

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

3
4 ROBERT MASON,
5 *Petitioner,*

6
7 vs.

8
9 CITY OF CORVALLIS,
10 *Respondent,*

11 and

12
13
14 LES MELVILLE,
15 *Intervenor-Respondent.*

16
17 LUBA No. 2002-120 and 2002-121

18 ORDER ON MOTION TO DISMISS
19

20 LUBA No. 2002-120 involves a city resolution referring a decision on annexation of
21 property to city voters at the November 5, 2002 election. LUBA No. 2002-121 concerns a
22 city decision adopting comprehensive plan amendments and development approvals for the
23 same property proposed for annexation. The plan amendments and development approvals at
24 issue in LUBA No. 2002-121 are contingent upon voter approval of the requested
25 annexation.

26 The city informs us that the requested annexation failed at the November 5, 2002
27 election, and requests that both appeals be dismissed, as moot.

28 Petitioner agrees that the results of the November 5, 2002 election render LUBA No.
29 2002-120 moot, and does not object to dismissal of that appeal. However, petitioner notes
30 that the decision appealed in LUBA No. 2002-121 is contingent upon *annexation*, not upon
31 any particular annexation vote. Petitioner expresses concern that the plan amendment and
32 development approvals that are appealed in LUBA No. 2002-121 could still become effective
33 if there is a successful future annexation request. Petitioner states that he is willing to
34 stipulate with the city that the decision appealed in LUBA No. 2002-121 is of no legal effect.

1 In the alternative, petitioner requests that LUBA’s order of dismissal of LUBA No. 2002-121
2 clarify that the decision at issue in that case is of no legal effect.

3 The city’s motion to dismiss takes the position that the decision challenged in LUBA
4 No. 2002-121 is “no longer effective” as a result of the November 5, 2002 election. Motion
5 to Dismiss 1. However, that is not clear to us. As petitioner points out, the decision appealed
6 in LUBA No. 2002-121 is contingent upon annexation, not upon a particular vote on
7 annexation. It appears to be that the plan amendment and development approvals that are
8 appealed in LUBA No. 2002-121 could yet take effect if there is a successful future
9 annexation referral. *See Troy v. City of Grants Pass*, ___ Or LUBA ___ (LUBA No. 2001-
10 133, unpublished Order on Motion for Extension of Time, October 11, 2001) slip op 1
11 (rejecting argument that the outcome of an annexation vote may moot an appeal of a land use
12 decision approving annexation, where it was not clear to LUBA that the challenged decision
13 could not be ratified by voters in a later election). Given our uncertainty on this point, we
14 agree with petitioner that we may not assume that LUBA No. 2002-121 is moot.

15 That said, the parties appear to be willing to resolve LUBA No. 2002-121 without
16 proceeding to the merits. There are several conceivable ways to do so, including a stipulated
17 motion to dismiss, a motion for voluntary remand, or the adoption of another land use
18 decision that repeals the approvals granted in LUBA No. 2002-121 and hence moots that
19 appeal. Both LUBA No. 2002-120 and 2002-121 are currently suspended based on the
20 stipulations of the parties. The parties shall have 21 days from the date of this order to
21 inform LUBA whether LUBA No. 2002-121 should be reactivated or resolved in some other
22 manner. After the parties have responded to this order, LUBA will issue appropriate orders
23 resolving the city’s motion to dismiss LUBA No. 2002-120 and 2002-121.

24 Dated this 6th day of August, 2003.

25 _____
26 Tod A. Bassham
27 Board Chair