

1 record for insertion into three large three-ring binders to arrive at a product seen at the Josephine
2 County Planning Office and the Josephine County Legal Counsel's office. We wonder if LUBA
3 received the record of proceedings in loose pages contained in a cardboard box? If not, we did not
4 receive a copy of the original as submitted to LUBA.

5 **Objection 3. Authority: OAR 661-010-0026(2)(a)**

6 A major problem is the record does not include all materials included as part of the record
7 during the proceedings before the final decision maker.

8 OAR 661-010-0026(2)“(a) The record does not include all materials included as part of the
9 record during the proceedings before the final decision maker. The omitted item(s) shall be
10 specified, as well as the basis for the claim that the item(s) are part of the record.”

11 Omitted Item 1

12
13 Missing 58 pages of written testimony from Mike Walker, Lead Petitioner (February 5, 2007)
14 to the Josephine County Rural Planning Commission (RPC) for Item 16.

15 Josephine County's history is mixed as it pertains to a citizen's written testimony being
16 "placed before" a hearing body in a land use proceeding. In many cases, especially for complex
17 proposals involving demanding testimony, the testifier(s) will likely lose some procedural issue to
18 their disadvantage (e.g., limited time to prepare testimony, standing and/or party status not accepted,
19 written testimony not in record, written testimony in the record but not considered in detail,
20 testimony rejected, missed deadlines, excessive costs, etc.). <http://www.jeffnet.org/~hugo/FTR3.htm>

21 In this case the official record of proceedings used by the RPC was never know by the parties
22 as no list of the record of proceedings was developed prior to each of the four public hearings before
23 the RPC. For example, petitioner Mike Walker traveled on two occasions to the Josephine County
24 Planning Office to review the record prior to a public hearing before the RPC. The “record” he was
25 shown for review was the entire file for the subject property for the approximate last decade and one-
26 half. The file was in four to five medium sized cardboard boxes without any identification of what
27 was part of the official record of proceedings for the 2006 - 2007 RPC public hearings. The record
28 of proceedings before the RPC was only developed after the LUBA appeal. Also, the minutes of
the applicable RPC hearings, unlike hearings before the Josephine County Board of Commissioners
(BCC), do not have a list of documents (exhibits) entered into the record.

1 It is unknown why the February 5, 2007 written testimony from Mike Walker is missing from
2 the record of proceedings. However, the two points of order on the title page of Walker's omitted
3 written testimony are captured almost in quoted detail in the minutes of the RPC's February 5, 2007
4 public hearing. Rec 1,219

5 Petitioners can provide a hard copy of Omitted Item 1 if needed.

6 Omitted Item 2

7
8 Finding III.H. Findings of Fact (Rec. 63) follows in relevant part:

9 “ * * * The Board takes judicial notice of the documents, studies, testimony and legislative
10 intent for the Internal Rate of Return System to identify forest lands in Josephine County as
11 they apply to the subject property. The Board also considered the background documents on
12 the adoption of the IRR rating system as well as the objections submitted to the adequacy of
13 the system. * * *”

14 Missing records include the documents, studies, testimony and legislative intent records for
15 the Internal Rate of Return System **that the Board took judicial notice** of to identify forest lands
16 in Josephine County as they apply to the subject property.

17 Missing records include the background documents on the adoption of the IRR rating system
18 as well as the objections submitted to the adequacy of the system **that the Board considered**.

19 Omitted Item 3

20 **Authority: OAR 661-010-0025(2) & (3) in relevant part:**

21
22 OAR 661-010-0025"(2) Transmittal of Record: The governing body shall, within 21 days
23 after service of the Notice on the governing body, transmit to the Board a certified copy of
24 the record of the proceeding under review. . . .”

25 OAR 661-010-0025"(3) Service of Record: Contemporaneously with transmittal, the
26 governing body shall serve a copy of the record, exclusive of large maps, tapes, and difficult-
27 to-duplicate documents and items, on the petitioner or the lead petitioner, if one is
28 designated. . . .”

1 **Authority: OAR 661-010-0075(2)(b)(A), (C), & (D) in relevant part:**

2 OAR 661-010-0075(2)(b)“(A) Any document filed with the Board, other than the record as
3 provided in OAR 661-010-0025(3), or the record after withdrawal for reconsideration as
4 provided in OAR 661-010-0021(6), must also be served on all parties contemporaneously.
5 . . .”

6 OAR 661-010-0075(2)(b)“(C) Service copies of documents other than the Notice or the
7 record shall include a certificate showing the date of filing with the Board (see Exhibit 5).”

8 OAR 661-010-0075(2)(b)“(D) Documents filed with the Board shall contain either an
9 acknowledgement of service by the person served or proof of service by a statement certified
10 by the person who made service of the date of personal delivery or deposit in the mail, and
11 the names and addresses of the persons served (see Exhibit 6).”

12 **Authority: OAR 661-010-0075, Exhibit 6 in relevant part:**

13
14 “. . . I hereby certify that I served the foregoing [NAME OF DOCUMENT] for LUBA No.
15 _____ on [DATE] by mailing to said parties or their attorney a true copy thereof
16 contained in a sealed envelope with postage prepaid addressed to said parties or their attorney
17 . . .”

18 Per the Transmittal of Record of Proceeding, LUBA No. 2008-224, from Steven E. Rich,
19 OSB # 80099, Josephine County Legal Counsel, dated April 23, 2009, Rich served a copy of the
20 Record of Proceeding “CERTIFIED TO BE A TRUE COPY OF THE ORIGINAL”, to Mike
21 Walker, Lead Petitioner.

22 Original submitted colored written testimony should be part of the original record of
23 proceeding when necessary to fully understand the submitted testimony. For example, black and
24 white copies of original colored maps and aerial photographs that are unintelligible per the meaning
25 of the testimony are valueless and make the items/exhibits act as omitted items.

26 It is impossible for the petitioners to know what original testimony records were submitted
27 that were in color except for its own 17 submissions (Rec 2,111), but it is suspected that many
28 original submitted maps and most aerial photographs were in color.

1 Our copy of the record of proceedings was certified to be a true copy of the original record
2 of proceedings and that copy submitted to LUBA, but the following eight (8) items/exhibits out of
3 our 17 map submissions act as omitted items as they are black and white copies and unintelligible
4 to us and presumably to LUBA per the meaning of our submitted testimony and therefore valueless
5 in their black and white copied condition:

- 6 1. Map G1 Soils: 35-06-08, Tax Lot 100, Subject Property And Adjacent Lands. Rec 2,112
- 7 2. Map G2 Soils: 35-06-08, Tax Lot 100, Subject Property And Adjacent Or Nearby Lands. Rec
8 2,113
- 9 3. Map G3 USGS Quad (Topography): 35-06-08, Tax Lot 100, Subject Property And Adjacent
10 Lands. Rec 2,114
- 11 4. Map G5a) Zoning: 35-06-08, Tax Lot 100, Subject Property And Adjacent Lands. Rec 2,116
- 12 5. Map G5b) Zoning: 35-06-08, Tax Lot 100, Subject Property And Nearby Forest Lands. Rec
13 2,117
- 14 6. Map G6 Aerial Photograph Of Forest Land - Forest Operations Or Practices On Adjacent Or
15 Nearby Forest Lands. Rec 2,118
- 16 7. Map G13 Deer Habitat: 35-06-08, Tax Lot 100, Subject Property And Adjacent Lands. Rec
17 2,126
- 18 8. Map G14 Logging Roads: 35-06-08, Tax Lot 100, Subject Property. Rec 2,127

19 It is suspected that the following submitted maps and/or aerial photographs were in color as
20 submitted in their original written testimony. They also act as omitted items to us and presumably
21 to LUBA as they are black and white copies and appear to be unintelligible and/or deficient in much
22 of their colored value in discriminating the values depicted per the meaning of their submitted
23 testimony, and therefore valueless or of a lesser value in their black and white copied condition:

24 Recs 135, 136, 151 - 154, 679 - 681, 862, 871, 883, 892, 1,631, 1,662.