BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

KIP V.J. KIPFER and SHERRY KIPFER,
Petitioners,

vs.

JACKSON COUNTY,
Respondent.

LUBA No. 2008-205

FINAL OPINION
AND ORDER

Appeal from Jackson County.

Kip V.J. Kipfer and Sherry Kipfer, Rogue River, filed the petition for review on their own behalf.

No appearance by Jackson County.

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

AFFIRMED 02/27/2009

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

Opinion by Holstun.

NATURE OF THE DECISION

Petitioners appeal a county hearings officer's decision that rejects their appeal of a county planning division decision that tentatively approves lot line adjustments.

INTRODUCTION

We remanded an earlier county hearings officer decision that rejected petitioners' appeal of the planning division's tentative approval of the disputed lot line adjustments. *Kipfer v. Jackson County*, ___Or LUBA ___ (LUBA No. 2007-239, July 14, 2008) (*Kipfer I*). We noted in *Kipfer I* that petitioners appear *pro se* and that we had some difficulty understanding their arguments. *Kipfer I*, slip op 2. We also noted in *Kipfer I* that our review was made much more difficult because neither the applicant nor the county appeared in *Kipfer I* to defend the county's decision. That meant that LUBA did not have the benefit of a response from the county or the applicant to petitioners' arguments. It also meant that there was no party present to argue that petitioners may have waived some of the issues it raised in *Kipfer I*, by failing to raise those issues before the county hearings officer. Neither the county nor the applicant has appeared in this appeal of the hearings officer's decision on remand, so LUBA finds itself in the same situation that it faced in *Kipfer I*.

FACTS

A plat showing the disputed property line adjustment appears at Remand Record 164 and *Kipfer I* Record 147.[1] A copy of that plat is attached as Appendix A of this opinion. As a result of the disputed property line adjustments: tax lot 2108 (10.6 acres) becomes tract 1 (17.89 acres); tax lot 2100 (32.4 acres) becomes tract 2 (16.74 acres); tax lot 2107 (62.7

[1] In this decision we cite the record in *Kipfer I* as "*Kipfer I* Record," and we cite the record that the county transmitted to LUBA in this appeal of the county's decision on remand as "Remand Record." The hearings officer on remand also referred to the record that he compiled as the remand record. But the record the hearings officer refers to as the Remand Record is paginated differently from the Remand Record that the county transmitted to LUBA in this appeal. In hopes of avoiding confusion, we will refer to that record as "Hearings Officer Record."

acres) becomes tract 3 (68.7 acres); and tax lot 3200 (6.1 acres) becomes tract 4 (8.39 acres). A subdivision plat of Blue Ridge Estates appears at *Kipfer I* Record 149. A copy of that plat is also shown on Appendix A. It appears that tract 1 is Phase I, tract 2 is Phase II and tract 3 is Phase III of Blue Ridge Estates. None of the decisions that the county has issued in connection with Blue Ridge Estates Subdivision are before us in this appeal, although petitioners' arguments frequently seem to be directed at Blue Ridge Estates and development activity that may have occurred in connection with one or more phases of Blue Ridge Estates Subdivision. As we noted in *Kipfer I*, petitioners' concerns are primarily directed at the Woodville Cemetery (tax lot 3200). As a result of the property line adjustment, the Woodville Cemetery will increase from 6.1 acres to 8.39 acres. Petitioners live near the cemetery and object to its expansion.

The county hearings officer held a hearing regarding LUBA's *Kipfer I* remand on October 20, 2008 and issued his decision on remand on October 29, 2008. We now turn to petitioners' challenge to the hearings officer's October 29, 2008 decision.

FIRST ASSIGNMENT OF ERROR

Jackson County Land Development Ordinance (LDO) 1.7.6 provides as follows:

> "Any documented violation of previous land development ordinances related to permissible activities or structures on land that also violate this Ordinance will continue to be a violation subject to all penalties and enforcement under this Ordinance. Likewise, previous judgments rendered under past ordinances remain enforceable. Except as provided for in Chapter 10, when a violation of this Ordinance exists on a property, the County will not approve any application for building or land use permits on that property unless such application addresses the remedy for the violation. *Where a violation of any other local ordinance, state, or federal law has been documented on property to the satisfaction of the County, such violation must be corrected prior to application for a land use or development permit on that property, unless the violation can be remedied as part of the development application.*" (Emphasis added.)

We understand petitioners to argue that there are documented violations of local, state or federal law on the property and the hearings officer erred by failing to require that those violations be remedied as part of the disputed property line adjustment approval.[2]

In our decision in *Kipfer I*, we noted that LUBA has already considered the meaning of LDO 1.7.6:

> "LUBA recently considered the meaning of LDO 1.7.6 in *Rogue Aggregates, Inc. v. Jackson County*, ___ Or LUBA ___ (LUBA Nos. 2007-158, 2007-178, 2007-179, 2007-180 and 2007-181, July 8, 2008). In that case a party argued the LDO 1.7.6 requirement that 'a violation' must be 'documented' should be interpreted as follows:
>
> > "'[M]ere allegations of a code violation are insufficient. Instead, * * * there must be a notice of code violation, a cease and desist order, a code enforcement action, or a similar county document evidencing some code violation in order to trigger obligations under LDO 1.7.6 or 1.8.2(A).' Slip op at 11.
>
> "We generally agreed with that interpretation, although it may be that other interpretations are also possible." *Kipfer I*, n 4 slip op at 4-5.

On remand the hearings officer did not adopt his own interpretation of LDO 1.7.6 and did not expressly state whether he agreed with LUBA's interpretation of LDO 1.7.6. However, the

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[2] At the end of their argument under this assignments of error, petitioners also cite LDO 1.8.2, which provides in part:

> "**1.8.2 General Enforcement Provisions and Penalties**
>
> "A) When a violation of this Ordinance is documented to exist on a property, the County will deny any and all development permits, unless such application addresses the remedy for the violation, or the violation has otherwise been corrected.
>
> "B) The County will not approve any application for a land use permit when a local, state, or federal land use enforcement action has been initiated on property, or other reliable evidence of such pending action exists. Such violations must be corrected prior to application for a land use or development permit on that property, unless the violation can be remedied as part of the development action.
>
> "* * * * *"

We do not see that LDO 1.8.2 imposes a materially different standard than LDO 1.7.6.

hearings officer's findings suggest that he generally agreed with LUBA's interpretation, and we will assume that he did.

Petitioners clearly believe that there has been a great deal of unpermitted grading and filling on the subject property. The county takes a contrary position. The hearings officer adopted four and a half pages of findings responding to petitioners' arguments under LDO 1.7.6. With one exception, in this appeal to LUBA, petitioners appear to repeat the arguments that they made to the hearings officer, without specifically challenging the hearings officer's reasoning in rejecting those arguments below. Based on that failure, we do not consider those arguments further.

The exception concerns a September 19, 2008 Oregon Division of State Lands (DSL) letter and Cease and Desist Order regarding tax lots 2100, 2108 and 2109. The record includes a printout of activity related to Blue Ridge Estates Subdivision. Remand Record 125-26 (Hearings Officer Record 158-59). The final entry is "Fax/Mail/Email Letter" "Notes: Anita Huffman – Wetlands Violation." Remand Record 126 (Hearings Officer Record 158).[3] Apparently in response to petitioners' contention that that note establishes a documented violation of state and federal law on the subject property, the hearings officer adopted the following findings:

> "A document relating to another application in connection with [Blue Ridge Estates] Subdivision, this regarding Tax Lot 2100 [Hearings Officer Record 150-158] has an entry indicating that a letter was sent on September 19, 2008 via 'fax/email/letter' regarding 'Notes: Anita Huffman – wetlands violation'. This information is too cryptic to allow the Hearings Officer to draw any conclusion, and the letter that was transmitted is not in the Remand Record. *Perhaps it references a violation, but the Planning Division Staff testified that the code enforcement record on the Property was checked shortly before the Hearing and that it reveals no violation.* It may also be a letter [to] Anita Huffman regarding the Appellant's concerns. It may also be a number of other things, but speculation will not elevate this reference to the status of a violation under LDO Section 1.7.6." Remand Record 6-7 (emphasis added).

[3] We cannot tell from the documents in the record who Anita Huffman is.

The hearings officer's finding that the September 19, 2008 letter was not included in the Remand Record is probably in error. We suspect that the referenced September 19, 2008 letter is the letter that appears at Remand Record 142 (Hearings Officer Record 174), although that letter is signed by Lori Warner-Dickenson, not Anita Huffman. In that letter, DSL advised the property owners that grading and road construction related to the subdivision may require a permit from DSL. The letter also advised the property owners that DSL had previously advised them that a wetland delineation was needed for tax lot 2100 and DSL had no record that the needed wetland delineation for tax lot 2100 had been submitted.

The hearings officer was aware of the DSL Cease and Desist Order, which appears in the Remand Record immediately after the September 19, 2008 letter, and that order appears to have been included as an enclosure to the September 19, 2008 letter. Remand Record 143 (Hearings Officer Record 175). The hearings officer adopted the following findings to respond to contentions that the Cease and Desist Order documents the existence of a violation of state and federal law on the property:

> "Finally, during the Hearing the Appellants introduced DSL Cease and Desist Order relating to Tax Lots 2100, 2107, 2108 and 2109 * * *. However, it is clear from its face that this order does not state a violation. It addresses a 'Threatened Violation'. As explained by the Applicant's agent, DSL sent this order because the owner of the land involved in the Subdivision is undertaking or preparing to undertake roadway improvements, and this is the device that DSL uses to assure that its jurisdiction and concerns will be respected. It does not disclose – and is not intended to imply – the existence of a violation." Remand Record 7.

We do not agree with the applicant's agent's categorical dismissal of DSL Cease and Desist Orders as merely devices that DSL uses to get peoples' attention rather than orders to cease and desist violations of state fill and removal law. However, as the hearings officer noted in his findings, the Cease and Desist Order in this case indicates the presence of a "Threatened Violation" rather than a "Violation." Remand Record 143. Just as importantly, the hearings officer specifically found that planning staff had checked the enforcement record for the property shortly before the October 20, 2008 remand hearing and it revealed

"no violation." Remand Record 6-7. In view of that unchallenged finding, and the wording of the DSL Cease and Desist Order itself, we conclude that petitioners have failed to demonstrate that the hearings officer erroneously concluded that there was no documented violation of state fill and removal laws that must be corrected under LDO 1.7.6.

The first assignment of error is denied.

THIRD THROUGH SIXTH AND TWELFTH THROUGH FIFTEENTH ASSIGNMENTS OF ERROR[4]

With one exception that we address below, petitioners' arguments under these assignments of error are simply not sufficiently developed to demonstrate error in the hearings officer's decision. We reject them for that reason without further discussion. The arguments that are sufficiently developed for review are based in part on petitioners' sixth assignment of error in *Kipfer I*, which we sustained. In that assignment of error, petitioners relied on LUBA's decision in *Warf v. Coos County*, 43 Or LUBA 460 (2003), to argue that the county erred by approving several property line adjustments in a single decision.

A. LUBA's Decision in *Warf*

At the time LUBA decided *Warf*, the ORS 92.010(7) (2003) definition of "partition land" provided in relevant part:

> "'Partition land' means to divide land into two or three parcels of land within a calendar year, but does not include:
>
> "* * * * *
>
> "(b) An adjustment of a property line by the relocation of a common boundary where an additional unit of land is not created and where the *existing* unit of land reduced in size by the adjustment complies with any applicable zoning ordinances[.]" (Emphasis added.)

As defined by ORS 92.010(11) (2003), "'[p]roperty line adjustment' means the relocation of a common property line between *two* abutting properties." (Emphasis added.) Based on

[4] The petition for review in this appeal includes no second, ninth or eleventh assignment of error.

those definitions, we decided in *Warf* that a property line adjustment could only adjust a *single* property line between *two* existing properties. Under our decision in *Warf*, a local government could not approve the adjustment of more than one property line in a single decision. Our reasoning is set out below:

> "As the concept is used in ORS 92.010(7) and 92. 010(11), a property line adjustment is a rather limited tool. As defined by ORS 92.010(11), a property line adjustment is limited to relocating '*a* common property line between *two* abutting properties.' (Emphases added.) That means *one* property line may be relocated and it must be a *common* property line between *two* abutting properties. Another important limitation is implicit in ORS 92.010(11), but reasonably clear when ORS 92.010(11) is read together with ORS 92.010(7)(b). The two properties that share the common property line that is to be adjusted must be 'existing' units of land (i.e., existing lots or parcels). That means the subdivision or partition plat or the deed or other legal instrument that created the existing lots or parcels must be recorded before the boundary lines that those lots or parcels create can be further adjusted. Property line adjustments may not be approved for proposed or hypothetical lots or parcels that do not yet separately exist as lots or parcels." *Warf*, 43 Or LUBA 460 at 466 (emphases in original; footnote omitted).

B. 2005 Legislative Changes and LUBA's Decision in *Kipfer I*

Following our decision in *Warf*, in 2005, the legislature amended the ORS 92.010(11) definition of "property line adjustment" to remove the word "two." As amended in 2005, ORS 92.010(11) provided: "'[p]roperty line adjustment' means the relocation or elimination of a common property line between abutting properties."[5] In sustaining petitioners' sixth assignment of error in *Kipfer I*, we noted that the 2005 statutory amendment might well call our reasoning in *Warf* into question:

> "As the findings that were prepared by the applicant and adopted by the hearings officer note, the ORS 92.010(11) definition of 'property line

[5] Additional statutory amendments to both ORS 92.010(7) and 92.010(11) were adopted in 2008. Oregon Laws 2008, ch 12 (Spec Sess). Those changes took effect after the application that led to the challenged decision was complete and for that reason do not apply here. Those 2008 amendments resulted in the statutory definition of property line adjustment being further amended and recodified at ORS 197.010(12). Because the statutory definition of property line adjustment that applies in this case is the 2005 version of that definition, and that definition was codified at ORS 92.010(11), we have changed all references in our quotation from the hearings officer's decision below to reflect the 2005 ORS codification.

adjustment' was amended in 2005. * * * That change in statutory language could call into question the conclusion that we reached in *Warf*. * * * But if the limitation on property line adjustments that we described in the above-quoted portion of our decision in *Warf* is unaffected by the change in statutory language, the challenged decision appears to be inconsistent with *Warf*, because in a single decision it grants multiple property line adjustments to tax lot 2100. On remand, the hearings officer must address whether the multiple property line adjustments to tax lot 2100 are consistent with the current ORS Chapter 92 grant of authority to approve property line adjustments." *Kipfer I*, slip op at 9-10 (footnote and record citation omitted).

C. The Hearings Officer's Decision Following *Kipfer I*

On remand, the hearings officer concluded that the relevant statutes no longer preclude a single decision that approves more than one property line adjustment:

"The balance of this assignment of error asserts a defect based in the fact that the Staff Decision approved the adjustment of a property line between more than two parcels of land. It relies on *Warf v. Coos County*, 43 Or LUBA 460 (2003) which in turn relies on [statutes] that were in effect when that case was decided. Those provisions were amended in pertinent and substantial parts in 2005, and it is the new provisions that control both ORS 92.010([11]) and the companion provisions in the 2004 LDO. The 2005 version of ORS 92.010([11]) governs.

"Prior to the 2005 amendment, [the ORS 92.010(11) definition of] 'property line adjustment' provided ''property line adjustment' means the relocation of a common property line between two abutting properties.' LDO Section 3.4.3(A) is based on this language. It requires that property line adjustments can only be approved if '[b]oth properties were lawfully created'. The 2005 ORS amendments deleted the reference to two abutting properties so that it then defined 'property line adjustment' to mean 'the relocation of or elimination of a common property line.' Of importance here is the fact that ORS 92.010([11]) no longer required that the adjustment occur between two abutting properties. The new language authorizes a common property line to be adjusted among *any* number of properties.

"The effect of this language is that LDO Section 3.4.3(A) is not in compliance with ORS 92.010([11]) as it is required to be. It appears that the Jackson County Board of Commissioners has not yet revised Section 3.4.3(A). The Planning Division nonetheless is applying the current provisions of state law. This approach is correct and entirely proper. In fact, were the Planning Division to persist in applying the outdated language of LDO Section 3.4.3(A), it would be in violation of state law.

> "*Finding: The language of ORS 950919(12)* [sic] *as of the date of the Staff Decision allowed the adjustment of a common property line between and among multiple parcels of land.*"[6] Remand Record 21 (italics in original).

We generally agree with the hearings officer's analysis. It is arguable that our very literal reading of the prior versions of ORS 92.010(7) and 92.010(11) in *Warf* read limitations into those statutes that the legislature did not intend. Be that as it may, we agree with the hearings officer that with the 2005 amendment to the ORS 92.010(11) definition of property line adjustment to eliminate the word "two," it is no longer appropriate to interpret ORS 92.010(7) and ORS 92.010(11) (2005) to preclude approval of more than one property line adjustment in a single decision, even if it was appropriate to interpret those statutes to impose that limitation before they were amended in 2005. Under ORS 92.010(11) (2005), adjusted property lines must be *common* property lines between *abutting* properties.[7] However, as amended in 2005, we do not believe ORS 92.010(11) (2005) includes any prohibition against approving more than one property line adjustment in a single decision.[8]

The challenged decision adjusts property lines between (1) tax lot 2108 and 2107, (2) tax lot 2107 and 2100, and (3) between tax lots 3200 and 2100. As far as we can tell, all three adjusted property lines are "common" and they lie between "abutting properties." Petitioners make no cognizable argument that any of the disputed property line adjustments

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[6] Petitioners assign error to the hearings officer's citation to ORS 950919(12), which petitioners correctly point out is a nonexistent statute. In context it is clear that the hearings officer was relying on and intended to cite ORS 92.010(11) (2005). We overlook the typographical error, as we have overlooked typographical errors in petitioners' petition for review.

[7] As amended in 2008, the definition of property line adjustment provides that property line adjustment "means a relocation or elimination of all or a portion of the common property line between abutting properties that does not create an additional lot or parcel. Or Laws 2008, ch 12 § 3.

[8] It is true that the statutory definitions of "property line adjustment" and the statutory exclusion of property line adjustments from the statutory definition of "partition land" in 2005 continued to refer to "a common property line" and "a property line." ORS 92.010(8)(b) (2005); 92.010(11) (2005). Singular references to the adjusted property line remain in those definitions after the 2008 amendments. Or Laws 2008, ch 12 § 3. But we believe it is sufficiently clear from the legislature's removal of the word "two" in ORS 92.010(11) that it intended to allow a local government to approve more than one property line adjustment in a single decision, rather than force an applicant to submit multiple applications and force the local government to issue multiple decisions to approve more than one property line adjustment.

are something other than multiple adjustments of common property lines between abutting properties. Absent such an argument, we will assume that they are. Petitioners do argue that the disputed decision approves adjustments of more than one common property line between abutting properties. While that was impermissible under *Warf*, it was not impermissible under the 2005 versions of ORS 92.010(7) and 92.010(11).

D. Petitioners' Arguments

Petitioners argue it was error for the county to apply the 2005 statutes rather than LDO 3.4.3(A) and (C), which petitioners contend limit the county to approving an adjustment of one common property line at a time.[9] We understand petitioners to contend that since LDO 3.4.3(A) and (C) have not been amended to align LDO 3.4.3 with the amended statutory definitions of "partition land" and "property line adjustment," the hearings officer should have applied LDO 3.4.3(A) and (C) and denied the request to approve multiple property line adjustments.

Petitioner's argument rests on two premises: (1) that the county can regulate property line adjustments under the LDO more strictly than required by state statute, if it wishes to, and (2) LDO 3.4.3(A) and (C) impose the same limit on property line adjustments that LUBA found was imposed by ORS 92.010(7) and 92.010(11) in *Warf*. For purposes of this

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[9] LDO 3.4.3 sets out the county approval criteria for property line adjustments and provides, as relevant:

> "[A] property line adjustment may be approved if it complies with (A through F) below. * * *
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> "A) *Both* properties are lawfully established units of land;
>
> "* * * * *
>
> "C) *[B]oth* parcels will either conform to the minimum lot size and minimum lot width requirement of the underlying zoning district, or, if one (1) or both parcels are currently nonconforming, neither resulting parcel will be smaller or narrower than the existing smallest parcel, provided the standards of Section 10.4.4 are met. * * *
>
> "* * * * *. (Emphases added.)

opinion, we do not question petitioners' first premise. *See Von Lubken v. Hood River County*, 104 Or App 683, 803 P2d 750 (1990), *adhered to* 106 Or App 226, 806 P2d 727, *rev den* 311 Or 349, 811 P2d 144 (1991) (counties may regulate uses that are conditionally allowed in EFU zones more strictly than required by statute). However, we do not agree with petitioners' second premise, which the hearings officer does not appear to question. Simply stated, we do not agree that the term "both," which appears in LDO 3.4.3(A) and (C) *must* be interpreted to limit property line adjustments under LDO 3.4.3 to adjusting a single property line between two abutting properties. At best, LDO is ambiguous regarding the number of property lines than may be approved in a single decision. We believe the more likely explanation for the use of the term both is that in many cases only a single property line between two abutting properties will be requested, and it is easier to describe the standards that the county applies to approve property line adjustments in the context of the simplest or most elementary property line adjustment, one that adjusts a single property line between two abutting properties. As we explained above, we agree with the hearings officer's interpretation of ORS 92.010(11) (2005) not to prohibit approval of more than one property line adjustment in a single decision. Because petitioners have not established that LDO 3.4.3 imposes such a limitation, petitioners' arguments under these assignments of error provide no basis for reversal or remand.

The third through sixth and twelfth through fifteenth assignments of error are denied.

SEVENTH ASSIGNMENT OF ERROR

The hearings officer considered the seventh assignment of error that petitioners included in their petition for review in *Kipfer I*. The hearings officer rejected the assignment of error, concluding that petitioners' arguments under the seventh assignment of error were either directed at Blue Ridge Estates Subdivision, which was not before the hearings officer in this matter, or directed at potential future uses of the property, which were not approved by the disputed property line adjustment. In concluding that the property line adjustment did

not authorize any particular uses of the property the hearings officer relied in part on the LDO 3.4.3 property line adjustment approval criteria, which the hearings officer concluded were unconcerned with potential future uses of the property.

Petitioners argue:

> "Petitioners challenge the validity of the hearings officer's * * * ruling [on] the Seventh Assignment of Error. Petitioners repeat and re-allege their entire Seventh Assignment of Error as filed in their Amended Petition for Review [in *Kipfer* I] as though fully set forth herein. Petitioners' will comment on certain aspects of this assignment of error." Petition for Review 19.

Although the hearings officer understood the scope of our remand under the seventh assignment of error in *Kipfer I* to be broader than it was, he considered the seventh assignment of error and adopted approximately two pages of findings explaining why he rejected petitioners' arguments. It is the hearings officer's rejection of petitioners' prior seventh assignment of error that is before us in this appeal. We will not review petitioners' seventh assignment of error from *Kipfer I* for a second time, since it has now been considered by the hearings officer and petitioners make no meaningful attempt to explain why they think the hearings officer erred in rejecting that assignment of error.

Petitioners appear to argue the hearings officer erred by considering the county's LDO 3.4.3 property line adjustment standards in rejecting the seventh assignment of error, when he concluded elsewhere in his opinion that one aspect of LDO 3.4.3 is inconsistent with the 2005 statutory amendments discussed under the third through sixth assignment of error.

As we explain in our resolution of the third through sixth and twelfth through fifteenth assignments of error, we do not agree that LDO 3.4.3 is inconsistent with the 2005 statutes. The hearings officer was required to apply the county's LDO 3.4.3 property line adjustment criteria and committed no error under the seventh assignment of error in referring to those criteria in rejecting petitioners' arguments concerning past development activity on the property and potential future development activity on the property.

Petitioners also argue the county has erred by not amending LDO 3.4.3 to ensure that it is entirely consistent with the current version of ORS chapter 92. That argument is based on petitioners' assumption that LDO 3.4.3 prohibits county decisions approving multiple property line adjustments. As we have already explained, we do not interpret LDO 3.4.3 to impose that limitation. Even if it did, we do not see how the county's failure to amend LDO 3.4.3 to make it consistent with less restrictive statutory limits on property line adjustments in ORS chapter 92 would provide a basis for reversal or remand of the property line adjustment decision that is before us in this appeal. In that circumstance the county would simply apply the parts of LDO 3.4.3 that are consistent with parallel statutory requirements and any more restrictive limits in LDO 3.4.3 that are not inconsistent with the parallel statutory limits or other statutory requirements.

The seventh assignment of error is denied.

EIGHTH ASSIGNMENT OF ERROR

Petitioners' take the same approach under the eighth assignment of error that they took under the seventh assignment of error:

> "Petitioners challenge the validity of the hearings officer's * * * ruling of the Eighth Assignment of Error. Petitioners repeat and re-allege their entire Eighth Assignment of Error as filed in their Amended Petition for Review [in *Kipfer I*] as though fully set forth herein. Petitioner's will comment on certain aspects of this assignment of error." Petition for Review 21.

Petitioners' approach under the eighth assignment of error is even more inappropriate than it was under the seventh assignment of error. In response to the eighth assignment of error in their amended petition for review in *Kipfer I*, the hearings officer adopted approximately six pages of findings. Those findings include responses to each of five claims petitioners advanced under that assignment of error (Claims A through E) and a large number of other objections that petitioners advanced concerning documents that were included in the *Kipfer I* record. Petitioners must do more than say they "challenge the validity" of those findings and then say they "re-allege their entire Eighth Assignment of Error." Petition for Review 21.

The two paragraphs of comments that petitioners add under their eighth assignment of error in this appeal provide no basis for reversal or remand.

The eighth assignment of error is denied.

TENTH ASSIGNMENT OF ERROR

Petitioners argue that the county's approval of the disputed property line adjustment will result in an unconstitutional taking of their property, in violation of Article I, Section 18 of the Oregon Constitution.[10] The hearings officer considered petitioners' argument and concluded that petitioners' taking claim was without merit.

Once again, without attempting to explain why they believe the hearings officers' legal analysis is faulty, petitioners simply reassert their taking claim to LUBA. Petitioners' taking claim is based on the negative impacts that they believe expansion of the cemetery will have on their nearby property and grading and deposit of fill that petitioners allege has occurred in the past and will occur in the future if the cemetery is allowed to expand and the subdivision is further developed. We agree with the hearings officer that a county decision to approve a property line adjustment (a decision that neither approves an expansion of the cemetery nor authorizes placement of fill in conjunction with subdivision development) does not result in an uncompensated governmental taking of petitioners' property.

The tenth assignment of error is denied.

The county's decision is affirmed.

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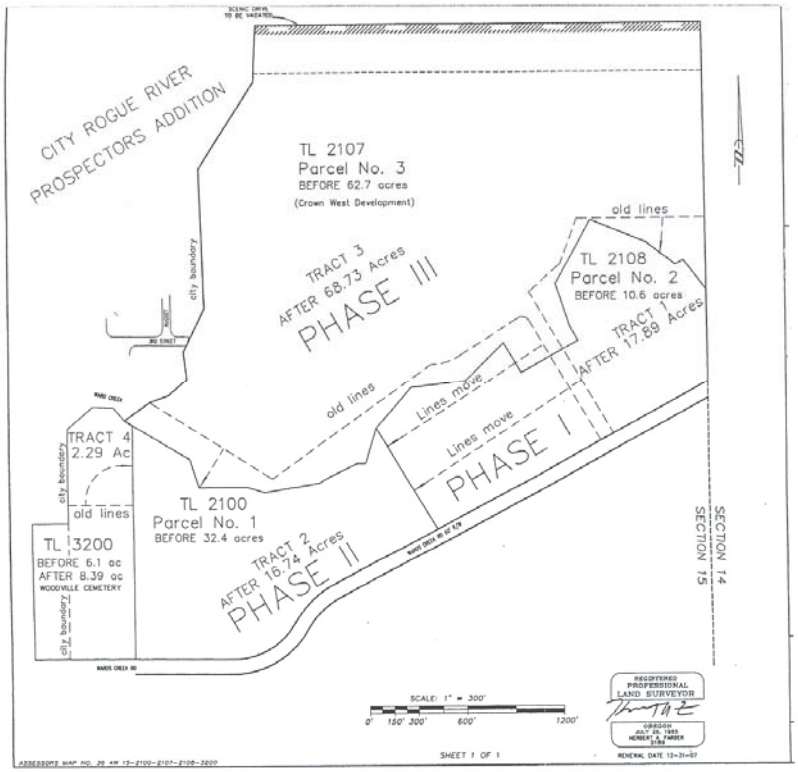
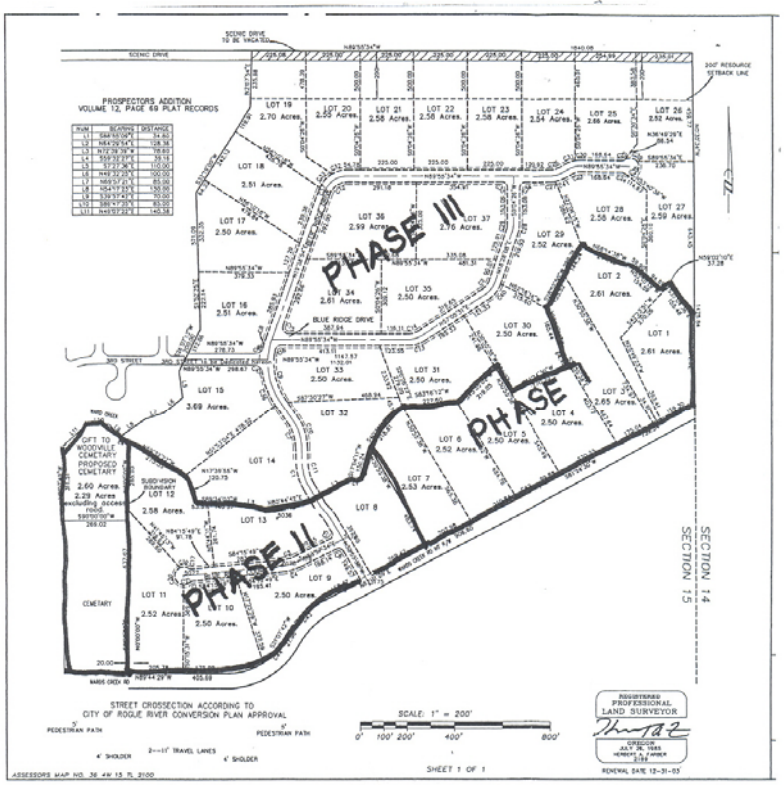
[10] Article I, Section 18 of the Oregon Constitution provides in part:

"Private property shall not be taken for public use[.]"

Appendix A


CITY ROGUE RIVER PROSPECTORS ADDITION
TL 2107
Parcel No. 3
BEFORE 62.7 acres
(Crown West Development)
TRACT 3
AFTER 68.73 Acres
PHASE III
old lines
TL 2108
Parcel No. 2
BEFORE 10.6 acres
TRACT 1
AFTER 17.89 Acres
city boundary
TRACT 4
2.29 Ac
old lines
Lines move
Lines move
PHASE I
TL 2100
Parcel No. 1
BEFORE 32.4 acres
TRACT 2
AFTER 16.74 Acres
PHASE II
TL 3200
BEFORE 6.1 ac
AFTER 8.39 ac
WOODVILLE CEMETERY
SECTION 14
SECTION 15
SCALE: 1" = 300'
REGISTERED PROFESSIONAL LAND SURVEYOR
SHEET 1 OF 1


PROSPECTORS ADDITION
VOLUME 12, PAGE 69 PLAT RECORDS
PHASE III
PHASE I
PHASE II
BLUE RIDGE DRIVE
GIFT TO WOODVILLE CEMETARY PROPOSED CEMETARY
2.60 Acres
2.29 Acres
CEMETARY
SECTION 14
SECTION 15
STREET CROSSECTION ACCORDING TO CITY OF ROGUE RIVER CONVERSION PLAN APPROVAL
SCALE: 1" = 200'
REGISTERED PROFESSIONAL LAND SURVEYOR
SHEET 1 OF 1