

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

3
4 JACK BRYANT,
5 *Petitioner,*

6
7 vs.

8
9 UMATILLA COUNTY,
10 *Respondent,*

11 and

12
13 HATLEY CONSTRUCTION, INC.,
14 *Intervenor-Respondent.*

15
16 LUBA No. 2002-108

17
18 ORDER

19 **MOTION TO INTERVENE**

20 Hatley Construction, Inc. (intervenor), the applicant below, moves to intervene on the
21 side of respondent. There is no opposition to the motion, and it is allowed.

22 **MOTION FOR STAY**

23 Petitioner moves to stay the challenged decision, pursuant to ORS 197.820(4) and
24 OAR 661-010-0068. To obtain a stay under the statute and rule, the movant must establish a
25 “colorable claim of error in the decision,” and that the movant “will suffer irreparable injury
26 if a stay is not granted.” OAR 661-010-0068(1)(c).

27 The challenged decision is a comprehensive plan amendment to add intervenor’s
28 aggregate site to the county’s Goal 5 Aggregate Resources Inventory as a significant
29 resource. Petitioner explains that he owns an aggregate quarry that is already on the county’s
30 inventory. In anticipation of winning a bid from the Oregon Department of Transportation
31 (ODOT), petitioner crushed 40,000 tons of rock. However, intervenor ultimately won the
32 ODOT contract. Petitioner argues that if intervenor is allowed to mine from his quarry,
33 petitioner will be irreparably harmed because he “will not be able to recover the costs

1 associated with crushing 40,000 tons of rock.” Application for Stay 3. Petitioner states that
2 there is no other ready market for the 40,000 tons of rock.

3 We assume for purposes of this order that petitioner has established a colorable claim
4 of error in the decision. *See Rhodewalt v. Linn County*, 16 Or LUBA 1001, 1004 (1987) (the
5 requirement to demonstrate a colorable claim of error is not a particularly demanding one).
6 However, for the reasons set out below, petitioner has failed to establish that he will suffer
7 irreparable injury if the stay is not granted.

8 We consider the following factors in determining whether the petitioner had
9 demonstrated irreparable injury:

- 10 1. Has the petitioner adequately specified the injury he or she will suffer?
- 11 2. Is the identified injury one that cannot be compensated adequately in
12 money damages?
- 13 3. Is the injury substantial and unreasonable?
- 14 4. Is the conduct petitioner seeks to bar through the stay probable rather
15 than merely threatened or feared?
- 16 5. If the conduct is probable, is the resulting injury probable rather than
17 merely threatened or feared?

18 *City of Oregon City v. Clackamas County*, 17 Or LUBA 1032, 1042-43 (1988).

19 Intervenor argues, and we agree, that a stay is not warranted under the foregoing
20 factors. Petitioner has not established either that the alleged injury is substantial and
21 unreasonable, or that he cannot be compensated adequately in money damages. As we stated
22 in *Roberts v. Clatsop County*, 43 Or LUBA 577, 583 (2002), the cases in which we find that
23 the petitioner has demonstrated irreparable injury if a stay is not granted generally involve
24 proposals that destroy or injure unique historic or natural resources, or other interests that
25 cannot be practicably restored or adequately compensated for once destroyed. An injury that
26 is purely economic or that can be adequately compensated in money damages is not
27 irreparable, under the foregoing factors.

1 The present case does not involve unique historic or natural resources, or other
2 interests that cannot be practicably restored or adequately compensated for. To the contrary,
3 petitioner made a business decision to crush rock in anticipation of winning the ODOT bid.
4 As it turned out, petitioner did not win that bid, and will now have to look for another buyer.
5 Given that the alleged injury is attributable primarily if not entirely from petitioner's
6 calculated business decision, it is difficult to see why the alleged injury is "unreasonable."
7 More to the point, given the lack of any causative or direct connection between the land use
8 decision that is challenged in this appeal and petitioner's alleged injury, no stay of that land
9 use decision is justified under ORS 197.820(4). .

10 The motion for stay is denied.¹

11 Dated this 4th day of September, 2003.

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Tod A. Bassham
Board Chair

¹ This appeal is currently suspended pending a record objection. The Board will resolve that record objection in due course.