

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

MILDRED ANNE O'CALLAGHAN,  
*Petitioner,*

vs.

CITY OF JOSEPH,  
*Respondent,*

and

ZAHRA RAHMANI,  
*Intervenor-Respondent.*

LUBA No. 2019-026

FINAL OPINION  
AND ORDER

Appeal from City of Joseph.

Mildred Anne O'Callaghan, Joseph, represented herself.

Wyatt S. Baum, La Grande, represented respondent.

Benjamin Boyd and D. Rahn Hostetter, Enterprise, represented intervenor-respondent.

ZAMUDIO, Board Member; RYAN, Board Chair; RUDD, Board Member, participated in the decision.

DISMISSED      05/23/2019

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 appeals an oral vote by the city council approving a preliminary partition.

**MOTION TO INTERVENE**

Zahra Rahmani, the subject property owner, moves to intervene on the side of respondent. No party opposes the motion and it is granted.

**MOTION TO DISMISS**

On February 21, 2019, petitioner filed with LUBA by certified mail a document titled “Notice of Intent to Appeal and Request for Reconsideration” (NITA). The first paragraph of the NITA states:

“Notice is hereby given that petitioner intends to appeal that land use decision of respondent involving the application of Zahra Rahmani for a Major Partition of Tax Lot #50100 within the city limits of the City of Joseph, Oregon. The decision to pass the Major Partition application [was made] by a vote [of] the Joseph City Council on February 11, 2019.”

Petitioner attached to the NITA photocopies of what appear to be portions of a city comprehensive plan, a partition plat map, a public records request form dated February 19, 2019 and requesting, among other things, “Decision document – pending Engineering report from Anderson/Perry \* \* \*,” a notice list with hand-written notes, and a meeting sign-in sheet dated February 11, 2019.

On March 18, 2019, LUBA received intervenor’s motion to intervene and motion to dismiss. On March 26, 2019, LUBA received petitioner’s response to

1 the motion to dismiss. On April 4, 2019, LUBA received from the city a motion  
2 to toll the deadline to file the record.

3 The legislature has authorized LUBA to review “land use decision[s],” as  
4 defined in ORS 197.015(10)(a), which provides that “[l]and use decision’  
5 [i]ncludes [a] final decision or determination made by a local government or  
6 special district that concerns the adoption, amendment or application of” a  
7 statewide planning goal, a provision of local government comprehensive plan, or  
8 a land use regulation, and “limited land use decisions” as defined in ORS  
9 197.015(12)(a), which provides that a “limited land use decision [m]eans a final  
10 decision or determination made by a local government pertaining to a site within  
11 an urban growth boundary that concerns [t]he approval or denial of a tentative  
12 subdivision or partition plan, as described in ORS 92.040(1).” Under OAR 661-  
13 010-0010(3), “[a] decision becomes final when it is reduced to writing and bears  
14 the necessary signatures of the decision maker(s), unless a local rule or ordinance  
15 specifies that the decision becomes final at a later date, in which case the decision  
16 is considered final as provided in the local rule or ordinance.”

17 Intervenor argues that LUBA lacks jurisdiction because the city council’s  
18 vote on February 11, 2019 is not a final decision, reduced to writing, and bearing  
19 the signatures of the city council members. The city explains that on February  
20 11, 2019, the city council held a hearing on intervenor’s partition application and  
21 orally approved the application and that the city council’s decision has not yet

1 been reduced to writing as of April 1, 2019. Declaration of [City Attorney] In  
2 Support of Respondent’s Motion to Toll Deadline to File Record.

3 Petitioner responds that she did not receive a copy of a written decision  
4 document prior to February 21, 2019, the date she mailed her NITA. Petitioner  
5 attaches to her response a document titled Joseph City Council Report and  
6 Decision for Tentative Partition MjP-1-2018, which lists the “date of decision”  
7 as February 11, 2019, and states that the report was prepared by a contract planner  
8 at Anderson Perry & Associates, Inc. (APA Report). The APA Report includes  
9 findings of fact, conclusions of law, and exhibits. It is not signed or dated.

10 It is clear to us from the pleadings that petitioner intends, and respondent  
11 and intervenor knows or should know that petitioner intends, to appeal the city  
12 council’s final decision approving the tentative partition MjP-1-2018. However,  
13 it appears to us that the city has not yet issued a final land use decision or limited  
14 land use decision because the city council’s oral February 11, 2019 decision has  
15 not been reduced to a writing “bear[ing] the necessary signatures of the decision  
16 maker(s)[.]” OAR 661-010-0010(3). Our jurisdiction is limited to review of final  
17 land use decisions and limited land use decisions. We agree with intervenor that  
18 we lack jurisdiction because the city council’s oral vote and the APA Report are  
19 not a “land use decision” as defined in ORS 197.015(10)(a) or a “limited land use  
20 decision” as defined in ORS 197.015(12)(a).

1 Intervenor's motion to dismiss is granted.<sup>1</sup>

2 The appeal is dismissed.

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<sup>1</sup> Respondent's motion to toll the deadline for filing the record is moot.