

1 On August 20, 2013, the county hearings officer concluded that petitioner is neither
2 adversely affected nor aggrieved by the challenged decision and dismissed petitioner’s appeal
3 for lack of standing. On September 9, 2013, petitioner appealed that decision to LUBA.

4 At the same time petitioner filed his appeal with LUBA on September 9, 2013,
5 petitioner moved for an order staying the decision on appeal, pursuant to ORS 197.845(1)
6 and OAR 661-010-0068.² Under ORS 197.845(1), a petitioner seeking a stay at LUBA must
7 “demonstrate[] “colorable claim of error” in the appealed decision and “[t]hat the petitioner
8 will suffer irreparable injury if the stay is not granted.” Under OAR 661-010-0068(1) a
9 motion for stay must include, among other things, “[a] statement of facts and reasons * * *
10 demonstrating a colorable claim of error * * * and specifying how the movant will suffer
11 irreparable injury if a stay is not granted[.]”

12 Four pages of petitioner’s motion for stay are devoted to his attempt to show
13 colorable claim of error in the hearings officer’s finding that petitioner is not adversely
14 affected by the decision and therefore lacks standing to appeal locally. Petitioner does not

² OR 197.845(1) provides:

“Upon application of the petitioner, the board may grant a stay of a land use decision or limited land use decision under review if the petitioner demonstrates:

“(a) A colorable claim of error in the land use decision or limited land use decision under review; and

“(b) That the petitioner will suffer irreparable injury if the stay is not granted.”

OAR 661-010-0068(1) provides, in part:

“A motion for a stay of a land use decision or limited land use decision shall include:

“(a) A statement setting forth movant’s right to standing to appeal the decision;

“(b) A statement explaining why the challenged decision is subject to the Board’s jurisdiction;

“(c) A statement of facts and reasons for issuing a stay, demonstrating a colorable claim of error in the decision and specifying how the movant will suffer irreparable injury if a stay is not granted[.]”

1 separately address the statutory and rule requirement that he establish that he will suffer
2 irreparable injury if the stay is not granted. The only arguable attempt to address that
3 requirement is a single sentence at the very end of petitioner’s argument addressing colorable
4 claim of error: “The initial phases of the construction have begun as it has been announced in
5 the local media, if Stay is not granted shortly, the petitioner will suffer irreparable harm to his
6 interests.” Motion for Stay 7. That is a bare assertion of irreparable harm, whereas the
7 statute and rule require a *demonstration* of irreparable harm. One of the things petitioner
8 must demonstrate to show that the injury he will suffer is irreparable is that the injury will be
9 “substantial and unreasonable.” *City of Oregon City v. Clackamas County*, 17 Or LUBA
10 1032, 1043 (1988). Petitioner never even attempts to make that showing.

11 In his argument where he attempts to demonstrate a colorable claim of error in the
12 hearings officer’s decision, petitioner contends the proposed parking lot will be constructed
13 in a now undeveloped area that he uses to access an area near the proposed parking lot, which
14 he refers to as “the knoll.” Petitioner describes “the knoll” as “quiet and pristine.” Motion for
15 Stay 3. Petitioner argues that loss of the presently undeveloped route he uses to access to
16 “the knoll” adversely affects interests personal to petitioner such that petitioner has standing
17 to appeal the staff decision to the hearings officer. The hearings officer rejected that
18 argument. Presumably that ruling by the hearings officer will be the central issue in this
19 appeal, and if petitioner successfully challenges that ruling, remand likely will be required for
20 the hearings officer to proceed with petitioner’s local appeal.

21 Petitioner may believe that his arguments regarding whether he is “adversely
22 affected” by the decision, for purposes of colorable claim of error and standing to appeal, are
23 also sufficient to establish “irreparable injury,” for purposes of a stay at LUBA. If so,
24 petitioner is mistaken. *Zirker v. City of Bend*, 55 Or LUBA 188, 194 (2007) (“The
25 irreparable injury standard is a much more exacting standard.”) Whatever the merits of
26 petitioner’s colorable claim of error arguments, they are not sufficient to demonstrate that

1 petitioner will suffer irreparable injury without the requested stay.

2 Petitioner’s bare assertion that construction of the parking lot will result in irreparable
3 injury is not sufficient to comply with OR 197.845(1)(b) and OAR 661-010-0068(1)(c).
4 Further, under the facts as we understand them, it seems highly unlikely that petitioner could
5 demonstrate irreparable injury. For one thing, petitioner makes no attempt to explain why
6 alternate routes to “the knoll” are not sufficient to render any harm petitioner may suffer
7 insubstantial.

8 Petitioner’s motion for stay is denied.

9 Dated this 18th day of September, 2013.

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Michael A. Holstun
Board Chair