

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

RONALD D. SATTLER,  
*Petitioner,*

vs.

CITY OF BEAVERTON,  
*Respondent,*

and

ASHCREEK PARENT COOPERATIVE PLAYSCHOOL,  
*Intervenor-Respondent.*

LUBA No. 2025-012

DAVID C. GOLDER,  
*Petitioner,*

vs.

CITY OF BEAVERTON,  
*Respondent,*

and

ASHCREEK PARENT COOPERATIVE PLAYSCHOOL,  
*Intervenor-Respondent.*

LUBA No. 2025-013

DOUGLAS GORDON,  
*Petitioner,*

vs.

1 CITY OF BEAVERTON,  
2 *Respondent,*

3  
4 and

5  
6 ASHCREEK PARENT COOPERATIVE PLAYSCHOOL,  
7 *Intervenor-Respondent.*

8  
9 LUBA No. 2025-014

10  
11 FINAL OPINION  
12 AND ORDER

13  
14 Appeal from City of Beaverton.

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16 Ronald D. Sattler, David C. Golder, and Douglas Gordon represented  
17 themselves.

18  
19 Robin Rojas McIntyre represented respondent.

20  
21 Zoe Lynn Powers represented intervenor-respondent.

22  
23 BASSHAM, Board MEMBER; ZAMUDIO, Board Chair; WILSON,  
24 Board Member, participated in the decision.

25  
26 DISMISSED 07/10/2026

27  
28 You are entitled to judicial review of this Order. Judicial review is  
29 governed by the provisions of ORS 197.850.

**NATURE OF THE DECISION**

Petitioners appeal a city council decision approving intervenor-respondent's (intervenor's) application for a modification of their conditional use permit to increase enrollment at a childcare facility.

**FACTS**

Intervenor operates a childcare facility as part of a church on property located at 15050 SW Weir Road, Beaverton, and that is zoned Residential Mixed B (RMB). In 2024, intervenor applied to the city (1) for a design review compliance letter for retroactive approval of its 2011 expansion of an outdoor play area on the subject property (the DRCL), and (2) to modify its conditional use permit to increase enrollment at the childcare facility from 20 to 60 children (the CUP). On January 16, 2025, the city issued notices of the city council decisions approving both the DRCL and the CUP. On February 5, 2025, petitioners filed their notices of intent to appeal the separately issued decisions.

We subsequently consolidated the CUP appeals (LUBA Nos. 2025-012/013/014) and separately consolidated the DRCL appeals (LUBA Nos. 2025-009/010/011). On March 20, 2025, we issued an order denying intervenor's request to consolidate the DRCL and CUP appeals, explaining that "[w]e understand design review and conditional use approval to be subject to distinct approval criteria and it is unclear to us that it is appropriate to consolidate the

1 appeals.” *Sattler v. City of Beaverton*, LUBA Nos 2025-012/013/014 (Mar 20,  
2 2025) (slip order at 5).

3 On March 14, 2025, LUBA received the record. On March 28, 2025,  
4 petitioners and intervenor filed record objections. The parties then stipulated to  
5 suspend these appeals for mediation. On February 24, 2026, while these appeals  
6 were suspended, the city and intervenor (together, respondents) filed a joint  
7 motion to dismiss these appeals as moot based on a recent city legislative  
8 enactment. On March 10, 2026, petitioners filed a joint response opposing the  
9 motion to dismiss.

#### 10 **RECORD OBJECTIONS**

11 No party contends that we should resolve the record objections prior to  
12 ruling on the motion to dismiss. For the reasons explained below, we grant the  
13 motion to dismiss and dismiss these appeals. Accordingly, the record objections  
14 are denied as moot.

#### 15 **MOTION TO DISMISS**

16 On December 2, 2025, while these appeals were suspended, the city  
17 enacted Ordinance No. 4876, which adopted amendments to the Beaverton  
18 Development Code (BDC), effective January 20, 2026. Motion to Dismiss Ex B,  
19 at 1. Under the amended BDC, “Child Care Centers” are “[p]ermitted when  
20 collocated with a legally established institutional use, including public buildings,  
21 public recreation facilities, public parks, places of worship, and educational  
22 institutions.” BDC 20.05.20. BDC 90 (Jan 20, 2026) defines “Child Care Center”

1 as “Preschool recorded program or school-age recorded program recorded under  
2 ORS 329A.255; Parent cooperative, as defined in ORS 329A.250; or Child care  
3 facility, other than a family child care home, that is certified under ORS  
4 329A.280.” Respondents explain that Ordinance No. 4876 was enacted, in part,  
5 to implement House Bill (HB) 3560 (2025). HB 3560 amended *former* ORS  
6 329A.440 (2024), *renumbered as* ORS 197.671 (2025), to expand both the  
7 statutory definition of “child care center” and areas where such child care centers  
8 may be sited. HB 3560 required local governments to update their land use  
9 regulations to comply with the amendments within one year after the act’s  
10 effective date. Or Laws 2025, ch 157, § 3.

11 On February 11, 2026, in response to a request from intervenor, the city  
12 issued a Zoning Confirmation Letter (ZCL). Motion to Dismiss Ex A, at 1. The  
13 ZCL states:

14 “Under the [BDC], and consistent with [*former*] ORS  
15 329A.440(1)(a) [(2024)], Ashcreek Playschool is a child care center.  
16 Moreover, it is collocated with a legally established institutional use.  
17 Accordingly, the City of Beaverton finds that the child care center  
18 use at 15050 SW Weir Road is now permitted by right.

19 “Regarding the previous Conditional Use approvals for the child  
20 care center, specifically [the CUP challenged in this appeal], the  
21 City of Beaverton, finds these approvals, and associated conditions  
22 of approval, have been superseded by Ordinance No. 4876, which  
23 allows the child care center as a permitted use. Because the child  
24 care center use is now permitted by right, the prior conditional use  
25 permits for the child care center, including the conditions of  
26 approval, are no longer operative and have no force or effect.”  
27 Motion to Dismiss Ex A, at 3.

1       On February 24, 2026, respondents jointly moved to dismiss these appeals  
2 as moot based on the ZCL’s determination that the CUP and its associated  
3 conditions of approval are “superseded” by Ordinance No. 4867 and are therefore  
4 “no longer operative and have no force or effect.”<sup>1</sup> *Id.*

5       Petitioners oppose the motion to dismiss, arguing first that we should deny  
6 the motion as premature because these appeals are stayed for mediation under  
7 ORS 197.860.<sup>2</sup> However, as explained in our May 27, 2026 order, the stipulated  
8 suspension period ended on May 4, 2026, without the parties agreeing to a  
9 stipulation for remand or dismissal. *Sattler v. City of Beaverton*, LUBA Nos

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<sup>1</sup> Respondents acknowledge that the facts underlying their motion to dismiss in these appeals do not apply to the DRCL appealed in LUBA Nos. 2025-009/010/011. Motion to Dismiss 2 n 1. Those appeals remain pending before LUBA and we express no opinion as to whether the facts presented here have any effect on LUBA Nos. 2025-009/010/011.

<sup>2</sup> ORS 197.860 provides:

“All parties to an appeal may at any time prior to a final decision by the Court of Appeals under ORS 197.855 stipulate that the appeal proceeding be stayed for any period of time agreeable to the parties and the [B]oard or court to allow the parties to enter mediation. Following mediation, the [B]oard or the court may, at the request of the parties, dismiss the appeal or remand the decision to the [B]oard or the local government with specific instructions for entry of a final decision on remand. If the parties fail to agree to a stipulation for remand or dismissal through mediation within the time the appeal is stayed, the appeal shall proceed with such reasonable extension of appeal deadlines as the [B]oard or Court of Appeals considers appropriate.”

1 2025-012/013/014 (May 27, 2026) (slip order at 3). Accordingly, these appeals  
2 were reactivated and we proceeded to re-suspend the appeals to consider the  
3 motion to dismiss.

4 Even if these appeals were currently stayed for mediation, ORS 197.860  
5 does not, as petitioners argue, prevent a party from unilaterally moving to dismiss  
6 a stayed appeal. ORS 197.860 governs mediation procedures, not jurisdiction. It  
7 does not prevent a party from filing a unilateral motion to dismiss, nor does it  
8 limit LUBA's authority to determine whether an appeal is properly before it.  
9 Further, OAR 661-010-0065(2) expressly allows motions to dismiss for lack of  
10 jurisdiction to be filed "at any time." The motion is not premature.

11 Petitioners next argue that these appeals are not moot because HB 3560  
12 and Ordinance No. 4876 cannot be applied retroactively to negate the CUP.  
13 Petitioners' arguments are, in substance, challenges to the determinations made  
14 in the ZCL. The ZCL is a binding city decision that expressly determines that the  
15 recently enacted city ordinance supersedes the CUP challenged in these appeals  
16 and renders the CUP without legal effect. The ZCL is not before us in these  
17 appeals, and it has not been separately appealed to LUBA.

18 Generally, local governments lack the authority to amend or modify a  
19 decision that is on appeal to LUBA. However, local governments retain the  
20 authority to issue a new decision that rescinds or expressly supersedes the  
21 decision on appeal. *Standard Insurance Co. v. Washington County*, 17 Or LUBA  
22 647, 660, *rev'd on other grounds*, 97 Or App 687, 776 P2d 1315 (1989) (once a

1 LUBA appeal is perfected, the local government no longer has jurisdiction to  
2 modify the appealed land use decision until LUBA resolves the appeal); *Heiller*  
3 *v. Josephine County*, 25 Or LUBA 555 (1993) (where the applicant withdraws  
4 the application and the land use decision on appeal has been rescinded by a  
5 separate decision, LUBA will dismiss the appeal as moot). In that event, LUBA  
6 typically dismisses the appeal of the original decision as moot. *Jacobsen v.*  
7 *Douglas County*, 62 Or LUBA 461, 462 (2010). Here, the ZCL advising  
8 intervenor that their CUP is “superseded,” “no longer operative,” and without  
9 “force or effect,” is a new city decision that nullifies or expressly supersedes the  
10 challenged decision.

11 Petitioners further argue that these appeals should not be dismissed  
12 because “effective relief remains available[.]” Response to Motion to Dismiss 12.  
13 Specifically, petitioners argue that reversal or remand would have practical effect  
14 in the following respects:

15 “First, it would directly affect the legal validity of the City Council’s  
16 approval authorizing the increase in enrollment from 20 to 60  
17 children. Second, it would require correction of the asserted errors  
18 of law and procedural errors that Petitioners contend prejudiced  
19 their substantial rights. Third, it would vacate the existing approval  
20 or require lawful findings and conditions to govern any future  
21 approval.” *Id.*

22 Based on ORS 197.805, providing that LUBA’s “decisions be made  
23 consistently with sound principles governing judicial review[.]” LUBA has long  
24 held that it will decline to exercise its jurisdiction under circumstances where our

1 review would have no “practical effect” on the rights of the parties.<sup>3</sup> *Graser-*  
2 *Lindsey v. City of Oregon City*, 57 Or LUBA 279, 280-81 (2008); *Thunderbird*  
3 *Hotels, LLC v. City of Portland*, 56 Or LUBA 430, 432 (2008); *Gettman v. City*  
4 *of Bay City*, 28 Or LUBA 121, 122 (1994); *Heiller*, 25 Or LUBA at 556; *Forest*  
5 *Highlands Neigh. Assoc. v. City of Lake Oswego*, 24 Or LUBA 215, 216 (1992).  
6 We do not see how our review of a CUP that has been expressly declared  
7 “superseded,” “no longer operative,” and without “force or effect” by a  
8 subsequent and binding city decision would have any practical effect. Therefore,  
9 these appeals are moot.

10       These appeals are dismissed.

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<sup>3</sup> Mootness is a judicial justiciability doctrine that is not codified in statutes or rules governing LUBA’s jurisdiction. *See Graser-Lindsey*, 57 Or LUBA at 280 (“Because LUBA is an Executive Department administrative review tribunal, and not part of the Judicial Department, it is not constitutionally required to dismiss appeals simply because a decision by LUBA in an appeal would have no practical effect.”). However, we note that ORS 14.175, which governs civil proceedings in circuit courts, allows courts to adjudicate a moot case concerning acts by public bodies in certain limited circumstances. *See Couey v. Atkins*, 357 Or 460, 522, 355 P3d 866 (2015) (so holding); *Bishop v. Deschutes County*, 77 Or LUBA 15, 19-21 (2018) (assuming without deciding that ORS 14.175 is relevant to LUBA’s consideration of a mootness claim under ORS 197.805, which states the policy that LUBA’s review be consistent with “sound principles governing judicial review[ ]”).

## Certificate of Mailing

I hereby certify that I served the foregoing Final Opinion and Order DIS for LUBA No. 2025-012/013/014 on July 10, 2026, by mailing to said parties or their attorney a true copy thereof contained in a sealed envelope with postage prepaid addressed to said parties or their attorney as follows:

David C. Golder  
10175 SW 149th Terrace  
Beaverton, OR 97007

Douglas Gordon  
10050 SW 151st Place  
Beaverton, OR 97007

Robin Rojas McIntyre  
Assistant City Attorney  
12725 SW Millikan Way  
PO Box 4755  
Beaverton, OR 97076

Ronald D. Sattler  
10170 SW 149th Terr  
Beaverton, OR 97007

Zoe Lynn Powers  
Radler White Parks & Alexander LLP  
111 SW Columbia Street, Suite 700  
Portland, OR 97201

Dated this 10th day of July, 2026.



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Erin Pence  
Executive Assistant

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Hannah Barkemeyer Baker  
Executive Support Specialist