

1 Opinion by Hanna.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a letter of an assistant planner in the city planning department
4 concerning an earlier tentative subdivision plat approval (subject letter).

5 **MOTION TO INTERVENE**

6 Mike and Toni Winters (intervenors), the applicants for the earlier tentative
7 subdivision plat approval, move to intervene in this proceeding on the side of respondent.
8 There is no opposition to the motion, and it is allowed.

9 **FACTS**

10 The planning commission approved a tentative subdivision plat on May 23, 1996.¹
11 On May 30, 1996, the city mailed a notice of decision that contained a statement that "unless
12 the above action [implementation of the tentative plat approval] is taken or a request for
13 extension is submitted, the approval will expire in one year." Record 19.²

14 On August 11, 1997, one of the intervenors made a telephone inquiry to the planning
15 department.³ The assistant city planner answered by letter, stating in part:

16 "In response to your inquiry of August 11, 1997, I am providing the following
17 information in regard to the status of the tentative plat approval for the subject
18 subdivision (LDS-96-8).

19 "The specific language of Article II of the Land Development Code that
20 pertained to expiration of tentative plat approvals was deleted from the Code
21 [prior to the application for the tentative subdivision approval]. It is
22 anticipated that similar language will be readopted as expiration options
23 remain a viable tool in the implementation of the City's land use goals.

¹Petitioner appealed the planning commission's approval of that subdivision to the city council, which affirmed the planning commission decision. Petitioner then appealed the city council decision to LUBA. That appeal was dismissed because petitioner failed to timely file a petition for review.

²The notice of decision is not part of the underlying decision. The decision itself does not impose a time limit.

³The record does not reflect the substance of the inquiry.

1 Therefore, technically speaking, the tentative plat approval has not nor will it
2 expire at least until such language is adopted as part of the Land Development
3 Code again.

4 "* * * * *"4 Record 1.

5 The record does not indicate nor do the parties discuss whether petitioner attempted
6 to appeal the subject letter to the planning commission or the city council. In any event, on
7 May 21, 1998, petitioner appealed the subject letter to LUBA.

8 **JURISDICTION**

9 Petitioner argues that the challenged decision is either a land use decision or limited
10 land use decision, over which LUBA has jurisdiction. Petitioner bases his argument on
11 Forest Park Neigh. Assoc. v. City of Portland, 26 Or LUBA 636 (1994) (Forest Park I). In
12 Forest Park I, we determined that a planner's letter rejecting a petitioner's attempt to file a
13 local appeal of an earlier letter that explained how land use regulation provisions were
14 interpreted and applied was a land use decision. The basis of our conclusion was that the
15 planner's letter applied land use regulation provisions governing local appeals in concluding
16 that no appeal was available.

17 The city responds that the subject letter is not an action over which LUBA has
18 jurisdiction. The city frames its jurisdictional challenge on our analysis in Forest Park
19 Neighborhood Assoc. v. City of Portland, 27 Or LUBA 215 (1994) (Forest Park II), the case
20 on which petitioner bases his assignments of error. In Forest Park II, the petitioner requested
21 that the city determine which of two subdivision code provisions controlled the time period
22 for a tentative subdivision approval and to explain its interpretation. The petitioner appealed
23 the responding letter from the city planning director to LUBA. We determined that the city
24 planning director's letter interpreting which of the two subdivision code provisions applied

⁴Petitioner acknowledges that there was no explicit code provision in effect on the date the application was complete that could have established a one year limitation on the approval.

1 was a limited land use decision. The city contends that, unlike the facts in Forest Park II,
2 where we found jurisdiction based on the planner's analysis of which code section applied,
3 no code interpretation or analysis occurred here:

4 "[T]he assistant planner's letter did not concern the application of local code
5 provisions relevant to tentative or final subdivision or plat approval. The
6 assistant planner's letter also was not prepared in response to a request from
7 Petitioner. Furthermore, the request did not specifically ask the assistant
8 planner to explain his interpretation and application of relevant code
9 provisions." Response Brief 3.

10 This Board's jurisdiction is limited to review of "land use decisions" or "limited land
11 use decisions." ORS 197.825(1). In essence, the city contends that the subject letter is not a
12 land use decision under ORS 197.015(10)(b)(A) or limited land use decision under ORS
13 197.015 (11). We agree. The challenged letter does nothing more than provide
14 information.⁵ The planner merely informed intervenors that the city's code does not contain
15 a provision that imposes a time limit on the earlier approval. The letter does not involve the
16 application or interpretation of any code provisions, and is neither a land use decision nor a
17 limited land use decision.

18 Petitioner's appeal is dismissed.

⁵See Ceniga v. Clackamas County, 32 Or LUBA 273 (1997). (A letter from county counsel refusing to revoke a previously granted building permit was not an appealable land use decision) Kalmiopsis Audubon Society v. Curry County, 27 Or LUBA 640 (1994) (A local government order that simply corrects clerical mistakes in an earlier local government order making a land use decision is not itself an appealable land use decision; Gage v. City of Portland, 25 Or LUBA 449, rev'd on other grounds 123 Or App 269, (1993) rev'd in part, aff'd in part other grounds 319 Or 308, 877 P2d 1187 (1994) (A letter sent by the planning director to the applicant, four months before a city decision granting PUD final development plan approval, does not constitute a final, appealable city decision with regard to the duration of the subsequent PUD final development plan approval); City of North Plains v. Washington County, 24 Or LUBA 78 (1992) (A county planning director's letter stating he will initiate an application for development approval is not a final land use decision subject to LUBA's review authority).