

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

3
4 DAVID SARETT,
5 *Petitioner,*

6
7 vs.

8
9 LANE COUNTY,
10 *Respondent,*

11 and

12
13
14 D & H BESSETT,
15 *Intervenor-Respondent.*

16
17 LUBA No. 2017-055

18 ORDER

19
20 **MOTION TO INTERVENE**

21 D & H Bassett (intervenor), the applicant below, moves to intervene on
22 the side of the respondent. There is no opposition to the motion and it is
23 allowed.

24 **OBJECTIONS TO THE RECORD**

25 The challenged decision is a planning staff decision, signed August 11,
26 2014, approving intervenor’s application for property line adjustments that
27 cumulatively achieve a significant reconfiguration of a large tract consisting of
28 six commonly owned parcels. Record 28-35. The record filed by the county
29 includes a diagram at Record 33 showing the configuration of the six parcels
30 before adjustments, and a diagram at Record 34 that shows the configuration of

1 the six parcels after adjustments. The record also includes three deeds recorded
2 on December 15, 2014. As far as we can tell, the three deeds complete three
3 adjustments involving only three of the parcels (2, 5 and 6). The three deeds
4 include diagrams with hand-drawn lines illustrating the effect of each
5 adjustment accomplished by the respective deed. Record 11, 19, 27. The
6 record does not include other deeds that would be necessary to achieve the final
7 configuration depicted on the diagram at Record 34, or diagrams that show
8 those property line adjustments. Petitioner states that four deeds intended to
9 accomplish the final configuration approved in the August 11, 2014 decision
10 were recorded exactly two years after the property line adjustment decision, on
11 August 11, 2016.

12 **A. 2016 Deeds**

13 As noted, the record includes three deeds recorded on December 15,
14 2014, which adjusted the boundaries of parcels 2, 5 and 6. Petitioner argues
15 first that the record should include four other deeds, which were recorded on
16 August 11, 2016 to achieve the final configuration approved in the August 11,
17 2014 decision, as illustrated on the applicant's diagram at Record 34.
18 Petitioner apparently obtained the four 2016 deeds from the county recorder,
19 and includes the four 2016 deeds in Exhibit C to the objection.¹

¹ The deeds include diagrams that show the four property line adjustments.

1 The county responds that the four deeds recorded in 2016 post-date the
2 challenged August 11, 2014 decision, and therefore do not belong in the record
3 because they were not “placed before” the final decision maker during the
4 course of the proceedings before the final decision maker, within the meaning
5 of OAR 661-010-0025(1)(b).²

6 Petitioner replies that the same argument would apply to the three deeds
7 recorded December 15, 2014, which the county *has* included in the record.
8 Petitioner argues that the county apparently deems recorded deeds that
9 complete a property line adjustment approval to be part of the record for
10 purposes of appeal to LUBA, even though the deeds post-date the decision.
11 Petitioner argues that the county’s unexplained choice to include three of the
12 deeds in the record that post-date the decision, but not all seven, results in an

² OAR 661-010-0025(1) provides, in relevant part:

“Contents of Record: Unless the Board otherwise orders, or the parties otherwise agree in writing, the record shall include at least the following:

“(a) The final decision including any findings of fact and conclusions of law.

“(b) All written testimony and all exhibits, maps, documents or other materials specifically incorporated into the record or placed before, and not rejected by, the final decision maker, during the course of the proceedings before the final decision maker.”

1 incomplete record that prejudices petitioner’s ability to challenge the decision
2 and LUBA’s ability to review those challenges.

3 It is not clear to us why petitioner is seeking to supplement the record
4 with the deeds that completed, and drawings that illustrate, four of the seven
5 property line adjustments that were required to reconfigure the parcels as
6 shown on Record 33 to achieve the configuration shown on Record 34. It is
7 also not clear to us how the planner that approved the seven property line
8 adjustments on August 11, 2014, could approve those seven property line
9 adjustments if diagrams showing those property line adjustments were not
10 placed before him so that he could see them. Nevertheless, we agree with the
11 county that the deeds which postdate the August 11, 2014 property line
12 adjustment decision were not “placed before” the planner that approved those
13 property line adjustments, within the meaning of OAR 661-010-00(1)(b). *See n*
14 *2.* With regard to petitioner’s point that the three deeds that are included in the
15 record also post-date the challenged August 11, 2014 decision, the county’s
16 unexplained decision to include those deeds does not mean that four other
17 deeds that also post-date the decision must be included in the record. It simply
18 means the three deeds that are included in the record should probably not have
19 been included in the record. But we do not have a record objection regarding
20 those three deeds.

21 Exhibit C also includes three deeds recorded on January 27, 2016, which
22 make minor “corrections” to the legal description of the three deeds recorded in

1 2014. Petitioner argues that these three corrected deeds should also be
2 included in the record. However, petitioner offers no theory we can understand
3 for why the three corrected deeds belong in the record of this appeal.

4 The first objection is denied.

5 **B. Nine Diagrams**

6 Next, petitioner objects to the omission of nine diagrams that illustrate
7 the entire series of adjustments, beginning with the pre-existing configuration,
8 going through each of what appear to be seven adjustments to the six parcels,
9 to achieve the final configuration approved in the August 11, 2014 decision
10 Petitioner offers the nine diagrams in Exhibit B, attached to its objection.
11 Petitioner argues that these diagrams must have been submitted as part of the
12 2014 application, and were therefore “placed before” the county planner who
13 approved the adjustments in the challenged August 11, 2014 decision.

14 The nine diagrams in Exhibit B are based on the “before” diagram that
15 appears at Record 33, but have been modified with hand-drawn lines and
16 handwritten text. Seven of the nine diagrams bear handwritten notations of the
17 recordation numbers for the three 2016 corrected deeds, and the other four
18 2016 deeds. From those notations, it is apparent that the nine diagrams in
19 Exhibit C were not created until 2016, and therefore were not submitted to the
20 county planner as part of the 2014 application. Petitioner does not state where
21 he obtained the nine diagrams, or how or when they were created. Petitioner
22 has not established that the nine diagrams were placed before the county

1 planner as part of the 2014 application, or cited any other basis to conclude that
2 the nine diagrams should be included in the record on appeal.

3 Petitioner argues that the nine diagrams would be highly useful in
4 understanding what the August 11, 2014 decision approved, since nothing else
5 in the record illustrates how the final reconfiguration approved in the decision
6 is to be achieved. As noted earlier, petitioner appears to be correct. However,
7 absent a successful motion to take evidence outside the record under OAR 661-
8 010-0045, we know of no basis for LUBA to consider the nine diagrams in the
9 course of resolving the merits of this appeal. ORS 197.835(2)(a) (LUBA's
10 review is confined to the record).

11 The second objection is denied.

12 **C. Conclusion**

13 Petitioner's record objections are denied. The record is settled as of the
14 date of this order. The petition for review shall be due 21 days from the date of
15 this order. The response briefs shall be due 42 days from the date of this order.
16 The Board's final opinion and order shall be due 77 days from the date of this
17 order..

18 Dated this 4th day of August, 2017.

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Tod A. Bassham
Board Member