

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

3
4 GARRISON F. TURNER
5 and CHRIS SKREPETOS,
6 *Petitioners,*

7
8 vs.

9
10 JACKSON COUNTY,
11 *Respondent,*

12
13 and

14
15 CHRIS STURDEVANT
16 and AMBER STURDEVANT,
17 *Intervenors-Respondents.*

18
19 LUBA No. 2010-071

20
21 FINAL OPINION
22 AND ORDER

23
24 Appeal from Jackson County.

25
26 Garrison F. Turner and Chris N. Skrepetos, Ashland, filed the petition for review and
27 argued on their own behalf.

28
29 G. Frank Hammond, Jackson County Counsel, Medford, filed a response brief and
30 argued on behalf of respondent.

31
32 Deborah K. Vincent, Medford, filed a response brief and argued on behalf of
33 intervenors-respondents.

34
35 HOLSTUN, Board Chair; BASSHAM, Board Member; RYAN, Board Member,
36 participated in the decision.

37
38 REVERSED

11/02/2010

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40 You are entitled to judicial review of this Order. Judicial review is governed by the
41 provisions of ORS 197.850.

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NATURE OF THE DECISION

Petitioners appeal a county hearings officer decision that approves a minimum setback reduction.

MOTION TO INTERVENE

Chris Sturdevant and Amber Studevant (intervenors), the applicants below, move to intervene on the side of respondent. There is no objection to the motion, and it is granted.

REPLY BRIEF

Petitioners move for permission to file a reply brief to respond to new issues raised in the county’s and intervenors’ briefs. OAR 661-010-0039. The county and intervenors object that the reply brief was filed ten days after the response briefs were filed, which is more than the seven days allowed under OAR 661-010-0039. The county and intervenors object to the reply brief on other grounds as well. The three day delay in filing the reply brief did not prejudice any party’s substantial rights and therefore provides no basis for rejecting the reply brief. Respondent’s and intervenors’ other objections to the reply brief are also not well taken. The reply brief is allowed.

FACTS

A. Introduction

The central dispute in this appeal is whether intervenors’ 5.24-acre parcel (Tax Lot 1708) is zoned for exclusive farm use (EFU) or zoned Rural Residential (RR-00). The county and intervenors contend that an ordinance that took effect in 2004 (Ordinance 2004-3), which replaced the prior 18 official zoning maps for Jackson County with three official zoning maps, adopted a change in zoning for Tax Lot 1708. Petitioners dispute that contention. The parties have largely succeeded in making a relatively straightforward case exceedingly complicated. In particular, much of the argument in support of the first three assignments of error is fairly characterized as a second effort on petitioners’ part to challenge

1 Ordinance 2004-3 on the merits. We dismissed petitioners' first attempt to appeal Ordinance
2 2004-3, concluding that petitioners' attempt to appeal that ordinance more than six years
3 after it was adopted was barred by the three-year statute of ultimate repose set out at ORS
4 197.830(6). *Turner v. Jackson County*, ___ Or LUBA ___ (LUBA No. 2010-007, July 22,
5 2010). We agree with the county that Ordinance 2004-3 is now final and the legal
6 consequence of our dismissal of petitioners' appeal is that Ordinance 2004-3 is now deemed
7 acknowledged under ORS 197.625. Ordinance 2004-3 cannot be collaterally attacked on the
8 merits in this appeal and much of petitioners' petition for review appears to be an attempt to
9 do so. However, determining whether Ordinance 2004-3 itself had the legal effect of
10 rezoning Tax Lot 1708 from EFU to RR-00 is neither a challenge to the acknowledged status
11 of the ordinance nor an impermissible collateral attack on Ordinance 2004-3. That
12 determination simply calls for an interpretation of Ordinance 2004-3 along with other
13 applicable county land use laws. As we explain below, that interpretation was required for
14 the hearing officer to adopt the decision that is before us in this appeal, and the issue of
15 whether the county correctly interpreted Ordinance 2004-3 is the dispositive issue presented
16 in the first three assignments of error.

17 The parties' interpretive dispute arose in the context of intervenors' request for a
18 setback reduction. In the RR-00 zone, one single-family dwelling is permitted by right.
19 Jackson County Land Development Ordinance (LDO) 6.3.2(C)(1). However, in siting a
20 single-family dwelling on a RR-00 zoned property, LDO 8.5.3(F) requires that such
21 dwellings be set back at least 200 feet from EFU-zoned property. Tax Lot 1708 is
22 surrounded by EFU-zoned land. Tax Lot 1708's size and dimensions make siting a dwelling
23 that complies with the LDO 8.5.3(F) setback problematic or impossible. Intervenors sought
24 a reduction from that setback in order to site a dwelling on Tax Lot 1708.

25 In considering that 200-foot setback reduction request, the threshold question that the
26 hearings officer had to consider is whether Tax Lot 1708 is zoned EFU, as petitioners argue,

1 or RR-00, as intervenors argue. That is because if Tax Lot 1708 is zoned EFU, a single-
2 family dwelling would not be allowed outright on Tax Lot 1708, with or without a setback
3 reduction. The much more restrictive approval criteria for siting dwellings on EFU-zoned
4 land would apply instead. With that explanation for why the zoning of Tax Lot 1708 is the
5 dispositive question under petitioner’s first three assignments of error, we set out the relevant
6 zoning history of Tax Lot 1708 below before returning to that question.¹

7 **B. Ordinance 99-15 (August 17, 1999)**

8 All parties agree that sometime before August 17, 1999, Tax Lot 1708 was zoned
9 EFU. On August 17, 1999, the county adopted Ordinance 99-15. Record 149-63.
10 Ordinance 99-15 adopted exceptions to Statewide Planning Goals 3 (Agricultural Lands) and
11 4 (Forest Lands) and changed the comprehensive plan and zoning map designations to allow
12 rural residential development on Tax Lot 1708. It is undisputed that Ordinance 99-15
13 rezoned Tax Lot 1708 from EFU to RR-00. However, it is also undisputed that Ordinance
14 99-15 was appealed to LUBA and remanded to Jackson County. *Jackson County Citizens*
15 *League*, 38 Or LUBA 357 (2000). The county has apparently taken no further action with
16 regard to Ordinance 99-15. Petitioner takes the position that following LUBA’s remand in
17 *Jackson County Citizens League* the zoning for Tax Lot 1708 reverted to EFU. Intervenors
18 contend that because the county took no action following LUBA’s remand, the zoning for
19 Tax Lot 1708 remained RR-00. We return to this question later in this opinion after we
20 consider the county’s legal theory—that Ordinance 2004-3 rezoned Tax Lot 1708 from EFU
21 to RR-00.

22 **C. October 28, 2003 Zoning Information Sheet**

23 In October 2003, intervenors contacted the county before purchasing Tax Lot 1708.
24 At that time intervenors were advised by the county that Tax Lot 1708 is zoned RR-00.

¹ Petitioners’ only other assignment of error challenges the hearings officer’s findings that the LDO standards that govern setback reductions are satisfied in this case.

1 Record 558. The record includes a zoning information sheet, which indicates that the zoning
2 information sheet was last updated on October 28, 2003. According to that October 28, 2003
3 zoning information sheet, Tax Lot 1708 is zoned RR-00. Record 562-63.²

4 **D. Ordinance 2004-3 (January 12, 2004)**

5 Ordinance 2004-3 and Ordinance 2004-2 both took effect on January 12, 2004. As
6 we have already explained, Ordinance 2004-3 is the ordinance that the county believes
7 rezoned Tax Lot 1708. Ordinance 2004-2 adopted a number of LDO textual amendments,
8 including the LDO language now codified at LDO 5.1.4. LDO 5.1.4 plays a pivotal role in
9 the hearings officer's interpretation of Ordinance 2004-3. We turn to the key language in
10 Ordinance 2004-3 and LDO 5.1.4 after our explanation of the history of key county actions
11 with regard to Tax Lot 1708.

12 **E. The 2007/2008 Setback Reduction Application**

13 In 2007, intervenors filed an application for a reduction to the LDO 8.5.3(F) 200-foot
14 setback from EFU-zoned land to develop a single-family dwelling on Tax Lot 1708. After
15 the county approved that application, petitioner Turner filed a local appeal, arguing that the
16 subject property is zoned EFU and that the standards that govern approval of dwellings in
17 EFU zones must be applied before the county can approve a dwelling on Tax Lot 1708. The
18 2008 county hearing on petitioner's appeal was cancelled, and petitioner Turner maintains
19 that he was advised in 2008 that the county agreed with him that Tax Lot 1708 is zoned EFU.
20 Intervenors apparently abandoned the 2007/2008 setback reduction application, and it
21 appears that no further action was ever taken on intervenors' 2007/2008 setback reduction.

22 **F. The 2009 Setback Reduction Application**

23 On September 29, 2009, intervenors submitted a second application for a setback
24 reduction. Record 617-20. Intervenors submitted a number of documents in support of that

² The record does not disclose why intervenors were told in 2003 that Tax Lot 1708 is zoned RR-00.

1 application. Record 621-73. In the proposed findings that were included with the
2 application, intervenors took the position that under LDO 5.1.4(A) and 5.1.4(C) any dispute
3 concerning the zoning of Tax lot 1708 is conclusively resolved by the official zoning maps
4 that were adopted by Ordinance 2004-3. Intervenors contended that because there is no
5 dispute that those official zoning maps show Tax Lot 1708 to be zoned RR-00, there can be
6 no dispute that Tax Lot 1708 is zoned RR-00. Planning Staff tentatively approved the
7 application on December 11, 2009, and petitioners appealed. Record 608-12. On appeal the
8 county hearings officer concluded that the subject property is zoned RR-00 and that the LDO
9 criteria governing setback reductions are satisfied. This appeal followed.

10 **FIRST, SECOND AND THIRD ASSIGNMENTS OF ERROR**

11 The county took the position below that the zoning for Tax Lot 1708 was changed
12 from EFU to RR-00 when the county adopted Ordinance 2004-3, which consolidated 18
13 official zoning maps into three official zoning maps. Record 584. Ordinance 2004-3
14 includes the following language:

15 “1.1 The Board of Commissioners hereby adopts the Findings contained in
16 ‘Exhibit 1’ as the basis for [its] decision to amend the Jackson County
17 Comprehensive Plan maps and Zoning maps as shown in ‘Exhibit 2.’”
18 Record 522.

19 As we have already explained, there is no dispute that the official zoning maps that were
20 attached to Ordinance 2004-3 as Exhibit 2 show Tax Lot 1708 zoned RR-00.

21 Petitioners argue that Ordinance 2004-3 did not have the legal effect of changing the
22 zoning of Tax Lot 1708 from EFU to RR-00. That argument is based in part on a finding
23 that was adopted in support of Ordinance 2004-3, which states that the ordinance does not
24 change the zoning of any EFU-zoned properties:

25 “3.2.3. No zoning map changes are proposed for properties zoned
26 * * * Exclusive Farm Use (EFU). * * *” Record 528.

27 We understand petitioners to argue that this finding makes it clear that Ordinance 2004-3 was
28 adopted to collapse 18 official zoning maps into three official zoning maps and apply some

1 new zoning district names; it was not adopted to rezone any EFU-zoned property. We
2 understand the Ordinance 2004-3 finding to say that no EFU-zoned property is rezoned by
3 Ordinance 2004-3, but the official zoning map that was adopted by Ordinance 2004-3
4 arguably had the effect of rezoning Tax Lot 1708 from EFU to RR-00. The Ordinance 2004-
5 3 finding and the official zoning map adopted by Ordinance 2004-3 are in conflict with
6 regard to Tax Lot 1708.

7 Based on the official zoning map adopted by Ordinance 2004-3, which shows Tax
8 Lot 1708 zoned RR-00, and application of LDO 5.1.4(A) and (C), the hearings officer
9 concluded that Tax Lot 1708 is zoned RR-00. The relevant text of LDO 5.1.4 is set out in
10 the margin, but the language the hearings officer relied on appears in LDO 5.1.4(C) and is as
11 a follows: “In case of any dispute regarding the Zoning classification of property subject to
12 this Ordinance, the original maps contained in the Official County Records will control.”³
13 The hearings officer’s findings are set out below:

³The language the hearings officer relied upon appears in the second sentence of LDO 5.1.4(C). We set out additional text of LDO 5.1.4(A) and (C) to provide context.

“5.1.4 Official Zoning Map(s)

“A) Incorporation Into This Ordinance

The designations, locations, and boundaries of the zoning and overlay districts established by this Ordinance will be shown on the Official Zoning Maps of Jackson County (‘Official Zoning Maps’). The Official Zoning Maps will be numbered, dated, and signed by the Board of Commissioners and maintained by the Jackson County Development Services Department. These maps and all notations, references, and data shown thereon are incorporated by reference into this Ordinance, and will be as much a part of the Ordinance as if all were fully described herein.

“* * * * *

“C Interpretation of Zoning Map Boundaries

Initial Zoning boundary interpretations will be made by Planning Staff using maps generated by the County’s Geographic Information System (GIS) data base, and printed GIS maps. *In case of any dispute regarding the Zoning classification of property subject to this Ordinance, the original maps contained in the Official County Records will control.* Where uncertainty exists with respect to the

1 “The clear requirement of [LDO 5.1.4(A) and 5.1.4(C)] is that the hearings
2 officer must base the determination of the Appeal on the original Jackson
3 County Zoning Map which applies to the Property. During the Hearing and at
4 the Hearings Officer’s request, Staff produced the original Jackson County
5 Zoning Map that includes the Property. Upon inspection, the Hearings
6 Officer determined that that map sheet clearly shows the Property zoned RR-
7 00.

8 “The Appellant * * * offered no authority for their contention that the
9 Hearings Officer can inquire into whether Ordinance 2004-3 was properly
10 noticed and adopted. The Hearings Officer is unable to find any such
11 authority in the LDO and concludes that such an analysis is not within his
12 purview. Hence, the hearings officer does not have the authority to inquire
13 further and concludes that the Property is zoned RR-00 as depicted on the
14 County’s [official] zoning map. The issue of whether Ordinance 2004-3 was
15 competent to achieve the rezoning is left to LUBA and the appellate courts.
16 No such determination has been made as of the date of the Decision.” Record
17 5.

18 We understand the hearings officer to have concluded that the county may have
19 committed errors in adopting Ordinance 2004-3 by sending out inadequate notices and
20 failing to adopt an exception to Goals 3 and 4. However, the hearings officer concluded that
21 jurisdiction to consider those questions lies with LUBA and jurisdiction to review LUBA’s
22 decision lies with the appellate courts. We agree with the hearings officer on that point.

23 The hearings officer’s decision was rendered on June 26, 2010. LUBA’s decision in
24 *Turner v. Jackson County* was issued on July 22, 2010. As noted earlier in this opinion, that
25 appeal was dismissed as untimely filed and no party appealed our decision. While the failure
26 of the notices that preceded and followed adoption of Ordinance 2004-3 to mention any
27 exceptions or rezonings of EFU-zoned land and the county’s failure to adopt an exception
28 when it adopted Ordinance 2004-3 likely would have provided bases for reversal or remand
29 of Ordinance 2004-3 if petitioners’ appeal had been timely filed, those failures provide no

boundaries of the Zoning districts shown on the Official Zoning Maps, the Director
will use the following rules to interpret the Official Zoning Maps:

“1) [There follow six rules for resolving ambiguities in the Official Zoning
Maps.]” (Emphasis added.)

1 basis for reversal or remand of the decision before us in this appeal. They simply add
2 contextual support for the conclusion that the official zoning map that was adopted by
3 Ordinance 2004-3 mistakenly changed the zoning for Tax Lot 1708 from EFU to RR-00,
4 without justifying an exception to Goals 3 and 4. However, that does not necessarily mean
5 that the mistaken rezoning that is shown on the official zoning map can be or must be
6 ignored in favor of the Ordinance 2004-3 finding that no EFU-zoned properties are rezoned
7 by Ordinance 2004-3.

8 Returning to the hearings officer's conclusion that under LDO 5.1.4(A) and 5.1.4(C)
9 he was bound to give effect to the official zoning map designation for Tax Lot 1708 that was
10 adopted by Ordinance 2004-3, notwithstanding that the zoning designation may have been a
11 mistake, we first note that the hearings officer's decision to give binding effect to the official
12 zoning map adopted by Ordinance 2004-3 clearly would be erroneous without LDO 5.1.4(C).
13 In a case with substantially the same facts, we concluded that where the text of an ordinance
14 stated that existing zoning was being retained but the map attached to that ordinance showed
15 different zoning, the text/map conflict should be resolved in favor of the text. *Flying J. Inc.*
16 *v. Marion County*, 49 Or LUBA 28, 36-37, *aff'd* 201 Or App 99, 117 P3d 1027 (2005).
17 Under *Flying J*, it is clear that the hearings officer would err in this case by failing to (1) give
18 effect to the Ordinance 2004-3 finding quoted earlier in this opinion and (2) interpret
19 Ordinance 2004 not to rezone Tax Lot 1708 from EFU to RR-00 on the basis of that finding.
20 The question is whether LDO 5.1.4 requires a different result.

21 The county argues that it is significant that in *Flying J* the conflicting map was
22 simply a map attached as an ordinance exhibit (not an official zoning map) and the
23 conflicting text was text in the ordinance itself rather than supporting findings in an exhibit
24 to the ordinance. Whether the map that is being adopted by the ordinance is an official
25 zoning map or some other map does not seem significant to us. The important question is
26 whether the zoning depicted on the map and the zoning described in the ordinance text are in

1 conflict. Similarly whether the textual conflict appears in the body of the ordinance or in the
2 findings that are adopted in support of the ordinance seems unimportant. Findings play a
3 crucial role in land use decision making, and findings are frequently included in the land use
4 legislation itself rather than in an exhibit that is adopted as part of the ordinance. We also
5 note it appears from our decision in *Flying J* that the conflicting text did appear in the
6 ordinance findings. 49 Or LUBA at 37. Unless LDO 5.1.4(C) has the controlling legal
7 effect the county argues it does, the principle described in *Flying J* applies and the first three
8 assignments of error must be sustained.

9 It is somewhat unclear to us whether the three maps that were attached to Ordinance
10 2004-3 are the “Official Zoning Maps” referenced in LDO 5.1.4(A) or whether the
11 designations shown on the maps that were actually attached as exhibits to Ordinance 2004-3
12 were later transferred in some way from those maps to the Official Zoning Maps. The text of
13 LDO 5.1.4(A) suggests the county follows the latter approach. *See* n 3. But whatever the
14 case, as we have already noted, there is no dispute that the Official Zoning Maps show Tax
15 Lot 1708 zoned RR-00 and there is no dispute that those Official Zoning Maps either are the
16 same maps that were adopted by Ordinance 2004-3 or are accurate representations of the
17 maps that were adopted by Ordinance 2004-3.⁴

18 The relevant text of LDO 5.1.4(C) was set out earlier at n 3 and is set out again
19 below:

⁴ We are more than a little perplexed that given the importance of the Official Zoning Map that shows Tax Lot 1708, the record does not appear to include a copy of the actual maps that were adopted by Ordinance 2004-3, or, if those are not the Official Zoning Maps, a copy of the Official Zoning Map that shows Tax Lot 1708. If the map that the hearings officer considered is the map that appears at Record 712, that is a map that was generated by the county’s GIS. That map apparently is an accurate representation of what the Official Zoning Map shows, but it is not the Official Zoning Map or a copy of the Official Zoning Map. The map that appears at Record 643 is also a GIS map, but it indicates at the bottom that it was generated by the “identical GIS Layer Used to Create County Zoning-South Map Adopted by Ord. 2004-3.” If we understand that notation correctly, it establishes that the map at Record 643 also is not a copy of the Official County Zoning Map, although it was created by the same GIS data layer that was used to generate the Official County Zoning Map.

1 “Initial Zoning boundary interpretations will be made by Planning Staff using
2 maps generated by the County’s Geographic Information System (GIS) data
3 base, and printed GIS maps. *In case of any dispute regarding the Zoning*
4 *classification of property subject to this Ordinance, the original maps*
5 *contained in the Official County Records will control.* Where uncertainty
6 exists with respect to the boundaries of the Zoning districts shown on the
7 Official Zoning Maps, the Director will use [six rules for resolving
8 ambiguities in the Official Zoning Maps] to interpret the Official Zoning
9 Maps[.]” (Underlining and italics added.)

10 If the second (italicized) sentence of LDO 5.1.4(C) is viewed in isolation, the
11 hearing’s officer interpretation is possible and consistent with the text of the second
12 sentence. If the second sentence were the complete text of LDO 5.1.4(C), we might be
13 bound to affirm the hearings officer’s decision even though that would give effect to a clear
14 mistake in the zoning of Tax Lot 1708. However, as the first (underlined) sentence and the
15 record in this appeal makes clear, the maps that the county actually uses in its day-to-day
16 activities in applying the county’s official zoning are the maps generated by the county’s GIS
17 database, not the official zoning maps themselves. Viewed in context with the first sentence
18 we believe the drafters of the second sentence of LDO 5.1.4(C) simply included that sentence
19 in anticipation that the GIS maps that would be generated after Ordinance 2004-3 took effect
20 might in some cases conflict with the Official Zoning Maps that were adopted by Ordinance
21 2004-3. Reading the first and second sentences together, the Official Zoning Maps that were
22 actually adopted by Ordinance 2004-3 control in the case of all disputes based on facts that
23 arise after Ordinance 2004-3 was adopted and took effect, including disputes generated by
24 the GIS maps that the county uses for day-to-day administration of county zoning. We do
25 not believe the text of LDO 5.1.4(C) must be understood to assign controlling legal status to
26 the maps that were attached as Exhibit 2 to Ordinance 2004-3 when it is clear that one of the
27 maps erroneously shows Tax Lot 1708 zoned RR-00 and the change in zoning is flatly
28 inconsistent with one of the Ordinance 2004-3 findings that was adopted as Exhibit 1.
29 Simply stated, we see no reason to believe the county intended to apply LDO 5.1.4(C) to
30 text/map conflicts in Ordinance 2004-3 itself or to assign controlling legal status to the

1 adopted maps in the event of a text/map conflict. It seems highly doubtful that, in adopting
2 LDO 5.1.4(C), the board of commissioners intended that staff mapping errors should
3 effectively trump the expressed intent of the board of commissioners in adopting ordinances
4 such as Ordinance 2004-3, as reflected in the ordinance text and findings.

5 The county offers the following argument in its attempt to argue that the Official
6 Zoning Map controls and to distinguish *Flying J*:

7 “Here the operative law is the duly adopted and acknowledged Jackson
8 County Land Development Ordinance. In contrast, the operative law in
9 *Flying J* was the uncodified ordinance itself. The LDO clearly states that all
10 disputes regarding the current zoning of a property are to be resolved by
11 reference to the official maps. LDO § 5.1.4. *This rule was intended to*
12 *prevent precisely the litigation at issue here. The point of Ordinances 2004-1,*
13 *-2 and -3 was to preclude future litigation over the present zoning of a parcel,*
14 *and all of the legislative history research associated with such litigation, by*
15 *providing a clear and simple dispute resolution mechanism. Ordinance 2004-*
16 *3, Exhibit 1, Finding 3.2.1. In contrast, in *Flying J*, because there was an*
17 *absence of authority like LDO § 5.1.4, both LUBA and the Court of Appeals*
18 *determined the current zoning of property by examining the history of*
19 *legislation pertaining to that property.” Jackson County’s Response Brief 12-*
20 *13 (emphasis added).*

21 If there was anything in the record to support the county’s contention that LDO
22 5.1.4(C) was adopted specifically to preclude Official Zoning Map disputes based on
23 text/map conflicts in the ordinances that enact and amend zoning maps, the county fails to
24 identify where that support might be. Finding 3.2.1 certainly provides no such support; it
25 merely points out the separate zoning and comprehensive plan maps adopted by Ordinance
26 2004-3 were intended to eliminate the county’s prior “two-map system that [was] graphically
27 displayed on a single map.”⁵

⁵ Finding 3.2.1 is set out below:

“The acknowledged Comprehensive Plan and implementing ordinances include text and maps, which the law requires to be internally consistent. The updated Plan and LDO include language that clarifies the existing relationship between the textual ‘two-map’ system that is graphically displayed on a single map. This approach has previously caused confusion sufficient to result in litigation.” Record 528.

1 Finally, we briefly note intervenors’ contention that although LUBA remanded
2 Ordinance 99-15 in 2000, Tax Lot 1708 remained zoned RR-00 up until the time Ordinance
3 2004-3 again applied RR-00 zoning to the property. The hearings officer’s decision that is
4 before us is not based on that legal theory. However, if it had been based on that legal theory
5 it would be legally incorrect. Intervenors’ position that Tax Lot 1708 remained zoned RR-00
6 after LUBA remanded the ordinance that first changed its zoning from EFU to RR-00 is
7 simply wrong. After LUBA remanded Ordinance 99-15, Ordinance 99-15 became legally
8 ineffective to zone Tax Lot 1708 from EFU to RR-00 and the zoning of Tax Lot 1708
9 reverted to EFU. *See NWDA v. City of Portland*, 58 Or LUBA 533, 541-42 (2009)
10 (explaining that after LUBA remands legislation adopting new land use legislation that
11 legislation is no longer legally effective); *Western States v. Multnomah County*, 37 Or LUBA
12 835, 842-43 (2000) (same). Neither the county nor intervenors cite to any subsequent
13 ordinance that even arguably rezoned Tax Lot 1708 from EFU to RR-00, other than
14 Ordinance 2004-3. However, for the reasons explained above, Tax Lot 1708 remained zoned
15 EFU after Ordinance 2004-3 was adopted and will remain so zoned until the county justifies
16 an exception to Goals 3 and 4 or provides some other justification for not applying Goals 3
17 and 4 and adopts an ordinance that applies a new zoning designation.

18 Petitioners’ first, second and third assignments of error are sustained.

19 **FOURTH ASSIGNMENT OF ERROR**

20 We would only need to address petitioners’ fourth assignment of error if the county
21 were correct that Tax Lot 1708 is zoned RR-00. Because we sustain petitioners’ first three
22 assignments of error, the hearings officer’s decision that Tax Lot 1708 is zoned RR-00 must
23 be reversed. Therefore, it would serve no purpose to review petitioners’ fourth assignment of
24 error.

25 The county’s decision is reversed.