

1 REYNOLDS, Chief Referee.

2 This matter is before the Board upon the stipulated motion
3 to dismiss with prejudice and without cost to either party and,
4 furthermore, that Petitioners' deposit for cost be returned to
5 them.

6 It is hereby ordered this appeal is dismissed and
7 petitioners will be returned their deposit for costs in the
8 amount of \$150.

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

F. CARTER KERNS,
JEAN H. KERNS, LOU LEVY,
and CLARE WAGNER,

Petitioners,

vs.

CITY OF PENDLETON,
FREDERICK S. HILL and
MARY ANN HILL,

Respondents.

LUBA No. 80-138

FINAL OPINION
AND ORDER

Appeal from the City of Pendleton.

Thomas R. Page, Portland, filed the Petition for Review and argued the cause for Petitioners. With him on the brief was Stephen T. Janik, Stoel, Rives, Boley, Fraser and Wyse, Portland.

Rudy M. Murgo, Pendleton, and William J. Storie, Pendleton filed the brief and argued the cause for Respondents.

REYNOLDS, Chief Referee; COX, Referee; BAGG, Referee; participated in this decision.

REMANDED

2/19/81

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

1 REYNOLDS, Chief Referee.

2 NATURE OF THE PROCEEDINGS

3 Petitioners appeal Pendleton Ordinance No. 3141 which
4 provides in its title: "An ordinance creating street and water
5 local improvement district number 393; authorizing call for
6 bids; providing for liens; and declaring an emergency."

7 Petitioners set forth nine assignments of error.

8 Petitioners' first assignment of error, and the only one which
9 we address, is that the city failed to consider or apply the
10 applicable legal standards, namely, the city's comprehensive
11 plan and the statewide goals, and that no findings of fact were
12 made by the city concerning these standards.

13 STANDING

14 Respondents challenge the standing of petitioners F. Carter
15 and Jean H. Kerns and Lou Levy on the basis that there are
16 insufficient facts alleged in the Petition for Review to confer
17 standing. Respondents concede that petitioner Wagner appeared
18 before the city governing body and was entitled as a matter of
19 right to notice and hearing. However, respondents argue that
20 inasmuch as this was a legislative proceeding, petitioner
21 Wagner has not set forth facts in the petition showing how her
22 interests were adversely affected or how she was aggrieved by
23 the decision. Moreover, the city argues that petitioner Wagner
24 has other relief available to her in the form of a case filed
25 by her in Circuit Court challenging the validity of Ordinance
26 No. 3141 and that this should affect her right to have standing

1 in this case.

2 We conclude, for reasons expressed later in this opinion,
3 that the city's decision to authorize extension of North Main
4 Street, which decision is reflected in Ordinance No. 3141, was
5 quasi-judicial in nature. Oregon Laws 1979, ch 772, (4)(3)
6 requires that in order to have standing to challenge a
7 quasi-judicial decision a person must have appeared before the
8 governing body and must either be a person entitled as a matter
9 of right to notice and hearing or be a person whose interests
10 are adversely affected or who is aggrieved by the decision.
11 Concerning Mr. Kerns, respondents admit that he appeared at the
12 city council meeting. Respondents deny, however, that he was
13 entitled as a matter of right to notice and hearing prior to
14 the making of the decision and assert that the Petition for
15 Review fails to set forth sufficient facts showing that his
16 interest were adversely affected or that he was aggrieved. Mr.
17 Kerns alleges that he is within sight and sound of the proposed
18 improvements and that the decision will cause the removal of
19 open space and recreational land which he and his family
20 utilize. These allegations set forth sufficient facts to
21 confer standing upon Mr. Kerns.

22 Clare Wagner has also alleged sufficient facts to confer
23 standing upon her. She has alleged that she appeared before
24 the city and was entitled as of right to notice and hearing.
25 That she is maintaining a separate lawsuit against the city in
26 the Circuit Court does not deprive her of standing to challenge

1 before this Board the city's decision authorizing extension of
2 North Main Street. Petitioner Wagner's lawsuit filed in
3 Circuit Court challenges the LID method chosen by the city to
4 fund the street extension. The lawsuit does not challenge the
5 city's decision with respect to its compliance with the
6 comprehensive plan or statewide planning goals. Because this
7 Board has exclusive jurisdiction in Oregon Laws 1979, ch 772 to
8 review decisions alleged to be in violation of a city's
9 comprehensive plan or in violation of the statewide planning
10 goals, petitioner Wagner could not maintain such a lawsuit in
11 the Circuit Court. Accordingly, we conclude that the
12 maintenance by petitioner Wagner of a separate lawsuit in the
13 Circuit Court challenging the method of funding chosen by the
14 city for extending North Main Street has no bearing on her
15 standing to challenge before this Board the city's decision to
16 authorize the extension of North Main Street on the basis that
17 it fails to comply with the city's comprehensive plan or
18 applicable statewide planning goals.

19 We conclude petitioners Jean Kerns and Lou Levy do not have
20 standing because the petition for review contains no allegation
21 they appeared either orally or in writing in this proceeding
22 before the City of Pendleton.

23 OPINION ON THE MERITS

24 The central question in this case is whether the adoption
25 of Ordinance No. 3141 is a land use decision within the meaning
26 of Oregon Laws 1979, ch 772 such that this Board has

1 jurisdiction to review the ordinance.¹ The ordinance
2 authorizes the extension of North Main Street a distance of
3 approximately 310 feet. The improvements involve grading and
4 paving the street, and the placement of storm sewers, drains,
5 curbs and sidewalks. The extension of the street will open up
6 for development lots within the city which presently have no
7 access available. In addition, a major purpose of the road
8 extension is to facilitate development of an area which adjoins
9 the city limits and which was the subject of an annexation
10 proceeding to the City of Pendleton reviewed by this Board in
11 Kerns v City of Pendleton, 1 Or LUBA 1 (1980). Extension of
12 North Main Street as authorized by this ordinance will not only
13 facilitate development of the Hill property which adjoins the
14 city but also development of the proposed Owens Addition, a
15 subdivision of some 75 to 85 lots which is presently within the
16 city limits but cannot be developed due to a lack of access to
17 the city. That access will be provided if North Main Street is
18 extended as authorized by this ordinance and if the Hill
19 property is developed. Development of the Hill property will
20 result in an extension of North Main Street through the Hill
21 property to the Owens Addition.

22 Thus, as can be seen from the above, this ordinance not
23 only authorizes construction of a street and the immediate
24 development of lots bordering on the street but goes a long way
25 toward the future development of many additional lots.

26 Accordingly, this one improvement has not only an immediate but

1 a long term impact on land development.

2 Moreover, the 1965 Pendleton Comprehensive Plan, in effect
3 at the time this ordinance was passed, devotes an entire
4 section to streets within the City of Pendleton, setting forth
5 the objectives, needs and plan policies governing maintenance
6 and development of streets within the city. The plan
7 identifies streets within the city as freeways, arterial
8 streets, central area streets, collector streets and minor
9 streets. North Main Street is designated in the plan as a
10 minor street. The plan specifies with respect to minor streets
11 the maximum pavement width, the number of travel lanes, the
12 number of parking lanes as well as the planting, utility and
13 sidewalk area for each side of the street. For minor streets,
14 the maximum pavement width is 36 feet: "Except for minor
15 streets which are continuous in alignment for a considerable
16 distance and which will tend to serve as collector streets" in
17 which case the maximum pavement width is 44 feet. Accordingly,
18 the comprehensive plan specifies not only the kind of street
19 which the city may allow but controls the pavement width,
20 number of travel lanes, number of parking lanes, etc for the
21 street.

22 The city's decision from a factual standpoint has a
23 considerable impact on land use, both present and future,
24 thereby constituting an exercise of the city's planning and
25 zoning responsibilities. See: Peterson v. Klamath Falls, 279
26 Or 249, 566 P2d 1193 (1977). The city's decision must,

1 therefore involve application of and be consistent with the
2 statewide planning goals. ORS 197.175(1); Peterson, supra.
3 The city's decision to extend North Main Street as well as the
4 width of pavement, etc., for that street also involves
5 application of the city's comprehensive plan because the
6 decision must conform to the policies set forth in the
7 comprehensive plan. Because Ordinance No. 3141 involves the
8 application of the statewide planning goals as well as the
9 comprehensive plan it is a land use decision within the meaning
10 of Oregon Laws 1979, ch 772, sec 3.

11 The fact that Ordinance No. 3141 also creates an LID
12 setting forth the manner of financing the street does not make
13 the basic decision to extend the street not a land use
14 decision. Even if we were to decide that the method of
15 financing a street extension, such as through an LID procedure,
16 does not require application of the statewide planning goals
17 (see Oregon Business Planning Council v. LCDC, 49 Or App
18 153, ___ P2d ___ (1980)), petitioners are not challenging in
19 this proceeding the method of financing chosen by the city but
20 only the city's decision to extend North Main Street. We have
21 been advised by both parties that Ordinance No. 3141 is the
22 only decision made by the City of Pendleton authorizing
23 extension of this street. The city has, essentially, in one
24 ordinance combined two decisions: The decision to extend a
25 street and the decision as to how that street extension is to
26 be financed. This Board has jurisdiction to review the city's

1 decision to extend the street, as that decision requires
2 application of the statewide planning goals, as well as the
3 city's comprehensive plan.

4 Having decided that the city's decision to extend the street
5 in Ordinance No. 3141 is a land use decision as defined by our
6 statute, we next consider whether the city's ordinance was
7 required to contain findings demonstrating compliance with both
8 the statewide planning goals and the city's comprehensive plan.
9 Petitioners contend such findings of fact are required by Goal 2.

10 The decision of the City of Pendleton to extend North Main
11 Street 310 feet including deciding such matters as street width
12 is clearly quasi-judicial in nature in that application of
13 existing policy (that stated in the statewide planning goals
14 and the city's comprehensive plan) to a specific factual
15 setting is involved. Neuberger v. City of Portland, 288 Or
16 155, 603 P2d 771 (1979). Because the city's decision was
17 quasi-judicial in nature, the city was required to adopt
18 findings, based on the evidence in the record, demonstrating
19 compliance with the statewide planning goals and the city's
20 comprehensive plan.² Sunnyside Neighborhood v. Clackamas Co.
21 Comm., 280 Or 3, 569 P2d 1063 (1977); Fasano v. Washington Co.
22 Comm., 264 Or 574, 507 P2d 23 (1973).

23 Ordinance No. 3141 contains no findings addressing the
24 city's comprehensive plan or the applicable statewide planning
25 goals.³ Ordinance No. 3141 must be remanded to the city in
26 order that appropriate findings may be adopted.

FOOTNOTES

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A land use decision over which this Board has jurisdiction is defined in Oregon Laws 1979, ch 772 as:

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

- (A) The statewide planning goals;
- (B) A comprehensive plan provision; or..."

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We do not address whether Goal 2 specifically requires findings of fact and conclusion of law of the same detail as has been held to be required for quasi-judicial decisions. We have consistently held that we cannot perform our function of reviewing quasi-judicial decisions for conformance with applicable legal standards in the absence of findings setting forth the facts and reasons why the local government believes conformance to the applicable standards has been met in a particular case. See, most recently, City of Ashland v. Bear Creek Valley Sanitary Authority, ___ Or LUBA ___ (LUBA No. 80-094, 1980).

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Goal 2 specifically requires findings of facts and conclusions of law.