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

DAN REEVES,)
)
Petitioner,)
)
vs.)
)
CITY OF WILSONVILLE and)
RAYMOND R. BAGLEY, Circuit Court)
Judge for Clackamas County,)
)
Respondents.)

LUBA No. 98-149

FINAL OPINION
AND ORDER

Appeal from City of Wilsonville.
Jack L. Orchard, Portland, represented petitioner.
Michael E. Kohlhoff, Wilsonville, represented respondent.

GUSTAFSON, Board Chair; HANNA, Board Member, and HOLSTUN, Board Member, participated in the decision.

DISMISSED 10/15/1998

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

1 Opinion by Gustafson.

2 **NATURE OF THE DECISION**

3 Petitioner appeals an order of the Clackamas County Circuit Court enjoining
4 petitioner from removing trees or placing fill without obtaining appropriate land use
5 development approvals from the city.

6 **MOTION TO DISMISS**

7 The city moves to dismiss this appeal, arguing that the challenged decision is not a
8 land use decision or limited land use decision subject to our jurisdiction, but rather an order
9 of the circuit court arising from proceedings brought to enforce the city's land use
10 regulations. The city contends that, pursuant to ORS 197.825(3), orders arising from
11 enforcement proceedings in circuit court are not within LUBA's jurisdiction. Wygant v.
12 Curry County, 110 Or App 189, 192, 821 P2d 1109 (1991) (a local government's decision to
13 bring an enforcement proceeding pursuant to ORS 197.825(3) is not reviewable by LUBA
14 because it is not a land use decision).¹

15 Petitioner responds that city staff interpreted the city code in determining that
16 petitioner's activities constituted site development requiring a permit, and further that the city
17 applied its land use regulations in determining that its only recourse was to institute a code
18 enforcement proceeding with the circuit court. Petitioner argues that the present matter falls
19 within a jurisdictional "gray zone" because the city staff's determinations involve application
20 of the city's land use regulations and thus might bring the present matter within the definition

¹ORS 197.825(3)(a) provides that:

"Notwithstanding subsection (1) of this section, the circuit courts of this state retain jurisdiction:

"(a) To grant declaratory, injunctive or mandatory relief in proceedings arising from decisions described in ORS 197.015(10)(b) or proceedings brought to enforce the provisions of an adopted comprehensive plan or land use regulations; * * * [.]"
(Emphasis added.)

1 of a "land use decision" at ORS 197.015(10).

2 We disagree with petitioner that the question of our jurisdiction is unclear. Petitioner
3 did not appeal a final land use decision of the city, but rather an order of the circuit court
4 arising from proceedings brought to enforce the city's land use regulations. Accordingly, we
5 lack jurisdiction. ORS 197.825(3). Even if petitioner's notice of intent to appeal could be
6 read to challenge the city's decision to enforce its comprehensive plan or land use
7 regulations, we would lack jurisdiction. Wygant, 110 Or App at 192.

8 This appeal is dismissed.