



**NATURE OF THE DECISION**

Petitioner appeals a decision by the city hearings officer denying his appeal of the city’s approval of a final partition plat.

**FACTS**

In January, 2006, the planning commission approved a tentative partition plat for the subject property, subject to conditions. No party appealed that decision. In January, 2007 the city issued an administrative decision approving the final partition plat for the same property. Petitioner appealed that decision to the hearings officer. The hearings officer denied petitioner’s appeal and approved the final plat. This appeal followed.

**JURISDICTION**

On its own motion, LUBA issued an order suspending the appeal and requesting briefing from the parties regarding whether LUBA has jurisdiction over this appeal, in light of ORS 92.100(7), which provides:

“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.”

Respondent moves to dismiss the appeal, arguing that LUBA does not have jurisdiction to hear the appeal because under ORS 92.100(7), the appealed decision is not a land use decision as defined in ORS 197.015(11)(a), or a limited land use decision as defined in ORS 197.015(13).<sup>1</sup>

Petitioner puts forth several arguments urging our jurisdiction over the appeal. First, petitioner notes that the administrative decision approving the final plat contained a

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<sup>1</sup> As relevant here, our jurisdiction is limited to review of land use decisions or limited land use decisions, as those terms are defined in ORS 197.015. ORS 197.825(1).

1 statement that an appeal of the hearings officer’s decision “shall be to the Oregon Land Use  
2 Board of Appeals.” Record 17. However, a statement in a local government’s decision  
3 cannot operate to bestow jurisdiction on LUBA that is inconsistent with ORS 197.825. *See n*  
4 1.

5 Second, petitioner notes that he followed the procedure for local appeals contained in  
6 the Salem Revised Code (SRC).<sup>2</sup> The city apparently applies its procedures for limited land  
7 use decisions to applications for final plat approval. Memorandum in Support of Motion to  
8 Dismiss 2-3. However, the fact that procedures for making limited land use decisions are  
9 used for making a decision to approve or deny a final partition plat does not convert that  
10 decision into a limited land use decision, or override the language of ORS 92.100(7)  
11 providing that decisions to approve or deny a final plat are not limited land use decisions.

12 Petitioner next appears to argue that the city’s approval of the tentative partition plat  
13 in January, 2006 was not a “final” land use decision. Petitioner characterizes the city’s  
14 partition approval process as a “two-step” process. Petitioner asserts that his appeal of the  
15 final plat approval to LUBA came only after he had exhausted all local appeal remedies for  
16 plat approval.<sup>3</sup> The January, 2006 tentative plat approval is not relevant to the question of  
17 whether LUBA has jurisdiction over a decision by the city approving the final partition plat,  
18 a decision that is, by statute, not a land use decision or limited land use decision.

19 Finally, petitioner argues that the intent of the legislature in enacting ORS 92.100(7)  
20 was to make clear that a surveyor’s decision is mechanical in nature, and that it appears to  
21 have been enacted primarily to clarify that a survey or assessor’s decision is not a land use  
22 decision. Petitioner argues that the statute must be narrowly construed to limit our review to  
23 cases involving surveyor or assessor non-discretionary review activities. However, nothing

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<sup>2</sup> SRC 63.043(a) and SRC 63.047 delegate the authority to approve or deny final plats to the planning administrator.

<sup>3</sup> As noted above, no party appealed the city’s January, 2006 approval of the tentative partition plat.

1 cited to us in the text or legislative history of ORS 92.100(7) suggests that the legislature  
2 intended to limit the scope of that statute to decisions on final subdivision or partition plat  
3 applications that do not involve discretion.<sup>4</sup> Because the challenged decision is neither a  
4 land use decision nor a limited land use decision, we have no jurisdiction over it. *Severson v.*  
5 *Josephine County*, 51 Or LUBA 569 (2006) (dismissing appeal of final subdivision plat  
6 decision under ORS 92.100(7)). Because petitioner has not filed a motion to transfer this  
7 appeal to circuit court, we must dismiss this appeal. *Id.* at 571.

8 The appeal is dismissed.

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<sup>4</sup> Respondent also argues that recently enacted amendments to ORS 197.015(11) and (13) make petitioner's appeal moot, and that those amendments eliminated any remaining ambiguity regarding the meaning of ORS 92.100(7). In the 2007 legislative session the legislature passed and the Governor signed HB 3025, which amends the definitions of "land use decision" and "limited land use decision" to clarify that such decisions do not include decisions that approve or deny a final subdivision or partition plat. Because HB 3025 became effective after the date of the decision challenged in this appeal, we do not consider respondent's argument.