

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 ART BULLOCK,
5 *Petitioner,*

6
7 vs.

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9 CITY OF ASHLAND,
10 *Respondent,*

11 and

12
13 SAGE DEVELOPMENT, LLC,
14 *Intervenor-Respondent.*

15
16 LUBA No. 2007-218

17
18 ORDER

19 The decision on appeal is a city decision that grants “final plan” approval for an 18-
20 lot subdivision. The decision was approved under Ashland Land Use Ordinance (ALUO)
21 Chapter 18.88 “Performance Standards Options.” Under ALUO Chapter 18.88, subdivisions
22 and other development may be approved under more flexible approval standards than would
23 otherwise apply. For subdivisions that are approved under the ALUO Chapter 18.88
24 Performance Standards Options, the standards in ALUO Chapter 18.80 “Subdivisions,”
25 apparently do not apply. We asked the parties to address the issue of whether LUBA is
26 divested of jurisdiction over this appeal due to ORS 92.100(7) which provides:

27 “Granting approval or withholding approval of a final subdivision or partition
28 plat under this section by the county surveyor, the county assessor or the
29 governing body of a city or county, or a designee of the governing body, is not
30 a land use decision or a limited land use decision, as defined in ORS
31 197.015.”

32 LUBA’s jurisdiction is limited to land use decisions and limited land use decisions.
33 Under ORS 92.100(7), final subdivision “plat[s]” are excluded from the statutory definitions
34 of land use decisions and limited land use decisions, and LUBA therefore does not have

1 jurisdiction to review such decisions. The present appeal involves petitioner’s appeal of the
2 city’s decision that approves intervenor-respondent’s “final plan.” Petitioner argues that
3 there is a difference between final “plats” under ORS 92.100(7) and final “plans” that may be
4 approved under ALUO 18.88. The city agrees with petitioner, although for somewhat
5 different reasons.

6 The city assigns great significance to the fact that the ALUO has a separate chapter
7 for approval of subdivisions and that chapter includes a section entitled “Final plat.” ALUO
8 18.80.050. We understand the city to contend that ORS 92.100(7) only divests LUBA of
9 City of Ashland final subdivision plat decisions if they are reviewed and approved under
10 ALUO 18.80.050.

11 The city is almost certainly correct that, under ORS 92.100(7), city decisions
12 regarding applications for final subdivision plat approval under ALUO 18.80.050 are not
13 land use decisions. However, that does not necessarily mean that a decision to grant final
14 plan approval for a Performance Standards Options subdivision under ALUO Chapter 18.88
15 could not also be a decision approving a “final subdivision plat,” for purposes of ORS
16 92.100(7). ORS 92.010(18) provides the following definition of “subdivision plat:”

17 “Subdivision plat’ includes a final map and other writing containing all the
18 descriptions, locations, specifications, dedications, provisions and information
19 concerning a subdivision.”

20 The critical question is whether the decision that is before us in this appeal approves a “final
21 map” that falls within the above definition. If it does, it does not matter whether the ALUO
22 refers to the approved final map as a “final plan” or a “final plat.”

23 Subdivision approval under ALUO Chapter 18.80 proceeds under a two-step
24 process—“Preliminary plat” approval under ALUO 18.80.040 followed by “Final plat”
25 approval under ALUO 18.80.050. Similarly, subdivision approval under ALUO 18.88 also
26 follows a two-step approval process—“Outline plan” approval under ALUO 18.88.030(A)
27 followed by “Final plan” approval under ALUO 18.88.030(B). While there are similarities

1 between preliminary plat approval and outline plan approval, and between final plat approval
2 and final plan approval, there are also significant differences. An applicant for subdivision
3 approval under the ALUO 18.88 Performance Standards Options must provide things that an
4 applicant for a run-of-the-mill subdivision is not required to provide. In addition, an
5 applicant for subdivision approval under the ALUO 18.88 Performance Standards Options is
6 able to avoid or modify approval standards that an applicant for a run-of-the-mill subdivision
7 must comply with. ALUO 18.88.030(B)(4) makes it clear that much more is required to
8 secure subdivision approval under the ALUO Chapter 18.88 Performance Standards Options,
9 than is required to secure subdivision approval under ALUO Chapter 18.80. ALUO
10 18.88.030(B)(4) sets out the required contents of an application for final plan approval under
11 the Performance Standards Options. Seventeen items are listed, a through q.¹ One of those
12 seventeen items, ALUO 18.88.030(B)(4)(o), provides:

13 “If individual lots are to be sold in the Planned Unit Development, a final plat,
14 similar to that required in a subdivision section of the Land Use Development
15 Ordinance.”²

16 The relationship between the ALUO 18.80 and 18.88 is far from clear, and ALUO
17 18.88.030(B)(4)(o) is the only meaningful cross reference between those two chapters that
18 we have been able to find. But ALUO 18.88.030(B)(4)(o) makes it clear that approval of a
19 “final plat” is, at most, only part of final plan approval under the ALUO 18.88 Performance
20 Standards Options.³ Those additional aspects of final plan approval under ALUO 18.88 are

¹ For example, an applicant for final plan approval must provide “a scale map or maps” that show “[c]ommon open areas and spaces, and the particular uses intended for them,” and “[a]reas proposed to be conveyed, dedicated, reserved or used for parks, scenic ways, playgrounds, schools or public buildings.” ALUO 18.88.030(B)(4)(j) and (k).

² We are not sure why ALUO 18.88.030(B)(4)(o) refers to “Planned Unit Development” rather than “Performance Standards Option” development.

³ In this case, in addressing the ALUO 18.88.030(B)(4)(o) requirement for a “final plat,” the applicant states “[a] preliminary Plat has been provided, See Sheet SV-2 ‘Preliminary Plat’.” Record 141. As far as we can tell, the record does not include a final plat.

1 sufficient to render ORS 92.100(7) inapplicable to the decision that is before us in this
2 appeal. ORS 92.100(7) divests LUBA of jurisdiction over final plat approval decisions; it
3 does not divest LUBA of jurisdiction over decisions that grant more than final subdivision
4 plat approval.

5 Finally, we also note that even though the ALUO Chapter 18.88 Performance
6 Standards Options appear to anticipate that final plan approval could include subdivision plat
7 approval, the challenged decision does not grant final subdivision plat approval. To the
8 contrary, the challenged decision is conditioned on the applicant complying with a number of
9 conditions “prior to signature of the final survey plat.” Record 9-10 (conditions 4, 6-9, and
10 11-14). We understand those conditions to require that the applicant take a number of
11 additional steps before it will receive final plat approval from the city. If the challenged
12 decision does not grant final plat approval, ORS 92.100(7) could not apply to divest LUBA
13 of jurisdiction in this matter.

14 LUBA suspended the appeal pending resolution of the jurisdictional issue, and
15 cancelled the scheduled oral argument. LUBA will reschedule oral argument in the normal
16 course.

17 Dated this 4th day of September, 2008.

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Michael A. Holstun
Board Member