

LAND USE
BOARD OF APPEALS

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

SEP 16 2 59 PM '80

3	WILLIAM H. SIMMONS and ELSIE)	
4	M. SIMMONS, husband and wife,)	
)	
	Petitioner,)	LUBA NO. 80-021
5)	
	vs.)	FINAL OPINION
6)	AND ORDER
	CITY OF PRINEVILLE,)	
7)	
	Respondent.)	

8
9 Appeal from City of Prineville.

10 Stephen D. Dixon, Prineville, filed the petition for review
and argued the cause for Petitioners.

11 Fredrick S. Carman filed the brief and James W. Powers
12 argued the cause for Respondent City of Prineville.

13 COX, Referee; REYNOLDS, Chief Referee; BAGG, Referee;
participated in the decision.

14 Dismissed. 9/16/80

15 You are entitled to judicial review of this Order.
16 Judicial review is governed by the provisions of Oregon Laws
1979, ch 772, sec 6(a).

1 COX, Referee.

2 NATURE OF PROCEEDING

3 Petitioners are contesting respondent's refusal to execute
4 a document allegedly required by DEQ to the effect that at such
5 time in the future as sewer service is available respondent
6 will allow petitioners to hook up their subdivision to the City
7 sewer system. Petitioners claim without this type of statement
8 the petitioners cannot secure approval of the final plat of
9 Rose Subdivision from the Oregon Department of Environmental
10 Quality.

11 STANDING

12 Standing is not an issue in this case.

13 ALLEGATIONS OF ERROR

14 Petitioners set forth one assignment of error which is
15 stated as follows:

16 "The City of Prineville is without jurisdiction
17 to block final plat approval of Rose Subdivision which
18 has been granted by the Crook County Planning
19 Commission and the City should be enjoined from doing
20 so and ordered to give written notification to D.E.Q.
that it will allow Rose Subdivision to hook onto the
City sewer system at such time in the future as sewer
service becomes available."

21 FACTS

22 Petitioners are owners and developers of Rose Subdivision
23 which received preliminary plat approval from Crook County on
24 July 12, 1978. Rose Subdivision is located outside the
25 Prineville city limits but within the urban growth boundary for
26 the City of Prineville. Both Crook County and the City of

1 Prineville have comprehensive plans which have been
2 acknowledged by the Land Conservation and Development
3 Commission.

4 Petitioners are unable to obtain final plat approval for
5 the Rose Subdivision without the signature of the Department of
6 Environmental Quality. The Department of Environmental Quality
7 will not sign the final plat of Rose Subdivision unless the
8 City executes a letter stating that it will allow Rose
9 Subdivision to hook onto the city sewer system at some
10 indefinite future date when the city determines such service is
11 available. Petitioners personally and through their attorney
12 have requested such a letter from the City of Prineville but
13 the city has refused to execute any such document. On January
14 30, 1980, petitioners, through one of their attorneys,
15 requested a written response from the respondent as to why
16 respondent refused to sign a statement to the effect that if
17 sewer services were ever available to the Rose Subdivision, it
18 could be connected to the service. On February 12, 1980,
19 petitioners' attorney was sent a letter from the Director of
20 the City/County Planning Department in which it was stated:

21 "The City of Prineville is concerned about the
22 commitment which Mr. Simmons requests of it in regard
23 to the provision of future sewer service. At the
24 present time the City has no developed sewer plan
25 which addresses the problem of future expansion and/or
26 extensions; until such time as the City has adopted
such a plan we will be unable to make the commitment
to your client's request. We anticipate adopting such
a plan as soon as possible; however the possibility
remains that this plan may not encompass extension in
the direction of Mr. Simmons' Subdivision. In other

1 words the adoption of a plan will not guarantee the
2 signing of an agreement.

3 "The Planning Department is presently seeking
4 various funding alternatives for developing this sewer
5 plan."

6 Petitioners filed a Notice of Intent to Appeal with this
7 Board on February 25, 1980. Petitioners claim that the
8 February 12, 1980 letter from the Director of the City/County
9 Planning Department is a final land use decision upon which
10 their appeal can be based.

11 Respondent City of Prineville alleges in its response brief
12 that the Land Use Board of Appeals is without jurisdiction to
13 grant the relief requested by petitioners. Respondent, in
14 essence, argues that no final land use decision has been made.

14 DECISION

15 Oregon Laws 1979, ch 772, sec 4(1) states in pertinent part:

16 "Subject to the provisions of section 6a of this
17 1979 Act relating to judicial review by the Court of
18 Appeals, the board [Land Use Board of Appeals] shall
19 have exclusive jurisdiction to review any land use
20 decision of a city, county or special district
21 governing body or a state agency in the manner
22 provided in sections 5 and 6 of this 1979 Act."

23 Section 3(1)(a) defines a land use decision to mean:

24 "A final decision or determination made by a
25 city, county or special district governing body that
26 concerns the adoption, amendment or application of

(A) The state-wide planning goals;

(B) A comprehensive plan provision; or

(C) A zoning, subdivision or other ordinance that
implements a comprehensive plan; or

1 (b) A final decision or determination of a state
2 agency other than the Land Conservation and
3 Development Commission, with respect to which the
agency is required to apply the state-wide planning
goals."

4 This Board has adopted pursuant to Oregon Laws 1979, ch
5 772, sec 2(a)(4) Rules of Procedure. LUBA Rule sec 3(C)
6 defines a final decision as being "a decision or determination
7 which has been reduced to writing and which bears the necessary
8 signatures of the governing body." Rule 3(D) defines governing
9 body as "a city, county or special district governing body or a
10 state agency." Respondent claims that no documents meeting the
11 above set forth standards appear in the record in this case.
12 It contends that the letter of February 12, 1980 signed by the
13 Planning Director does not meet the requirements of the above
14 cited rules. It claims that the Planning Director is not a
15 member of the Prineville City Council and has been granted no
16 authority to sign documents on behalf of the Council.
17 Therefore, respondents urge there is no final order for this
18 Board to review and that this appeal should be dismissed for
19 the lack of the Land Use Board of Appeals' jurisdiction.

20 The February 12, 1980 letter, supra, does not amount to a
21 "final decision or determination made by a city." Its contents
22 are not couched in terms of finality but rather merely
23 represent the planning directors opinion that the city was not
24 then in a position to give the petitioners a definitive
25 response. In addition, there has been no showing that the
26 planning director has the authority to sign a final decision

1 for the city as regards this matter.¹

2 Therefore, petitioners' petition for review is dismissed
3 for lack of LUBA jurisdiction.

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FOOTNOTE

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We express no opinion as to LUBA's jurisdiction had the letter been signed by the governing body.

1 CERTIFICATE OF MAILING

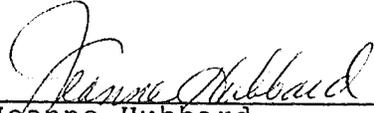
2 I hereby certify that I served the foregoing Final Opinion
3 and Order for LUBA No. 80-021, on September 16, 1980, by
4 mailing to said parties or their attorney a true copy thereof
5 contained in a sealed envelope with postage prepaid addressed
6 to said parties or their attorney as follows:

5 Stephen D. Dixon
6 Attorney at Law
7 203 N. Main Street
8 Prineville, OR 97754

5 James W. Powers
6 Attorney at Law
7 200 N. Belknap
8 Prineville, OR 97754

7 Daniel E. Van Vactor
8 Attorney at Law
9 1199 NW Wall
10 Bend, OR 97754

10 Dated this 16th day of September, 1980.

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12 
13 Jeanne Hubbard
14 Secretary to the Board
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