

BEFORE THE LAND USE BOARD OF APPEALS

DEC 15 10 55 AM '82

OF THE STATE OF OREGON

1000 FRIENDS OF OREGON,)
an Oregon nonprofit)
corporation, KELLY McGREER,)
ROSEMARY McGREER, DAVID)
DICKSON, MELINDA DICKSON,)
JAMES G. PERKINS and)
SHIRLEE PERKINS,)

Petitioners,)

vs.)

DEPARTMENT OF ENVIRONMENTAL)
QUALITY, an Oregon state)
agency, and RAJNEESH)
NEO-SANNYAS INTERNATIONAL)
COMMUNE,)

Respondents.)

LUBA No. 82-044

FINAL OPINION
(ORDER OF DISMISSAL)

Appeal from the Department of Environmental Quality.

Robert E. Stacey, Jr., Portland, filed the Petition for Review on behalf of Petitioners.

Michael B. Huston, Salem, filed the brief on behalf of Respondent Department of Environmental Quality.

Steven L. Pfeiffer, Portland, filed the brief on behalf of Respondent Rajneesh Neo-Sannyas International Commune.

BAGG, Board Member; COX, Board Member.

DISMISSED

12/15/82

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of Oregon Laws 1979, ch 772, sec 6(a), as amended by Oregon Laws 1981, ch 748.

1 BAGG, Board Member.

2 This matter is before the Board on the motion of Respondent
3 Rajneesh Neo-Sannyas International Commune (Commune).¹

4 Respondent Commune argues that the within proceeding is moot on
5 the ground that the water pollution control facilities permit,
6 which is the subject of the appeal, has been superceded and
7 entirely replaced by a new water pollution control facilities
8 permit. The permit appealed was issued on May 3, 1982 and
9 expired in July 31, 1980. The permit authorized construction
10 of a temporary "sewage stablization" plant for disposal of
11 domestic waste through seepage and evaporation. The system
12 allowed under the permit included a sewage lagoon and pump
13 station. While the improvements were to be removed prior to
14 expiration of the permit, the permit did not require removal of
15 the lagoon or the pressure line between the pump station and
16 the lagoon.

17 The new permit includes the same statement of permitted
18 activities as did the old permit. Under the permit, the
19 permittee is permitted to "construct, install, modify, or
20 operate a waste water collection, treatment, control and
21 disposal system..." There is a general discription included in
22 the application for the permit (application is made part of the

23 permit that summarizes the facility as a

24 ".12MGD septic effluent treatment lagoons and waste
25 water storage reservoir. Consisting of two 2.0 acre
26 facultative lagoons in series discharging into a 59
acre foot treated waste water storage reservoir for
winter storage prior to discharge via the area-wide

1 agricultural irrigation system."

2 There is also a narrative attached to the application
3 describing the facility in more detail and noting that portions
4 of the proposed system are in place pursuant to the earlier
5 permit.

6 In an earlier motion to dismiss for mootness, Respondent
7 Commune argued that as the permit had expired, there was
8 nothing left for the Board to review. We disagreed and held
9 that the matter was not moot because physical structures
10 authorized by the permit were still in the ground. We
11 concluded that a controversy still existed as to whether those
12 structures were properly authorized in the first instance. See
13 Order on Motion to Dismiss of 11/23/82.

14 The situation is rather different here. Respondent Commune
15 argues that the new permit "authorizes the activation,
16 operation and maintenance of these same remaining facilities."
17 Respondent states that the abandoned facilities now exist under
18 new independent authority, the permit issued on November 18,
19 1982. Any remand or reversal of the original permit would have
20 no practical affect, argues Respondent Commune, because the
21 structures have an independent legal basis for existence.
22 Respondent concludes that the Board is unable to give any
23 effective relief to petitioners and has a duty to dismiss the
24 appeal, citing Fujimoto v Metropolitan Service District, 1 Or
25 LUBA 93 (1980); 1000 Friends of Oregon v Wasco County Court, ___
26 Or LUBA ___ (LUBA No. 82-039 at Footnote 5, 8/09/82); State ex

1 rel Juvenile Department v Holland, 290 Or 765, 625 P2d 1318
2 (1981); Greyhound Park v Oregon Racing Commission, 215 Or 176,
3 332 P2d 634 (1958).

4 Petitioners argue that the only way they can obtain relief
5 is through review of "all permits that authorize construction
6 of various portions of the sewer system which Respondent
7 Commune contemplates." Petitioners argue that if the November
8 18, 1982 permit were declared to be invalid, the structures
9 authorized by the May permit would continue to exist.
10 Therefore, petitioners claim a controversy still exists.

11 It is the Board's view that the new permit authorizing the
12 permittee to "construct, install, modify, or operate a waste
13 water collection" system constitutes new authority for
14 structures remaining in the ground pursuant to the old permit.
15 We do not believe that the new permit somehow resurrects the
16 expired old permit, but rather it authorizes facilities and
17 construction anew. In other words, the new permit completely
18 replaces the old.

19 Because we feel the new permit completely replaces the old,
20 we believe that our proposed opinion and order issued on
21 November 23, 1982 and approved by the Land Conservation and
22 Development Commission on December 9, 1982 is not effective to
23 require removal of the improvements as they exist under a new
24 and independent authority.² We believe the issuance of the
25 new permit constitutes an event which "renders it impossible
26 for the court (this Board) to grant the relief sought * * *".

1 Card v Flegel, 26 Or App 783, 786, 554 P2d 596 (1976).

2 This matter is dismissed.

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FOOTNOTES

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Respondent Commune filed another motion to dismiss on several grounds on December 13, 1982. Because of our holding here, we do not reach the issues raised in this latest motion.

2
In that opinion, we held DEQ to have failed to make findings showing compliance with statewide land use goals. The opinion construed OAR 660-31-020 and 660-31-035, LCDC rules that set out how state agencies are to insure goal compliance when issuing permits. In certain cases the rules allow state agencies to rely on local government determinations of goal compliance. However, in the case before us, we read OAR 660-31-020 and 660-31-035 to require DEQ to make its own determination as to goal compliance rather than rely on Wasco County because the local government had given no opportunity for argument on whether DEQ's proposed permit issuance was in compliance with the goals.