

1 We first consider whether petitioner has adequately demonstrated that he “will suffer
2 irreparable injury if a stay is not granted,” because if he has not done so the motion must be denied.
3 The requirement that petitioner demonstrate that failure to grant the stay would result in irreparable
4 injury to petitioner is a demanding requirement. We have explained that it requires that LUBA
5 answer each of the following questions in the affirmative:

- 6 “1. Has the petitioner adequately specified the injury he or she will suffer?
- 7 “2. Is the identified injury one that cannot be compensated adequately in money
8 damages?
- 9 “3. Is the injury substantial and unreasonable?
- 10 “4. Is the conduct petitioner seeks to bar through the stay probable rather than
11 merely threatened or feared?
- 12 “5. If the conduct is probable, is the resulting injury probable rather than merely
13 threatened or feared?” *City of Oregon City v. Clackamas County*, 17
14 Or LUBA 1032, 1042-43 (1988) (internal citations omitted).

15 In this order, we refer to these five questions as the irreparable injury questions.

16 Petitioner’s motion for stay relies on the following alleged irreparable injuries:

- 17 1. The improvements will occur near the historic Mary J. Carpenter House
18 and will change its “setting from a quiet side street to the corner lot on a
19 busy intersection.” Petitioner’s Motion for Stay 19.
- 20 2. The project will alter and demolish other “structures in the [city’s] Old
21 Town District that are not landmarks but that are protected by the Talent
22 Historical Preservation Ordinance.” *Id.* at 19-20.
- 23 3. The project will widen the highway crossing of the floodway of Wagner
24 Creek in a way that is “unsafe and hazardous to petitioner and the general
25 public.” *Id.* at 20-21.
- 26 4. The project will “re-align a perfectly fine and ordinary sidewalk on West
27 Valley View Road, so that the corner of petitioner’s building will jut into the
28 re-aligned sidewalk.” *Id.* at 21.
- 29 5. The project “will restrict access to petitioner’s property, which will lead to
30 failure of the two businesses operating on the property.” *Id.*

31 We address each of the alleged irreparable injuries below.

1 **A. The Mary J. Carpenter House and Other Unspecified Historic District**
2 **Structures**

3 The Mary J. Carpenter House is located a short distance west of the proposed highway
4 improvements near the north end of the city. The house is some distance from petitioner’s property.
5 Petitioner does not indicate the location of the structures he believes will be demolished. The city
6 contends only a small one-story house that was constructed in 1951 and has no historical
7 significance will be demolished. That house is close to the Mary J. Carpenter House on Gibson
8 Street and is some distance from petitioner’s property. For brevity, we refer to these impacts as the
9 historic resource impacts. We agree with the city that petitioner’s allegations regarding the historic
10 resource impacts are insufficient for at least two reasons.

11 First, petitioner has not demonstrated that any of the alleged historic resource impacts will
12 result in an injury to petitioner personally. In other words, petitioner fails to establish that those
13 impacts will result in an “injury he * * * will suffer” (irreparable injury question one).¹ Petitioner
14 simply alleges the impacts on these structures “are irreparable and they are injurious to petitioner.”
15 Petitioner’s Motion for Stay 20. As we have already noted, petitioner’s property is located some
16 distance away and the Mary J. Carpenter House is not visible from petitioner’s property. The only
17 house in the historic district that anyone has identified is similarly some distance from petitioner’s
18 property. Petitioner must do more than simply claim that historic resource impacts will irreparably
19 injure him.

20 Second, petitioner has not demonstrated that the historic resource impacts constitute a
21 “substantial and unreasonable injury” (irreparable injury question three). The city characterizes the
22 alleged harm to the Mary J. Carpenter house as “aesthetic conjecture at best.” Response to
23 Petitioner’s Motion for Stay 14. Petitioner makes no attempt to establish the significance of the

¹ Under OAR 661-010-0068(1)(c) the party moving for a stay must demonstrate “the *movant* will suffer irreparable injury if a stay is not granted.” (Emphasis added.)

1 injury that can be expected due to removal or alteration of the unspecified houses in the historic
2 district.

3 **B. The Improved Highway Crossing of the Floodway of Wagner Creek.**

4 Petitioner's reliance on the proposed improvements to the highway crossing of the floodway
5 of Wagner Creek suffers from the same inadequacies as his attempted reliance on the historic
6 resource impacts and is even more speculative. Petitioner simply alleges that floodways are
7 dangerous and speculates that the crossing that will be built as part of the project will be dangerous.
8 Petitioner has not adequately established that the alleged injury would personally affect petitioner
9 (irreparable injury question one) and has not adequately specified a substantial and unreasonable
10 injury (irreparable injury question three). Petitioner's unsupported speculation that the crossing will
11 be dangerous is insufficient to establish that the alleged injury will be substantial and unreasonable.

12 **C. Impacts on Petitioner's Property**

13 Although petitioner alleges the relocated sidewalk will create a dangerous condition for
14 pedestrians, the city disputes that allegation and contends that the project is designed to increase
15 safety. Petitioner also is concerned that the access restrictions that will be imposed on the
16 businesses that are located on his property will result in the failure of those businesses. However,
17 the city contends that petitioner's concern is entirely speculative. The city also points out that
18 petitioner has refused the state's offer to purchase his property, and there is no reason to believe
19 that petitioner will not be fairly compensated in the condemnation action that will follow.

20 Petitioner's speculation regarding dangers that may be attributable to the relocated sidewalk
21 are speculative and do not establish that there will be any substantial and unreasonable injury
22 (irreparable injury question 3). Petitioner's concerns about the potential for business failures
23 similarly are too speculative (irreparable injury question three) and do not explain why any such
24 injury could not be compensable in money damages (irreparable injury question two).

1 **D. Conclusion**

2 Because we conclude that petitioner has not demonstrated that he will suffer irreparable
3 injury unless we grant his motion to stay, the motion is denied. Because we deny the motion to stay
4 on this ground, we need not address the other reasons advanced by the city for denying the motion
5 for stay.

6 **ORDER ON RECORD OBJECTIONS**

7 Petitioner objected to the record filed by the city in this appeal. We issued an order on
8 May 31, 2005 in which we required that the city file an amended record to respond to those record
9 objections. LUBA received an amended record on July 14, 2005. LUBA understands that
10 petitioner's attorney is on vacation and will not return until July 25, 2005. Petitioner shall have until
11 July 29, 2005 to advise the Board if he believes that amended record is not sufficient to comply with
12 our May 31, 2005 Order. Unless petitioner does so, LUBA will enter an order settling the record
13 and beginning the briefing schedule on July 29, 2005.

14 Dated this 20th day of July, 2005.

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Michael A. Holstun
Board Member