

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON
3
4 JOYCE HART and KEN HART,)
5)
6 Petitioners,)
7)
8 vs.)
9) LUBA No. 92-235
10 JEFFERSON COUNTY,)
11) FINAL OPINION
12 Respondent,) AND ORDER
13)
14 and)
15)
16 BAY RIVER DEVELOPMENT CORP.,)
17 and STEVEN E. McGHEHEY,)
18)
19 Intervenors-Respondent.)

22 Appeal from Jefferson County.

24 Bill Kloos, Eugene, filed the petition for review on
25 behalf of petitioners. With him on the brief was Johnson &
26 Kloos.

28 No appearance by respondent.

30 Steven L. Pfeiffer and Michael R. Campbell, Portland,
31 filed the response brief on behalf of intervenors-
32 respondent. With them on the brief was Stoel Rives Boley
33 Jones & Grey.

35 SHERTON, Referee; KELLINGTON, Chief Referee; HOLSTUN,
36 Referee, participated in the decision.

37

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

1 Opinion by Sherton.

2 **NATURE OF THE DECISION**

3 Petitioners challenge a county planning director's
4 decision determining the Metolius River Resort has satisfied
5 "all the procedural requirements" of the Oregon Revised
6 Statutes, Jefferson County Zoning Ordinance (JCZO) and
7 Jefferson County Subdivision Ordinance (JCSO).

8 **MOTION TO INTERVENE**

9 Bay River Development Corp. and Steven E. McGhehey,
10 owners of the subject property and developers of the
11 Metolius River Resort, move to intervene in this proceeding
12 on the side of respondent. There is no opposition to the
13 motion, and it is allowed.

14 **FACTS**

15 In Hart v. Jefferson County, ___ Or LUBA ___ (LUBA
16 No. 92-235, Order on Motion to Dismiss, June 7, 1994)
17 (Hart I), slip op 1-2, we described the events leading to
18 the decision challenged in this appeal as follows:

19 "On March 20, 1991, the county planning commission
20 issued an order approving a conditional use permit
21 to replace an existing 35 unit recreational
22 vehicle (RV) park with 12 cabins, and to remodel
23 an existing restaurant to include a bed and
24 breakfast. Record 3-7. The subject property is a
25 2.5 acre parcel zoned Camp Sherman Resort
26 Residential (CSRR). This decision was not
27 appealed.

28 "On March 19, 1992, Friends of the Metolius (FOM)
29 sent a letter to the county planning director.
30 The FOM letter contends 13 undivided interests in
31 the subject property have been sold in such a

1 manner as to constitute a 'subdivision' under the
2 definitions of that term in the [JCZO] and in
3 ORS 92.010(12). The FOM letter argues that as a
4 subdivision, the use of the subject property
5 requires site plan review under the JCZO. The FOM
6 letter also asks the planning director to
7 'promptly inquire into the ownership character of
8 this development to determine whether the use is
9 in noncompliance with the JCZO.' Supp. Record 24.
10 The next day, FOM sent a letter to the Oregon Real
11 Estate Agency (REA) stating the subject property
12 had been subdivided without county approval or
13 compliance with ORS chapter 92.

14 "On March 30, 1992, the REA sent intervenors a
15 letter stating that it appears they are
16 'subdividers,' as defined in ORS 92.305(13), and
17 that under ORS 92.325(1) and 92.345 it is unlawful
18 to sell or lease subdivided lands or interests
19 until all provisions of ORS ch 92 have been
20 satisfied. The REA letter notes the subdivision
21 requirements of ORS chapter 92 apply where
22 property is divided into 11 or more undivided
23 interests.

24 "On July 22, 1992, intervenors' attorney met with
25 county planning staff to discuss the ownership of
26 the subject property, ground leases for the
27 'tenant/owners' of the 12 cabins, covenants and
28 restrictions concerning the use of the property,
29 and a rental agency agreement available to the
30 'tenant/owners' of the 12 cabins. Record 11. On
31 July 31, 1992, intervenors' attorney sent the
32 planning department a letter * * * concluding as
33 follows:

34 "'It is my understanding that this
35 project is in conformance with the
36 ordinances and regulations of Jefferson
37 County and that there are no further
38 requirements that need to be complied
39 with relative to the [JCZO and JCSO].
40 If your understanding is any different
41 than is set forth in this letter, I
42 would appreciate it if you would please
43 let me know.' Id."

1 On August 28, 1992, the county planning director issued
2 the following letter (hereafter planning director letter),
3 addressed to the REA:

4 "This letter is intended to address your concerns
5 regarding the approval process that Bay River
6 Development Corporation received for its Metolius
7 River Resort.

8 "The Jefferson County Comprehensive Plan received
9 final acknowledgement by the Land Conservation and
10 Development Commission in 1985; as part of this
11 acknowledgement, the Commission also
12 [acknowledged] the County's Zoning Ordinance and
13 the Subdivision/Partition Ordinance.

14 "The adoption process followed by Jefferson County
15 is in compliance with the adoption standards set
16 forth in ORS 92.048.

17 "The Metolius River Resort was processed by
18 Jefferson County as a Conditional Use for a
19 Travelers Accommodation in the Camp Sherman
20 Resort/Residential zone.

21 "In conclusion, it is the determination of the
22 Jefferson County Planning Department that the
23 Metolius River Resort has met all the procedural
24 requirements set forth in the Oregon Revised
25 Statutes as well as the Jefferson County
26 ordinances." (Emphasis added.) Record 10.

27 This appeal followed.

28 **JURISDICTION**

29 Intervenors previously moved to dismiss this appeal on
30 the ground that the planning director's letter is not a
31 "final" decision and, therefore, is not a "land use
32 decision" subject to review by this Board. In Hart I, we
33 denied intervenors' motion to dismiss. Intervenors ask that
34 we reconsider our ruling on jurisdiction.

1 We have considered the jurisdictional arguments in
2 intervenors' response brief and adhere to our decision in
3 Hart I.

4 **FIRST AND SECOND ASSIGNMENTS OF ERROR**

5 Petitioners contend the planning director letter errs
6 in determining the Metolius River Resort (resort) has met
7 the requirements of the JCZO and JCSO in two respects.
8 First, petitioners argue the subject property has been
9 "subdivided" through the creation of 11 or more undivided
10 interests, without complying with requirements for the
11 subdivision of land set out in JCZO 307 and 414 and JCSO 201
12 through 205, 302 and 701 through 722.¹ Second, petitioners
13 argue a cabin on the subject property intrudes into the
14 100-foot structural setback from the Metolius River by
15 eleven feet, more than the five-foot intrusion authorized by
16 the county in a previously approved variance. Petitioners
17 ask that the decision of the planning director be reversed
18 on these points.

19 Intervenors respond that assuming the planning director
20 letter is a land use decision, it is clearly inadequate for

¹The definition of "subdivide land" in both JCSO 108.B.40 and JCZO 105.B includes:

"Subdivide Land is also defined as the creation of eleven or more undivided interests in [an] area or tract of land which exists as a unit or contiguous units of land under single ownership at the beginning of such year."

Equivalent language is also found in the definition of "subdivided lands" and "subdivision" in ORS 92.305(12).

1 review and should be remanded to the county.² Intervenors
2 point out that in order to be adequate for review, the
3 decision must include findings that "(1) identify the
4 relevant approval standards, (2) set out the facts which are
5 believed and relied upon, and (3) explain how those facts
6 lead to the decision on compliance with the approval
7 standards." Heiller v. Josephine County, 23 Or LUBA 551,
8 556 (1992). According to intervenors, the planning director
9 letter is inadequate for review because it does not identify
10 which provisions of the JCZO and JCSO it addresses, does not
11 set out the facts relied on (other than the fact the resort
12 was approved as a conditional use), and does not relate any
13 facts to the JCZO and JCSO provisions addressed. We agree
14 with intervenors that the planning director letter is
15 inadequate for review.

16 The first and second assignments of error are
17 sustained.

18 The county's decision is remanded.

²With regard to the issue of unauthorized intrusion into the required structural setback from the Metolius River, intervenors also argue this issue was decided by a previous decision of the planning director, which cannot be collaterally attacked in this appeal. As explained in the text, infra, the planning director letter is inadequate for review. We cannot determine whether it includes a county decision on the setback intrusion issue or what the basis for any such determination might be. Therefore, consideration of intervenors' collateral attack argument is premature.