

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

3  
4 CENTURY DRIVE MOBILE HOME PARK, LLC  
5 and TIM LARKIN,  
6 *Petitioners,*

7  
8 vs.

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10 CITY OF BEND,  
11 *Respondent.*

12 LUBA No. 2006-114

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15 CASCADE VILLAGE NW, LLC,  
16 *Petitioner,*

17  
18 vs.

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20 CITY OF BEND,  
21 *Respondent.*

22 LUBA No. 2006-115

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25 FINAL OPINION  
26 AND ORDER

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28 Appeal from City of Bend.

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30 Christopher A. Bagley and Sharon R. Smith, Bend, represented Century Drive Mobile  
31 Home Park, LLC and Tim Larkin. Charles M. Greeff, Portland, represented Cascade Village  
32 NW, LLC.

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34 Peter M. Schannauer, Bend, represented respondent.

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

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39 TRANSFERRED

11/01/2006

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

**NATURE OF THE DECISION**

Petitioners appeal a city ordinance imposing requirements on mobile home park closures.

**JURISDICTION**

On July 6, 2006, the city council adopted Ordinance 2010, which establishes a permitting process for closing mobile home parks requiring, among other things, development of relocation plans to mitigate the impacts on tenants. Petitioners appealed the ordinance to LUBA in two separate appeals, which were consolidated. A civil action has also been filed in circuit court, arguing that Ordinance 2010 (1) conflicts with the state Residential Landlord and Tenant Act, ORS 90.505 *et seq.*, (2) allows an unconstitutional taking of the park owner’s property in violation of the state and federal constitutions, and (3) interferes with a private contractual relationship contrary to state and federal constitutions. *Butterfly Holdings, LLC v. City of Bend*, Deschutes County Circuit Court, Case No. 06CV-0397ST (*Butterfly Holdings*). The parties advise us that the same issues are raised in the present appeal and in *Butterfly Holdings*.

The city argues in the response brief that Ordinance 2010 is not a “land use decision” or otherwise within LUBA’s jurisdiction. In response, petitioners filed (1) a motion to suspend LUBA’s review proceeding pending the circuit court’s decision in *Butterfly Holdings*, and (2) a motion to transfer the present appeal to circuit court if LUBA determines it has no jurisdiction. The city replies that it does not oppose transfer to circuit court, but does oppose the motion to suspend LUBA’s proceedings. We now resolve the motions and the jurisdictional dispute.

The jurisdictional statement in the petition for review states, in relevant part, that “the challenged ordinance is a land use decision as defined in ORS 197.015(11), because it involves the application of (i) the goals or (ii) a land use regulation.” Petition for Review 8.

1 However, nowhere in the petition for review do petitioners explain what statewide planning  
2 goals or land use regulations apply to or are concerned with the challenged ordinance. As  
3 relevant here, our jurisdiction is limited to final decisions that concern the adoption,  
4 amendment or application of the goals, comprehensive plan provisions, or land use  
5 regulations.<sup>1</sup> Petitioners do not argue that Ordinance 2010 is a “land use regulation” as that  
6 term is defined at ORS 197.015(12).<sup>2</sup> Because petitioners have not demonstrated that  
7 Ordinance 2010 concerns the adoption, amendment or application of any goal,  
8 comprehensive plan provision, land use regulation or new land use regulation, we agree with  
9 the city that we lack jurisdiction over the present appeal.

10 Because we have no jurisdiction over the challenged decision, petitioners’ motion to  
11 suspend this appeal is denied, as moot. Petitioners’ motion to transfer this appeal to  
12 Deschutes County Circuit Court is granted.

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<sup>1</sup> LUBA’s jurisdiction is limited in relevant part to “land use decisions.” ORS 197.015(11)(a)(A) defines “land use decision” to include:

“A final decision or determination made by a local government or special district that concerns the adoption, amendment or application of:

- “(i) The goals;
- “(ii) A comprehensive plan provision;
- “(iii) A land use regulation; or
- “(iv) A new land use regulation[.]”

<sup>2</sup> ORS 197.015(12) provides:

“‘Land use regulation’ means any local government zoning ordinance, land division ordinance adopted under ORS 92.044 or 92.046 or similar general ordinance establishing standards for implementing a comprehensive plan.”