BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

KEITH CYRUS and MATT CYRUS,
Petitioners,

vs.

DESCHUTES COUNTY,
Respondent,

and

CENTRAL ELECTRIC COOPERATIVE INC.,
Intervenor-Respondent.

LUBA No. 2003-153

FINAL OPINION
AND ORDER

Appeal from Deschutes County.

Tia M. Lewis and Brian L. Gingerich, Bend, filed the petition for review, and Brian L. Gingerich argued on behalf of petitioners. With them on the brief was Merrill O'Sullivan, LLP.

No appearance by Deschutes County.

Martin E. Hansen, Bend, filed the response brief and argued on behalf of intervenor-respondent. With him on the brief was Francis, Hansen and Martin.

BASSHAM, Board Chair; BRIGGS, Board Member; HOLSTUN, Board Member, participated in the decision.

REMANDED 04/08/2004

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

Opinion by Bassham.

NATURE OF THE DECISION

Petitioners appeal a county hearings officer's decision verifying an electric transmission line as a nonconforming use and approving alterations to the use, including new poles and a higher voltage transmission line.

FACTS

Intervenor is an electric cooperative that provides electricity to portions of Deschutes County, and is regulated by the Oregon Public Utility Commission (PUC). In 1962, intervenor constructed the Jordan Road line, consisting of an 11.5 mile long 69 kilovolt (kV) electric transmission line supported by wooden poles extending from the Cline Falls substation on the east to a switch referred to as the "Sisters Tap" on the west, near the city of Sisters. About half of the Jordan Road line passes over federal land, and the remainder crosses over privately-owned land. When intervenor constructed the Jordan Road Line, it obtained easements from the landowners over whose land the line crosses, including petitioners. County zoning was first applied to the area on November 15, 1972. Most of the property over which the Jordan Road line passes is zoned exclusive farm use (EFU) or multiple-use agriculture (MUA), both of which allow a "utility facility" as a conditional use. A small portion of the line passes over land zoned Surface Mining (SM), which does not permit utility facilities either outright or conditionally.

In 1972, intervenor constructed the Sisters-Black Butte line, which altered a small portion of the Jordan Road line. In 1975, intervenor added a distribution line or underbuild to the Jordan Road line.[1] In 1980, intervenor constructed the 115-kV Highway 126 line, which parallels the Jordan Road line to the north, and which transmits electricity to the Sisters substation. In 1991, intervenor made improvements to the Sisters Tap, which is not considered part of the Jordan Road line. When intervenor made improvements to the Sisters Tap, intervenor moved several poles on

[1] The parties advise us that a transmission line transmits electricity from one station or substation to another, while a distribution line is an entirely separate line that distributes electricity to individual properties.

petitioners' land, at petitioners' request. In 1997, the eastern portion of the Jordan Road line was modified by moving poles from private land to federal land.

In February 2003 intervenor applied to the county for (1) a nonconforming use verification for the existing Jordan Road line and (2) an alteration to upgrade the transmission line from 69kV to 115kV and to install taller poles, new conductors, and lightning protection. Currently, the Jordan Road line is supported by 156 wood poles ranging in height from 38.5 to 74.5 feet above ground and separated by an average of 400 feet. Intervenor proposed 190 poles made of weathered steel ranging in height from 64.5 to 83.5 feet above ground and separated by an average of 350 feet.

The county issued an administrative decision approving the application on May 2, 2003. Petitioners appealed the administrative decision to the county hearings officer. After a public hearing on the application and the preparation of a written evidentiary record, the county hearing officer affirmed the administrative decision on August 25, 2003. The board of county commissioners declined to hear petitioners' appeal of the hearing officer's decision. This appeal followed.

FIRST ASSIGNMENT OF ERROR

Petitioners contend that the hearing officer erred in concluding that the proposed alterations to the Jordan Road line were "necessary to comply with any lawful requirement for alteration in the use," for purposes of ORS 215.130(5).[2] As a result of that error, petitioners argue, the hearings

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[2] ORS 215.130 provides, in relevant part:

> "(5) The lawful use of any building, structure or land at the time of the enactment or amendment of any zoning ordinance or regulation may be continued. Alteration of any such use may be permitted subject to subsection (9) of this section. Alteration of any such use shall be permitted when necessary to comply with any lawful requirement for alteration in the use. Except as provided in ORS 215.215, a county shall not place conditions upon the continuation or alteration of a use described under this subsection when necessary to comply with state or local health or safety requirements, or to maintain in good repair the existing structures associated with the use. A change of ownership or occupancy shall be permitted.
>
> "* * * * *

officer failed to apply the standards applicable to nonconforming use alterations under ORS 215.130(9), specifically, the hearings officer failed to determine whether the proposed alterations would cause either a change in the use or a change in physical improvements of no greater adverse impact to the neighborhood. According to petitioners, there is no "lawful requirement for alteration of the use" in this case. Even if such a requirement exists, petitioners contend, other alternatives exist to the proposed improvements, and thus the proposed improvements are not "necessary" to satisfy any lawful requirement. Finally, petitioners argue that even if the proposed alterations are necessary to comply with a "lawful requirement for alteration in the use," such alterations are also subject to the standards in ORS 215.130(9).

Intervenor responds that the hearings officer properly found that the proposed upgrades to the Jordan Road line are necessary to comply with a "lawful requirement for alteration in the use." According to intervenor, the hearings officer interpreted PUC Order No. 38806 (1962), which granted intervenor its service area, to impliedly impose the obligation to provide electrical service in

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> "(8) Any proposal for the verification or alteration of a use under subsection (5) of this section, except an alteration necessary to comply with a lawful requirement, for the restoration or replacement of a use under subsection (6) of this section or for the resumption of a use under subsection (7) of this section shall be subject to the provisions of ORS 215.416. An initial decision by the county or its designate on a proposal for the alteration of a use described in subsection (5) of this section shall be made as an administrative decision without public hearing in the manner provided in ORS 215.416 (11).
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> "(9) As used in this section, 'alteration' of a nonconforming use includes:
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> "(a) A change in the use of no greater adverse impact to the neighborhood; and
>
> "(b) A change in the structure or physical improvements of no greater adverse impact to the neighborhood.
>
> "(10) A local government may adopt standards and procedures to implement the provisions of this section. The standards and procedures may include but are not limited to the following:
>
> "* * * * *
>
> "(c) Conditioning approval of the alteration of a use in a manner calculated to ensure mitigation of adverse impacts as described in subsection (9) of this section."

a safe and uninterrupted manner.[3] Further, the hearings officer cited ORS 757.020, 757.669, and 758.405, which delineate the duties and obligations of utilities, and concluded that those statutes separately or cumulatively "impose on regulated utilities such as [intervenor] a legal duty to provide safe, reliable and adequate electrical service to their customers."[4] Record 33. The hearings officer then concluded that the evidence was "sufficient to demonstrate the proposed upgrade of the Jordan Road line is necessary to comply with the applicant's legal requirement to provide safe, reliable and adequate power to its customers." Record 34.

With respect to necessity, intervenor cites to testimony that growing demand for electricity in its service area, and the vulnerability of the Highway 126 transmission line to interruption, makes it necessary to upgrade the Jordan Road transmission line to provide a backup for the Highway 126 transmission line.

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[3] The hearing officer quotes paragraph 4 of the 1962 PUC order, which states:

> "'[Intervenor] is the only person supplying electric service in the exclusively served area. It is providing adequate service in this area. Sisters is the only incorporated city within the area applied for and said city has at no time requested or required a franchise from Applicant to serve within the city limits.'" Record 32.

[4] ORS 757.020 provides:

> "Every public utility is required to furnish adequate and safe service, equipment and facilities, and the charges made by any public utility for any service rendered or to be rendered in connection therewith shall be reasonable and just, and every unjust or unreasonable charge for such service is prohibited."

ORS 757.669 provides, in relevant part:

> "[I]t is the policy of the State of Oregon regarding consumer-owned utilities to:
>
> "(1) Preserve and enhance the ability of community-based, consumer-owned utilities to provide reliable electric power to their consumers[.] * * *"

ORS 758.405 provides:

> "The elimination and future prevention of duplication of utility facilities is a matter of statewide concern; and in order to promote the efficient and economic use and development and the safety of operation of utility services while providing adequate and reasonable service to all territories and customers affected thereby, it is necessary to regulate in the manner provided in ORS 758.400 to 758.475 all persons and entities providing utility services."

With respect to petitioners' alternative argument that ORS 215.130(9) applies to "lawful requirement" alterations, intervenor argues that petitioners' interpretation is contrary to the apparent legislative intent to *mandate* that local governments approve alterations necessary to comply with lawful requirements. Under petitioners' interpretation, intervenor argues, a local government could deny an alteration necessary to comply with a lawful requirement, or impose conditions to mitigate adverse impacts under ORS 215.130(10), a result contrary to the plain language of ORS 215.130(5).

We need not resolve the parties' dispute whether the proposed improvements are "necessary" or whether ORS 215.130(9) applies to a "lawful requirement" alteration under ORS 215.130(5), because we agree with petitioners that the hearings officer erred in determining that intervenor has established that the proposed upgrading of the Jordan Road line is pursuant to a "lawful requirement for alteration of the use," within the meaning of ORS 215.130(5). As we discussed in *Gibson v. Deschutes County*, 17 Or LUBA 692 (1989), ORS 215.130(5) distinguishes between alterations that a county "may" permit and alterations that a county "shall" permit. The latter are limited to alterations "necessary to comply with any lawful requirement for alteration in the use." Significantly, the "lawful requirement" must be "for alteration in the use." That modifier suggests that is not sufficient that some authority impose a general legal obligation on the nonconforming use owner; the authority must require the requested "alteration of in use."

That reading of ORS 215.130(5) is supported by the legislative history that we reviewed in *Gibson* and that the parties cite again to us. As we summarized that legislative history in *Gibson*, the "primary motivation in amending [ORS 215.130(5) to add the 'lawful requirement' language] was to prevent counties from being able to force abandonment of a nonconforming use by denying approval of a change when that change is required by another government agency." 17 Or LUBA at 700 n 6. In other words, the circumstances in which the legislature apparently contemplated that the "lawful requirement" language would apply involve situations where a regulatory agency requires changes to a nonconforming use. Nothing in the legislative history cited to us supports intervenor's

broader reading that the "lawful requirement" language includes any general legal obligation, such as intervenor's obligation to provide safe and reliable electrical service.

That narrow reading of ORS 215.130(5) is also supported by the few cases addressing the lawful requirement language. In *Michael v. Clackamas County*, 9 Or LUBA 70 (1983), a state agency ordered a nonconforming use to provide hot and cold running water near the employee restroom. The nonconforming use owner constructed a new building containing a washroom, lunchroom and offices. We held that the new building was not necessary to comply with a state agency's order, and thus county approval was permissive rather than mandatory under ORS 215.130(5). While *Michael* turns on whether the proposed alterations were "necessary," it generally supports our view that the legislature contemplated application of the "lawful requirement" language in circumstances where a regulatory authority requires alteration of a nonconforming use in order to continue the use. *See also Bennett v. Linn Co. Board of Commissioners*, 14 Or LUBA 217, 228-29 (1986) (proposed upgrading of wastewater disposal system and other improvements to slaughterhouse are not "necessary to comply with any lawful requirement" for purposes of code provisions implementing ORS 215.130(5), where there is no evidence that state or federal regulatory agencies have specifically required the improvements, or verified that the improvements are the minimum necessary to comply with legal requirements).

Turning to the present case, while the 1962 PUC order grants intervenor an exclusive service area, it does not purport to impose any relevant legal requirements, much less requirements for alterations of the use in question here. The cited statutes at best can be read to impose a general obligation on intervenor to provide safe, reliable, and adequate electrical service to its customers. We do not believe that such a general, open-ended obligation is a "lawful requirement for alteration in the use" within the meaning of ORS 215.130(5). We would almost certainly feel differently if the PUC or other regulatory agency or authority specifically required intervenor to upgrade its Jordan Road line transmission capacity or imposed a specific performance standard that entailed upgrades in capacity. However, the 1962 PUC order and the cited statutes fall far short of that.

Having concluded that the 1962 PUC order and cited statutes do not constitute "lawful requirement[s] for alteration in the use" for purposes of ORS 215.130(5), we need not resolve the parties' further disputes regarding whether the proposed alterations are "necessary" to comply with the PUC order and statutes, and whether "lawful requirement" alterations are subject to the standards generally applicable to alterations at ORS 215.130(9).[5]

The first assignment of error is sustained.

SECOND ASSIGNMENT OF ERROR

Under Deschutes County Code (DCC) 22.08.010(B), all applications for land use actions, including verification of a nonconforming use, must be submitted by either the property owner or a person who has written authorization from the property owner, with one potentially pertinent exception.[6] Intervenor's application was signed by intervenor's representative and does not include the signatures of petitioners or other property owners over which the Jordan Road line passes. Petitioners contend that the hearings officer erred in concluding that intervenor's application nonetheless complied with DCC 22.08.010(B).

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[5] However, because the proposed alterations are not "lawful requirement" alterations, it follows that on remand the county must evaluate whether the proposed alterations may be approved under ORS 215.130(9) and (10).

[6] DCC 22.08.010 provides, in relevant part:

> "A. For the purposes of DCC 22.08.010, the term 'property owner' shall mean the owner of record or the contract purchaser and does not include a person or organization that holds a security interest.
>
> "B. Applications for development or land use actions shall:
>
> > "1. Be submitted by the property owner or a person who has written authorization from the property owner as defined herein to make the application; * * *
>
> "C. The following applications are not subject to the ownership requirement set forth in DCC 22.08.010(B)(1):
>
> > "1. Applications submitted by or on behalf of a public entity or public utility having the power of eminent domain with respect to the property subject to the application[.]"

The hearings officer first concluded that intervenor does not have eminent domain powers, and thus could not avoid the owner signature requirement pursuant to DCC 22.08.010(C)(1). However, the hearings officer ultimately concluded that the easements that petitioners and other property owners signed with intervenor implicitly authorized intervenor to apply for the subject applications, and thus intervenor's application complied with the "written authorization" prong of DCC 22.08.010(B)(1). Petitioners challenge that conclusion, arguing that the easements do not expressly or impliedly provide written authorization for intervenor to apply for development permits. Further, petitioners note that the easements were signed in 1962, before zoning or any land use process was imposed; therefore, petitioners argue, the parties to the easements could not have contemplated authorizing intervenor to sign land use applications.

Intervenor does not attempt to defend the hearings officer's conclusion that the easements impliedly authorize intervenor to sign and file land use applications. Instead, intervenor argues that (1) the hearings officer erred in concluding that intervenor lacks eminent domain powers and thus no property owner signature is necessary pursuant to DCC 22.08.010(C)(1); and (2) in any case, an easement owner is properly viewed as a "property owner" for purposes of DCC 22.08.010(B)(1).[7]

We need not address petitioners' arguments regarding the proper interpretation of the easements, or intervenor's argument regarding whether an easement owner is a "property owner" under DCC 22.08.010(B)(1), because we agree with intervenor that the hearings officer erred in concluding that intervenor lacks eminent domain authority and thus intervenor is not entitled to the DCC 22.08.010(C)(1) exemption to the property owner signature requirement at DCC 22.08.010(B)(1). The hearings officer's conclusion to the contrary was based on ORS 62.125, part of a chapter governing corporations and partnerships that sets out the general powers of "cooperatives." As intervenor points out, ORS 772.210(1)(b) specifically authorizes an

[7] Intervenor's arguments are in the nature of cross-assignments of error, which may be properly raised in a response brief. *See Copeland Sand and Gravel v. Jackson County*, ___ Or LUBA ___ (LUBA No. 2003-193, April 1, 2004), slip op 14-15 (cross-assignments of error may be raised in the response brief and need not be raised in a cross-petition for review).

"electrical cooperative association" to condemn land as necessary to construct electrical service facilities.[8] There is no dispute that intervenor is an "electrical cooperative association" for purposes of ORS 772.210(1) and hence has condemnation powers. There is also no dispute that an electrical cooperative association with condemnation powers is exempt from the owner signature requirement at DCC 22.08.010(B)(1).[9] Therefore, petitioners' arguments under this assignment of error do not provide a basis for reversal or remand.

The second assignment of error is denied.

THIRD ASSIGNMENT OF ERROR

DCC 18.120.010(B)(1) requires "[v]erification of the existence of a nonconforming use" prior to or concurrent with any application to alter the use. DCC 18.120.010(B)(2) sets out three standards for verifying a nonconforming use.[10] First, the applicant must prove the nonconforming

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[8] ORS 772.210(1) provides, in relevant part:

> "Any public utility, electrical cooperative association or transmission company may:
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> "* * * * *
>
> "(b) Condemn such lands not exceeding 100 feet in width for its lines (including poles, towers, wires, supports and necessary equipment therefor) and in addition thereto, other lands necessary and convenient for the purpose of construction of service facilities. * * *"

[9] DCC 22.08.010(B)(1) exempts only a "public entity or public utility having the power of eminent domain" from the owner signature requirement, and does not specifically mention "electrical cooperative associations." However, the hearings officer found that an electrical cooperative association is a "public utility" for purposes of DCC 22.08.010(B)(1), albeit one that the hearings officer erroneously viewed as lacking condemnation powers. Record 23. We assume, as the hearings officer did, that the scope of "public utility" under DCC 22.08.010(B)(1) includes electrical cooperative associations.

[10] DCC 18.120.010(B) provides, in relevant part:

> "2. Subject to DCC 18.120.010(F)(2), the applicant shall demonstrate all of the following [in order to verify a nonconforming use]:
>
> "a. The nonconforming use was lawfully established on or before the effective date of the provisions of the zoning ordinance prohibiting the use or had proceeded so far toward lawful completion as of the date it became nonconforming that a right to complete and maintain the use would be vested;

use was established before the effective date of the zoning ordinance prohibiting the use or had proceeded so far toward completion before the effective date that the right to maintain the use would be vested. DCC 18.120.010(B)(2)(a). Second, the applicant must prove that the nonconforming use as it existed on the effective date of the ordinance prohibiting the use has continued without interruption or abandonment since that date. DCC 18.120.010(B)(2)(b). Third,

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"b. The nonconforming use as it existed on the date it became nonconforming, considering the nature and the extent of the actual use of the property, has continued without abandonment or interruption; and

"c. Any alteration in the nature and extent of the nonconforming use was done in compliance with applicable zoning ordinance standards governing alterations of nonconforming uses.

"3. For purposes of determining whether an abandonment or interruption of use has occurred, the following shall apply:

"a. The reference period for determining whether an abandonment or interruption of a nonconforming use or an aspect thereof has occurred shall be one year.

"b. An abandonment or interruption in a use or portion thereof may arise from the complete cessation of actual use of a property for a one-year period or may arise from a change in the nature or extent of the use made of the property for a one-year period or more.

"c. An interruption or abandonment that constitutes less than full cessation of the use or a portion thereof may, in accordance with DCC 18.120.010(F)(4), result in a declaration of a continuing use, but of a lesser intensity or scope than what would have been allowable if the nature and extent of the use as of the date it became nonconforming had continued.

"d. Absent an approved alteration, a change in the nature of the use may result in a determination that the use has been abandoned or has ceased if there are no common elements between the activities of the previous use and the current use.

"* * * * *

"f. Factors to be considered in determining whether there has been a change in the nature and/or extent of a use shall include, but are not limited to, consideration of the type of activities being conducted, the operating characteristics of the activities associated with the use (including off-site impacts of those activities), the frequency of use, the hours of operation, changes in structures associated with the use and changes in the degree to which the activities associated with the use occupy the site."

the applicant must prove that any alterations made to the nonconforming use were made in compliance with the applicable zoning standards. DCC 18.120.010(B)(2)(c).

A. DCC 18.120.010(B)(2)(a)

Petitioners challenge the hearing officer's conclusion that intervenor proved that the Jordan Road line was lawfully established on or before the effective date of the zoning ordinance prohibiting the use, or had proceeded so far toward completion before the effective date that the right to maintain the use would be vested. According to petitioners, evidence in the record suggests that a small portion of the current Jordan Road line on petitioners' property was constructed or reconstructed in 1972, and completed on November 18, 1972, three days after zoning was adopted.

Intervenor responds, and we agree, that the hearings officer's finding that the Jordan Road line was constructed and in place prior to November 15, 1972, the effective date of the Deschutes County zoning ordinance, is supported by substantial evidence. The work done in 1972 apparently involved a minor relocation of the line on petitioners' property. Even if that work was completed three days after the effective date zoning was applied, as petitioners contend, petitioners do not explain why that work had not "proceeded so far toward lawful completion as of the date it became nonconforming that a right to complete and maintain the use would be vested." DCC 18.120.010(B)(2)(a).

B. DCC 18.120.010(B)(2)(b)

Petitioners argue that the hearings officer erred in concluding that intervenor's nonconforming use continued without interruption or reduction in intensity. As verified by the hearing officer, "the Jordan Road line [consists of that] part of the applicant's system transmitting 69kV of electricity from the Cline Falls Substation to the Sisters Tap." Record 30. However, petitioners cite to testimony suggesting that the Jordan Road line became a "backup" transmission line in 1980 when the Highway 126 transmission line was constructed, and that the switch connecting the Jordan Road transmission line to the Sisters substation has been open since 1980. According to

petitioners, while the Jordan Road line may have been "energized" since 1980, it has not actually been "transmitting" energy between substations. Relying on DCC 18.120.010(B)(3)(c), petitioners contend that the hearing officer should have concluded that intervenor reduced the intensity or scope of the nonconforming use in 1980, and therefore the hearings officer should have verified the Jordan Road line only as a backup transmission line. *See* n 10.

The hearings officer relied on the affidavit of intervenor's project manager, who stated: "Since construction in 1962, [intervenor] has utilized the Jordan Road line without interruption or abandonment to serve Sisters/Black Butte. The Jordan Road line continues to provide electrical transmission and distribution power to Sisters/Black Butte." Record 710.

The project manager's affidavit is substantial evidence supporting the hearings officer's conclusion that the Jordan Road line has been used as a transmission line since 1962, and has not been interrupted or reduced in intensity. While petitioners cite to contrary evidence (much of which is petitioners' own testimony), that evidence is not such that no reasonable person could reach the same conclusion that the hearings officer did. *Dodd v. Hood River County*, 317 Or 172, 179, 855 P2d 608 (1993).

C. DCC 18.120.010(B)(2)(c)

Under DCC 18.120.010(B)(2)(c), an applicant for verification of a nonconforming use must demonstrate that any alterations made to the nonconforming use since the effective date of the zoning ordinance complied with applicable zoning standards. *See* n 10. DCC 18.120.010(E)(3) defines "alteration" as any "change in the use of the property that would constitute a change in the nature or extent of the use of the property."[11]

Petitioners contend that several changes made to the Jordan Road line after the effective date of the zoning ordinance are "alterations" that required, but did not receive, county approvals. According to petitioners, the hearings officer erred in failing to recognize these changes as

[11] Presumably, under the DCC any post-zoning alteration made in the absence of required approvals would require *post-hoc* approval as part of the verification process. DCC 18.120.010(E)(2).

"alterations" that must be considered under DCC 18.120.010(B)(2)(c), in verifying the nature and extent of the nonconforming use. The first change, petitioners argue, involves movement of poles and hence the location of the route of the Jordan Road line that occurred in 1972, 1991 and 1997. The hearings officer addressed these changes and concluded that they constituted at most minor relocations of portions of the line, and did not constitute "alterations" as that term is defined in the DCC, because the changes did not alter the nature of the line, transmission of 69kV of electricity, nor its geographic extent. Record 31. Petitioners challenge that conclusion, arguing that any structural change, such as relocation of poles, constitutes an "alteration." However, we do not see that the minor relocations of poles that occurred in 1972, 1991 and 1997 constitute "alterations" as that term is defined in the DCC or statute.

The second change petitioners cite to involves a distribution line underbuild that was apparently added to the Jordan Road line in 1975, after the effective date of the zoning ordinance. Record 266. The hearings officer's decision explicitly states that "the Jordan Road line as it existed when it became nonconforming consisted of a 69kV electric transmission line" and does not verify that the distribution underbuild existed prior to the effective date of the zoning ordinance. The hearings officer does not explain why, assuming the distribution underbuild post-dates application of the zoning ordinance, it is not properly viewed as an "alteration" that must be considered for purposes of DCC 18.120.010(B)(2)(c). Therefore, remand is necessary for the hearings officer to determine when the distribution underbuild was added, whether it constitutes an "alteration" that must be considered under DCC 18.120.010(B)(2)(c) and, if so, the consequences for verifying the nature and extent of the nonconforming use.

The third assignment of error is sustained, in part.

FOURTH ASSIGNMENT OF ERROR

Petitioners contend that the hearings officer's findings fail to adequately determine the nature and extent of the existing nonconforming use and fail to adequately identify the nature and scope of the approved alterations.

A. Adequate Description of Nonconforming Use

Petitioners argue that the hearings officer's findings describing the nature and extent of the verified nonconforming use are inadequate, because they fail to adequately address several alterations that occurred since the Jordan Road line was first established in 1962. In particular, petitioners contend that the findings do not discuss (1) the alleged interruption or decrease in intensity in the use of the Jordan Road line in 1980 when intervenor constructed the Highway 126 line and began using that line as its main transmission line; and (2) movement of poles and a switch on one pole that occurred in 1991 on petitioners' property.

As discussed above, the hearings officer did address the issue of whether use of the Jordan Road line after 1980 decreased in intensity and concluded that after 1980 the line continued to be fully energized and used for transmission of electricity. Record 30, 31. That finding is adequate and supported by substantial evidence. Petitioners are correct that the hearings officer did not address the movement of poles and a switch that occurred on petitioners' property in 1991. However, the hearings officer did address similar changes that occurred in 1997, when a small portion of the Jordan Road line was relocated, and concluded that such minor changes do not constitute "alterations" in the nature and scope of the nonconforming use. Record 31. Petitioners do not challenge that finding or explain why the same reasoning is not applicable to the relocation of poles and switch that occurred in 1991.

B. Adequate Description of Approved Alterations

According to petitioners, the hearings officer's description of the approved improvements or alterations fails to mention (1) distribution lines; (2) proposed lightning shield wires on the new poles; and (3) proposed capacity on the new poles to add cables to allow communication between substations. In addition, petitioners argue that the hearings officer failed to address petitioners' arguments that intervenor is obligated to allow other service providers to co-locate on the new towers under federal telecommunications law.

As explained above, petitioners appear to be correct that distribution lines were added to Jordan Road line in 1975, after the date the use became nonconforming. The hearings officer's findings do not address whether the distribution lines are part of the nonconforming use, for purposes of DCC 18.120.010(B)(2)(c). Nor does the decision approve the distribution lines on the existing or proposed poles as an alteration under DCC 18.120.010(E). Remand is necessary for the hearings officer to consider those questions.

However, petitioners' other arguments under this assignment of error do not establish a separate basis for reversal or remand. With respect the lightning shield wires, they appear to be an integral part of the new metal poles, rather than a distinct structure that requires separate description and approval as an alteration. With respect to the communication cables, the diagram of the approved poles shows that the poles provide space for communication cables, but as far as we can tell intervenor did not propose, and the hearings officer did not approve, placement of any communication cables. Record 93. Petitioners may be correct that future placement of a communication cables will require county approval as an alteration, but we do not see that in approving the proposed poles the hearings officer was required to address or approve future improvements that intervenor does not propose in this application.

Finally, with respect to co-location, petitioners do not explain how the possibility of future co-location requests from other service providers is relevant to whether the improvements approved in this decision comply with applicable criteria. Presumably, if future requests are made that would require alterations of intervenor's nonconforming use, future county approvals will be necessary.

The fourth assignment of error is sustained, in part.

The county's decision is remanded.