

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 RICHEY LANE NEIGHBORHOOD)
5 ASSOCIATION, INC., RUSS)
6 HUMBERTSON, and JACK BURNS,)
7)
8 Petitioners,)

9
10 vs.)

LUBA No. 96-076

11
12 WASHINGTON COUNTY,)
13)
14 Respondent,)

FINAL OPINION
AND ORDER

15
16 and)
17)
18 LARRY BROWN, INC.,)
19)

20 Intervenor-Respondent.)

21
22 Appeal from Washington County

23
24 Robert S Simon, Oregon City, represented petitioners.

25
26 Dan Olsen, Chief Assistant County Counsel, Hillsboro,
27 represented respondent.

28
29 Jack L. Orchard, Portland, represented intervenor-
30 respondent.

31
32 GUSTAFSON, Referee; LIVINGSTON, Chief Referee; HANNA,
33 Referee, participated in the decision.

34
35 DISMISSED 04/17/96

36
37 You are entitled to judicial review of this Order.
38 Judicial review is governed by the provisions of ORS
39 197.850.

1 Opinion by Gustafson.

2 Petitioners appeal the county's approval of an
3 expedited land division. Petitioners also move to suspend
4 this appeal pending petitioners' appeal of the same approval
5 to the Court of Appeals, as mandated by ORS 197.375(8),
6 which governs appeals of expedited land divisions.¹
7 Petitioners' position is that "the application does not
8 qualify as an expedited land use decision. Therefore, the
9 appeal of which is properly to be determined by the Board
10 [sic]." Petitioners' Motion to Suspend Case 1-2.

11 Intervenor moves to dismiss this appeal for lack of
12 jurisdiction.

13 ORS 197.375(7) plainly states that this Board has no
14 jurisdiction to consider challenges to expedited land

¹ORS 197.375(8) states:

"Any party to a proceeding before a referee [appointed by the local governing body] under this section may seek judicial review of the referee's decision in the manner provided for review of final orders of the Land Use Board of Appeals under ORS 197.850 and 197.855. The Court of Appeals shall review decisions of the referee in the same manner as provided for review of final orders of the Land Use Board of Appeals in those statutes. However, notwithstanding ORS 197.850(9) or any other provision of law, the court shall reverse or remand the decision only if it finds:

"(a) That the decision does not concern an expedited land division as described in ORS 197.360 and the appellant raised this issue in the proceedings before the referee;

"* * * * *"

1 divisions.² Instead, ORS 197.375(8) confers on the Court of
2 Appeals jurisdiction over decisions made under the expedited
3 land divisions process set forth in ORS 197.360 to 197.380.
4 If the Court of Appeals determines that the challenged
5 decision does not qualify as an expedited land division, the
6 Court of Appeals may reverse or remand the decision to the
7 local government. ORS 197.380(8)(a).

8 Petitioner does not dispute that the challenged
9 decision was made as an expedited land division. However,
10 petitioners' appeal ignores the language of the expedited
11 land divisions statute. Rather, it appears to be premised
12 on a contrary assumption that if the Court of Appeals
13 determines that the county should not have reviewed the
14 proposed development under the expedited land divisions
15 process, somehow the county's decision will be transformed
16 into a land use decision over which this Board has
17 jurisdiction. The expedited land divisions statute plainly
18 precludes that result.

19 Petitioners' appeal and concurrent motion to suspend
20 the appeal appears to be precisely the type of additional
21 process the expedited land divisions statute was intended to
22 avoid.

²ORS 197.375(7) states:

"The Land Use Board of Appeals does not have jurisdiction to consider any decisions, aspects of decisions, or actions made under the expedited land division statute, ORS 197.360 to 197.380."

1 This appeal is dismissed.