

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

3
4 BONNIE BRODERSEN,
5 *Petitioner,*

6
7 vs.

8
9 CITY OF ASHLAND,
10 *Respondent,*

11
12 and

13
14 WILLIAM MCDONALD and LYNN MCDONALD,
15 *Intervenors-Respondents.*

16
17 LUBA No. 2013-014

18
19 FINAL OPINION
20 AND ORDER

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22 Appeal from City of Ashland.

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24 Corinne C. Sherton, Salem, represented petitioner.

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26 David H. Lohman, City Attorney, Ashland, represented respondent.

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28 Mark S. Bartholomew, Medford, represented intervenor-respondents.

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30 HOLSTUN, Board Chair; Bassham, Board Member; RYAN, Board Member,
31 participated in the decision.

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33 DISMISSED

08/23/2013

34
35 You are entitled to judicial review of this Order. Judicial review is governed by the
36 provisions of ORS 197.850.

Opinion by Holstun.

There have been a number of appeals concerning intervenors' attempts to construct a residence on their lot in the City of Ashland. One of those appeals concerned an encroachment permit that the city issued on September 12, 2011, which allowed intervenors to construct improvements in the public right of way next to their lot. We dismissed that appeal as untimely filed. *Brodersen v. City of Ashland*, ___ Or LUBA ___ (LUBA No. 2012-056, November 8, 2012). Petitioner believes that encroachment permit expired 90 days after it was issued, under Ashland Municipal Code AMC 13.02.090.¹ After petitioner saw construction activity in the right of way next to intervenors' lot in February 2013, she filed this appeal. The notice of intent to appeal explained that while she had not been able to find any decision that granted an extension of the September 12, 2011 encroachment permit, she had been unable to confirm with the city that no such extension had been approved, and therefore filed the present appeal to preserve her right to challenge the extension decision if it exists.

The record that was filed by the city in this matter includes no extension of the September 12, 2011 encroachment permit. Petitioner objected to the record, in part because it failed to include a copy of a new encroachment permit or an encroachment permit extension. Neither the city nor intervenors responded to the record objection. LUBA issued

¹AMC 13.02.090 provides:

“All right of way, easement or public property encroachment permits shall be revocable by the City at any time such revocation would be in the public interest. No grant of any permit, expenditure of money in reliance thereon, or lapse of time shall give the permittee any right to the continued existence of an encroachment or to any damages or claims against the City arising from a revocation.

“Any permit issued under this section shall be automatically revoked if the permittee fails to comply with any conditions of the permit, or fails to begin installation of the allowed encroachment within ninety (90) days after issuance of the permit unless an extension is requested prior to the expiration of the ninety (90) day period.”

1 an Order on July 11, 2013 that required the city to file a Supplemental Record. That Order
2 provided, in part:

3 “The city shall include any new encroachment permit or decision extending,
4 amending or adopting an addendum [to] the original encroachment permit in
5 the Supplemental Record.” *Brodersen v. City of Ashland*, ___ Or LUBA ___
6 (LUBA No. 2013-014, July 11, 2013), slip op at 4.

7 The city transmitted the First Supplemental Record on July 29, 2013. The cover letter
8 that accompanied that First Supplemental Record, in addressing LUBA’s requirement that the
9 Supplemental Record include any new, extended or amended encroachment permit or
10 addendum to the September 12, 2011 encroachment permit, stated “No additional documents
11 exist.”

12 LUBA’s jurisdiction is limited to reviewing land use decisions and limited land use
13 decisions. ORS 197.825(1). The “decision” that is the subject of this appeal does not exist.
14 It follows that we do not have jurisdiction, and this appeal must be dismissed.

15 Respondent and intervenors also believe this appeal must be dismissed, but argue it
16 should be dismissed for other reasons. Because we only need one reason to dismiss this
17 appeal, we decline to consider whether there are additional reasons why this appeal should be
18 dismissed.

19 This appeal is dismissed.