

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

3
4 J & G HOLDINGS, LLC,
5 *Petitioner,*

6
7 vs.

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9 WASHINGTON COUNTY,
10 *Respondent,*

11
12 and

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14 MEADOW NEIGHBORHOOD ASSOCIATION,
15 CINDY GRANT, GEORGIA HOGAN,
16 MARIE WOODCOCK, GEORGE WOODCOCK,
17 JANET DOBYNS, GUY FLUNO, SUSAN FLUNO,
18 RAYMOND ROY LAKE, DIANE ZINK, GERALD ZINK,
19 LINDA BERTWELL, SCOTT KRASKE, DOUGH SCHMICK,
20 THOMLYN BINNETT, DAVID O'GUINN, LORNA O'GUINN,
21 JUDY WULF, JOSHUA CONRAD, JOHN SHERMAN,
22 KRIS DEWING, PETER DEWING, CHRISTINA FOX,
23 ALAN GREGG, CAROL SHEANS and JUDITH LIENHARDI,
24 *Intervenors-Respondents.*

25
26 LUBA No. 2011-042

27
28 FINAL OPINION
29 AND ORDER

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31 Appeal from Washington County.

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33 Michael C. Robinson, Portland, represented petitioner.

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35 Dan R. Olsen, County Counsel, Hillsboro, represented respondent.

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37 Lawrence R. Derr, Beaverton, represented intervenors-respondents.

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

41
42 DISMISSED

06/14/2011

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

MOTION TO INTERVENE

Meadow Neighborhood Association, Cindy Grant, Georgia Hogan, Marie Woodcock, George Woodcock, Janet Dobyms, Guy Fluno, Susan Fluno, Raymond Roy Lake, Diane Zink, Gerald Zink, Linda Bertwell, Scott Kraske, Dough Schmick, Thomlyn Binnett, David O’Guinn, Lorna O’Guinn, Judy Wulf, Joshua Conrad, John Sherman, Kris Dewing, Peter Dewing, Christina Fox, Alan Gregg, Carol Sheans and Judith Lienhardi move to intervene on the side of respondent in the above-captioned appeal. No party opposes the motion, and it is granted.

REQUEST FOR REFUND OF INTERVENORS’ FILING FEE

Intervenors’ motion to intervene on the side of respondent in this appeal was filed on May 26, 2011. One day later, on May 27, 2011, petitioner moved to voluntarily dismiss this appeal. We grant that motion below. Intervenors’ May 26, 2011 motion to intervene was accompanied by a check for \$100 as required by ORS 197.830(7)(a) and OAR 661-010-0050(3).¹ In accordance with LUBA procedures, that check was promptly deposited on the same date it was received. Under OAR 661-010-0050(1), “[s]tatus as an intervenor is

¹ ORS 197.830(7)(a) provides as follows:

“Within 21 days after a notice of intent to appeal has been filed with the board under subsection (1) of this section, any person described in paragraph (b) of this subsection may intervene in and be made a party to the review proceeding by filing a motion to intervene and by paying a filing fee of \$100.”

OAR 661-010-0050(3) provides as follows:

“Filing Fee: A motion to intervene shall be accompanied by a filing fee of \$100 payable to the Land Use Board of Appeals. If a motion to intervene is received without payment of the filing fee or a check providing the filing fee is returned for insufficient funds, the intervenor will be given an opportunity to submit the required fee. If the filing fee is not paid within the time set by the Board, the Board shall deny the motion to intervene. Cash shall not be accepted.”

1 recognized when a motion to intervene is filed * * *.” On May 31, 2011, intervenors
2 requested that LUBA refund their filing fee.

3 ORS 197.830(7)(a) and OAR 661-010-0050(3) do not authorize LUBA to refund
4 intervenors’ filing fee. While LUBA likely would allow an intervenor to withdraw its
5 motion to intervene and return the check for the filing fee, if the request to withdraw the
6 motion to intervene were received by LUBA before the check for the intervenor’s filing fee
7 is deposited, that is not what happened here. Because LUBA lacks authority to refund
8 intervenors’ filing fee, intervenors’ request for a refund of that filing fee is denied.

9 **MOTION TO DISMISS**

10 As already noted, petitioner requests that this appeal be dismissed. Accordingly, this
11 appeal is dismissed. Because the county did not transmit a record in this appeal, the Board
12 will return petitioner’s \$200 deposit for costs.