

FILED: August 8, 2012

IN THE COURT OF APPEALS OF THE STATE OF OREGON

JOHN CROSLEY,
Petitioner,

v.

COLUMBIA COUNTY,
Respondent.

Land Use Board of Appeals
2011093

A151317

Submitted on July 02, 2012.

Ross Day and T. Beau Ellis filed the brief for petitioner.

Robin R. McIntyre, Assistant County Counsel, filed the brief for respondent.

Before Ortega, Presiding Judge, and Sercombe, Judge, and Hadlock, Judge.

PER CURIAM

Affirmed.

1 PER CURIAM

2 Petitioner seeks review of a final order of the Land Use Board of Appeals
3 (LUBA) that affirmed an order of the Columbia County Board of Commissioners that
4 determined that petitioner had lost a vested right to complete construction of a dwelling
5 because he discontinued construction for 30 years. LUBA upheld the county's decision
6 based on a county ordinance and ORS 215.130(5), both of which provide that, when a
7 nonconforming use is discontinued or interrupted for a certain period of time, the right to
8 continue the nonconforming use is lost.

9 Petitioner argues that a vested right cannot be abandoned by operation of
10 law and asks us to reconsider our decision in [*Fountain Village Development Co. v.*](#)
11 [*Multnomah Cty.*](#), 176 Or App 213, 31 P3d 458 (2001), *rev den*, 334 Or 411 (2002), in
12 which we held that a vested right to construct a nonconforming use may be lost by
13 abandonment, interruption, or discontinuance. Petitioner argues that our decision in
14 *Fountain Village* ignored key differences between vested rights and nonconforming uses
15 that necessitate treating them differently in this context. In *Fountain Village*, we
16 explicitly characterized vested rights as "inchoate nonconforming uses" and held that
17 "[n]othing in Oregon's case law or statutes precludes subjecting vested rights to develop
18 property to the same limitations that apply to nonconforming uses generally[.]" *Id.* at
19 221. We decline to revisit that holding.

20 Affirmed.