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

MATTHEW KUZMANICH, JR., and)
EVELYN ROSS,)
Petitioners,)
v.)
WASHINGTON COUNTY and)
DOUGLAS SMITH,)
Respondent.)

LUBA NO. 83-044

FINAL OPINION
AND ORDER

Appeal from Washington County.

Larry Moomaw, Beaverton, filed a petition for review and argued the cause for petitioners.

Timothy V. Ramis, Portland, filed a brief and argued the cause for Participant Smith

Dan R. Olsen, Hillsboro, filed a brief and argued the cause for Respondent.

DISMISSED

10/20/83

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of Oregon Laws 1983, ch 827.

1 BAGG, Board Member.

2 The petitioners appeal a land use decision of Washington
3 County which changes the zone of the subject property from RU-3
4 low density residential to B-3 office commercial. Petitioners
5 ask the Board to reverse the zone change.

6 FACTS

7 The subject property is on the south side of Southwest
8 Canyon Lane, approximately 600 feet east of Southwest 87th
9 Avenue in an area known as West Slope in Washington County. In
10 1981 the applicant, Douglas Smith, applied for a zone change
11 from RU-3 (low density residential) to B-3 (office
12 commercial). On October 21, 1982, the Washington County
13 Hearings Officer heard the application. The Hearings Officer
14 denied the application, and Mr. Smith appeal to the Washington
15 County Board of Commissioners; on January 18, 1983, the Board
16 voted to approve the zone change. Petitions for rehearing were
17 submitted by petitioners herein but were denied on February 8,
18 1983, and an order bearing number 82-401-Z to that effect was
19 signed on March 8, 1983. This appeal followed.

20 After the filing of the notice of intent to appeal, and on
21 June 28, 1983, Washington County adopted Ordinance 263.
22 Ordinance 263 approved several "community plans" for areas
23 within the urban growth boundary, and one of these areas is the
24 Cedar Hills/Cedar Mill area. The subject property is within
25 this area. Ordinance 263 applied an "office-commercial" plan
26 designation to this property.

1 On the same date, the Board of Commissioners passed
2 Ordinance 265 which abolished the old zoning map and replaced
3 it with several new maps. The Board understands the effect of
4 this ordinance is to change the county two map system to a one
5 map system. That is, a single map embodies both the plan and
6 zone designation for the property instead of two maps, one for
7 the planning designation and one for the zoning designation.
8 The subject site is designated as office commercial.

9 Section 3 of Ordinance 265 states it supersedes all zoning
10 maps previously adopted.

11 MOTION TO DISMISS

12 Respondent Smith moves to dismiss this review proceeding on
13 the ground that the land use decision on review, County Order
14 82-401-Z, has been entirely superseded by Ordinance 265. This
15 act renders review of county order 82-401-Z moot, according to
16 Respondent Smith. Respondent argues that even if the Board
17 were to sustain one or more of petitioners' challenges to
18 Washington County's rezoning of this property by Order
19 82-401-Z, the Board's order would have no force or effect. The
20 planning and zoning designations on the property have been
21 changed by a subsequent legislative action, and if petitioners
22 have a quarrel with the zoning of the property, his quarrel
23 must be with Ordinances 263 and 265, according to respondents.

24 Petitioners reply the county should not be permitted to
25 eliminate a person's right to appeal. Petitioners also allege
26 the quasi-judicial decision under review here provides the

1 basis for the later legislative acts. Petitioners claim there
2 is an exception to the usual doctrine that subsequent events
3 will render moot issues on appeal where there is a question of
4 public interest or where the alleged moot question involves the
5 merits. Petitioners say:

6 "In this case that part of Ordinance No. 263 referring
7 to the subject property is based upon the exact
8 findings and decision which is herein on appeal."
Memorandum Opposing Motion to Dismiss, p. 5.

9 The Board understands petitioners to argue that because no new
10 record and findings were made to support the legislative
11 decision, this later legislative decision can not be said to
12 supplant and make moot the issues in the earlier quasi-judicial
13 decision.

14 The Board believes this proceeding is moot. Any zoning
15 designation made by county order 82-401-Z has been effectively
16 erased by Washington County's new legislation. Whether this
17 new legislation was born out of the prior quasi-judicial act or
18 not does not change the fact the prior quasi-judicial act no
19 longer is effective to control the use of the property. Use of
20 the property is now controlled by Ordinances 263 and 265. The
21 Board has no power to grant the relief requested because the
22 controlling legislation has supplanted the decision appealed to
23 the Board. With no power to grant the relief requested, the
24 case is moot. Card v. Flegel, 26 Or App 782, 554 P2d 596
25 (1976). Fujimoto v. Metropolitan Service District, 1 Or LUBA
26 93 (1980). Carmel Estates, Inc. v. Land Conservation and

1 Development Commission, 51 Or App 435, 562 P2d 1367 (1981).

2 Petitioners' complaint that no new record and no new
3 findings were made in conjunction with the passage of the new
4 legislation is of no consequence. There are two ways to make
5 changes in land use designations, one is by quasi-judicial
6 action, and the other is by legislative action. Either method
7 is effective to control the use of land. If petitioners
8 believe the county has committed procedural error in the
9 adoption of its legislation or if the legislation is not
10 supported by findings or an adequate record, petitioners'
11 remedy is an appeal of the legislation. Again, it is the new
12 legislation that controls use of the property.

13 Dismissed.