of the five-page
18 Ordinance 997, as well as paper copies of all the readopted ordinances, are available at the
19 back counter; or (3) a paper copy of the five-page Ordinance 997, along with the CD
20 electronic copy of the readopted ordinances, is available at the back counter.⁴

21 We need not resolve this factual ambiguity to resolve petitioner's third record
22 objection. Whatever was actually placed on the back counter at the October 31, 2002
23 meeting, the *decision* that is the subject of this appeal is Ordinance 997. That ordinance

² The CD does not include a copy of Ordinance 997.

³ OAR 661-010-0025(1)(b) provides that the record includes:

"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."

⁴ If the third meaning was intended, petitioner complains that the CD was not "plainly labeled" and "there was no table of contents identifying what was in the CD[.]" Answer to Multnomah County's Response to Record Objection 2.

1 readopts a number of referenced ordinances. Whether those referenced ordinances were
2 present in paper format, electronic format or not present in either paper or electronic format,
3 the readopted ordinances are part of the appealed decision. Without commenting on whether
4 the absence of the readopted ordinances at the October 31, 2002 meeting or their presence in
5 electronic format only may constitute error, the ordinances are plainly part of the decision
6 regardless of whether they were present at the October 31, 2002 meeting and regardless of
7 the format in which they were present at the October 31, 2002 meeting.

8 OAR 661-010-0025(1)(a) provides that the record includes “[t]he final decision
9 * * *.” The ordinances included on the CD are clearly part of the record if they are in fact
10 the ordinances that were readopted by Ordinance 997. The ordinance numbers on the
11 ordinances included in the CD correspond with the ordinance numbers identified in
12 Ordinance 997, and we do not understand petitioner to argue that the ordinances on the CD
13 are not the same ordinances that Ordinance 997 readopts.

14 The only remaining question (which does not appear to be part of petitioner’s record
15 objection) is whether the copy of the decision that the county has included in the record in
16 this appeal may be partially in electronic format. Our rules do not specify that the “certified
17 copy of the record” that the county must file with LUBA and the “copy of [the] record” the
18 county must serve on petitioner must be a paper copy. OAR 661-010-0025(2) and (3).
19 Petitioner does not claim that he is unable to access the documents on the CD or that the
20 county’s decision to supply only a CD copy of the readopted ordinances hampers his ability
21 to prepare for this appeal. Given the relative ease with which petitioner and this Board can
22 access those ordinances on the CD and make paper copies if necessary, and given that the
23 CD contains the *only* copy of those ordinances that is included in the record, we conclude
24 that the CD is properly included in the record.

25 Petitioner’s third record objection is denied.

1 **B. The Prior Record in LUBA No. 2001-171**

2 As permitted by OAR 661-010-0025(4)(b), the record table of contents designates the
3 record in LUBA No. 2001-171 as part of the record in this appeal. Petitioner contends that
4 the record in LUBA No. 2001-171 was not physically present at the October 31, 2002 board
5 of commissioners’ meeting and, for that reason, should not be included in the record.

6 As the county correctly notes, the local proceedings that led to adoption of Ordinance
7 997 were a continuation of the local proceedings that led to Ordinance 967, which LUBA
8 remanded to the county. As such, the record in LUBA No. 2002-171 is part of the record in
9 this appeal, without regard to whether it was physically present at the October 31, 2002 board
10 of county commissioner meeting. *See Murphy Citizens Advisory Comm. v. Josephine*
11 *County*, 27 Or LUBA 651, 652 (1994) (“[I] f a local government wishes to exclude the record
12 of a previous local proceeding on the same development application that led to the local
13 remand proceedings, it must expressly do so.”).

14 Petitioner’s fourth record objection is denied.

15 The record is settled as of the date of this order. The petition for review shall be due
16 21 days from the date of this order. Respondent’s brief shall be due 42 days from the date of
17 this order. The Board’s final opinion and order shall be due 77 days from the date of this
18 order.

19 Dated this 27th day of March, 2003.

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Michael A. Holstun
Board Member