

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

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Michael A. McCrystal,)
Petitioner,)
and)
Friends of Polk County,)
Petitioner,)
vs.)
Polk County,)
Respondent.)

LUBA No. 79-027
ORDER OF DISMISSAL

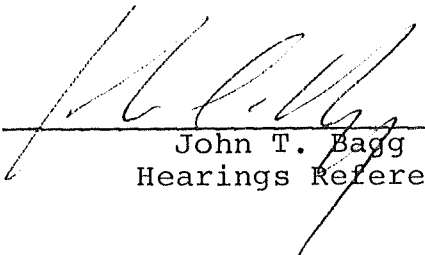
12 This matter is before the Board on its own motion because
13 it appears in the face of the Notice of Intent to Appeal that
14 the land use action complained of had not taken place at the
15 time the notice was filed. This Board has no power except that
16 provided by law and its power to review land use decisions
17 exists only after the decision is made. Here, an act concern-
18 ing a partitioning was announced at a meeting, but that announce-
19 ment is not a final and appealable determination until reduced
20 to writing. Procedural Rule 3(E). No authority has been pre-
21 sented showing how the Board may retain jurisdiction under these
22 circumstances. Petitioners, in their letter of December 17, 1979,
23 have, in fact, requested the Board to promptly dismiss the matter
24 so a new appeal may be filed.

25 By letter of December 13, 1979, this Board advised the
26 parties that the Board would dismiss the matter and return

1 the "filing fee" unless shown that it had the power to act.
2 The reference to return of the filing fee was not correct.
3 The filing fee may not be returned as Ch 772, Or Laws 1979
4 provides that "costs" may be awarded the prevailing party;
5 and "costs," as defined in the act, is separate from the filing
6 fee. The Board has no authority to award the filing fee except
7 where no petition for review is filed through default of the
8 petitioner. However, unless advised by the respondent that
9 costs have been incurred in preparation of the record in this
10 matter, the \$150.00 deposit for the cost of record production
11 may be returned. The respondent has until January 10, 1980
12 to present a cost bill. Should there be no costs, Respondent
13 is asked to so advise this Board in writing as soon as possible.

14 IT IS HEREBY ORDERED that this appeal is dismissed.

15 Dated this 26th day of December, 1979.

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20 John T. Bagg
21 Hearings Referee
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