

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 STAN KEZAR, PATTY KEZAR and)
5 WILLIAM RIDGE,)
6)
7 Petitioners,) LUBA No. 93-116
8)
9 vs.) FINAL OPINION
10) AND ORDER
11 CLACKAMAS COUNTY,)
12)
13 Respondent.)

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16 Appeal from Clackamas County.

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18 Stan Kezar, Patty Kezar and William Ridge, Oregon City,
19 represented themselves.

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21 Stacy L. Fowler, Oregon City, represented respondent.

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23 HOLSTUN, Referee; SHERTON, Chief Referee; KELLINGTON,
24 Referee, participated in the decision.

25
26 DISMISSED 09/08/93

27
28 You are entitled to judicial review of this Order.
29 Judicial review is governed by the provisions of ORS
30 197.850.

1 Opinion by Holstun.

2 On May 10, 1993 and May 27, 1993, respondent issued
3 orders directing that certain persons, including petitioner
4 Stanley Kezar, take certain steps to eliminate and screen
5 outside storage of plastic items and materials on their
6 property. The May 27, 1993 order established a compliance
7 reporting schedule.

8 The July 15, 1993 decision of the Clackamas County
9 Compliance Hearings Officer finds petitioners to be in
10 violation of the prior orders and the Clackamas County Solid
11 Waste Management Ordinance. The challenged decision directs
12 petitioners to erect and maintain a sight obscuring screen
13 and imposes a \$1,000 civil penalty, which may be waived or
14 reduced depending upon [petitioners'] compliance with [the
15 challenged decision] and prior orders."

16 As relevant, our review jurisdiction is limited to land
17 use decisions. ORS 197.825. Respondent moves to dismiss
18 this appeal, contending the challenged decision is not a
19 land use decision because it meets neither the statutory
20 definition of "land use decision," nor the significant
21 impact test. ORS 197.015(10); City of Pendleton v. Kerns,
22 294 Or 126, 133-34, 653 P2d 996 (1982).

23 Although the challenged decision includes a conclusion
24 that petitioners are in violation of the Clackamas County
25 Solid Waste Management Ordinance, the findings supporting
26 the ultimate conclusions and order are based on petitioners'

1 failures to comply with the May 10, 1993 and May 27, 1993
2 county orders in this matter, rather than county land use
3 regulations themselves.¹ Respondent's motion to dismiss
4 raises a significant question concerning our jurisdiction,
5 and petitioners have not responded to the motion to
6 dismiss.² It is petitioners' obligation to establish that
7 this Board has jurisdiction to review the county's decision.
8 Billington v. Polk County, 299 Or 471, 475, 703 P2d 232
9 (1985). Petitioners have not done so, and we therefore
10 grant the motion to dismiss.

11 This appeal is dismissed.

¹The statutory definition of "land use decision" includes decisions that concern the application of land use regulations, unless such decisions "do not require interpretation or the exercise of policy or legal judgment." ORS 197.015(10).

²The motion to dismiss was filed August 13, 1993, and was served on petitioners by mail on that date. Under our rules, petitioners have 10 days from the date of receipt of the motion to file a response. As of the date of this order, the Board has not received a response from petitioners.