

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

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1000 FRIENDS OF OREGON, the)
assumed name of Oregon Land)
Use Project, Inc.,)
an Oregon nonprofit)
corporation, KELLY MCGREER,)
ROSEMARY MCGREET, JAMES G.)
PERKINS, SHIRLEE PERKINS,)
DAVID DICKSON and MELINDA)
DICKSON,)
Petitioners,)
vs.)
WASCO COUNTY,)
Respondent,)
and)
DAVID KNAPP, RICHARD DENNIS)
SMITH, KENT BULLOCK, SAMADHI)
MATTHEWS, and CHIDVALIS)
RAJNEESH MEDITATION CENTER,)
Petitioners/)
Respondents.)

LUBA No. 81-132

ORDER DENYING
MOTION FOR STAY

Respondents/participants (hereinafter respondents) Knapp,
Smith, Bullock, Matthews and Chidvalis Rajneesh Meditation
Center move this Board for a stay of its order issued September
30, 1983. The September 30 order remanded the grant of a
petition for incorporation to Wasco County for further
proceedings. Respondents say the Board's order formed the
basis for an order of the Circuit Court of Wasco County
enjoining new development within the city limits of
Rajneeshpuram and further enjoining the annexation of any
additional territory to the city. The order of the Circuit

1 Court dated October 24, 1983, provides that the city is
2 enjoined from

3 "(a) Issuing building permits, mobile home permits, or
4 other permits authorizing development,
5 construction, or installation, or establishment
6 of structures, facilities, and urban uses;

7 "(b) Authorizing or approving subdivisions or
8 partitions;

9 "(c) Constructing or expanding, or otherwise
10 establishing any urban development by the City
11 within the City limits of Rajneeshpuram;

12 "(d) Annexing any additional lands to the City of
13 Rajneeshpuram."

14 Respondents argue that if LUBA does not stay the order,
15 other legal proceedings will take place which will render it
16 impossible for the city to provide for the needs of its
17 citizens. In particular, respondents say that petitioners will
18 seek a declaration that the city is illegal. That declaration,
19 if made, could result in the city losing sources of revenue,
20 its police force, and other necessary incidents of a legally
21 constituted and operating municipality. Respondents argue that
22 even without any further legal proceedings, the Board's order
23 will inflict irreparable harm on respondents because it casts a
24 cloud over the city's ability to finance its activities and to
25 secure bonding. Respondents also allege the Board's order will
26 encourage Wasco County to continue to refuse to cooperate in
planning activities which require the cooperation of both
Rajneeshpuram and the county. Finally, the order irreparably
harms respondents in a more immediate and personal manner in

1 that it

2 "impairs the free exercise of religion, speech and the
3 press by depriving Respondents/Participants of sight,
4 services and facilities necessary for the maintenance
5 of their community and the continuation of their
6 religious, political and expressive activities....

7 "...respondents will lose the opportunity to chose and
8 participate in their form of local government....

9 "The community, its members and the individual
10 residents have contributed savings, property and
11 uncounted hours of work to create the community and
12 its services and facilities and will irretrievably
13 lose their personal investments of savings, labor, and
14 love. They will lose their community, their homes,
15 and their current livelihoods.

16 "The children of the Respondents and their friends and
17 senior citizens will be subjected to dislocations,
18 stress, loss of nearby medical facilities, loss of
19 city services necessary to their health and safety,
20 and disruption of their peaceful community.

21 "...Respondents, their children and their fellow
22 citizens will be deprived of the excellent medical
23 facilities currently available at Rajneeshpuram....

24 "The community's businesses...will have their ability
25 to expand or continue to function destroyed,
26 undermining the economic base of the entire community.

27 "The City's ability to obtain municipal financing will
28 be impaired or destroyed and the validity of its
29 existing contracts and intergovernmental agreements
30 will be impaired or destroyed, thereby ending or
31 seriously impairing its ability to provide services
32 necessary to the health and welfare of these
33 Respondents and their fellow citizens.

34 "The City's ability to maintain its existing Peace
35 Force will be impaired or ended, requiring the
36 respondents to depend upon the extremely limited
37 services of the Wasco County Sheriff's department,
38 thereby exposing them to greater chances of personal
39 harm.

40 "The City's ability to provide and maintain sewer
41 services, water, road maintenance, and general
42 supervision and regulation of conditions affecting

1 sanitation and pollution of the air and water will be
2 impaired or destroyed....

3 "The decision will have serious impacts upon the
4 economy of the county and the state of which
5 Respondents are citizens.

6 "Respondents will be unable to continue or expand
7 their current agricultural and land reclamation
8 activities at Rancho Rajneesh, which are dependent
9 upon the work force, market and urban facilities and
10 services provided by the city." Motion for
11 Evidentiary Hearing, pp. 13-15.

12 Respondents liken the injuries listed above to the loss of a
13 dream and a way of life.

14 "One cannot be compensated in cash for loss of a
15 dream, a community, a way of life, security, an issue
16 of a community newspaper, an opportunity to speak,
17 vote, or worship, a week of good police protection,
18 working sewers or proper medical care." Ibid p. 17.

19 Respondents add that refusing the issuance of a stay will
20 stimulate a new round of litigation, create harm to more than
21 1,200 people or residents of the city and cripple the economic
22 mainstay of Wasco County's economy. Failure to order a stay
23 will put new pressures on county government, nearby cities and
24 state government to provide services now provided by the city,
25 according to respondents.

26 In support of the motion, affidavits of many individuals
were submitted. The Board conducted evidentiary hearings on
October 27, 1983, November 21, 22 and 23, 1983. At the
hearings, many of the affiants presented evidence and
supplemental affidavits, and petitioners cross-examined those
presenting oral testimony.¹

1 APPLICABLE LEGAL STANDARD

2 In order to obtain a stay of a Board order under the
3 provisions of 1979 Or Laws, ch 772, §6a, as amended by 1981 Or
4 Laws, ch 748, the moving party must show:

5 "(A) Irreparable injury to the petitioner; and

6 "(B) A colorable claim of error in the order."

7 A. Irreparable Injury.

8 We look to pertinent case law to assist us in interpreting
9 the statutory tests for a stay. In order to meet the first
10 part of this test, the Board must find there is no pecuniary
11 standard with which to measure damage, and the conduct
12 complained of must be unlawful and probable and not simply
13 threatened or feared." Winston v Fleischner, 110 Or 554, 233
14 P2d 924 (1924); Bates v Dept of Motor Vehicles, 30 Or App, 791,
15 568 P2d 686 (1977). In addition, the injury complained of must
16 be substantial and unreasonable. See Jewett v Dearhorn
17 Enterprises Inc., 281 Or 469, 575 P2d 154 (1968).

18 In applying this test, the Board believes it is important
19 to keep in mind that the present circumstances represent
20 preservation of the status quo in terms of land use. See Helms
21 Groover & Dubber Company v Copenhagen, 93 Or 410, 177 P 935
22 (1919). As noted supra at page 2 of this opinion, the Wasco
23 County Circuit Court has enjoined the city from the issuance of
24 building permits and the making of any land use decision. The
25 court has not ordered the removal of any structures at
26 Rajneeshpuram.² The court's action is presumably based upon

1 this Board's order of September 30, 1983, holding that the
2 petition for incorporation of the City of Rajneeshpuram did not
3 comply with certain land use regulations.

4 The Board understands these circumstances to represent a
5 freeze on land use decisions by the city. In addition, there
6 is no order prohibiting the city from the exercise of any of
7 its other municipal functions. There is evidence in the record
8 that certain funds paid by the State of Oregon to
9 municipalities including highway and cigarette tax funds have
10 been placed in escrow pending the outcome of litigation on the
11 validity of the city. This impoundment is authorized by a
12 statute passed in a special session of the Oregon Legislature.
13 See ORS 221.785.

14 Any request for a stay involves a balancing of interests
15 and impacts. See Matthews v Eldridge, 424 US 319, 965 S.Ct.
16 893, 47 L.Ed 2d 18 (1976). If the Board were to stay the
17 enforcement of its order, the Board understands that legal
18 grounds might exist under which the injunction maintaining the
19 status quo at Rajneeshpuram would be subject to dissolution.
20 Should that occur, the Board assumes more construction activity
21 will be undertaken. If this case is finally decided by a court
22 declaration that the city was improperly formed, and the
23 structures within it must be removed, the public interest as
24 well as the interest of the movants herein would be severely
25 impacted. The impact would be financial as well as emotional.
26 The Board believes it is prudent to maintain the status quo

1 until the courts finally decide the underlying legal issues in
2 this case, not create circumstances which may lead to further
3 construction and expense.

4 It is against this background that we decline to issue the
5 stay as requested. The Board understands its order of
6 September 30, 1983, has the effect of curtailing the land use
7 decision authority of the City of Rajneeshpuram. In this case,
8 the Board does not believe respondents have shown how the
9 city's loss of its land use regulating authority has
10 irreparably injured the respondents.³

11 The claims of injury to first amendment rights and in
12 particular the exercise of religious freedom are not
13 convincing. The Board does not find that the existence of an
14 incorporated city exercising land use authority is necessary to
15 the free exercise of the petitioners' religious beliefs. The
16 Board understands that respondents place a high value on living
17 and working (worshipping) together in a unified community.
18 This unity forms an expression of the respondents' religious
19 experience. However, the existence of a legal entity, a city,
20 has not been shown to be necessary to the continuation of this
21 religious experience. The Board simply is not convinced the
22 ability to construct new and improved facilities, provide
23 additional housing and otherwise exercise land use authority is
24 necessary to the practice of religion as explained to the Board
25 in the course of its evidentiary hearing. There may well be
26 inconvenience, but there has been no showing the inconvenience

1 rises to the dimension of unconstitutionality. The Board does
2 not find the religious beliefs of the respondents are infringed
3 upon by adherence to land use laws. See Christian Retreat
4 Center v Board of County Commissioners for Washington County,
5 28 Or App 673, 560 P2d 1100 (1977).

6 For the same reason, movants claim they will lose
7 opportunity to participate in and chose their own form of
8 government is not convincing. This Board has not held that
9 Rajneeshpuram has lost its status as a city. The order of
10 September 30, 1983, merely resulted in a loss of power to
11 exercise land use authority. The Board is aware of no order
12 stopping exercise by the city of other municipal powers. Also,
13 the Board does not believe that even if the city were to be
14 declared a nullity and no longer an incorporated body,
15 respondents would lose any constitutional right to
16 participation in government.

17 The Board does not find the allegations of economic harm to
18 any of the respondents, whether as a result of loss of income
19 directly to them or loss of income to the city causes an
20 irreparable injury. The economic injuries alleged are to
21 corporate entities existing within the city. There is no
22 explanation of how the financial problems of the corporate
23 entities affect the named respondents. The Board is not
24 convinced the commune and the company of individuals living in
25 and around Rajneeshpuram will be forced either to leave or
26 suffer any other injury other than inconvenience because of the

1 financial reversals suffered by various corporations in the
2 city.⁴

3 As to the question of medical services, the Board does not
4 find that respondents will suffer irreparable medical harm if
5 relief is denied. The evidence presented at the hearings
6 suggested there was a need for expanded medical services.
7 However, the Board does not understand that under the present
8 circumstances, any existing medical facilities at Rajneeshpuram
9 will have to be removed or services cut back. Therefore, what
10 respondents are suffering is a delay in improved medical
11 facilities, not a loss of medical facilities.⁵

12 The Board does not find any potential loss of municipal
13 services sufficient to constitute irreparable injury. While
14 loss of power to approve building permits for hospitals,
15 meeting halls, housing, police stations and other public
16 buildings may be discouraging to respondents, the Board does
17 not believe that irreparable harm has been shown. Further, the
18 Board notes that the sewer and water system is not owned by the
19 city. There has been no demonstration that sewer, water and
20 other utilities will cease if the stay is not issued.

21 The respondents have also alleged that continued
22 enforcement of the Board's order will result in a loss of the
23 city's police force. The Board declines to accept this
24 statement as correct. There is nothing in the record to show
25 the police officers now serving within the City of
26 Rajneeshpuram have lost their status as police officers as a

1 result of the September 30, 1983 order. Further, even if
2 through some circumstance the police force were to disband, the
3 Board does not believe the respondents have shown this
4 potential circumstance to constitute an irreparable injury.⁶

5 B. Colorable Claim of Error.

6 Because the Board has not found an irreparable injury, it
7 need not discuss whether a colorable claim of error exists in
8 the Board's order of September 30, 1983.

9 The motion for stay of the Board's order of September 30,
10 1983 is denied.

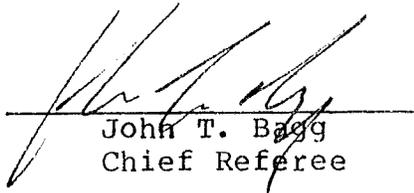
11 Dated this 21st day of February, 1983.

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John T. Bagg
Chief Referee

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FOOTNOTES

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4 The Board has not considered additional affidavits filed
5 after that time. The hearing was closed in November, and no
6 further leave was given to submit additional factual
7 information. The Board has considered all legal and memorandum
8 and pleadings filed in Wasco County Circuit Court.

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8 In a motion to amend petitioners' complaint, petitioners
9 note that they are seeking to add a third claim for mandatory
10 injunctive relief. This claim does seek removal of structures
11 approved by the city since the adoption of the city's
12 comprehensive plan. The motion, however, adds the following:

10 "While plaintiffs believe it may be premature at this
11 time to litigate this issue, plaintiffs wish to raise
12 the matter at this early stage to protect their rights
13 and interests and to avoid any possible laches
14 argument." Motion to Amend Complaint at 2.

14 The Board does not understand petitioners to seek immediate
15 removal of structures at Rajneeshpuram or in the annexed
16 territories.

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3
17 The Board notes that many of the city's complaints are
18 about the prohibition on further land use decision making and
19 the restrictive effect that has on the city and some of the
20 corporate entities that exist within the city. These
21 complaints, however, might be better placed with the Circuit
22 Court in Wasco County than with this Board. The Board's power
23 to stay its order depends upon a showing of irreparable injury
24 "to the petitioner." The petitioners in this case are the
25 named respondents, not the City of Rajneeshpuram and other
26 corporate entities.

23

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24 Much time was spent considering testimony about the
25 investments and financial arrangements of various entities
26 based at Rajneeshpuram. Evidence was presented showing that
the Board's order has a detrimental effect on the ability of
the financial entities to obtain credit. The Board does not
understand how this fact causes irreparable injury to the named

1 respondents. It may be that the city and its inhabitants will
2 not be able to grow at the rate expected and it may be that
3 inconvenience and some hardship will result, but again the
4 Board is unable to find that such injuries are "irreparable."

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6 The Board is sympathetic to respondents' claims that the only
7 medical facilities are a considerable distance away.
8 Inconvenience and potential danger exists in that full service
9 medical facilities do not exist in or nearby Rajneeshpuram. The
10 nearest hospital is in Madras, some 55 miles away over
11 difficult roads. Nonetheless, the Board does not believe that
12 an irreparable injury occurs because a community is unable, for
13 the time being, to improve upon its medical facilities. There
14 has been no showing that the citizens of Rajneeshpuram and the
15 named respondents are in any more danger of catastrophic
16 illness than any other cross section of the population. The
17 Board declines to find irreparable injury as alleged.

18

19 There are financial losses to the city as a result of the
20 Board's order of September 30, 1983. These losses may
21 adversely affect the city's police budget. The city has not,
22 however, presented evidence showing whether other sources of
23 funding for the police force are available.