

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 ROBERT D. LOFGREN, TYRRELL P. HART,
5 JEFFREY J. MOFFET, DAVID EATON,
6 FOREST BOHALL, JAMES J. BETSCHART
7 and RANDY LINKER,
8 *Petitioners,*

9
10 vs.

11
12 JACKSON COUNTY,
13 *Respondent,*

14
15 and

16
17 EDWARD L. COX, II,
18 *Intervenor-Respondent.*

19
20 LUBA No. 2007-061

21 ORDER

22 **MOTION TO INTERVENE**

23 Edward L. Cox, II, moves to intervene on the side of respondent in this appeal. There
24 is no opposition, and the motion is granted.

25 **RECORD OBJECTIONS**

26 **A. First Record Objection**

27 On April 13, 2007, petitioners filed a precautionary objection to the record,
28 requesting that the tape recordings of the planning commission hearing be made part of the
29 record. Intervenor-respondent opposes the objection, arguing that the tape recordings of the
30 planning commission hearing were not placed before the final decision maker and are
31 properly excluded from the record under OAR 661-010-0025(1)(b).¹

¹ OAR 661-010-0025(1) provides:

1 The general rule is that the record compiled at initial stages of a multi-stage local
2 government land use proceeding must actually be “placed before” the final decision maker,
3 or incorporated into the record by the final decision maker, for the record of the earlier stages
4 to become part of the record before LUBA. *Leonard v. Union County*, 23 Or LUBA 664, 667
5 (1992). An exception exists where a local code provision requires that the record of
6 proceedings before initial decision makers be included as part of the record of the final
7 decision maker, as a matter of law. *Id.* Petitioners have not cited any such code provision, or
8 other basis to conclude that the tapes of the planning commission proceedings should be
9 included in the record. Petitioners’ first record objection is denied.

10 **B. Second Record Objection**

11 On April 18, 2007, petitioners filed an additional objection to the record, stating that
12 several documents were omitted from the record that was transmitted by the county.

“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.
- “(c) Minutes and tape recordings of the meetings conducted by the final decision maker as required by law, or incorporated into the record by the final decision maker. A verbatim transcript of audiotape or videotape recordings shall not be required, but if a transcript has been prepared by the governing body, it shall be included. If a verbatim transcript is included in the record, the tape recordings from which that transcript was prepared need not be included in the record, unless the accuracy of the transcript is challenged.
- “(d) Notices of proposed action, public hearing and adoption of a final decision, if any, published, posted or mailed during the course of the land use proceeding, including affidavits of publication, posting or mailing. Such notices shall include any notices concerning amendments to acknowledged comprehensive plans or land use regulations given pursuant to ORS 197.610(1) or 197.615(1) and (2).”

1 Petitioners requested that the following documents, all connected with the February 21, 2007
2 public hearing before the Board of Commissioners, be made part of the record: (1) the Notice
3 of Hearing mailed to participants and/or published in the Medford Mail Tribune, (2) the
4 affidavit of mailing with names and addresses for the Notice of Hearing, (3) the agenda for
5 the hearing, (4) the list of names and addresses of persons who were mailed a copy of the
6 agenda for the hearing. Respondent and intervenor-respondent have not responded to this
7 record objection. We sustain petitioners' second record objection. The county shall transmit
8 the documents that are the subject of the second record objection in a supplemental record
9 within 14 days after the date of this order.

10 Dated this 1st day of June, 2007.

11

12

13

14

15

Tod A. Bassham
Board Member