

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

3
4 KENNETH A. THOMAS,)
5)
6 Petitioner,)
7)
8 vs.)
9) LUBA No. 94-185
10 WASCO COUNTY,)
11) FINAL OPINION
12 Respondent,) AND ORDER
13)
14 and)
15)
16 JOSEPH HINES and JODI HINES,)
17)
18 Intervenors-Respondent.)

19
20
21 Appeal from Wasco County.

22
23 Michael J. Lilly, Portland, represented petitioner.

24
25 Bernard L. Smith, County District Attorney, The Dalles,
26 represented respondent.

27
28 Michael G. Neff, Portland, represented intervenors-
29 respondent.

30
31 GUSTAFSON, Referee; HANNA, Referee, participated in the
32 decision.

33
34 DISMISSED 12/18/95

35
36 You are entitled to judicial review of this Order.
37 Judicial review is governed by the provisions of ORS
38 197.850.

1 Opinion by Gustafson.

2 **NATURE OF THE DECISION**

3 Petitioner appeals the county's approval of an
4 application for a non-forest dwelling.

5 **MOTION TO INTERVENE**

6 Joseph and Jodi Hines, the applicants below, move to
7 intervene on the side of respondent. There is no opposition
8 to the motion, and it is allowed.

9 **MOTION TO DISMISS**

10 The city requests that we remove an earlier stay of
11 this proceeding and dismiss this appeal for lack of
12 jurisdiction.¹

13 The facts of this case are set forth in Thomas I.
14 Briefly, petitioner filed a local appeal of the county's
15 approval of a non-forest dwelling after the county's 14 day
16 appeal period had passed. After the county refused to
17 accept the appeal as untimely filed, petitioner appealed the
18 approval to this Board. The county moved to dismiss the
19 appeal for lack of jurisdiction. After filing its motion to
20 dismiss, the county nonetheless agreed to a stay of this
21 proceeding in order to allow petitioner to exhaust local
22 administrative remedies.

¹The county also contends this case was, or should have been, consolidated with Thomas v. Wasco County, ___ Or LUBA ___, LUBA No. 95-114 (October 31, 1995) (Thomas I). Regardless of whether the facts would have warranted consolidation, no order on consolidation was entered, and we cannot now treat these cases as having been consolidated.

1 After local appeals, the county denied petitioner's
2 request to appeal the county's approval. In Thomas I, we
3 upheld the county's decision. The county now asks that we
4 dismiss the initial appeal.

5 Based on our analysis in Thomas I, we find that
6 petitioner's local appeal was not timely filed, and that we
7 have no jurisdiction over this appeal.

8 This appeal is dismissed.

9