

Opinion by Holstun.

DECISION

In this appeal, petitioners challenge a letter from respondent's county counsel refusing to process an application for land use approval submitted to the county by petitioners on September 2, 1987.

Intervenors-respondent (intervenors) move to dismiss this appeal alleging the challenged decision is not a final land use decision. Alternatively, intervenors contend the relevant letter is one dated September 11, 1987, which was not appealed, and petitioners' appeal of the county's decision in this matter should be dismissed as untimely filed.

Petitioners explain this appeal is one of three related appeals. The other two appeals are: Kirpal Light Satsang v. Douglas County, ___ Or LUBA ___, (LUBA No. 88-082, January 18, 1989), remanded 96 Or App 207, 772 P2d 944, modified on reconsideration 97 Or App 614, rev den 308 Or 382 (1989) (Kirpal I), and Kirpal Light Satsang v. Douglas County, CA A60341 (Kirpal II) (a pending appeal of a Douglas County Circuit Court decision dismissing a related mandamus proceeding brought by petitioners).

Petitioners state in their memorandum opposing the motion to dismiss:

"This appeal is precautionary. It was filed before the Court of Appeals rendered its * * * decision in Kirpal I. It was based upon a premise

set forth in LUBA's opinion, a premise that is rejected in the following passage from the decision of the Court of Appeals in Kirpal I:

"There is language in the [LUBA] opinion that can be read to suggest that, because the county in fact ruled only on the November application, there is no ruling on the September application for LUBA to review and judicial recourse is all that might be available to petitioner. If the county had made no decision, we might agree with that suggestion. However, it did make a decision, and petitioner's challenge to it is properly before LUBA.' [emphases court's] 96 Or App at 212-13.

"As [petitioners understand] it, LUBA has jurisdiction, on remand, to consider, first, whether there was an application for a land use decision on September 2, 1987, and second, whether that decision was substantively valid. If the answer to the first question is affirmative, under any theory, then LUBA must determine the substantive validity of the final decision appealed from in that case. What substantive standards will be applied in making the second determination will depend upon the kind [emphasis petitioners'] of permit involved, but LUBA will have jurisdiction in either case.

"Only if [LUBA] feels that this is not the case and that the decision of the Court of Appeals is both incorrect and nonbinding, should it retain jurisdiction in this case." Petitioners' Memorandum Opposing Motion to Dismiss 2.

Our final opinion and order on remand in Kirpal I was issued on January 22, 1990. In that decision, we concluded the documents submitted by petitioners on September 2, 1987 constitute an "application" for a "permit," as the latter term is defined in ORS 215.402(4). Kirpal Light Satsang v.

Douglas County, ___ Or LUBA ___ (LUBA No. 88-082, January 22, 1990), slip op 17. We also determined that the county erroneously determined that petitioners' application was not entitled to be judged by the standards in effect on September 2, 1987 and remanded the county's decision. Id. at 18.

In view of our disposition of Kirpal I on remand from the Court of Appeals and the above-quoted portion of petitioners' memorandum opposing the motion to dismiss, we understand petitioners to agree with intervenors that this appeal should be dismissed, although for different reasons.

Accordingly, this appeal is dismissed.