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

MARYLHURST NEIGHBORHOOD ASSOCIATION,  
*Petitioner,*

and

BEV BURKE,  
*Intervenor-Petitioner,*

vs.

CITY OF WEST LINN,  
*Respondent,*

and

PHIL GENTLEMANN and CENTURIAN HOMES,  
*Intervenors-Respondent.*

LUBA No. 2006-140

FINAL OPINION  
AND ORDER

Appeal from City of West Linn.

Michael F. Sheehan, Scappoose, represented petitioner.

Michael F. Sheehan, Scappoose, represented intervenor-petitioner.

William Monahan, Portland, represented respondent.

Carrie Richter, Portland, represented intervenors-respondent.

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

DISMISSED

09/29/2006

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

**NATURE OF THE DECISION**

Petitioner appealed city approval of a subdivision.

**MOTION TO INTERVENE**

Bev Burke (Burke), an opponent below, moves to intervene on the side of petitioner. Phil Gentlemann and Centurian Homes (Applicants), the applicants below, move to intervene on the side of respondent. There is no opposition to the motions and they are granted.

**FACTS**

Petitioner, a neighborhood association, filed the notice of intent to appeal (NITA) in this case. Burke, a member of the neighborhood association, intervened on the side of petitioner. Burke, however, did not file her own NITA. Petitioner subsequently filed a notice of withdrawal. Applicants subsequently filed a motion to dismiss the appeal because the only petitioner has withdrawn from the appeal.

**MOTION TO DISMISS**

Under existing LUBA case law, it is well established that after the petitioner withdraws from the appeal, any intervenors may not continue the appeal, and the appeal must be dismissed. *Waters v. Marion County*, 33 Or LUBA 751, 754 (1997); *National Advertising Company v. City of Portland*, 20 Or LUBA 79, 85 (1990); *Gross v. Washington County*, 17 Or LUBA 640 (1989). As we stated in *Gross*:

“The effect of our decision may be that potential intervenors wishing to avoid the uncertainty of relying on a petitioner to timely file and maintain a notice of intent to appeal must file their own notices of intent to appeal \*\*\*.” 17 Or LUBA at 646 n 6.

Burke acknowledges that existing case law dictates that this appeal must be dismissed, but asks the Board to overrule the existing caselaw and allow the appeal to proceed. We have considered Burke’s arguments, but these arguments provide no basis to overrule existing caselaw. Accordingly, this appeal is dismissed.