

NATURE OF THE DECISION

Petitioner appeals an alleged rezoning of his property.

FACTS

This appeal arose in response to events in a companion case. Our decision in that companion case is issued this date. *Wells v. Yamhill County (Wells I)*, ___ Or LUBA ___ (LUBA No. 2005-176, April 27, 2006). In *Wells I*, petitioner challenged a county decision denying his local appeal of a planning director decision that Yamhill County Communications Agency (YCOM) does not need additional land use approvals to modify antennae on a communications tower that is located on land that YCOM leases from petitioner. In an affidavit attached to the county’s response to petitioner’s record objections in *Wells I*, the planning director stated that the portion of petitioner’s property that is leased to YCOM is zoned PWS (Public Works/Safety). The PWS zoning came as a surprise to petitioner who believed his property to be zoned Agriculture Forestry (AF). Petitioner then filed the present appeal (*Wells II*) based on the purported rezoning of his property to PWS.¹

MOTION TO DISMISS

The county moves to dismiss this appeal on the basis that petitioner’s property was never rezoned to PWS. The county explains that petitioner’s property has been zoned AF since 1990 and remains zoned AF today.² According to the county, the statement in the affidavit from the planning director that a portion of petitioner’s property is zoned PWS was a mistake, and the county now agrees that petitioner’s property is zoned AF40. In both *Wells I* and *Wells II*, the county has included a “Notice of Errata” explaining the planning

¹ In his notice of intent to appeal, petitioner states that he believes the rezoning to PWS occurred sometime between January 14, 2005 and January 30, 2006.

² The property was originally zoned AF20 (20-acre minimum), but was rezoned AF40 (40-acre minimum) in 1993 pursuant to legislative changes. At the time, notice to petitioner was not required.

1 director's mistaken belief that petitioner's property was zoned PWS. In *Wells II*, the county
2 has filed an affidavit from the planning director stating that:

3 "Petitioner seems to believe all or part of his property is zoned PWS * * *.
4 That is not correct. All of his property is zoned AF40. He apparently got this
5 impression from my affidavit in [*Wells I*]. I was under the impression a small
6 portion of his lot was zoned PWS, but that was incorrect * * *." Affidavit of
7 Michael Brandt 2.

8 As the county's motion to dismiss and the planning director's affidavit explain,
9 petitioner's property was not rezoned PWS and remains zoned AF40. We agree with the
10 county that petitioner's property is zoned AF40. *Wells II* therefore challenges a rezoning
11 decision that was never made. Because there is no decision for LUBA to review, the appeal
12 must be dismissed.

13 This appeal is dismissed.