

LAND USE
BOARD OF APPEALS

BEFORE THE LAND USE BOARD OF APPEALS APR 2 1 27 PM '82

OF THE STATE OF OREGON

WENDY WYATT, PAUL BELL, WENDY)
PUSHMAN, KATHLEEN GREENE,)
JEFFREY HEISER, LINDSAY HUNT,)
PETER LANGHOFF, MICHAEL HILOW,)
JACQUELINE HIDER, SHERRY)
GORDON AND RAJNEESH INVESTMENT)
CORPORATION,)

Petitioners,)

v.)

CITY OF ANTELOPE,)

Respondent.)

LUBA NO. 82-024

FINAL OPINION
AND ORDER

Appeal from City of Antelope.

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

Dismissed.

4/02/82

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 COX, Referee.

2 This matter is before the Land Use Board of Appeals on
3 Respondent City of Antelope's motion to dismiss the appeal of
4 its authorization of a special election on the question of
5 disincorporation for the City of Antelope. The decision the
6 petitioners are appealing is entitled "Resolution adopted by
7 the council of the City of Antelope" which became final on
8 March 10, 1982. The decision sets April 15, 1982 as the date
9 for the special election. Respondent claims this Board lacks
10 jurisdiction. Both parties requested accelerated review of
11 this issue in order to give guidance to the parties prior to
12 the scheduled April 15, 1982 election.

13 The City of Antelope alleges in its motion to dismiss that
14 this Board lacks jurisdiction to consider petitioners' appeal.
15 It cites as authority the fact that pursuant to ORS 221.620 et
16 seq., the Council of the City of Antelope was required to
17 submit the question of disincorporation to the voters of that
18 city upon receipt of an appropriate petition for
19 disincorporation. In addition, respondent cites this Board's
20 recent ruling in 1000 Friends of Oregon, et al v. Wasco County
21 Court, ____ Or LUBA ____ (LUBA NO. 81-132, 1982) for the
22 proposition that the fact cities were not given any discretion
23 by the legislature in dealing with a disincorporation petition
24 indicates the legislature never intended that the subject be
25 considered a "land use decision."

26 In petitioners' response to the motion to dismiss, they

1 allege that disincorporation does away with the city and
2 consequently, the city's urban growth boundary. As a result,
3 petitioners reason that certain statewide land use goals must
4 be considered. Petitioners argue that the provisions of ORS
5 197.605 make the statewide goals applicable to the decision
6 under review. They allege that Goals 2, 10, 11, 14 are
7 applicable to a decision to disincorporate and that those goals
8 were not addressed by the city council before adopting the
9 above identified resolution. Petitioners ultimately want us to
10 require the City of Antelope to comply with ORS 197.605 through
11 197.660 before submitting the question of disincorporation to
12 the voters. Petitioners claim the effect of the resolution is
13 a moratorium on construction and land development for other
14 than resource related uses without the city having complied
15 with ORS 197.505 to 197.540. Petitioners finally allege that
16 since the city has an acknowledged comprehensive plan any
17 modifications of that plan, which petitioners' allege
18 disincorporation would be, must be reviewed by the LCDC
19 pursuant to Oregon Laws 1981, ch 748.

20 Respondent's motion to dismiss is granted. The Land Use
21 Board of Appeals does not have jurisdiction to consider the
22 appropriateness of the "Resolution adopted by the city council
23 of the City of Antelope" on March 10, 1982. That resolution
24 merely authorizes a special election on the question of
25 disincorporation. Pursuant to ORS 221.620 et seq. such a
26 special election is required to be allowed by the council of

1 the City of Antelope upon a sufficient petition being submitted
2 to that Council. Such a resolution is not a land use decision
3 within the definition set forth in ORS 197.015(10).¹ In
4 1000 Friends, et al v. Wasco County, supra, we were faced in
5 part with the question of whether under ORS 221.005 through ORS
6 221.106 we had jurisdiction over a decision to allow a vote on
7 the question of incorporation. In that case we held LUBA has
8 no jurisdiction over a vote to incorporate even though county
9 officials can exercise some discretion in deciding what the
10 boundaries of a proposed city shall be. Unlike the Wasco
11 County case, supra, the provisions of ORS 221.610 et seq.
12 involved in the present case allow city officials no discretion
13 before submitting the question of disincorporation to the
14 voters. While our reasoning in Wasco County supra is not
15 directly on point, the analysis we undertook in that case is
16 informative and aids us in deciding this case. The fact that
17 the legislature granted cities no discretion in submitting the
18 issue of disincorporation to the voters indicates it never
19 intended that such a submission decision be considered a "land
20 use decision." City officials have no authority to apply the
21 statewide goals before they submit the issue of
22 disincorporation to the voters. Even if they were to apply the
23 goals, the vote would still be mandated regardless of what land
24 use implications arose from goal application.

25 Dismissed.

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FOOTNOTE

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1 The definition of "land use decision" appeared in Oregon Laws 1979, ch 772, sec 3 prior to the amendment of chapter 772 by Oregon Laws 1981, ch 748, which repealed sec 3. We are assuming that the definition of "land use decision" now set forth in ORS 197.015(10) was meant to replace the repealed section 3; however, the legislature appears to have failed to cross reference ORS 197.015(10) to the remaining unamended portions of this Board's statutory birth certificate, Oregon Laws 1979, ch 772.