

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 REST-HAVEN MEMORIAL PARK

5 and CHARLES WIPER III,

6 *Petitioners,*

7
8 vs.

9
10 CITY OF EUGENE,

11 *Respondent.*

12
13 LUBA No. 99-069

14
15 FINAL OPINION

16 AND ORDER

17
18 Appeal from City of Eugene.

19
20 Bill Kloos, Eugene, represented petitioners.

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22 Emily N. Jerome, Eugene, represented respondent.

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24 BASSHAM, Board Chair; HOLSTUN, Board Member; BRIGGS, Board Member,
25 participated in the decision.

26
27 DISMISSED

03/21/2003

28
29 You are entitled to judicial review of this Order. Judicial review is governed by the
30 provisions of ORS 197.850.

NATURE OF THE DECISION

Petitioners appeal a city decision approving a tree cutting permit, with conditions.

MOTION TO DISMISS

The city moves to dismiss this appeal, on two grounds. We address the city's dispositive argument, which is that during the proceedings before LUBA the challenged permit expired by the terms of a city administrative rule, and therefore this appeal is moot.

We take the following facts from the record and the parties' pleadings. The subject property is a 76-acre parcel partially developed as a cemetery. In 1995 the city approved a conditional use master plan that in relevant part authorized an expansion of the cemetery onto undeveloped, wooded portions of the property. In 1998, petitioners requested a tree-cutting permit from the city's urban forester pursuant to the city's tree-cutting ordinance at Eugene Code (EC) 6.300 *et seq.*, proposing to cut 3,166 trees. The urban forester issued the permit, but limited the proposed cutting to the northern portion of the property. Petitioners appealed that decision to a hearings officer, who on March 29, 1999, affirmed the urban forester's decision, subject to amended conditions. Petitioners then appealed that decision to LUBA. The parties stipulated to suspend LUBA's proceedings in LUBA No. 99-069, to allow the parties to pursue a mediated settlement. That stipulation was renewed several times. In the meantime, petitioners cut down the trees authorized by the challenged permit.

Petitioners later filed for and received a permit to cut the trees on the southern portion of the property. That permit was appealed in LUBA No. 2002-009. By stipulation of the parties, LUBA No. 99-069 and 2002-009 were placed on the same review schedule, but not consolidated.

On December 12, 2002, petitioners advised LUBA that they wished to proceed with LUBA No. 99-069 and 2002-009. On January 13, 2003, the city filed a motion to dismiss LUBA No. 99-069. In relevant part, the city argues that the challenged permit expired on

1 March 29, 2000, one year after it became final, pursuant to Administrative Order No. 58-96-
2 22-F. That order, issued February 28, 1997 by the city manager, adopts an administrative
3 rule, R-6.305-E, that implements EC 6.305. As relevant here, R-6.305-E provides that “[a
4 tree-cutting] permit shall expire at midnight on the one year anniversary of the date of
5 issue.”¹ The city argues that the present appeal is moot, because (1) the challenged permit
6 has expired; and (2) petitioners have acted on the permit and cut down the trees. Therefore,
7 the city argues, this appeal should be dismissed.

8 Petitioners offer three reasons why this appeal is not moot: (1) R-6.305-E never
9 became “effective” and so cannot be applied to the challenged permit; (2) the appeal to
10 LUBA tolls the one-year expiration period; and (3) even if the permit is expired, this appeal
11 is not moot because the Board’s decision on the merits will have a “practical effect” on the
12 parties.

13 Petitioners advanced identical arguments against an identical motion to dismiss filed
14 in LUBA No. 2002-009. For the reasons expressed in our final opinion and order in LUBA
15 No. 2002-009, issued this date, we agree with the city that the permit challenged in LUBA
16 No. 99-069 expired in March or April 2000, and that the present appeal is therefore moot.
17 *Rest-Haven Memorial Park v. City of Eugene*, ___ Or LUBA ___ (LUBA No. 2002-009,
18 March 21, 2003).

19 LUBA No. 99-069 is dismissed.

¹ R-6.305-E provides, in relevant part:

- “1. Except as provided in [R-6.305-E(2)], a [tree-cutting] permit shall be effective on the date issued or such other date as may be specified in the permit.
- “2. If an application is granted after public notice and an opportunity for comment is provided under R-6.305-C-5, the permit shall not be effective for a period of 15 days from the date of the decision of the City Manager or designee or, in the event an appeal is filed under Section R-6.305-F, seven days from the date of the decision of the hearings officer.
- “3. A permit shall expire at midnight on the one year anniversary of the date of issue.”