

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

3
4 DEPARTMENT OF LAND CONSERVATION
5 AND DEVELOPMENT,
6 *Petitioner,*

7
8 vs.

9
10 CLATSOP COUNTY,
11 *Respondent,*

12
13 and

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15 JAMES CARLSON and VIRGININA CARLSON,
16 *Intervenors-Respondents.*

17
18 LUBA No. 2008-176

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20 OREGON SHORES CONSERVATION COALITION,
21 RICHARD ROWLAND, and PATRICIA ROWLAND,
22 *Petitioners,*

23
24 vs.

25
26 CLATSOP COUNTY,
27 *Respondent,*

28
29 and

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31 JAMES CARLSON and VIRGININA CARLSON,
32 *Intervenors-Respondents.*

33
34 LUBA No. 2008-178

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36 FINAL OPINION
37 AND ORDER
38

1 MEMORANDUM DECISION
2 (ORS 197.835(16))
3

4 Appeal from Clatsop County.
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6 Darsee Staley and Gary L. Vrooman represented petitioner Oregon
7 Department of Land Conservation and Development.
8

9 Courtney Johnson represented petitioners Oregon Shores Conservation
10 Coalition, Richard Rowland, and Patricia Rowland.
11

12 E. Andrew Jordan, Blair Henningsgaard, and Christopher D. Crean
13 represented respondent.
14

15 James D. Zupancic represented intervenors-respondents.
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17 RYAN, Board Chair; RUDD, Board Member; ZAMUDIO, Board
18 Member, participated in the decision.
19

20 REVERSED 11/23/2022
21

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

BACKGROUND

Petitioners appeal a September 24, 2008 county decision approving a preliminary plat for a 31-lot subdivision on intervenors-respondents' (intervenors') property, based on a September 18, 2008 county decision concluding that intervenors have a vested right to complete the subdivision notwithstanding county and state land use laws to the contrary. That vested rights determination was issued pursuant to Ballot Measure 37 (2004) and Ballot Measure 49 (2007).

The September 18, 2008 vested rights decision was challenged in a writ of review proceeding in Clatsop County Circuit Court. The September 24, 2008 subdivision approval was challenged at LUBA in these consolidated appeals. In an order dated May 13, 2009, we suspended the appeals "pending a final resolution of that writ of review proceeding, including final resolution of any appeals."

The circuit court's decision affirming the September 18, 2008 vested rights decision was reversed and remanded by the Court of Appeals on June 29, 2011. *DLCD v. Clatsop County (A144073)*, 244 Or App 33, 260 P3d 575 (2011). The Supreme Court vacated and remanded that decision for further consideration. 351 Or 403 (2011). On May 2, 2012, the Court of Appeals reversed and remanded the September 18, 2008 vested rights decision a second time for the county to reapply the ratio test under *Clackamas County v. Holmes*, 265 Or 193, 508 P2d 190

1 (1973). *DLCD v. Clatsop County*, 249 Or App 566, 281 P3d 613 (2012). After a
2 petition for Supreme Court review of that May 2, 2012 decision was denied, 352
3 Or 377 (2012), the circuit court entered a judgment on April 29, 2013, reversing
4 and remanding the September 18, 2008 vested rights decision and directing the
5 county “to reconsider the Measure 49 vested right determination in light of the
6 Court of Appeals’ decisions in this case.”

7 On June 7, 2013, petitioners in LUBA No. 2008-178 (collectively, OSCC)
8 filed a motion to reinstate the appeals and for summary reversal of the September
9 24, 2008 subdivision approval. In an order dated July 8, 2013, we denied that
10 motion. In our order, we agreed with intervenors that the appeals should remain
11 suspended “at least until the board of county commissioners has rendered a new
12 decision regarding intervenors’ alleged vested rights, in response to the circuit
13 court’s April 29, 2013 remand.”

14 After our July 8, 2013 order, we received no further communications from
15 any of the parties regarding the appeals. In an order dated September 21, 2022,
16 we directed the parties to advise LUBA whether the appeals should be dismissed
17 or reactivated. Petitioners and intervenors have not responded to our order. On
18 October 21, 2022, the county filed a motion to reactivate the appeals. In an order
19 dated October 26, 2022, we reactivated the appeals and directed the county to

20 “provide the Board and the parties with a copy of the board of county
21 commissioners’ vested rights decision rendered in response to the
22 circuit court’s April 29, 2013 order, or to advise the Board and the
23 parties in writing that no such decision has been rendered in the

1 almost 10 years since the circuit court's order.”

2 On November 2, 2022, the county filed a response to our order, stating that “no
3 decision was made on Intervenors’ vested rights application following remand
4 from circuit court. As such, there is not a current, valid vested rights
5 determination for the property that is the subject of these appeals.”

6 **DISPOSITION**

7 ORS 197.835(16) provides, “The board may decide cases before it by
8 means of memorandum decisions and shall prepare full opinions only in such
9 cases as it deems proper.” For the reasons set out above, we do not believe a full
10 opinion is proper in this case. No valid vested rights determination for the
11 property exists to support the county’s decision approving a subdivision that is
12 otherwise prohibited by county and state land use laws.

13 For the reasons set out in OSCC’s June 7, 2013 motion to reinstate the
14 appeals and for summary reversal, the county’s decision is reversed.