

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 KELLY McGREER, ROSEMARY McGREER,
5 JAMES G. PERKINS, SHIRLEE PERKINS,
6 DAVID DICKSON and MELINDA DICKSON,
7 *Petitioners,*

8
9 and

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11 JOHN SILVERTOOTH-STEWART
12 *Intervenor-Petitioner,*

13
14 vs.

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16 CITY OF RAJNEESHPURAM,
17 *Respondent,*

18
19 and

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21 RAJNEESH NEO-SANNYAS INTERNATIONAL COMMUNE,
22 RAJNEESH INVESTMENT CORP., RAJNEESH FOUNDATION INTERNATIONAL
23 RAJNEESH RURAL FIRE PROTECTION DISTRICT, SUMNER SHARPE,
24 SWAMI DHYAN SANTOSH, MA PREM KAVITA, MA SATYA BHARTI,
25 MA KAVISHO, SWAMI SATSANG, SWAMI SARVANANDA,
26 SWAMI PREM KENSHO, SWAMI SATCHIDANANDA, MA PREM MADIR,
27 MA ANANDA SARITA, MA PREM GULABO, MA ANAND GAYATRI,
28 MA GYANPRIYA, SWAMI ANAND HARI, SWAMI ANAND SANGITO,
29 MA PREM DASSANO, MA DEVA JAYAMALA, SWAMI DEVANANDA,
30 SWAMI PREM JAYANANDA, SWAMI JAYANTA, MA ANAND KALI,
31 MA PREM ISABEL, SWAMI ANAND HASYO, MA PREMGYAN,
32 SWAMI ANTAR HUGH, MA NIRVAN HOPE, MA PREM KAVIDO,
33 MA DEVA PRABHA, SWAMI DEVAGEET, MA PREM SAVITA,
34 MA YOGA MUKTA, MA PREM IDAMA, SWAMI VEET NIRVANA,
35 MA NIRUPAM, MA DEVA WADUDA, MA PREM NIVEDITA,
36 SWAMI NITYANANDO, SWAMI SURYADAS, MA PREM PADMA,
37 SWAMI ANTAR SAMIRA, MA ANAND DURGA, MA PREM GARIMA,
38 MA SAKI, SWAMI BODHIGARBHA, SWAMI VEET SANGHARSH,
39 MA DEVA SAMYA, MA DEVA CONNIE, MA YOGA PRATIMA,
40 SWAMI NARAYANADEVA, SWAMI ANAND VIDEH, SWAMI PREM SAMARPAN,
41 MA PREM VIRAJ, MA DOLMA, MA PREM SADHYA,
42 SWAMI SHANTI SAGAR, SWAMI PREM VARDI, MA PREM PANNA,
43 MA PREM PATIPADA, MA PREM SADHANO, SWAMI ANAND DEVALAYA,

1 SWAMI PREM LEELADHAR, SWAMI KRISHNANANDA, SWAMI RAMA PREM,
2 SWAMI DHYAN EARLE, SWAMI PREM MADHAV, MA DEVA NAVEENA,
3 MA PREM PRABODHI, MA SAT PRABODHI, SWAMI ANAND PRAGITAM,
4 MA DIPAM, SWAMI PREM CHRISTO, MA PREM NIRAV,
5 MA DEVA NISEEMA, SWAMI ANAND SURAJ, SWAMI CHRIST CHAITANYA,
6 MA DHYAN SAHAJA, SWAMI DEVA RAJENDRA, MA PREM PUNITA,
7 SWAMI ANAND PRASTHAN, MA NIRADA MA PREM DEBAL,
8 SWAMI PREM KABIR, SWAMI ANAND MAHAKAVI, MA PREM GULAMO,
9 MA YOGA PRAGYA, MA DEVA RIKTA, SWAMI DEVA RON,
10 SWAMI PREM VEERESH, SWAMI ANAND VEDAM, MA ANAND SHEELA,
11 MA ANAND RAPHAELLE, SWAMI DEVA VADAN, SWAMI ANAND SAGARO,
12 SWAMI GEET GOVIND, SWAMI SHUNYO MA PREM KARUNA,
13 SWAMI PRARTHIO SUBHAN, MA PREM SUJATO, MA AMRITA PRITAM,
14 MA MARY CATHERINE, SWAMI ANAND MASTA, MA PREM SUNSHINE,
15 MA PREM SAHAJA, MA PREM SHARDA, SWAMI PARITOSH YOGENA,
16 MA ANAND YOGANIDRA, SWAMI PREM YATREN, MA DEVA MAMTA,
17 SWAMI DEVA PRITAM, MA ANAND PUJA, MA PREM KOMALA,
18 MA PREM SUMAN, MA ANAND KEVALA, MA PREM ANAMA,
19 MA ARUNA BHARTI, MA PREM AMRITO, SWAMI ANAND ALOK,
20 MA PREM AJA, SWAMI ANANDADAS, SWAMI PREM ANBUDDHA,
21 MA ANAND ANUPA, SWAMI ANUGITEN, MA PREM ARCHAN,
22 SWAMI ANAND ARUP, MA YOGA ASHA, MA YOGA ASTHA,
23 SWAMI PREM AVINASH, MA DEVA BARKHA, MA YOGA BHAKTI,
24 SWAMI ANAND BHAVO, SWAMI DEVA ALLEN, SWAMI SHANTPARV,
25 SWAMI PREM YASHEN, MA PREMRUP, MA PREM GEETA,
26 MA KRISHNA GOPA, AND SWAMI PREM NIREN,

27 *Intervenors-Respondent.*

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29 LUBA No. 1982-085/086

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31 FINAL OPINION
32 AND ORDER

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34 Appeal from City of Rajneeshpuram.

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36 Charles Swindells, Portland, represented petitioners.

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38 John Silvertooth-Stewart, Madras, represented himself.

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40 Ma Prem Sangeet represented respondent.

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42 Sumner Sharpe, Portland, represented himself.

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44 Allen L. Johnson, Portland, represented intervenor-respondent Rajneesh Investment Corp.

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Swami Prem Niren represented the remaining intervenors-respondent.

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

DISMISSED 03/18/2004

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

MOTION TO INTERVENE

John Silvertooth Stewart moves to intervene on the side of petitioners. There is no opposition to the motion and it is allowed.¹

DECISION

In these consolidated appeals, petitioners challenge two ordinances adopting a comprehensive plan and development ordinance for the City of Rajneeshpuram. On January 25, 1983, we issued an order deferring review pending acknowledgment review of those ordinances by the Land Conservation and Development Commission (LCDC). On August 23, 1983, the Board issued an order denying a stay of the challenged decisions. On July 11, 1984, the Board received a motion to lift the deferral, however, no action was taken in response to that motion. Other than certain notices regarding substitutions of counsel, no action occurred for nine years.

On April 12, 1995, the Board issued an order requesting a status report, and informing the parties that if no response was provided, the Board would dismiss the appeals. Petitioners filed a response, arguing that the proper disposition was reversal rather than remand of the decisions. According to petitioners, the city was created in violation of the “Constitutionally required separation of church and state * * * [and therefore] the ordinances adopted by the purported City of Rajneeshpuram [are] ultra vires.” Objection to Dismissal and Memorandum in Support of Reversal 1-2.

Intervenor-respondent Rajneesh Investment Corporation (intervenor) opposed petitioners’ request that the appealed decisions be reversed, arguing that while “dismissal for lack of prosecution or mootness based upon acknowledgement of superseding land use provisions by Wasco County may be appropriate, reversal is emphatically not.” Memorandum in Response to LUBA Order Dated April 12, 1995, 2. Intervenor contended that the question of the constitutionality of the city

¹ In an order dated November 15, 1982, we allowed the participation of the listed intervenors-respondent.

1 was a temporal one, in that the alleged constitutional infirmity was a result of ownership and control
2 of the city by a religious organization. Intervenor argued that once the religious organization
3 relinquished ownership and control, the incorporation and operation of the city did not violate the
4 U.S. Constitution. Intervenor argued:

5 “The City of Rajneeshpuram is not dead. It is asleep. Like Sleeping Beauty, it
6 awaits only the kiss of a federal court order recognizing the constitutional toxin
7 which put it to sleep has long ceased to exist at the townsite.” Memorandum in
8 Response to LUBA Order dated April 12, 1995 at 2.

9 In 1992, LCDC acknowledged Wasco County’s proposed Exclusive Farm Use zoning
10 designation for 2,385 acres, including 2,119 acres encompassing the City of Rajneeshpuram.
11 LCDC Compliance Acknowledgement 92-ACK-852. Because the county adopted legislation that
12 has superseded the city’s comprehensive plan and development ordinance at issue in these appeals,
13 proceeding with these consolidated appeals would serve no useful purpose. *Davis v. City of*
14 *Bandon*, 19 Or LUBA 526 (1990). Accordingly, these appeals are dismissed as moot.²

² In a January 20, 2004 letter, we advised the parties that we would dismiss this appeal if we did not “receive a response from the parties within 14 days of [our] letter.” That letter was not sent to all parties in this appeal. We corrected that error in a February 23, 2004 letter and advised all parties that this appeal would be dismissed if we did not receive a response from any party by March 15, 2004. We have not received a response from any party, and all parties apparently agree that these appeals are moot.