

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

3  
4 PATRICIA J. VILKS,  
5 *Petitioner,*

6  
7 vs.

8  
9 JACKSON COUNTY,  
10 *Respondent,*

11  
12 and

13  
14 PENNEY REED,  
15 *Intervenor-Respondent.*

16  
17 LUBA No. 2007-254

18  
19 FINAL OPINION  
20 AND ORDER

21  
22 Appeal from Jackson County.

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24 Patricia J. Vilks, Gold Hill, filed the petition for review and argued on her own  
25 behalf.

26  
27 No appearance by Jackson County.

28  
29 Penney Reed, Eagle Point, filed the response brief and argued on her own behalf.

30  
31 RYAN, Board Member; HOLSTUN, Board Chair; BASSHAM, Board Member,  
32 participated in the decision.

33  
34 AFFIRMED

04/07/2008

35  
36 You are entitled to judicial review of this Order. Judicial review is governed by the  
37 provisions of ORS 197.850.

1

2 **NATURE OF THE DECISION**

3 Petitioner appeals a decision by the county approving an ownership of record  
4 dwelling on forest land.<sup>1</sup>

5 **MOTION TO INTERVENE**

6 Penney Reed moves to intervene on the side of respondent in the appeal. There is no  
7 opposition to the motion and it is granted.

8 **FACTS**

9 The applicant, Judith Adams, applied for an ownership of record dwelling to allow a  
10 dwelling on property zoned Woodland Resource, a forest zone. The planning department  
11 approved the application, and petitioner appealed the decision to the county hearings officer.  
12 The hearings officer approved the application with conditions. Record 7. This appeal  
13 followed.

14 **FIRST ASSIGNMENT OF ERROR**

15 In the first assignment of error, petitioner argues:

16 “\* \* \* LDO 9.3.1 and LDO 9.3.2 \* \* \* should have been imposed whether  
17 there is slope greater than 20 percent or expansive soils, as overwhelming  
18 evidence was submitted by the Petitioner and neighbors documenting floods  
19 and landslides in 1997, and again in 2005. Further, the development of the  
20 subject property through road building, land clearing, slope shaping and  
21 excavation for the homesite and septic will increase the risk for environmental  
22 damage and risk associated with development. As the downslope residents,  
23 we are requesting the standards for 9.3.1 and 9.3.2 be imposed to assure that  
24 the proposed development can be completed without threat of harm to us or  
25 our property. \* \* \*” Petition for Review 7.

26 In this assignment of error, we understand petitioner to argue that the hearings officer erred  
27 in determining that Jackson County Land Development Ordinance (LDO) 9.3.1 and 9.3.2

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<sup>1</sup> The present appeal is related to *Adams v. Jackson County*, 54 Or LUBA 103 (2007). In *Adams*, we upheld the hearings officer’s conclusion that the applicants had failed to satisfy their burden of proof that Adams was the owner of the property as required by Jackson County Land Development Ordinance (LDO) 4.3.6(D)(1). *Id.* at 112.

1 does not apply to the proposed ownership of record dwelling. LDO 9.3.1 is entitled “Steep  
2 Slope Development” and provides in relevant part:

3 “Development activities on slopes in excess of 20% that are also composed  
4 predominantly of expansive soils (see Section 9.3.2) are subject to the  
5 development standards of this Section and are regulated by the *State of*  
6 *Oregon Structural Specialty Code* and *State of Oregon One- and Two Family*  
7 *Dwelling Specialty Code.* \* \* \*” (Emphasis in original.)

8 LDO 9.3.2 is entitled “Development on Expansive Soils” and provides in relevant part:

9 “Development on expansive soils in hillside areas with a moderate to severe  
10 degree of shrink-swell potential, as identified in the NCRS Soil Survey of  
11 Jackson County Area, Oregon, issued August, 1993, are subject to the  
12 development standards of this Section and as regulated by the *State of Oregon*  
13 *Structural Specialty Code* and *State of Oregon One- and Two Family*  
14 *Dwelling Specialty Code.* \* \* \* (Emphasis in original.)

15 In explaining his conclusion that the provisions of LDO 9.3.1 and 9.3.2 are not  
16 applicable to the proposed dwelling, the hearings officer found:

17 “\* \* \* LDO 9.3 addresses disturbances on steep slopes and expansive soils but  
18 no expansive soils have been identified.” Record 6.

19 We understand the hearings officer to have found that there was no evidence in the record  
20 that the property contains expansive soils, and that therefore LDO 9.3.1 and 9.3.2 by their  
21 terms do not apply to the proposed dwelling. The county found that no expansive soils were  
22 present on the property. Record 429, 436. Petitioner does not point to any evidence in the  
23 record that the property contains expansive soils, but rather, argues “\* \* \* [s]oils are a  
24 science and should be left to the expertise of an engineering geologist. \* \* \* [I]t is our  
25 position that a geologic/soil engineer be required to provide an assessment prior to home  
26 site/septic development.” Petition for Review 8.

27 We agree with the hearings officer that the evidence in the record indicates that no  
28 expansive soils are present on the property, and that consequently LDO 9.3.1 and 9.3.2 are  
29 inapplicable to the proposed dwelling.

30 The first assignment of error is denied.

1 **SECOND ASSIGNMENT OF ERROR**

2 In the second assignment of error, petitioner argues that the hearings officer erred in  
3 concluding that the provisions of LDO 4.3.6(D)(1) were met. LDO 4.3.6(D) provides in  
4 relevant part:

5 “A dwelling may be approved if:

6 “1. The lot or parcel on which the dwelling will be sited was lawfully  
7 created and was acquired and owned continuously by the present  
8 owner as defined in subsection (2) below:

9 “(a) Since prior to January 1, 1985; or

10 “(b) By devise or by intestate succession from a person who  
11 acquired and had owned continuously the lot or parcel since  
12 prior to January 1, 1985 [.]”

13 At the hearing, intervenor indicated that Judith Adams is the owner of the property, Adams  
14 paid the property taxes on the property, and that intervenor and her husband are parties to an  
15 option to purchase the subject property. Based on this evidence and other evidence in the  
16 record, the hearings officer concluded that LDO 4.3.6(D)(1) was met.

17 The hearings officer rejected petitioner’s argument that intervenor’s rights as holder  
18 of an option to purchase the property meant that intervenor was the “owner” of the property  
19 under the LDO definition of “owner” found at LDO 13.3(168).<sup>2</sup> The hearings officer  
20 concluded that intervenor was not an owner under that definition because an option  
21 agreement is not a written contract to purchase property, but rather an irrevocable offer to  
22 sell property. Record 5.

23 Although petitioner challenges the hearings officer’s conclusion that an option holder  
24 is not a purchaser of property under a written contract, petitioner offers no argument in

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<sup>2</sup> LDO 13.3(168) defines “owner” as:

“a person \* \* \* possessing fee title to a tract of land, or shown as owner of record on the latest tax rolls or deed records of the County, or an entity purchasing a parcel of property under written contract.”

1 support of this assignment of error. In fact, a portion of petitioner's argument in support of  
2 this assignment of error appears to be unattributed quotations of footnotes from our opinion  
3 in *Adams*. Petition for Review 14. *See Adams*, 54 Or LUBA at 109-110, fns 4-6.

4 The second assignment of error is denied.

5 The county's decision is affirmed.