

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 PEGGY CONTRERAS, JOHN BOLTE,)
5 and FRIENDS OF NEABEACK HILL,)

6)
7 Petitioners,)
8)
9 vs.)

10) LUBA No. 96-111

11 CITY OF PHILOMATH,)
12)
13 Respondent,)
14)
15 and)
16)
17 SCHNEIDER HOMES, INC.,)
18)
19 Intervenor-Respondent.)

 FINAL OPINION
 AND ORDER

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21
22 Appeal from City of Philomath.

23
24 Richard Rodeman, Corvallis, represented petitioners.

25
26 Scott Fewel, Corvallis, represented respondent.

27
28 Wendie L. Kellington, represented intervenor-
29 respondent.

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

33
34 DISMISSED 08/20/96

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 Petitioners appeal two city council events: (1) a
3 request from the city council to the city staff during a May
4 28, 1996 city council meeting, to evaluate a question raised
5 by petitioners regarding the city's jurisdiction to make an
6 October 9, 1995 decision; and (2) a vote by the city council
7 at its June 10, 1996 meeting not to reopen a public hearing
8 regarding the matter over which the city council had made a
9 final decision on October 9, 1995.

10 Petitioners argue that one or both of the challenged
11 events is a final land use decision over which we have
12 jurisdiction, because the city council did not have
13 jurisdiction to make a decision on October 9, 1995,
14 following a remand from this Board in Friends of Neabeack
15 Hill v. City of Philomath, 30 Or LUBA ____ (LUBA No, 95-027,
16 September 2, 1995), aff'd 139 Or App 39, rev den 323 Or 136
17 (1996), when the appeal period following the remand had not
18 passed. Petitioners did not appeal the city's October 9,
19 1995 decision.

20 Respondent and intervenor-respondent move to dismiss
21 this appeal, on the basis that neither appealed event is a
22 final land use decision over which this Board has
23 jurisdiction. We agree. If petitioners thought the city
24 did not have jurisdiction to make its October 9, 1995
25 decision, they were entitled to appeal that decision within
26 the statutory 21-day appeal period. They cannot

1 collaterally challenge it eight months after the decision
2 was made.

3 For this and the other reasons explained in
4 respondent's and intervenor-respondent's motions and
5 supporting memoranda, we find that neither of the challenged
6 events is a land use decision over which we have
7 jurisdiction.

8 This appeal is dismissed.