

1 to decide a vested rights issue, we have nothing to
2 review." Union Oil Company v. Clackamas County,
supra, 5 Or LUBA at 151.

3 No appeal was filed of our dismissal order. However, Union
4 now states we lacked authority to issue the order. Union
5 asserts LUBA is required under 1979 Or Laws, Ch 772, §5(2), as
6 amended by 1981 Or Laws, Ch 748, §36 and our own former rule
7 15A(2) to issue an order which either affirms, reverses or
8 remands the decision on review.³ It contends that unless
9 LUBA chooses between an affirmance, a reversal or a remand, no
10 final order has been issued within the meaning of 1979 Or Laws,
11 Ch 772, as amended.⁴

12 We conclude the powers given the Board under 1979 Or Laws,
13 Ch 772, as amended by 1981 Or Laws, Ch 748 included authority
14 to issue the order of dismissal at issue. Legislative grants
15 of authority to administrative agencies include those implied
16 powers necessary to carry out the function granted by enabling
17 legislation. Ochoco Construction v. LCDC, 295 Or 422, 667 P2d
18 499 (1983). Our express power is to review land use
19 decisions. The result of a review is a "final order affirming,
20 reversing or remanding the decision." 1979 Or Laws, Ch 772,
21 §5(2). Where, however, the proceeding is for some reason
22 terminated without a review of the challenged action, another
23 kind of order is appropriate. For example, we believe an order
24 of dismissal may be issued where, as here, the Board concludes
25 the appeal is outside its statutory jurisdiction, either
26 because no "land use decision" is involved or some other

1 jurisdictional prerequisite has not been satisfied. We have
2 made many such orders in the past. See, for example, Gordon v.
3 City of Beaverton, 52 Or App 937, 630 P2d 366, aff'd, 292 Or
4 228, 637 P2d 125 (1981); Fujimoto v. Land Use Board of Appeals,
5 52 Or App 875, 630 P2d 364 (1981); Hoffman v. City of Portland,
6 294 Or 150, 654 P2d 1106 (1982).⁵

7 Even if we are mistaken as to our authority to issue an
8 order of dismissal, we believe 1979 Or Laws, Ch 772, §4(8), as
9 amended by 1981 Or Laws, Ch 748 bars granting petitioner's
10 motion. If our order of dismissal was not a final order, the
11 challenged county decision in Union Oil Co. v. Clackamas
12 County, supra, was affirmed by operation of §4(8). That
13 section required LUBA to issue a final opinion and order within
14 90 days of the time of the filing of the petition for review.
15 The law provided:

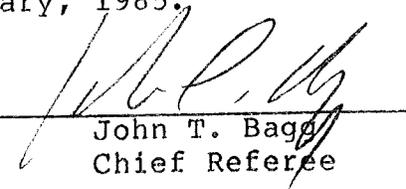
16 "If the order is not issued within 90 days and no
17 extension of time has been stipulated to by the
18 parties, the decision being reviewed shall be
19 considered affirmed and the decision may then be
20 appealed in the manner provided in section 6a, chapter
21 772, Oregon Laws 1979." 1979 Oregon Laws, Ch 772, as
22 amended by 1981 Oregon Laws, Ch 748.

23 The land use decision would then have been appealable to the
24 Court of Appeals. As noted, no appeal was filed by Union Oil
25 Company.

26 We deny petitioner's motion to issue a "Final Order," and
the alternative motion to withdraw our former opinion.

Dated this 14th day of January, 1985.

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John T. Bagg
Chief Referee

FOOTNOTES

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4 In a second motion, Union moves for withdrawal of our
5 opinion. Union makes this request

6 "[s]ince the issuance of a 'Final Order' as requested
7 by Union would, upon appeal of that order, result in a
8 reversal on the jurisdiction question (because of
9 Foreman) followed by a remand to this Board, and
immediate withdrawal of this Board's March, 1982,
opinion (prior to the issuance of any 'Final Order')
would result in substantial savings of time and effort
for all concerned." Motion for Withdrawal of Opinion,
pp. 1-2.

10 In an accompanying memorandum, Union urges a strict
11 reading of 1979 Or Laws, Ch 772, as amended, which Union
12 believes compels issuance of a final order as discussed
13 herein. According to Union, there is no preliminary
determination of jurisdiction permissible under 1979 Or
Laws, Ch 772, §5, as amended.

14 For the reasons discussed herein, we reject Union's
15 arguments.

16 2
17 Since we issued Union Oil Company, supra, the Supreme
18 Court has held we do have the authority to review local
19 determinations of vested right. Foreman v. Clatsop
County, 63 Or 617, 665 P2d 365 (1983), aff'd, 297 Or 129,
681 P2d 786 (1984); see also, Martin v. Lake Oswego, 69 Or
App 170, 684 P2d 28 (1984).

20 3
21 1979 Or Laws, Ch 772, §5(2):

22 "Where a petition for review contains no allegations
23 that a land use decision violates the state-wide
24 planning goals, the board shall review the decision
and prepare a final order affirming, reversing or
remanding the decision."

25 LUBA Rule of Procedure 15(A):

26 "(A) An Order of the Board shall be deemed final when

1 the cover page of the order containing the
2 caption of the appeal:

3 "(1) states that it is the "Final Opinion and
4 Order";

5 "(2) indicates whether the decision being
6 reviewed is affirmed, reversed or remanded;

7 "(3) contains the date of the final order;

8 "(4) has received a time and date stamp of the
9 Land Use Board of Appeals."

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Petitioner explains that as long as it challenges a local land use decision, LUBA is obliged to review the decision. Petitioner notes, correctly, that Clackamas County did not contend that it had made no land use decision when deciding whether Union Oil enjoyed a vested right.

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On occasion, LUBA has been ordered to "dismiss" a petition for review. See, for example, Billington v. Polk County, 68 Or App 914, 915, 683 P2d 568 (1984) and Oregon Electric Sign Association, Inc. v. Beaverton, 60 Or App 518, 654 P2d 1149 (1982).