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ORDER DENYING PETITION FOR WRIT OF MANDAMUS AND MOTION TO STAY (APRIL 5, 2018)

IN THE SUPREME COURT
OF THE STATE OF OREGON

PAUL GRIMSTAD,

Petitioner-Relator,

v.

DESCHUTES COUNTY,

Respondent,

and

DAN MAHONEY,

Respondent-Adverse Party.

No. S065716

Land Use Board of Appeals 2016035
Court of Appeals A163405

Before: Thomas A. BALMER,
Chief Justice, Supreme Court

Upon consideration by the court.

The petition for writ of mandamus and motion to stay are denied.

/s/ Thomas A. Balmer
Chief Justice, Supreme Court

4/5/2018 11:18 AM

Designation of Prevailing Party and Award of Costs

Prevailing party: Adverse Party

No costs allowed

c: Garrett Chrostek
David Adam Smith
Deschutes County
Paul Grimstad

asb

NOTICE OF DECISION
(FEBRUARY 5, 2018)

COMMUNITY DEVELOPMENT DEPARTMENT
Planning Division Building Safety Division
Environmental Soils Division

P.O. Box 6035117
NW Lafayette Avenue Bend
Oregon 97708-6005
Phone: (541) 388-6575
Fax: (541) 385-1764
http://www.deschutes.org/cd

The Deschutes County Planning Division has approved the land use application(s) described below:

FILE NUMBER: 247-17-000999-A

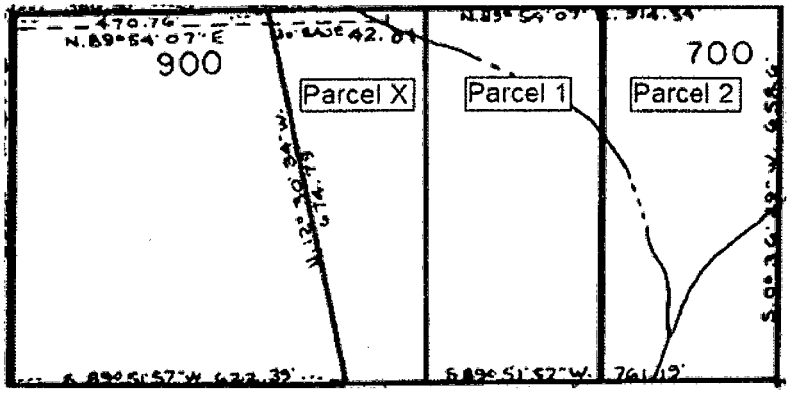
LOCATION:

The subject property has an assigned address of 60620 Billadeau Road, Bend, and is identified on County Assessor Tax Map 18-13-19, as tax lot 700.

APPLICANT/ OWNER: Dan Mahoney

SUBJECT:

The Deschutes County Planning Division has determined that tax lot 700 includes two (2) legal lots of record depicted as Parcel 1 and 2 in Figure 1 below. The applicant withdrew a request to recognize the property identified as Parcel X as a separate legal lot of record.



STAFF CONTACT:

Anthony Raguine,
anthony.raguine@deschutes.org, (541) 617-4739.

DOCUMENTS:

Can be viewed and downloaded from:
www.buildingpermits.oregon.gov and http://dial.deschutes.org

ORDER DENYING PETITION FOR REVIEW
(JUNE 29, 2017)

IN THE SUPREME COURT
OF THE STATE OF OREGON

PAUL GRIMSTAD,

Petitioner
Cross-Respondent,
Petitioner on Review,

v.

DESCHUTES COUNTY,

Respondent,

and

DAN MAHONEY,

Respondent
Cross-Petitioner,
Respondent on Review.

No. S064773

Court of Appeals A163405

Before: Thomas A. BALMER,
Chief Justice, Supreme Court

Upon consideration by the court.

The court has considered the petition for review filed by petitioner on review Paul Grimstad and orders that it be denied.

Respondent on review Dan Mahoney has filed a response to the petition, which the court treats as a separate petition for review. On the court's own motion, the court grants respondent on review relief from default. The court has considered the petition for review filed by respondent on review Dan Mahoney and orders that it be denied.

/s/ Thomas A. Balmer
Chief Justice, Supreme Court

06/29/2017 9:17 AM

Flynn, J., not participating.

c: Garrett Chrostek
Paul Grimstad

APPELLATE JUDGMENT AND
SUPPLEMENTAL JUDGMENT
(JULY 25, 2017)

IN THE COURT OF APPEALS
OF THE STATE OF OREGON

PAUL GRIMSTAD,

Petitioner
Cross-Respondent,

v.

DESCHUTES COUNTY,

Respondent,

and

DAN MAHONEY,

Respondent
Cross-Petitioner.

No. A163405

Submitted on December 19, 2016

Land Use Board of Appeals 2016035

Before: SERCOMBE, Presiding Judge;
FLYNN, Judge; and DeHOOG, Judge.

Affirmed Without Opinion

Designation of Prevailing Party and Award of Costs

Prevailing party: Respondents on petition; Cross-Respondent on cross-petition

Costs allowed, payable by Petitioner on petition; Cross-Petitioner on cross-petition.

Money Award

JUDGMENT #1

Creditor:	Dan Mahoney
Attorney:	Garrett Chrostek, 591 SW Mill View Way, Bend OR 97702
Debtor:	Paul Grimstad
Attorney:	Paul Grimstad
Costs:	$481.20
Total Amount:	$481.20

Interest: Simple, 9% per annum, from the date of this appellate judgment.

JUDGMENT #2

Creditor:	Paul Grimstad
Attorney:	Paul Grimstad, 60630 Billadeau Rd, Bend OR 97702
Debtor:	Dan Mahoney
Attorney:	Garrett Chrostek
Costs:	$473.00

Total Amount: $473.00

Interest: Simple, 9% per annum, from the date of this appellate judgment.

Appellate Judgment
Effective Date: July 25, 2017

Court of Appeals (seal)

ORDER OF THE COURT OF APPEALS DENYING MOTION FOR RECONSIDERATION (JANUARY 4, 2017)

IN THE COURT OF APPEALS
OF THE STATE OF OREGON

PAUL GRIMSTAD,

Petitioner
Cross-Respondent,

v.

DESCHUTES COUNTY,

Respondent,

and

DAN MAHONEY,

Respondent
Cross-Petitioner.

Court of Appeals No. A163405

Land Use Board of Appeals 2016035

Before: Timothy J. SERCOMBE,
Presiding Judge, Court of Appeals

Petitioner has moved for reconsideration of the Appellate Commissioner's order denying petitioner's motion to strike and extending time to file the

answering brief on cross-appeal. The motion for reconsideration is denied.

/s/ Timothy J. Sercombe
Presiding Judge, Court of Appeals

C: David Doyle
Garrett Chrostek
Paul Grimstad

ORDER DENYING MOTION TO STRIKE AND EXTENDING TIME TO FILE RELIEF (DECEMBER 8, 2016)

IN THE COURT OF APPEALS OF THE STATE OF OREGON

PAUL GRIMSTAD,

Petitioner Cross-Respondent,

v.

DESCHUTES COUNTY,

Respondent.

and

DAN MAHONEY,

Respondent Cross-Petitioner.

Land Use Board of Appeals No. 2016035

Court of Appeals No. A163405

Petitioner has moved to strike respondent Dan Mahoney's Answering and Cross-Opening brief filed November 29, 2016, on the ground that respondent either failed to serve petitioner at all with a copy of the brief or failed to serve petitioner in a manner authorized by law. The court notified respondent that

his brief, among other things, was deficient in its completion of service on petitioner, and required respondent to correct the deficiency within five days. Within that 5-day period, respondent filed his corrected Answering and Cross-Opening brief, which was properly served by first class mail on petitioner. Respondent's ability to file the correction sooner was affected by the court's electronic filing system not being available sooner.

However, petitioner potentially is prejudiced by the manner in which respondent initially served petitioner with the brief. Therefore, the court extends the time for the filing of petitioner's Answering - On Cross-Petition brief to December 12, 2016.

/s/ James W. Nass
Appellate Commissioner

C:

David Doyle
Garrett Chrostek
Paul Grimstad

LETTER FROM COURT OF APPEALS (NOVEMBER 30, 2016)

IN THE COURT OF APPEALS OF THE STATE OF OREGON

To:

Garrett Chrostek
o/b/o Dan Mahoney
Bryant Lovlien & Jarvis PC
591 SW Mill View Way
Bend OR 97702

From:

Appellate Court Records Section Clerk
Olivia (503) 986-5897

Re: Paul Grimstad v. Deschutes County
A163405
Land Use Board of Appeals
2016035

The Combined Answering and Cross-Opening Brief was filed on November 29, 2016.

The Answering-On Cross-Petition Brief is due on December 06, 2016.

COMPLIANCE WITH THE FOLLOWING IS REQUIRED:

The Combined Answering and Cross-Opening Brief does not conform to the Oregon Revised Statutes (ORS) and/or the Oregon Rules of Appellate Procedure (ORAP) in that:

- Incorrect Certificate of Service. The Certificate of Service states that Paul Grimstad was served by eService but only attorneys are served through eService. You must conventionally serve Paul Grimstad and file a correct Certificate of Service.
- The opening brief index must include a statement of the substance of each assignment of error, without argument, with appropriate page references. ORAP 5.35(1).

If the above-listed deficiencies are not corrected within 5 days from the date of this notice, the defective document will not be considered by the court.

All documents filed with the court must include a certificate of service indicating that service on the opposing parties was completed. ORAP 1.35(2)(a) and (d).

c: David Doyle
Paul Grimstad

NOTE: THIS OPINION HAS BEEN EDITED FOR BREVITY AND CLARITY. A FULL OPINION IS AVAILABLE AT https://www.oregon.gov/LUBA/docs/Opinions/2016/09-16/16035.pdf

FINAL OPINION AND ORDER OF THE LAND USE BOARD OF APPEALS (SEPTEMBER 29, 2016)

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

PAUL GRIMSTAD,

Petitioner,

v.

DESCHUTES COUNTY,

Respondent,

and

DAN MAHONEY,

Intervenor-Respondent.

LUBA No. 2016-035

Opinion by Bassham.

Nature of the Decision

Petitioner appeals a county decision concluding that a tract includes three legal "lots of record" as defined by county code. . . .

Facts

A. The Early Years

In the beginning was a rectangular-shaped 20-acre parcel zoned Exclusive Farm Use (EFU). In 1973, the then-owner conveyed to the Schocks via warranty deed a five-acre parcel (Parcel 1) near the middle of the rectangular parent parcel.[1] On the same date, the owner and the Schocks entered into a land sale contract for the remaining two portions of the parent parcel, located on either side of the deeded five-acre parcel. The county assigned separate tax lot numbers to these three units of land. For clarity, we refer to the three parcels that were transferred or contracted to be transferred to the Schocks as Parcels 1, 2 and 3. Diagram A below illustrates the likely configuration of the parent parcel after 1973:

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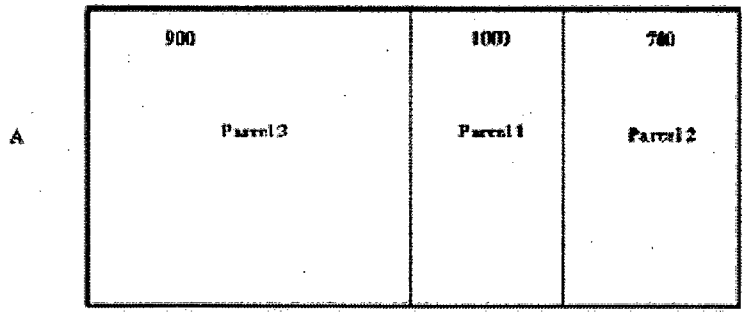
[1] The term "parcel" and related terms "lot" and "tract" have definitions in ORS chapters 92 and 215. In this opinion we will generally refer to the several putative units of land at issue in this appeal as "parcels." However, that reference is not intended to suggest that any units of land so referred to are "parcels" as defined at ORS 92.010 or ORS 215.010. For convenience, we will sometimes refer to units of land or tracts of land by the tax lot number assigned by the county assessor; however, as all parties recognize, tax lot designations do not necessarily correspond to actual units of land.



The western parcel (Parcel 3) was 10 acres in size and was designated tax lot 900. The middle, deeded five-acre parcel (Parcel 1) was designated tax lot 1000, and the eastern parcel (Parcel 2) was five acres in size and designated tax lot 700. At some point, the land sale contract was presumably paid off, and the Schocks acquired full title to all three parcels.

In 1977, the county adopted ordinances that required county approval to create lots and parcels in the EFU zone, via partition or subdivision. Record 8. After 1977, recording a deed was no longer a lawful means of creating a unit of land on county EFU lands.

B. The 1983 Property Line Adjustment

In 1983, the Schocks applied to the county for a property line adjustment (1983 PLA) to adjust the boundary between Parcels 1 and 3. The apparent intent was to reduce Parcel 3 in size by about approximately 2.5 acres, leaving Parcel 3 with about 7.5 acres, and to increase Parcel 1 in size by about 2.5 acres, leaving Parcel 1 with about 7.5 acres.[2] As discussed below,

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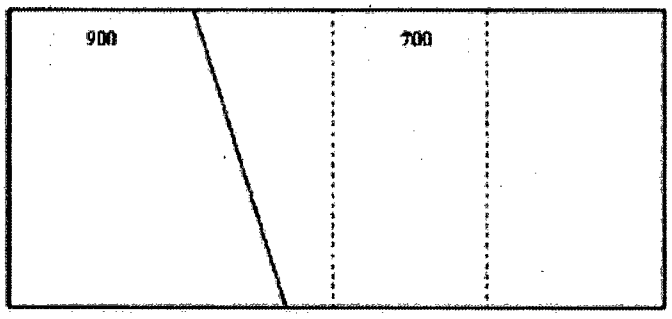
[2] The record includes different figures for the exact amount of acreage proposed to be transferred from Parcel 3. For simplicity, we have rounded the number to 2.5 acres.

whether the 2.5 acres of land that the Schocks wanted to transfer between Parcel 3 and Parcel 1 constitutes a legal "lot of record" as defined in county code is one of the issues in this appeal.

The county required the Schocks, as a condition of approval of the 1983 PLA, to consolidate Parcels 1 and 2 (tax lots 1000 and 700). Accordingly, a survey was prepared that showed Parcel 3 (tax lot 900) with approximately 7.5 acres, and Parcel 2 and the expanded Parcel 1 consolidated into a single parcel approximately 12.5 acres in size. Diagram B illustrates the approximate configuration shown on the survey:

B



The county's application form for a PLA included the following pre-printed language:

> "NOTE: THE DEEDS SHALL BE IN THE SAME NAME FOR ALL PARCELS THAT ARE ADJUSTED OR CONSOLIDATED, AND ALL DELINQUENT TAXES FOR ALL PARCELS SHALL BE PAID IN FULL." Record 12.

On April 12, 1983, a county planner approved the PLA application by signing the application, with the addition of a handwritten requirement that "Tax lots 1000 and 700 [Parcels 1 and 2] shall be consolidated."

Id. Subsequently, the county assessor changed the tax rolls to reflect that tax lot 1000, as adjusted, was combined with tax lot 700, and thereafter the 12.5-acre area of land shown on the 1983 PLA survey was designated tax lot 700.

On September 26, 1983, the Schocks applied for a building permit to construct a single family dwelling on Parcel 3 (tax lot 900). The county granted the building permit.

On January 18, 1984, the Schocks deeded to the Petersons the area currently encompassed by tax lot 700, totaling approximately 12.5 acres. The Petersons are the predecessors-in-interest to intervenor Dan Mahoney. The January 18, 1984 deed did not separately describe any units of land within the area conveyed.

On June 26, 1987, the Schocks deeded Parcel 3 (tax lot 900) to the Pendergrasses. The deed excluded all land previously transferred to the Petersons in the 1984 deed.

C. The June 9, 2015 Lot of Record Decision

Fast forward to 2015. Intervenor, the current owner of the 12.5-acre tract shown on the tax rolls as tax lot 700, applied to the county for a "Lot of Record" verification to determine how many legal units of land exist in the tract he owns. In relevant part, Deschutes County Code (DCC) 18.04.030 defines "Lot of Record" to mean a lot or parcel that conformed to all zoning and subdivision or partition requirements, if any, in effect on the date the lot or parcel was created, and that was created in one of five ways.[3]

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[3] DCC 18.04.030 provides, in relevant part:

On June 9, 2015, a county planner issued the decision challenged in this appeal. The 2015 Lot of Record decision concluded that tax lot 700 includes three legal lots of record: Parcel 1, Parcel 2, and the

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"'Lot of Record' means:

"A. A lot or parcel . . . which conformed to all zoning and subdivision or partition requirements, if any, in effect on the date the lot or parcel was created, and which was created by any of the following means:

"1. By partitioning land . . .

"2. By a subdivision plat . . . filed with the Deschutes County Surveyor and recorded with the Deschutes County Clerk;

3. By deed or contract, dated and signed by the parties to the transaction, containing a separate legal description of the lot or parcel, and recorded in Deschutes County if recording of the instrument was required on the date of the conveyance. If such instrument contains more than one legal description, only one lot of record shall be recognized unless the legal descriptions describe lots subject to a recorded subdivision or town plat;

"4. By a town plat filed with the Deschutes County Clerk and recorded in the Deschutes County Record of Plats; or

"5. By the subdividing or partitioning of adjacent or surrounding land, leaving a remainder lot or parcel.

"B. The following shall not be deemed to be a lot of record:

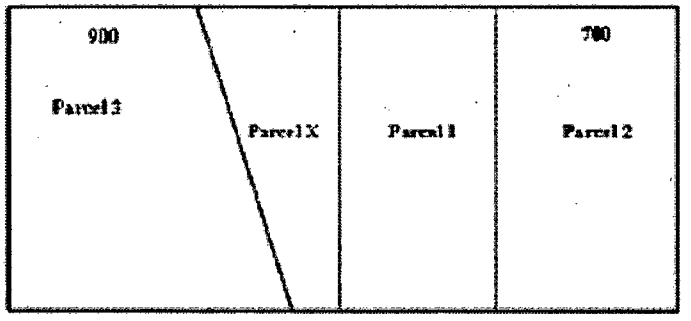
"1. A lot or parcel created solely by a tax lot segregation because of an assessor's roll change or for the convenience of the assessor.

"2. A lot or parcel created by an intervening section or township line or right of way.

"* * * * *"

2.5-acre sliver of land that the Schocks attempted to transfer from Parcel 3 to consolidate with Parcels 1 and 2 in the 1983 PLA. For lack of better shorthand, in this opinion we will henceforth refer to this 2.5-acre sliver of land as "Parcel X." Diagram C illustrates the property configuration verified in the June 9, 2015 Lot of Record decision:

C



The county planner first concluded that the 1983 PLA did not have the effect of consolidating Parcels 1 and 2, because the Schocks failed to record deeds "in the same name," as required by the pre-printed NOTE on the PLA application form. Instead, the planner noted, the Schocks recorded deeds to the Petersons and the Pendergrasses. Further, the planner noted that under the county's code at the time, the 1983 PLA approval expired within one year, or on April 12, 1984, and that by the time the 1987 deed was recorded, the 1983 PLA had expired. Accordingly, the planner gave no effect to the 1983 PLA.

With respect to Parcel 1, the middle parcel, the planner concluded that Parcel 1 was created in 1973 via warranty deed to the Schocks, at a time when a lot or parcel could lawfully be created by deed without county partitioning or subdivision approval, and is thus a "Lot of Record" under DCC 18.04.030(A)(3).

With respect to Parcel 2, the eastern-most parcel, the planner concluded that Parcel 2 had been created in 1973 via the land sale contract, at a time when a lot or parcel could be lawfully created by a land sale contract. We discuss this finding under the second and third assignments of error.

Finally, with respect to Parcel X, the 2.5-acre sliver of land, the planner concluded that Parcel X is a "remainder lot," apparently created in September 1983, when the county approved the Schocks' building permit application for the single family dwelling on Parcel 3 (tax lot 900). We discuss this conclusion and quote the relevant findings under the fourth assignment of error, below. *See* n.9. . . .

First Assignment of Error

Petitioner first challenges the planning staff's conclusion that the 1983 PLA expired without taking effect. Petitioner notes that as defined at ORS 92.010(12), a property line adjustment cannot create an additional lot or parcel, and the 1983 PLA was not intended to create any new lots or parcels. Instead, petitioner argues, the 1983 PLA was intended to reduce the number of parcels by requiring the consolidation of Parcel 1 and Parcel 2. According to petitioner, the 1983 PLA became final and effective, notwithstanding that the Schocks failed to record conforming deeds for all parcels in the same name within one year of the decision. We understand petitioner to argue that if the 1983 PLA is given effect, the property that intervenor now owns was consolidated into a single parcel, pursuant to the condition imposed in that decision.

However, the 1983 PLA approval by itself did not have the effect of moving any property boundaries or consolidating any units of land. Both acts are accomplished only by the recording of deeds that reflect the adjusted or vacated boundaries. As noted, two deeds were recorded following the 1983 PLA. We discuss those two deeds further below. However, for present purposes, we reject petitioner's argument that the 1983 PLA decision, in itself and without more, achieved a reconfiguration of intervenor's property.

The first assignment of error is denied.

Second and Third Assignments of Error

Petitioner next challenges the county's conclusion that Parcel 2, the easternmost five-acre parcel in tax lot 700, is a Lot of Record. As noted, the planner concluded that the 1973 land sale contract created Parcel 2. DCC 18.04.030 defines "Lot of Record" in relevant part to include a unit of land created:

> "By deed or contract, dated and signed by the parties to the transaction, containing a separate legal description of the lot or parcel, and recorded in Deschutes County if recording of the instrument was required on the date of the conveyance. If such instrument contains more than one legal description, only one lot of record shall be recognized unless the legal descriptions describe lots subject to a recorded subdivision or town plat[.]" (Emphasis added.)

The record before the county included only page 1 of the 1973 land sale contract. Record 21. Apparently, the other page(s) have been lost or are no longer available. Page 1 does not include either the date or

the signatures of the parties. Under the second assignment of error, petitioner argues that because the document at Record 21 lacks signatures and a date, it is not sufficient to establish that Parcel 2 is a lot of record as defined at DCC 18.04.030. Under the third assignment of error, petitioner argues that the document at Record 21 also does not contain "a separate legal description" of Parcel 2, and to the extent it can be construed to contain any legal description, it appears to describe more than one unit of land. If so, petitioner argues that under DCC 18.04.030 "only one lot of record shall be recognized[.]"

Intervenor responds that while the document at Record 21 may not meet the "technical requirements" of DCC 18.04.030 because it lacks evidence of a signature or date, it is nonetheless substantial evidence that the county could rely upon to conclude that Parcel 2 is a legal Lot of Record as defined at DCC 18.04.030. Intervenor argues that there is no reason to suppose that the 1973 land sale contract was not signed and dated.

In the alternative, intervenor argues, even if the record is insufficient to establish that the land sale contract was not the instrument that created Parcel 2, LUBA may nevertheless affirm the county's on this point under ORS 197.835(11)(b), because the record "clearly supports" the county's conclusion that Parcel 2 is a lot of record as defined at DCC 18.04.030, based on the 1973 warranty deed that created the five-acre parcel in the middle of the 20-acre parent parcel.[4]

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[4] ORS 197.835(11)(b) provides:

> "Whenever the findings are defective because of failure to recite adequate facts or legal conclusions or

According to intervenor, the transfer of Parcel 1 in the middle of the 20-acre parent parcel had the legal effect of creating two remainder parcels on either side of that parcel: the five acre Parcel 2 to the east, and the ten-acre Parcel 3 to the west.

The findings addressing Parcel 2 do not address the requirement for signatures and a date, or whether the instrument contains "a separate legal description" of Parcel 2, or whether the instrument contains more than one legal description. The requirement for a signed and dated instrument may be technical in nature, but it is one of the definitional requirements for a Lot of Record. The findings do not even address that requirement, much less explain how the county can conclude, in their absence, that Parcel 2 is a Lot of Record based on the 1973 land sale contract.

Similarly, we agree with petitioner that if the county relies on the 1973 land sale contract as the instrument that created Parcel 2 as a Lot of Record, it must address the definitional requirements for "separate legal description," and must further consider whether the land sale contract includes a legal description and, if so, more than one legal description.

We disagree with intervenor's alternative argument that LUBA can rely on ORS 197.835(11)(b) to affirm the county's conclusion that Parcel 2 is a Lot

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failure to adequately identify the standards or their relation to the facts, but the parties identify relevant evidence in the record which clearly supports the decision or a part of the decision, the board shall affirm the decision or the part of the decision supported by the record and remand the remainder to the local government, with direction indicating appropriate remedial action."

of Record, despite inadequate findings. ORS 197.835 (11)(b) operates to allow LUBA to overlook inadequate findings only when the evidentiary record "clearly supports" the decision. Intervenor does not cite any evidence in the record that clearly supports the county's conclusion that the 1973 land sale contract is the instrument that renders Parcel 2 a Lot of Record. Instead, intervenor advances an alternative legal theory, which the county did not consider, that Parcel 2 was indirectly created by an entirely different instrument, the 1973 warranty deed. Intervenor might be correct that in 1973 the legal effect of creating Parcel 1 as a five-acre parcel in the middle of a 20-acre parcel was to create remainder five and 10-acre parcels on either side of Parcel 1. However, even if so, the relevant question is whether Parcel 2, one of those remainder parcels, meets the requirements of a Lot of Record as defined at DCC 18.04.030. Parcel 2 may well have been created in 1973 by either the warranty deed or the land sale contract, but even if we assume that to be the case, Parcel 2 is a Lot of Record only if it meets all definitional requirements.

ORS 197.835(11)(b) is a limited vehicle, and does not allow LUBA to affirm a decision based on an alternative legal theory not considered below, which in turn requires significant and discretionary legal and evidentiary determinations. We conclude that remand is necessary for the county to adopt more adequate findings, supported by substantial evidence, regarding whether Parcel 2 qualifies as a Lot of Record as defined at DCC 18.04.030.

The second and third assignments of error are sustained.

Fourth Assignment of Error

With respect to Parcel X, the 2.5-acre sliver of land, the county found that Parcel X was created in 1983 when the county granted building permits for a dwelling on tax 900.[5] The rationale for that finding is difficult to follow, but we understand it to hinge on the perception that the building permit application to site a dwelling on Parcel 3 assumed that Parcel 3 had already been reduced in size, pursuant to the 1983 PLA. Record 27. The county reasoned that the building permit approval had the effect of granting legal lot of

---

[5] The county's findings state:

> "Lot Creation: [Parcel X] is a remainder lot. The parent parcel of [Parcel X] is the 10-acre lot created by the Exhibit I land sale contract on April 25, 1973. The approximate location of that lot is shown on Exhibit L. In 1983, building permits were issued to allow the construction of a home and greenhouse on Tax Lot 900 as it is currently configured and shown on Exhibit A without including [Parcel X] which was made part of Tax Lot 700 by this time. This fact is shown by the Exhibits M and N building permits, which were issued after a roll change was approved that changed the size and shape of Tax Lot 900 by excluding [Parcel X]. *See*, Exhibit E (roll change 4-20-83 removed 2.17 acres which became 'part of TL 700').
>
> "Applicable Law: Deschutes County treats the approval of a building permit as a determination that a lot is a legal lot of record at the time the permit is issued. In this case, both permits were approved by the Planning Department. The Board of Commissioners also grants lot of record status to remainder lots created by actions that are recognized as lawful means of creating legal lots of record." Record 9 (boldface omitted).

record status to Parcel 3, in its reduced size configuration. The county then cited a county practice of recognizing as legal lots of record remainder lots created by lawful means of creating legal lots of record. Based on those premises, the county concluded that Parcel X is a legal lot of record, because it is a "remainder" lot, apparently created in September 1983 when the county approved the building permit application for a dwelling on Parcel 3.

Petitioner argues, and we agree, that that conclusion is deeply flawed. Neither the decision nor intervenor explains how a building permit approval can create a unit of land, much less a unit of land that is also a Lot of Record as defined at DCC 18.04.030. The decision cites two informal processes: (1) a county practice to recognize lots on which a building permit has been issued as being a Lot of Record, and (2) the board of commissioners' practice to accord Lot of Record status to remainder lots created by actions that are recognized as lawful means of creating legal lots of record. However, neither informal practice has any counterpart or support in DCC 18.04.030. Further, even if the building permit approval is a valid basis for recognizing Parcel 3 as a legal lot of record, that building permit approval did not create Parcel 3, and therefore could not possibly have created Parcel X as a remainder lot or any other separate unit of land.

On appeal, intervenor argues that the findings regarding Parcel X merely rely on the 1983 building permit to recognize the legal Lot of Record status of Parcel 3, not for Parcel X. However, the lot of record status for Parcel 3 was not an issue before the county planner, and is not an issue on appeal to LUBA.

Intervenor offers no theory that we can understand, even an alternative one, for how Parcel X can be viewed as a Lot of Record as defined at DCC 18.04.030.

The fourth assignment of error is sustained.

Fifth Assignment of Error

As petitioner notes, DCC 18.04.030 recognizes as a Lot of Record a unit of land created by "the subdividing or partitioning of adjacent or surrounding land, leaving a remainder lot or parcel." *See* n.4. To the extent the county relies on the foregoing language to conclude that Parcel X is a "remainder lot or parcel," petitioner argues that the county erred, because that language applies only to remainder lots or parcels created as part of the subdividing or partitioning of land, and at no point was Parcel X involved in any subdivision or partition.

The county's decision did not rely on the above-quoted language from DCC 18.04.030 to conclude that Parcel X is a Lot of Record, and intervenor does not argue that that language could apply in the present case. Accordingly, petitioner's arguments under this assignment of error provide no additional basis for reversal or remand. The fifth assignment of error is denied.

Sixth Assignment of Error

In the "Background" section of the challenged decision the county refers several times to the fact that the tax rolls currently reflect the inclusion of the area encompassed by Parcel X within tax lot 700, a tax roll change that occurred after the 1983 PLA. Petitioner argues that to the extent the county relied

upon tax lot information to conclude that Parcel X is a legal Lot of Record, the city erred.

We generally agree with petitioner that tax lot information has no particular bearing on whether a unit of land is a Lot of Record as defined at DCC 18.04.030. Subsection B of DCC 18.04.030 lists four circumstances where the unit of land is not deemed to be a Lot of Record, including those where the unit of land is "created solely by a tax lot segregation because of an assessor's roll change[.]" *See* n.4. However, as far as we can tell, the county's decision did not rely upon tax lot information to conclude that Parcel X is a Lot of Record. The references to tax lot information in the Background section of the decision are simply that, background information. Accordingly, petitioner's arguments under the sixth assignment of error do not provide an additional basis for reversal or remand.

The sixth assignment of error is denied.

Conclusion

As noted, on January 18, 1984, the Schocks deeded to the Petersons a 12.5-acre tract of land, designated tax lot 700, in a warranty deed that was recorded on January 19, 1984. Record 15-17. In 1987, the Schocks deeded to the Pendergrasses a 7.5-acre parcel, designated tax lot 900. Both deeds appear to include metes and bounds legal descriptions consistent with the survey prepared for the 1983 PLA approval, *i.e.*, the Peterson deed appears to convey consolidated Parcels 1 and 2, along with the 2.5-acre sliver of land we refer to here as Parcel X. And the Pendergrass deed appears to convey Parcel 3 less the 2.5 acre sliver of land that was conveyed to the Petersons in

1984. As we explained under the first assignment of error, the 1983 PLA decision itself, without more, is incapable of achieving any reconfiguration of the subject parcels. We observe that if any instrument created the current configuration of what is now designated as tax lot 700, it would seem to be the 1984 deed to the Petersons. However, the 1984 deed almost certainly could not have lawfully created any new units of land, because by 1984 state law and the county's code required a subdivision or partition approval in order to create an additional lot or parcel. Record 8.

Remand is necessary for the county to reconsider, in light of the foregoing, whether Parcel 2 and Parcel X exist as separate units of land and, if so, whether they qualify as Lots of Record as defined by DCC 18.04.030.

The county's decision is remanded.

RELEVANT CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES, AND REGULATIONS

CONSTITUTIONAL PROVISIONS

The following relevant constitutional provisions, statutes, ordinances, and regulations provide in pertinent part:

- ARTICLE III OF THE U.S. CONSTITUTION

  Section 1.

  The judicial Power of the United States, shall be vested in one supreme Court. . . .

  Section 2.

  The judicial Power shall extend . . . to Controversies between . . . a State, or the Citizens thereof . . . .

- FIRST AMENDMENT OF THE U.S. CONSTITUTION

  Congress shall make no law . . . abridging the freedom of speech . . . or the right of the people to petition the Government for a redress of grievances.

- FOURTEENTH AMENDMENT OF THE U.S. CONSTITUTION

  No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATE OF OREGON STATUTES AND PROCEDURES

- OREGON REVISED STATUTES (ORE. REV. STAT.) § 197.850(7)(a) (2017) governing judicial review of Oregon Land Use Board of Appeals (LUBA) orders

  The court shall hear oral argument within 49 days of the date of transmittal of the record.

- ORE. REV. STAT. § 197.855(4) (2017) governing judicial review of LUBA orders

  No continuance under subsection (2)(b) of this section shall be granted because of general congestion of the court calendar or lack of diligent preparation or attention to the case by any member of the court or any party.

- OREGON RULES OF APPELLATE PROCEDURE (ORAP) 1.35(1) (2016)

  (a) Anything to be filed in the Supreme Court or Court of Appeals shall be delivered to the Appellate Court Administrator, Appellate Court Records Section, 1163 State Street, Salem, Oregon 97301 -2563 . . . .

  (c) . . . If the person relies on the date of mailing as the date of filing . . ., the person shall certify the date of mailing and shall file the certificate, together with acceptable proof from the post office of the date of mailing, with the Administrator with proof of service on the parties to the appeal, judicial review or original proceeding. Acceptable proof from the post office of the date of mailing shall be a receipt for certified or registered mail, with the certified or registered mail number on the envelope or on the item being

mailed, with the date of mailing either stamped by the United States Postal Service on the receipt or shown by a United States Postal Service postage validated imprint on the envelope received by the Administrator.

- ORAP 4.70(1) (2016)

  On judicial review of a LUBA decision . . . in the Court of Appeals, no continuance or extension shall be granted as to the time specified by statute for transmission of the record, the time specified by these rules for filing the cross-petition and the briefs. . . . .

- ORAP 6.05(2)-(3) (2016)

  (2)(a) . . . Parties to the case may request oral argument by filing a "Request for Oral Argument" in the form illustrated in Appendix 6.05 and directed to the attention of the court's calendar clerk.

  (3) Notwithstanding subsection (2) of this rule, if a self-represented party files a brief, the case will be submitted without argument by any party. An attorney representing himself or herself is not considered to be a self-represented party for the purpose of this rule.

- ORAP 13.05(3)-(4) (2016)

  (3) When an allowance of costs is dependent on identification of a party as a prevailing party, the appellant or petitioner . . . is the prevailing party only if the court reverses or substantially modifies the judgment or order from which the appeal or judicial review was taken. . . .

(4) The award of costs . . . shall be awarded by the court or tribunal on remand in favor of the prevailing party on appeal or review, if that party also prevails on remand. . . .

- ORAP 16.10(1)(a) (2016)

  Any member of the Oregon State Bar who is authorized to practice law may register to become an eFiler.

- ORAP 16.25 (2016)

  (1) A filer may use the eFiling system at any time, except when the system is temporarily unavailable. The filing deadline for any document filed electronically is 11:59:59 p.m. in the time zone in which the court is located on the date by which the document must be filed.

  (2) The submission of a document electronically by the eFiler and acceptance of the document by the court accomplishes electronic filing. When accepted for filing, the electronic document constitutes the court's official record of the document.

  (3)(a) The court considers a document received when the eFiling system receives the document. The eFiling system will send an email that includes the date and time of receipt to the eFiler's e-mail address, and to any other e-mail address provided by the eFiler, to confirm that the eFiling system received the document . . . .

- OREGON ADMINISTRATIVE RULES 661-010-0071(1)(c) (2014)

  The Board shall reverse a land use decision when: . . . (c) The decision violates a provision of applicable law and is prohibited as a matter of law.

- DESCHUTES COUNTY CODE 18.040.030 (2015) governing the establishment of lots of record

  'Lot of Record' means:

  A lot or parcel . . . which conformed to all zoning and subdivision or partition requirements, if any, in effect on the date the lot or parcel was created, and which was created by any of the following means: . . .

  3. By deed or contract, dated and signed by the parties to the transaction, containing a separate legal description of the lot or parcel, and recorded in Deschutes County if recording of the instrument was required on the date of the conveyance. If such instrument contains more than one legal description, only one lot of record shall be recognized unless the legal descriptions describe lots subject to a recorded subdivision or town plat;

NOTE: THIS PETITION FOR A WRIT OF MANDAMUS HAS BEEN EDITED FOR BREVITY AND CLARITY.

PETITION FOR WRIT OF MANDAMUS AND STAY REQUESTED (FEBRUARY 16, 2018)

IN THE SUPREME COURT OF THE STATE OF OREGON

PAUL GRIMSTAD,

Petitioner-Relator,

v.

DESCHUTES COUNTY,

Respondent-Defendant,

and

DAN MAHONEY,

Respondent-Adverse Party.

S064773

Land Use Board of Appeals 2016035
A163405

Statement of Facts and Relief Sought

Respondant-Defendant [sic], Deschutes County disregarded the law:

> Section 18.04.030 of the County Zoning Ordinance defines a "lot of record" as: (A), "A lot or parcel [created] (3), By deed or contract, dated and signed by the parties to the transaction, containing a separate legal description of the lot or parcel, ... If such instrument contains more than one legal description, only one lot of record shall be recognized . . . ." "ER-1"

The Applicant-Respondant-Adverse Party [sic], submitted an Installment Land Sales Contract [sic], (ILSC) "ER-2" with the application that is void of signatures and date. The Respondent-Defendant never the less relied on the very same (ILSC) [sic] document to support the establishment and verification of two separate parcels of land, ignoring the clear language on the face of the (ILSC) [sic] that plainly states: "Additional Parcel Release, see reverse hereof" "ER-2". A senior planner representing the Respondent-Defendant declared to the court "ER-3", that no second page exists nor was a document provided or available. Therefore it is an undisputed violation of law for the Respondant-Defendant [sic] to have ever issued such a "Lot of Record" approval based on such flawed documentation . . . .

[A]djudication in this case defined by LUBA Rule 661-010-0071[:] (1) "The Board shall reverse a land use decision when: (C) The decision violates a provision of applicable law and is prohibited as a matter of law," should, by a reasonable standard of

jurisprudence have required LUBA to issue a Ruling of REVERSE.

The Petitioner-Relator filed for Judicial Review in the Court of Appeals and received a Ruling [sic] of Affirmed without Opinion, "ER-10" leaving the primary legal issues and other pertinent matters at law unresolved. During the course of litigation in the Court of Appeals, counsel for the Respondent-Adverse Party failed to properly provide service of his Brief to the Petitioner-Relator as set forth in an email Notice "ER-5" from the Court Clerk. The Notice moreover states that said lawyer failed to properly complete his Brief in accordance with ORAP Rules for which he was additionally admonished in the Notice and he was therefore required to revise and subsequently resubmit his Brief at a later and "Out Of Time" date. Oregon Land Use Law sets out specific requirements for "EXPEDITED PROCEEDINGS" and therefore absolutely does not allow "CONTINUENCE" [sic]. . . .

This ORAP Rule is established and supported by the following law:

> ORS 197.850 (6) Petitions and briefs must be filed within time periods and in a manner established by the Court of Appeals by rule.
>
> ORS 197.855 (4) "No continuance . . . shall be granted because of . . . lack of diligent preparation or attention to the case by any member of the court or any party."

Notwithstanding the ORAP rules and the Oregon Revised Statutes, the Clerk granted a five day extension ["CONTINUENCE"] [sic] of time to the affiliated and flawed lawyer to redraft and correct his mistakes at

the cost of prejudice upon the substantive Rights of the Petitioner-Relator . . . . This Petition for Writ of Mandamus is based in part on the unwillingness of the aforementioned Officers of the Court to follow the law as set forth in the Oregon Revised Statutes and perform the duty of administration of justice, as set forth in:

> ORS 1.025: "Duty of court and court officers to require performance of duties relating to administration of justice; enforcement of duty by mandamus.
>
> (1) Where a duty is imposed by law or the Oregon Rules of Civil Procedure upon a court, or upon a judicial officer, clerk, bailiff, sheriff, constable or other officer, which requires or prohibits the performance of an act or series of acts in matters relating to the administration of justice in a court, it is the duty of the judicial officer or officers of the court, and each of them, to require the officer upon whom the duty is imposed to perform or refrain from performing the act or series of acts.
>
> (2) Matters relating to the administration of justice include, but are not limited to, . . . and all other matters touching the conduct of proceedings in courts of this state.
>
> (3) The duty imposed by subsection (1) of this section may be enforced by writ of mandamus.

The Court of Appeals additionally failed to fulfill requirements of the law for Notifying [sic] the parties

of the established date provided for the scheduling of Oral Arguments [sic]:

> ORS 197.850 (7)(a) "The court shall hear oral argument within 49 days of the date of transmittal of the record (c) . . . The court shall schedule oral argument as soon as practicable thereafter."

The Court of Appeals deferred to the ORAP Rules 6.05 & 6.10 which do not allow self-represented individuals to speak before the Honorable Judge's [sic]. . . . [I]n so doing failed to provide the Petitioner-Relator with a Notice of established date as required by the Oregon Revised Statutes, summarily extinguish[ing] . . . any opportunity for the Petitioner-Relator to file a Motion to Present Oral Arguments . . . [T]his is a Constitutional [sic] discrepancy that has prejudiced the substantive rights of the Petitioner-Relator. . . .

The Petitioner-Relator possesses both a Constitutional Right [sic], and a Statutory Right [sic] to participate in Oral Arguments [sic], and the ORAP Rules [sic] that usurp and deny those Rights [sic] are unlawful and prejudice against the substantive Rights [sic] of the Petitioner-Relator.

The Petitioner-Relator did not receive honest, truthful, and complete legal adjudication in the Court of Appeals[,] . . . [I]n fact the self-represented Petitioner-Relator experienced bias and unequal representation of the law by the Court and the ORAP Rules [sic], as a symptomatic result of the alliance between the "For Profit" membership of the Oregon State Bar Association acting Under the Color of Law [sic] in collusion with the Administrators and Author-

ities [sic] of the Court to proffer, edit, and implement the ORAP Rules [sic] that usurp and abridge Constitutional Civil Rights [sic]. No basis at law exists . . . to establish and institute ORAP Rules by *ex post facto, per se* enactment which nullify and abridge the Constitutional Civil Rights [sic] of a self-represented litigant as the Petitioner-Relator. The only viable conclusion that can be drawn to define such usurpations points directly at the "For Profit" activities and associated corruption committed Under the Color of Law [sic] by the Oregon State Bar [OSB] Association in collusion with the Courts and the Oregon Justice Department. Evidence of this fact is supported by a significant volume of activities in the record at the OSB Assoc. and the Petitioner-Relator provides one such example herein, a Power-Point® [sic] presentation by the OSB 2016 Fall Continuing Legal Education and Social - ORAP Amendments. "App-1"

The Petitioner-Relator paid additional costs in the course of litigation for conventional filing and service, printing, binding, supplies, postage and the additional time and expense to expedite a burden of documentation. Contrast this with a Bar Association Attorney's e-file and e-service utilities provided by the Court, [which] grant[s] . . exclusive advantages the lawyers with an approximate 7 hours of additional time to complete submittals and then at a fraction of the cost per page to transact such documentation by simply pushing the send [sic] button on their computers. The Court needs to look no further than Federal District Courts that allow all litigants equal access.

[T]he Petitioner-Relator had no other option except . . . [to] leave . . . the proceeding and hire an OSB attorney to obtain access to Oral Arguments [sic]. Conferring ORAP . . . that support incongruities and burdens requiring the self-represented Petitioner-Relator to pay additional costs, endure censorship, and face a general nature of disrespect in seeking access to Equal Justice under the Law [sic] . . . breaches the Petitioner-Relator's Constitutional Civil Rights [sic]. Additional examples of disproportionate burdens and limitations upon the Petitioner-Relator exist. The Court Rules [sic] simply cannot provide exclusive benefits for Bar Association Attorneys [sic] and render unequal access for the same Rights and Privileges [sic] to the self-represented Petitioner-Relator. Unequal Rights and Privileges [sic] in the Oregon State Justice system are not merely minor inconveniences laden on the Petitioner-Relator's self-represented litigant status[;] . . . they exemplify unlawful violations of the Petitioner-Relator's Constitutional Rights [sic] to Equal Representation under the Law [sic].

Now therefore the Petitioner-Relator seeks to have the Supreme Court consider this Petition for Writ of Mandamus and affirm the attached "MOTION TO STAY" the pending Land Use Action [sic], that if enacted may harm the relative economic value in the Petitioner-Relator's real property. The Petitioner-Relator seeks to have the Supreme Court Order [sic] REVERSAL of the Respondent-Defendant's Lot of Record [sic] approval in this case. The Petitioner-Relator seeks to have the Supreme Court issue an Order [sic] requiring LUBA to revise and amend their finding and Rule [sic]: REVERSAL for reasons set

forth herein. The Petitioner-Relator seeks an Order [sic] of the Supreme Court to sustain the properly filed Motion to Strike the Respondent-Adverse Party attorney's Brief and additionally set forth an Order requiring the Court of Appeals to issue a revised Judgment requiring LUBA to REVERSE, and thereafter Order reimbursement to the Petitioner-Relator for all Court fees PAID. Furthermore[,] the Petitioner-Relator seeks an Order of the Supreme Court to Revise and Amend the ORAP Rules [sic] for the removal of all barriers to Equal Representation [sic] under the law including the nullification of any regulations that abridge and usurp the Civil Rights [sic] of the Petitioner-Relator proceeding as a self-represented litigant.

Conclusion

The Petitioner-Relator has no other avenue for legal recourse to resolve the issues presented in this Petition for Writ of Mandamus. Moreover, each and every issue raised herein have been previously Briefed [sic] to the Court and the burdensome cost of litigation together with a pending threat of diminution to the Petitioner-Relator's real property value have forced the legal actions hereby undertaken.

Respectfully Submitted:

_____

Paul Grimstad, Petitioner-Relator

Date: February 16, 2018

NOTE: THIS PETITION FOR REVIEW HAS BEEN EDITED FOR BREVITY AND CLARITY.

(AMENDED) PETITION FOR REVIEW (MARCH 20, 2017)

IN THE SUPREME COURT OF THE STATE OF OREGON

PAUL GRIMSTAD,

Petitioner
Cross-Respondent,
Petitioner on Review,

v.

DESCHUTES COUNTY,

Respondent,

and

DAN MAHONEY,

Respondent
Cross-Petitioner,
Respondent on Review.

S064773

Land Use Board of Appeals 2016035
A163405

Before: The Honorable, Timothy SERCOMBE, Presiding Judge, Honorable, Meagan A. FLYNN, Judge and Honorable, Rodger DeHOOG, Judge

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Introduction

Petitioner on Review, Paul Grimstad, respectfully asks the Honorable Justices of the Supreme Court to reverse the decision of the Court of Appeals in this case. The Petitioner filed an Appeal at LUBA [Land Use Board of Appeals] regarding a Lot of Record [sic] decision (ER-5, 6 & 7) issued by Deschutes County, Respondent. The applicant is Mr. Dan G. Mahoney, Intervenor-Respondent, is represented by Mr. Garrett Chrostek. The Land Use Board of Appeals (LUBA, hereafter) REMANDED the Decision [sic] of the Respondent by Final Order sustaining the Petitioner's Second, Third and Fourth assignments of Error. . . .

The Petitioner is a self-represented litigant in the Oregon Court of Appeals, [sic] whom [sic] experienced bias and prejudice by a lack of equal treatment in the ORAP [Oregon Rules of Appellate Procedure] . . . Equal Access to Justice [sic] in the Oregon Court of Appeals for self-represented citizens of the State, [sic] is a great concern of the people.

Statement of Historical and Procedural Facts

This case pivots on a primary fact that is undisputed by the parties, originating as a supporting document from the Lot of Record [sic] application submitted to Deschutes County. A 1973 Installment Land Sales Contract (ILSC, hereafter) (ER-4) is void of signed signatures and date. No second page exists as declared (ER-8) by the Deschutes County Senior Planner as well

as the admission of the Respondent, Cross Petitioner's Attorney at Oral Arguments before LUBA. The (ILSC) [sic] was the primary supporting document for the application and it is specifically deficient in three regards. The (ILSC) [sic] lacks signed signatures and the date of signing, which prohibits the use thereof, by Zoning Ordinance 18.04.030 (A) (3), (App-2). The (ILSC) [sic] is relied upon by the applicant to support the legal description of two out of a total of three lots which is prohibited by the same Ordinance [sic], and the (ILSC) [sic] displays a statement indicating that additional parcels are listed on the back of (page two) [sic], where no second or back page was provided or available constituting a third prohibition, where a single document is relied upon to support the establishment of multiple parcels of land.

The Respondent's Senior Planner [sic] responsible for the decision did not perform due diligence in review and authentication of the applicant's documentation upon intake and acceptance of the (ILSC) [sic] as the primary support element of the Respondent's application. Facts reveal that the Senior Planner simply cut and pasted the application verbatim directly into his approval letter, [sic] following an email request for a copy of the applicant's document in . . . [sic] encompasses the litigation and the entire discourse hinges on the primary fact of this one prohibited document. . . .

During the course of settling the Record on Appeal, the Petitioner wrote a letter (App-3) to the Custodian of the Record [sic] requesting the transport of a full scale survey map to LUBA Oral Arguments [sic], [sic] to support of the Petitioners [sic] case. The Custodian [sic] failed to transport the survey as requested. Each

and every Board [sic] member and the parties were forced to halt the proceeding and closely stare at the reduced and truncated photocopy . . . that was provided with the Record, and thereupon the parties concluded that the photocopy reduced version was so diminished as to be undecipherable.

LUBA issued a Final Order that REMANDED the Decision [sic] of the Respondent . . . [but] concluded that the deficient (ILSC) "is one of the definitional requirements for a Lot of Record." . . . [This] makes it a violation of law where documents without signatures and date are prohibited by law, a result that should require LUBA to REVERSE under OAR 661.010.0071 (1)(c) (App-2) . . . .

During the course of litigating this case before the Court of Appeals, the Petitioner experienced bias and prejudice from the Administrators and the ORAP Rules [sic]. The effect of the ORAP Rules [sic] and treatment received from Administrators [sic] upon self-represented litigants by contrast to that of a Bar Association Attorney (BAA, hereafter) show a pattern of prejudice and disenfranchisement. The Court of Appeals provided the Respondent Cross-Petitioner's Attorney [sic] a Continuance [sic] to allow for significant rewrite of his Brief [sic] and also delayed Service [sic] to the Petitioner. The Petitioner[,] upon learning that the Respondent Cross-Petitioner's Attorney [sic] had failed to provide proper legal and authorized Service [sic] of his Brief [sic] within the binding time constraints of the Expedited Proceedings [sic][,] filed an (Amended) [sic] Motion to Strike.

Thereafter the Petitioner received an Order [sic] from the Commissioner of the Court, [sic] Denying [sic] the Motion to Strike but it declared that the:

"petitioner potentially is prejudiced in the manner in which respondent initially served petitioner with his brief." The Petitioner filed a Petition for Reconsideration but was denied by Order of the Honorable Presiding Judge [sic]. These actions establish the effects of bias and prejudice upon the Rights [sic] of the self-represented litigant by contrasting the relationship and the relative advantages provided to Respondent Cross-Petitioner's Attorney an active member, affiliated as a Bar Association Attorney (BAA, hereafter).

The Petitioner identifies an alliance and affiliation between the Oregon Court of Appeals and the (BAA) [sic] as collective members of the Oregon State Bar Association (OSBA, hereafter). The ORAP Rules for Judicial Review [sic] of a LUBA case are defined as Expedited Proceedings under ORS 197.850 (6) and ORS 197.855 (4) wherein, "No continuance . . . ;" is allowed as well as ORS 197.850 (7)(a) and (b); and ORAP Rule 4.70, "NO CONTINUANCES," (App-2). The Court of Appeals conferred special treatment upon the (BAA) [sic] by issuing a Continuance [sic] for the exclusive benefit of the affiliated and associated member, allowing him to fix mistakes and reset the deadline for Service [sic].

The ORAP Rules in the Court of Appeals restrict a self-represented citizen from the Constitutional Right to Speak, and by contrast allow only (BAA) [sic] such privilege. The Oregon Court of Appeals additionally did not provide the parties with the statutorily required scheduled date establishing a time set forth for Oral Arguments [sic]. As a result the Petitioner was denied an opportunity to petition the Court for the Right [sic] to participate in Oral Arguments [sic].

The only way that a self-represented citizen can achieve Equal Representation [sic] under the Law [sic] . . . under the current ORAP Rules [sic] and participate in Oral Arguments [sic] before the Honorable Judges . . . requires payment of additional Costs [sic] to Purchase Justice [sic] by employing the professional services of a (BAA) [sic]. Additional Costs [sic] to Purchase Equal Representation [sic] under Law [sic] in the ORAP Rules [sic] are also burdened upon the self-represented citizen by the requirement to file and serve documents conventionally.

Conventional filing and service requires the self-represented litigant to purchase printing, paper supplies, requirement for additional copies (second sets), photocopying, expediting, and mail or delivery as compared to (BAA) [sic] whom enjoy the privilege of e-Filing and e-Service utilities allowing one touch on their computer key board for such transactions. The Constitutional Civil Rights [sic] of self-represented citizens are disenfranchised by the ORAP Rules [sic] that restrict the Right of Free Speech [sic] and require additional costs to purchase Equal Representation [sic] under the Law [sic] . . . .

The Petitioner is extreme[ly] [sic] concerned by the troubling fact that this judgment if allowed to stand will cause the Petitioner to endure an economic loss in real property values and additionally face the very real threat of forced personal bankruptcy by virtue of the Court of Appeals Decision [sic] awarding costs. . . .

Conclusion

Lawful adjudication under reasonable scrutiny of the applicable Zoning Ordinance [sic] should have

triggered REVERSAL at LUBA. Now claims and allegations have been introduced concerning the deprivation of a self-represented citizen's Civil Rights [sic] in litigation before the Oregon Court of Appeals. . . .

The Petitioner in this case is a self-represented citizen putting forth substantive claims and allegations with regard to considerations of Access to Justice [sic] and Equal Representation [sic] under the Law [sic]. These are concerns of great importance to defend the Civil Rights [sic] afforded to all the people. . . .

The Petitioner respectfully requests the Honorable Justices of the Supreme Court grant this Petition for Review.

Respectfully Submitted:

_____

Paul Grimstad, Self-Represented

Dated: March 20, 2017

NOTE: THIS MOTION FOR RECONSIDERATION HAS BEEN EDITED FOR BREVITY AND CLARITY.

PETITIONER'S MOTION FOR RECONSIDERATION (DECEMBER 22, 2016)

IN THE COURT OF APPEALS
OF THE STATE OF OREGON

PAUL GRIMSTAD,

Petitioner,

v.

DESCHUTES COUNTY,

Respondent.

and

DAN MAHONEY,

Intervenor-Respondent.

A163405

Land Use Board of Appeals Case No. 2016-035

Expedited Proceeding Under ORS 197.850 & 197.855

. . . . The Petitioner filed and completed service upon the parties of an (Amended) Motion to Strike with supporting attachments, a copy of which is attached hereto . . . .

The Petitioner[']s Motion to Strike is founded upon the Intervenor-Respondent's failure to legally file a correct Combined Answering and Cross-Opening Brief, and provide lawfully perfected Service of said document in a timely manner upon the Petitioner.

The Oregon Revised Statutes and the ORAP Rules define an "Expedited Proceeding Under ORS 197.850 & 197.855" for Judicial Review [sic] of land use [sic] Rulings, [sic] as a lawful proceeding with time requirements established by the Court requiring firm deadlines without Toll of the Clock [sic], or Continuance [sic]. The merits of the Petitioner[']s Motion to Strike clearly define the rule of law in the ORS statutes and the ORAP Rules [sic] demonstrating the irredeemable error of the Intervenor-Respondent by failing to provide legally verifiable and timely Service [sic] . . . .

The Commissioner of the Court issued an Order to Deny . . . the Petitioners Motion to Strike and offered the Petitioner a small extension of time in the proceedings of the case as *quid pro quo* . . . for providing the Intervenor-Respondent a *[d]e facto* Continuance [sic]. The Petitioner points out in the Motion to Strike that the rules of the Court disallow any continuances . . . .[:]

> ORAP Rule 4.70 . . . <u>On judicial review of a LUBA decision . . . in the Court of Appeals, no continuance or extension shall be granted as to the time specified by statute for transmission of the record, the time specified by these rules for filing the cross-petition and the briefs, or the time set for oral argument</u> . . . ."

The Commissioner [sic] of the Court acknowledged the existence of prejudice upon the substantive rights of the Petitioner by the failure of the Intervenor-Respondent to provide Service [sic] to the Petitioner, however issued an Order to Deny Petitioner[']s Motion to Strike. The Commissioner's [sic] Order to Deny [sic] states that the "Petitioner potentially is prejudiced by the manner in which respondent initially served petitioner with the brief." . . .

The Commissioner [sic] should not submit authority in governance to deny the substantive rights of the Petitioner by supporting a Continuance [sic] of time which allows an advantage in litigation to the posture of the Intervenor-Respondent while overlooking the Appellate Court [sic] ORAP Rule 4.70, NO CONTINUANCE, *supra*. . . .

The Court Commissioner, Administrators and the Intervenor-Respondent, affiliated as such, are attempting to lead the Petitioner to believe that a delay of this Expedited Proceeding was somehow justified for a Continuance [sic] of time, [sic] because of this system called "e-Service" being somehow latently unavailable and or otherwise non-functioning. The Petitioner is . . . a self-represented litigant whom is restricted from and rejected by the Court's ORAP Rules [sic] from using the "e-Service" system and therefore neither bound by sanction and otherwise immune from any deleterious or other effect thereof. As so defined, the affiliated parties of the Court and the opposing Attorney [sic] cannot subject the Petitioner to such an excuse to allow for a Continuance [sic] because it is irrelevant and not applicable to self-represented litigants in consideration of equal representation under the law . . . .

[P]roper legal Filing [sic] and Service [sic] were always available to the Intervenor-Respondent simply by going to the public window at the Court Records Department [sic] if necessary and the obvious option of sending [by] standard 1st Class US [sic] Mail. The Court purportedly issued some sort of decree pertaining to the said "e-Service" system being unavailable, however no such notice was ever . . . provided to the Petitioner.

In consideration of procedural due process, reasonable accommodation should have been afforded by the issuance of a Notice [sic] from the Court in advance of a change in the Rules [sic] that might cause a detrimental effect on the Petitioner[']s position in litigation. The Court Administrator [sic] failed to provide the Petitioner with any advanced notice of delay or Continuance [sic] with regard to a filing and service system that exclusively apply to and therefore only effect members of the Bar Association . . . affiliated Attorney's [sic]. . . .

The purported delay in the Court proceedings concerning the "e-Service" system apparently began on or about November 30, . . . the same day as the deadline date established and set-forth by the Court for the Intervenor-Respondent to file and Serve [sic] the subject brief upon the Petitioner. Any theory which attempts to support the delay and Continuance [sic] in this issue cannot . . . provide the affiliated Intervenor-Respondent a legal route to unilateral advantage in litigation and likewise provide an opportunity to simply skate past the established Court [sic] deadline. . . .

The Petitioner[,] therefore, correctly summarizes the circumstances which clearly display prejudice

upon the Petitioner . . . by the minimal allowance of only four days to draft, review, print, file and provide Service [sic] of such Answer and Cross-Petition Brief. The Court should consider the gravity of the task required to produce such an Answer and Cross-Petition document as a legal exercise upon the shoulders of an unaffiliated, self-represented individual . . . and contrast by comparison the opposing affiliated professional attorney whom on the other side of this equation was gifted by the Court Clerk [sic] with a five day Continuance [sic], which ultimately resulted in a total of 26 days allowance for the Intervenon-Respondent to elaborate on his documentation in this litigation.

ORAP Rule [sic] 5.80 . . . (copy attached . . .) provides a specified and limited allowance of only 21 days for the Intervenor-Respondent to File [sic] and provide Service [sic] of an Answer and Cross Opening Brief, not the 26 days that the Court Clerk [sic] awarded to the benefit of the opposing affiliated attorney. . . . The Petitioner properly filed a Motion to Strike, however the Commissioner [sic] failed to correctly interpret the Rules [sic] and the Law [sic] by issuing an Order to Deny.

Now therefore the Petitioner brings this Motion For Reconsideration, and prays for the Honorable Judges of the Court of Appeals to consider only the facts in evidence pertaining to this issue with adherence to applicable Law [sic]. The Petitioner therefore seeks Reversal of the Commissioner's [sic] Order to Deny and the issuance of an Order Sustaining the Petitioners Motion to Strike, by its entirety.

Respectfully Submitted:

Paul Grimstad, Petitioner, *Pro se*

* * *

[Relevant excerpt from ORAP 5.80:]

BRIEF TIME CHART 1

CASE TYPE	Opening Brief	Answering and Cross-Opening Brief	Reply Brief	Answering Brief to Cross-Assignment of Error	Cross-Respondent's Answering Brief	Cross-Appellant's Reply Brief	DATE FROM WHICH SCHEDULE IS CALCULATED The opening brief due date is calculated by counting from the date that any of the following has occurred. See chart for appropriate number of days. The answering brief due date is calculated by counting from the date the opponent's brief was filed. *See* ORAP 1.35(1)(d) regarding the date of filing.
Land Use Board of Appeals (LUBA) Land Conservation and Development Commission (LCDC)[3]	21	21	0				Date petition for judicial review filed.

NOTE: THIS AMENDED MOTION TO STRIKE HAS BEEN EDITED FOR BREVITY AND CLARITY.

AMENDED MOTION TO STRIKE (DECEMBER 5, 2016)

IN THE COURT OF APPEALS OF THE STATE OF OREGON

PAUL GRIMSTAD,

Petitioner,

v.

DESCHUTES COUNTY,

Respondent.

and

DAN MAHONEY,

Intervenor-Respondent.

A163405

Land Use Board of Appeals Case No. 2016-035

Expedited Proceeding Under ORS 197.850 & 197.855

. . . A party may serve a Brief [sic] via 1st class [sic] mail[,] however, "Time Being of The Essence", [sic] the Court cannot simply allow the Intervenor-Respondent an advantage to send out of time [sic], late mail and inflict a procedural disadvantage upon the Petitioner. The Court must consider the facts

that surround the legally required timing for service and certification thereof . . . .

By inspection of (Appendix 1), [sic] the Court should conclude that the Administrator [sic] has wrongfully allowed the Intervenor-Respondent a period of 5 days to correct the Filing [sic] and properly serve documents upon the Petitioner. Should the Court allow this unsupported continuance for the benefit of the opposing party to meet the established Rules [sic] of the Court, the substantial Rights [sic] of the Petitioner will be summarily Prejudiced [sic].. . . If the Court allows the Intervenor-Respondent to fix this failure of proper legal Filing [sic] and Service [sic] of said documents, any changes to his original submittal will land outside the required time stamping and will therefore accordingly be nullified at law. . . .

Petitioner directs the Court to recognize the fact that under ORAP Rule 1.30; contact information for an attorney litigant both requires and allows the inclusion of email transmission, however[,] does not support the legal transference of any documents via electronic means or email to self-represented parties. In this case the Intervenor-Respondent specifically Certified [sic] to the Court that Service [sic] upon the Petitioner was completed by something defined as "e-Service." The Petitioner, has no specific knowledge of the use or process of e-Service, other than the rules that apply to the Court; ORAP Rule 16.45 ELECTRONIC SERVICE (3), *supra.* Therefore the Intervenor-Respondent failed to properly Serve [sic] said documents upon the Petitioner as declared to the Court under Certification [sic] and within the Time [sic] sensitive [sic] requirements of the law. The subject document in this Judicial [sic] process before

the Court, [sic] is mandated by the specific legal requirement that the same be Expedited [sic] and Served [sic] on or before the date required by the Court . . . in a time constrained [sic] manner, and that in absence of such proper legal Service [sic], the same will render Prejudice [sic] the Substantial Rights [sic] of the Petitioner. The Petitioner points out to the court that no other argument is hereby brought forth concerning the Court's admonishment of purported mistakes that exist in the document submitted by the Intervenor-Respondent, with the exception being this Motion to Strike, based upon the lawfully required Service [sic] upon the Petitioner [sic] in accordance with the Rules [sic] set-forth by the Court, and recited herein.

Any allowance by the Court to provide the Intervenor-Respondent the opportunity to now hereafter change a printed and Certificated submission to the Court amounts to a Continuance of Time inuring to the benefit of the Intervenor-Respondent. ORAP Rule 4.70 . . . absolutely does not allow Continuances of Time regarding the Expedited definitions involving Land Use Proceedings, and that is exactly what the Court would be doing by providing the Intervenor-Respondent an opportunity to correct the Filing of said Brief.

Rule 4.70 NO CONTINUANCES (1), <u>On judicial review of a LUBA decision, * * * , in the Court of Appeals, no continuance or extension shall be granted as to the time specified by statute for transmission of the record, the time specified by these rules for filing the cross-petition and the briefs, or the time set for oral argument, * * * .</u>"

It is worthwhile for the Petitioner to highlight the fact that under Agency Rules;

OAR 661-010-0030 Petition for Review (1) Filing and Service of Petition: * * * Failure to file a petition for review within the time required by this section, and any extensions of that, * * *, shall result in dismissal of the appeal and forfeiture of the filing fee and deposit for costs to the governing body. * * *.

[T]he Petitioner and therefore likewise the Intervenor-Respondent must meet strict time limits and the failure to do so result in dismissal. It is likewise worthwhile to point to the fact that when Oregon State law makers [sic] enacted the Land Use Appeal process into law, they placed strict time constraints and firm deadlines on all parties, including the Court. Similarly, all Motions [sic] filed in The Court of Appeals of The state of Oregon for a Land Use [sic] case are required to include the caption entitled; "EXPEDITED PROCEEDING" which in and of itself is a definition of "Time Being of The Essence."

For the reasons set forth above, the Intervenor-Respondent's Combined Answering and Cross-Opening Brief should be deemed null[,] and the improper Service of the defective document should not be considered by the court for the allowance of correction or reconfiguration. The Court should dismiss the Intervenor-Respondent's said Brief. . . .

Respectfully Submitted:

_____

Paul Grimstad, Petitioner, *Pro se*

Dated: December 5, 2016

NOTE: THIS BRIEF HAS BEEN EDITED FOR BREVITY AND CLARITY.

PETITIONER'S OPENING BRIEF AND EXCERPT OF RECORD (SEPTEMBER 29, 2016)

IN THE COURT OF APPEALS
OF THE STATE OF OREGON

PAUL GRIMSTAD,

Petitioner,

v.

DESCHUTES COUNTY and DAN MAHONEY,

Respondent.

A163405

LUBA 2016-035

Appeal from the Ruling issued by the
Land Use Board of Appeals

Statement of the Case

Nature of the Action and Relief Sought

This is an appeal of a land use approval decision issued by Deschutes County for a Lot of Record Determination, File No. 247-15-00021s-LR, and the resulting Final Order by the Land Use Board of

Appeals (LUBA) ruling the Appeal as Remanded. Petitioner Appellant seeks to elevate and correct LUBA's Ruling pursuant to the matters at law which support Reversal.

Nature of the Judgment

The nature of the judgment is the Land Use Board of Appeals Final Order which resulted in a Remanded ruling of the Respondents Decision. Basis of appellate jurisdiction Appellate jurisdiction is governed by the provisions of ORS 197.850.

Effective Date for Appellate Purposes

Final Order by the Land Use Board or Appeals, September 29, 2016. The Petition for Judicial Review of LUBA Final Order was served and filed on October 20, 2016.

Questions Presented on Appeal

a. Did the Land Use Board of Appeals error [sic] by ruling that a Property Line Adjustment expired and concurrently circumvent defining the legal method which allows the property lines to exist in the identical PLA adjusted position? . . .

c. Did the Land Use Board of Appeals error [sic] by issuing a Remanded ruling, when OAR 661-010-0071(1)(c), [sic] directs the issuance of a Reversal, pertaining to the Respondent[']s Decision which relied upon a "1973 Installment Land Sales Contract," (ER-4) the use of which, " * * * is prohibited as a matter of law[?]"

[. . .]

Summary of Argument

The Land Use Board of Appeals incorrectly ruled that a Property Line Adjustment completed in 1983 expired. However[,] the facts demonstrate that the original applicants completed the requirements of Deschutes County's Property Line Adjustment application form and thereafter every detail of the subject Property Line Adjustment have come to pass without legally authoritative reversal or any other public notification. . . . [C]onclusions reached by LUBA supporting the expiration theory for the original Property Line Adjustment fall short of proving any substitute legal means for the relocation of the original property line, and therefore the Petitioner argues that the Property Line Adjustment did not in fact expire, and remains the origin and only means by which the subject property lines still exists to this day.

LUBA failed to issue a ruling of Reversal where the Respondent[']s Decision was based on the verification of two separate parcels of land being defined by and reliance upon only one single "1973 Installment Land Sales Contract." . . . As a matter of law, this is a substantive violation of Deschutes County Zoning Ordinance, Section 18.04.030(A)(3). . . . Additionally, the subject Installment Land Sales Contract (ILSC) does not include the signatures and signing date, as required by law. Use and reliance upon the 1973 ILSC fails to meet the definitional requirements of the underlying Deschutes County Zoning Ordinance and therefore prejudice the substantive rights of the Petitioner.

LUBA failed to render a decision of Reversal, as defined by their Rules at law, which states in; [sic]

"OAR 661-010-0071 (1)[:] "The Board shall reverse a land use decision when: (c) The decision violates a provision of applicable law and is prohibited as a matter of law."

Statement of Facts

A Property Line Adjustment . . . application was completed in 1983 by the sole owner of all subject properties. The owner completed all required elements such as a land survey . . . to fulfill Deschutes County's application process which thereupon adjusted the parcels shapes and sizes of all the land, now the nexus of this appeal, as it still exists to this day. Six months after completion of the 1983 Property Line Adjustment (PLA), Deschutes County issued a building permit . . . for the adjoining parcel of land (tax lot 900) which had been reduced in size by the PLA, ratifying the Property Line Adjustment as it currently exists. The presiding statute in regard to Property Line Adjustments is ORS 92.010 (12) [which states:] "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." (underlined for emphasis)

Deschutes County relied upon a 1973 Installment Land Sales Contract (ILSC) . . . to support the verification of two separate parcels of land. Additionally, the facts establish and substantiate . . . that the 1973 ILSC lacks the signatures and dates of the parties, a violation of the law pursuant to the Deschutes County Zoning Ordinance . . . .

Section 18.04.030 [of the Deschutes County Zoning Ordinance] defines a "lot of record" as: A) "A lot or parcel * * * which was created by any of the

following means: (sec. 1 & 2 omitted) 3) By deed or contract, dated and signed by the parties to the transaction, containing a separate legal description of the lot or parcel, * * * If such instrument contains more than one legal description, only one lot of record shall be recognized * * *;"

Assignment of Error

LUBA caused an error by ruling that a Property Line Adjustment simply expired, when in fact the record of Deschutes County land use action pertaining to the subject properties shows the issuance of a building permit . . . on (tax lot 900) [sic] a conjoined parcel of property that ended up with a reduction in size by the adjustment of the 1983 PLA. The 1983 PLA . . . relocated a property line as shown on the recorded survey map . . . , which still exists to this day as the nexus of this Appeal. Deschutes County never moved to reverse the original PLA by formal legal means.

LUBA's Final Order rules that the 1983 PLA expired, yet that position is in contention with the fact that the adjusted line still exists to this day. In the absence of a legal land use action to reverse the 1983 PLA, an adjusted property line that still exists today . . . . The 1983 PLA moved the property line[,] and nothing has changed to undo that land use action. The Land Use Board of Appeals Final Order is in error by issuing a Remanded ruling when it should have issued a ruling of Reversal, subject to OAR 661.010.0071(1)(c)[,] *supra*. . . . where the Respondent included and relied upon a 1973 Installment Land Sale Contract (ILSC)[,] . . . which lacks the necessary

legal requirement of being dated and signed by the parties to the transaction. . . .

The Respondent used a single ILSC . . . to define two separate parcels of land in reaching for a "lot of record" Decision. The Petitioner points to LUBA's error regarding the use of ONE, only ONE Installment Land Sale Contract . . . to verify TWO separate parcels of land. (Underline for emphasis) Facts in the record plainly expose Deschutes County's Decision by using the one single ILSC . . . for the defining document to verify lot 2 and also lot 3. . . . LUBA's error is a result of a failure to recognize and adjudicate the Respondents use of only one single ILSC . . . document for the verification of multiple lots, resulting in a Decision which, pursuant to OAR 661.010.0071(1)(c)[,] . . . requires LUBA to REVERSE not Remand. (Underline for emphasis)

Argument

This appeal brings forth substantive legal issues that prejudice the rights of the Petitioner. The Land Use Board of Appeals issued a Final Order and Opinion that recognized the survey map . . . from the application of the 1983 Property Line Adjustment (PLA) . . . recorded in Deschutes County, which defines (tax lot 900) [sic] as approximately 10 acres prior to the implementation of the PLA. . . .

The Respondent and LUBA's ruling attempt to declare that the PLA expired because the application was not properly recognized by the recording of deeds within 12 months of the date of application, however Deschutes County recognized the PLA by issuing the building permit and thereby ratifying the property line configurations at a point six months following

the PLA application date. This governmental act of issuing a building permit is a matter at law that can only be accomplished by the Zoning Department legal verification of the building site, parcel size, survey shape and surveyed dimensions. The issuance of the subject building permit is a process that is completely within and under the jurisdiction of Deschutes County, the Respondent. LUBA's ruling fails to demonstrate in the absence of the existence and maintenance of the original PLA, how is it that these parcels of land were legally adjusted. . . .

Similarly, LUBA has failed to demonstrate at law how the existing property lines can exist in the position established by the PLA, and at the same time reach a conclusion that the PLA simply expired. LUBA issued a Remand to allow the "lot of record" application to return to the County for reconsideration, however the Petitioner argues that such a ruling for Remand sides in favor of the Respondent while at the same time failing to resolve the contention that exists by the fact that the property line still matches the 1983 PLA configuration. LUBA's ruling attempts to circumvent the conflict between the originating and historic PLA, the affect of which still exists to this day and their Opinion[,] which purports . . . that the PLA simply expired. . . . Petitioner additionally argues the fact that Deschutes County failed to affect any legal recourse or attempt to reverse the original PLA.

At this point in time more than 30 years past, it is preposterous to advance a theory that the original PLA simply expired. LUBA concluded that the PLA expired by virtue of the fact that deeds were not recorded within 12 months of the original applica-

tion, however the Petitioner argues that the facts prove otherwise. A close examination of the PLA application . . . displays the following: "NOTE: THE DEEDS SHALL BE IN THE SAME NAME FOR ALL PARCELS THAT ARE ADJUSTED OR CONSOLIDATED . . . ." . . .

The Petitioner argues that the Property Line Adjustment application form does not state any terms threatening reversal in the event that deeds were delayed in the timeliness of recording. Notwithstanding the fact that in this case . . . "the deeds were in the same name for all parcels that are adjusted or consolidated[.]" Considering the facts and misconstrued conclusions of the opposing parties, the Petitioner argues that the PLA was the only means by which the property lines were legally adjusted. The facts established, together with the present day existence of the very same property lines in identical location to the originally adjusted lines of the 1983 PLA, leave no legal alternative means to conclude the PLA [had] simply expired.

Therefore no other logical conclusion can be advanced other than the fact that the 1983 Property Line Adjustment . . . did not expire, but still exists. In the final analysis it is worthwhile for the Petitioner to point out that the only plausible reasoning behind the Respondent's urgency and emphasis on the futile effort to vacate the PLA . . . is simply the fact that . . . it would be the only way to circumvent the insurmountable controlling definition at ORS 92.010(12) supra, [sic] which would otherwise immediately extinguish the Applicant's [sic] legal consideration to create a completely new parcel of land under these circumstances.

LUBA put forth a Final Order and Opinion that issued a Remanded ruling, while at the same time sustained the Petitioner's arguments and assignments of error . . . regarding the Respondent's reliance and inclusion of a[n] ILSC . . . that was knowingly void of the legally required date and signatures of the parties. . . .

The Petitioner has repeatedly pointed to the subject violation at law, but nevertheless LUBA referred to the ILSC . . . by stating that the document merely lacked the necessary signatures and dates as required, then going on to describe and dismisses the substantive violation of the law and necessary fulfillment of agency administrative rules that require Reversal. . . . Similarly, LUBA concluded in error the allowance of two lots being verified by only one ILSC. . . . Again, LUBA sustained the Petitioners assignment of error . . . regarding this violation of the law, yet again, simply sidestepping the administrative rules OAR 661.010.0071(1)(c) *supra*, that require Reversal.

This violation of the law is not merely an issue described by LUBA allowing the basis for reconsideration and Remand. . . . LUBA had significant evidence from the Petition for Review, Oral Arguments [sic] and the Record [sic], to be completely aware of the exposed and acknowledged violations of the law. The substantive rights of the Petitioner have been overlooked by LUBA's ruling granting a Remand which resulted in improperly shifting evidence of illegality into an opportunity for the Respondent " . . . to adopt more adequate findings . . . "

The Record is fully supported by substantial evidence which was established and founded on docu-

mentation that violates DCZ Ordinance Sec. 18.04.030, *supra* . . . and therefore requires LUBA to Reverse pursuant to; OAR 661.010.0071(1)(c). . . . A review of LUBA's administrative rules under OAR 661.010. 0071(1)(c) *supra*, shows that the rules are definitively divided as to matters that shall be ruled a Reversal and matters that shall be ruled Remanded. The Land Use Board Appeals hand down a Remanded ruling for this Appeal in contrast to and contention with OAR 661.010.0071 *supra*, wherein known and declared violations of the law together with evidence that is prohibited as matter of law have been allowed to escape reasonable jurisprudence that would otherwise be definitively ruled as a Reversal.

Conclusion

The Petitioner presented the Land Use Board of Appeals with evidence and testimony of the facts established in this case and thereby recited the relative nature of those facts as they pertain to the law. The facts include the exposure of known and acknowledged violations of the law, such as the Respondents use and reliance upon the 1973 Installment Land Sales Contract, a single key document that was used to verify the definition of two separate parcels of land, while the same document fail[ed] . . . to portray the necessary legal requirements that such documents be dated and signed by the parties to the transaction.

Unlawful conclusions reached by the Respondent and LUBA displaying and embracing violations cannot be diminished by merely overlooking facts . . . The Petitioner brings forth two serious examples which define violations of the law in regard to the

use and reliance on the flawed 1973 Installment Land Sales Contract. Those facts should have rendered a ruling pursuant to OAR 661.010.0071(1)(c), [*supra*], requiring the Board to issue a Reversal and not a Remand.

The Petitioner's substantive rights under the law were first violated when the Senior Planner [sic] for Deschutes County failed to follow the law and knowingly circumvented defining definitions of the Deschutes County Zoning Ordinances to reach for a "lot of record" Decision of Approval. The Petitioner has exposed clear examples of injustice to the opposing parties in a civil manner from the very onset of this Appeal process as similarly evident by this move to the Court of Appeals for Judicial Review [sic] seeking impartial and proper adjudication.

. . . Simply put, the Land Use Board of Appeals has attempted to have it both ways, while on one hand sustaining the Petitioners assignment of error regarding the substantive violations of law exposed in key evidence, yet issuing a Final Order and Opinion benefiting the Respondent and Applicant with another run at validation. LUBA's ruling is a mix of equal opposites and contrasting issues including known violations at law and opposing conclusions, which in the end deliver substantive prejudice upon the rights of the Petitioner. The Petitioner therefore respectfully prays for the honorable Court of Appeals to hand down an order directing LUBA to Reverse the Respondent[']s Decision.

Respectfully Submitted,

_____

Paul Grimstad, Petitioner, *Pro se*