



1 Opinion by Sherton.

2 **NATURE OF THE DECISION**

3 Petitioners challenge a county planning director's  
4 decision determining the Metolius River Resort has satisfied  
5 "all the procedural requirements" of the Oregon Revised  
6 Statutes, Jefferson County Zoning Ordinance (JCZO) and  
7 Jefferson County Subdivision Ordinance (JCSO).

8 **MOTION TO INTERVENE**

9 Bay River Development Corp. and Steven E. McGhehey,  
10 owners of the subject property and developers of the  
11 Metolius River Resort, move to intervene in this proceeding  
12 on the side of respondent. There is no opposition to the  
13 motion, and it is allowed.

14 **FACTS**

15 In Hart v. Jefferson County, \_\_\_ Or LUBA \_\_\_ (LUBA  
16 No. 92-235, Order on Motion to Dismiss, June 7, 1994)  
17 (Hart I), slip op 1-2, we described the events leading to  
18 the decision challenged in this appeal as follows:

19 "On March 20, 1991, the county planning commission  
20 issued an order approving a conditional use permit  
21 to replace an existing 35 unit recreational  
22 vehicle (RV) park with 12 cabins, and to remodel  
23 an existing restaurant to include a bed and  
24 breakfast. Record 3-7. The subject property is a  
25 2.5 acre parcel zoned Camp Sherman Resort  
26 Residential (CSRR). This decision was not  
27 appealed.

28 "On March 19, 1992, Friends of the Metolius (FOM)  
29 sent a letter to the county planning director.  
30 The FOM letter contends 13 undivided interests in  
31 the subject property have been sold in such a

1 manner as to constitute a 'subdivision' under the  
2 definitions of that term in the [JCZO] and in  
3 ORS 92.010(12). The FOM letter argues that as a  
4 subdivision, the use of the subject property  
5 requires site plan review under the JCZO. The FOM  
6 letter also asks the planning director to  
7 'promptly inquire into the ownership character of  
8 this development to determine whether the use is  
9 in noncompliance with the JCZO.' Supp. Record 24.  
10 The next day, FOM sent a letter to the Oregon Real  
11 Estate Agency (REA) stating the subject property  
12 had been subdivided without county approval or  
13 compliance with ORS chapter 92.

14 "On March 30, 1992, the REA sent intervenors a  
15 letter stating that it appears they are  
16 'subdividers,' as defined in ORS 92.305(13), and  
17 that under ORS 92.325(1) and 92.345 it is unlawful  
18 to sell or lease subdivided lands or interests  
19 until all provisions of ORS ch 92 have been  
20 satisfied. The REA letter notes the subdivision  
21 requirements of ORS chapter 92 apply where  
22 property is divided into 11 or more undivided  
23 interests.

24 "On July 22, 1992, intervenors' attorney met with  
25 county planning staff to discuss the ownership of  
26 the subject property, ground leases for the  
27 'tenant/owners' of the 12 cabins, covenants and  
28 restrictions concerning the use of the property,  
29 and a rental agency agreement available to the  
30 'tenant/owners' of the 12 cabins. Record 11. On  
31 July 31, 1992, intervenors' attorney sent the  
32 planning department a letter \* \* \* concluding as  
33 follows:

34 "It is my understanding that this  
35 project is in conformance with the  
36 ordinances and regulations of Jefferson  
37 County and that there are no further  
38 requirements that need to be complied  
39 with relative to the [JCZO and JCSO].  
40 If your understanding is any different  
41 than is set forth in this letter, I  
42 would appreciate it if you would please  
43 let me know.' Id."

1           On August 28, 1992, the county planning director issued  
2 the following letter (hereafter planning director letter),  
3 addressed to the REA:

4           "This letter is intended to address your concerns  
5 regarding the approval process that Bay River  
6 Development Corporation received for its Metolius  
7 River Resort.

8           "The Jefferson County Comprehensive Plan received  
9 final acknowledgement by the Land Conservation and  
10 Development Commission in 1985; as part of this  
11 acknowledgement, the Commission also  
12 [acknowledged] the County's Zoning Ordinance and  
13 the Subdivision/Partition Ordinance.

14           "The adoption process followed by Jefferson County  
15 is in compliance with the adoption standards set  
16 forth in ORS 92.048.

17           "The Metolius River Resort was processed by  
18 Jefferson County as a Conditional Use for a  
19 Travelers Accommodation in the Camp Sherman  
20 Resort/Residential zone.

21           "In conclusion, it is the determination of the  
22 Jefferson County Planning Department that the  
23 Metolius River Resort has met all the procedural  
24 requirements set forth in the Oregon Revised  
25 Statutes as well as the Jefferson County  
26 ordinances." (Emphasis added.) Record 10.

27           This appeal followed.

28           **JURISDICTION**

29           Intervenors previously moved to dismiss this appeal on  
30 the ground that the planning director's letter is not a  
31 "final" decision and, therefore, is not a "land use  
32 decision" subject to review by this Board. In Hart I, we  
33 denied intervenors' motion to dismiss. Intervenors ask that  
34 we reconsider our ruling on jurisdiction.

1 We have considered the jurisdictional arguments in  
2 intervenors' response brief and adhere to our decision in  
3 Hart I.

4 **FIRST AND SECOND ASSIGNMENTS OF ERROR**

5 Petitioners contend the planning director letter errs  
6 in determining the Metolius River Resort (resort) has met  
7 the requirements of the JCZO and JCSO in two respects.  
8 First, petitioners argue the subject property has been  
9 "subdivided" through the creation of 11 or more undivided  
10 interests, without complying with requirements for the  
11 subdivision of land set out in JCZO 307 and 414 and JCSO 201  
12 through 205, 302 and 701 through 722.<sup>1</sup> Second, petitioners  
13 argue a cabin on the subject property intrudes into the  
14 100-foot structural setback from the Metolius River by  
15 eleven feet, more than the five-foot intrusion authorized by  
16 the county in a previously approved variance. Petitioners  
17 ask that the decision of the planning director be reversed  
18 on these points.

19 Intervenors respond that assuming the planning director  
20 letter is a land use decision, it is clearly inadequate for

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<sup>1</sup>The definition of "subdivide land" in both JCSO 108.B.40 and JCZO 105.B includes:

"Subdivide Land is also defined as the creation of eleven or more undivided interests in [an] area or tract of land which exists as a unit or contiguous units of land under single ownership at the beginning of such year."

Equivalent language is also found in the definition of "subdivided lands" and "subdivision" in ORS 92.305(12).

1 review and should be remanded to the county.<sup>2</sup> Intervenors  
2 point out that in order to be adequate for review, the  
3 decision must include findings that "(1) identify the  
4 relevant approval standards, (2) set out the facts which are  
5 believed and relied upon, and (3) explain how those facts  
6 lead to the decision on compliance with the approval  
7 standards." Heiller v. Josephine County, 23 Or LUBA 551,  
8 556 (1992). According to intervenors, the planning director  
9 letter is inadequate for review because it does not identify  
10 which provisions of the JCZO and JCSO it addresses, does not  
11 set out the facts relied on (other than the fact the resort  
12 was approved as a conditional use), and does not relate any  
13 facts to the JCZO and JCSO provisions addressed. We agree  
14 with intervenors that the planning director letter is  
15 inadequate for review.

16 The first and second assignments of error are  
17 sustained.

18 The county's decision is remanded.

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<sup>2</sup>With regard to the issue of unauthorized intrusion into the required structural setback from the Metolius River, intervenors also argue this issue was decided by a previous decision of the planning director, which cannot be collaterally attacked in this appeal. As explained in the text, infra, the planning director letter is inadequate for review. We cannot determine whether it includes a county decision on the setback intrusion issue or what the basis for any such determination might be. Therefore, consideration of intervenors' collateral attack argument is premature.