

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

3
4 PAUL E. FOLAND and CONSTANCE J. FOLAND,
5 *Petitioners,*

6
7 vs.

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9 JACKSON COUNTY,
10 *Respondent,*

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12 and

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14 DOM PROVOST and JOYCE PROVOST,
15 *Intervenor-Respondents.*

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17 LUBA No. 2006-206

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19 CHRIS N. SKREPETOS and CYNTHIA LORD,
20 *Petitioners,*

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22 vs.

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24 JACKSON COUNTY,
25 *Respondent,*

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27 and

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29 DOM PROVOST and JOYCE PROVOST,
30 *Intervenor-Respondents.*

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32 LUBA No. 2006-211

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34 ORDER

35 **MOTIONS TO INTERVENE**

36 Dom Provost and Joyce Provost, the applicants below, move to intervene on the side
37 of the county in these consolidated appeals. There is no opposition to the motion, and it is
38 granted.

1 **MOTION TO FILE EXTENDED PETITION FOR REVIEW**

2 Petitioners Skrepetos and Lord move the Board for permission to file a 60-page
3 petition for review. There is no opposition to the motion. Due to the lengthy history,
4 extensive record, and complexity of the issues, petitioners' motion is granted.

5 **RECORD OBJECTIONS**

6 **A. Previous Record**

7 This appeal involves Jackson County's decision on remand from a LUBA decision
8 from 1995: *Skrepetos v. Jackson County*, 29 Or LUBA 193 (1995). The county did not
9 include the record from *Skrepetos* (previous record) in the record of this appeal that was filed
10 with LUBA. After petitioners objected to the omission of the previous record, the county
11 agreed to include the previous record in the record of this appeal and provided LUBA with a
12 copy of the previous record. The county, however, has refused to provide copies of the
13 previous record to petitioners unless petitioners pay for the copies.¹ Petitioners now object
14 that the county has not provided them with a copy of the record as required by our rules.

15 OAR 661-010-0025(3) provides:

16 “Service of Record: *Contemporaneously with transmittal, the governing body*
17 *shall serve a copy of the record, exclusive of large maps, tapes, and difficult-*
18 *to-duplicate documents and items, on the petitioner or the lead petitioner, if*
19 *one is designated. The governing body shall also serve a copy of the record*
20 *on any other party, including intervenors-petitioner, requesting a copy*
21 *provided such other party reimburses the governing body for the reasonable*
22 *expense incurred in copying the record.* The governing body shall also serve a
23 copy of any tape included in the record, or any tape from which a transcript
24 included in the record was prepared, on any party requesting such a copy,
25 provided such party reimburses the governing body for the reasonable
26 expense incurred in copying the tape.” (Emphasis added.)

27 As our rules make clear, the local government must serve a copy of the record on
28 petitioners. The proceedings on remand, however, are a continuation of the original

¹ The previous record is over 2000 pages long, and the county maintains it is too expensive for the county to provide copies without reimbursement.

1 proceedings. This appeal and the prior appeal are the same case. *Beck v. City of Tillamook*,
2 313 Or 148, 151, 831 P2d 678 (1992). Therefore, if the county has already served petitioners
3 with a copy of a previous record then petitioners have also been served with a copy of the
4 previous record for purposes of this appeal. The general rule is, therefore, that a local
5 government is not required to re-serve a petitioner with another copy of a record from a
6 previous appeal. While that is the general rule, in the present circumstance our decision in
7 the previous appeal was issued more than a decade ago. While it is certainly reasonable to
8 expect a petitioner to retain a copy of a LUBA record when a local government begins
9 proceedings on remand in a timely matter, it is not reasonable to require a petitioner to retain
10 a voluminous LUBA record for over a decade. Furthermore, the Foland petitioners explain
11 that their copy of the previous record was destroyed in a fire in 2000.² Therefore, under the
12 present circumstances, the county must provide each set of petitioners with a copy of the
13 previous record. Any recovery of the costs of providing the previous record must be
14 recovered from petitioners' deposit for costs in the event the county is the prevailing party.

15 **B. Exhibit 52**

16 Petitioners argue that the county admitted Exhibit 52 and its attachments after the
17 evidentiary record had been closed and therefore Exhibit 52 should not be included in the
18 record. OAR 661-010-0025(1)(b) provides that the record includes all written materials
19 placed before and not rejected by the final decision maker. There is no dispute that the
20 county accepted Exhibit 52 and that it was placed before and not rejected by the final
21 decision maker. Any error by the county in accepting evidence after the record was allegedly
22 closed may serve as the basis for an assignment of error, but it is not a basis for removing
23 materials from the record.

24 This record objection is denied.

² Petitioners Skrepetos and Lord's copy has apparently been taken apart and scattered so that its reassembly is impractical.

1 **C. Conclusion**

2 The county will provide each set of petitioners with a copy of the previous record.
3 The petitions for review will be due 21 days after the previous record is served on
4 petitioners.

5 Dated this 15th day of February, 2007.

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Michael A. Holstun
Board Member