

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 CLYDE SEVERSON, JOY STEWART,
5 DICK HULET, LINDA FRIEBUS,
6 HARRY HARVEY and HOLGER T. SOMMER,
7 *Petitioners,*

8
9 and

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11 ED SCHOOLEY, VICKI VALDEZ
12 and ELIZABETH PAULSEN,
13 *Intervenors-Petitioner,*

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15 vs.

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17 JOSEPHINE COUNTY,
18 *Respondent,*

19
20 and

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22 COPELAND PAVING, INC.,
23 *Intervenor-Respondent.*

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25 LUBA No. 2006-019

26
27 FINAL OPINION
28 AND ORDER

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30 Appeal from Josephine County.

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32 Holger T. Sommer, Merlin, Clyde Severson, Joy Stewart, Dick Hulet, Linda Friebus
33 and Harry Harvey, Grants Pass, represented themselves.

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35 Ed Schooley, Vicki Valdez and Elizabeth Paulsen, Grants Pass, represented
36 themselves.

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38 Steven E. Rich, County Counsel, Grants Pass, represented respondent.

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40 James R. Dole, Grants Pass, represented intervenor-respondent.

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42 BASSHAM, Board Member; DAVIES, Board Chair; HOLSTUN, Board Member,
43 participated in the decision.

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45 DISMISSED

04/06/2006

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

NATURE OF THE DECISION

Petitioners appeal a decision approving the final subdivision plat.

MOTIONS TO INTERVENE

Ed Schooley, Vicki Valdez, and Elizabeth Paulsen move to intervene on the side of petitioners. Copeland Paving, Inc. (intervenor), the applicant below, moves to intervene on the side of respondent. There is no opposition to these motions, and they are granted.

JURISDICTION

On February 22, 2006, the county filed a motion to dismiss this appeal pursuant to Oregon Laws 2005, chapter 239, section 1, codified at ORS 92.100(7), which states in relevant part:

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

Oregon Laws 2005, chapter 239, section 2 adopted conforming amendments to the definition of “limited land use decision” at ORS 197.015(13). The amendments to ORS 92.100(7) and ORS 197.015(13) became effective June 16, 2005, and apply to plats submitted after that date. Oregon Laws 2005, chapter 239, section 3.

We understand the county to argue that the challenged final subdivision plat was submitted after June 16, 2005, and is subject to ORS 92.100(7). The county argues that because ORS 197.825(1) limits LUBA’s jurisdiction to appeals of land use or limited land use decisions, and the challenged decision is neither, LUBA has no jurisdiction over this appeal.

On March 21, 2006, petitioners responded, stating in relevant part that they consent to the county’s motion to dismiss based on ORS 92.100(7). Petitioners request “dismissal

1 without prejudice so the Petitioners might take this matter to Circuit Court.” Petitioners’
2 Request to Dismiss 2.

3 We agree with the county that the challenged decision is neither a land use nor
4 limited land use decision subject to our jurisdiction, pursuant to ORS 92.100(7).¹ Because
5 the appealed decision is not a land use decision or a limited land use decision subject to our
6 jurisdiction, and because petitioner has not filed a motion requesting that we transfer this
7 appeal to circuit court, this appeal is dismissed. *Franklin v. Deschutes County*, 29 Or LUBA
8 79, 85 (1995); *Many Rivers Group v. City of Eugene*, 25 Or LUBA 518, 52 (1993); *Miller v.*
9 *City of Dayton*, 22 Or LUBA 661, 666 (1992).

¹ Intervenor moves to dismiss this appeal on a different basis. Because we dismiss this appeal under ORS 92.100(7), we need not address intervenor’s motion to dismiss.