

LAND USE  
BOARD OF APPEALS

BEFORE THE LAND USE BOARD OF APPEALS JUN 2 12 30 PM '82  
OF THE STATE OF OREGON

THE JEFFERSON LANDFILL )  
COMMITTEE and JEFF FAHEY, )  
Petitioners, )  
vs. )  
MARION COUNTY, W.R. SCHLITT, )  
W.R. SCHLITT, JR., and )  
BROWNS ISLAND, INC., )  
Respondents. )

LUBA No. 82-005

FINAL OPINION  
(ORDER OF DISMISSAL)

Appeal from Marion County.

M. Chapin Milbank, Salem, filed the Petition for Review and argued the cause on behalf of Petitioners. With him on the brief were Schlegel, Milbank, Jarman & Hilgemann.

Robert Cannon, Salem, filed the brief and argued the cause on behalf of Respondent Marion County.

Richard C. Stein, Salem, filed the brief and argued the cause on behalf of Respondents Schlitt, Schlitt, Jr. and Browns Island, Inc. With him on the brief were Ramsay, Stein, Feibleman & Myers.

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

DISMISSED 6/02/82

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 REYNOLDS, Chief Referee.

2 Petitioners appeal Marion County's grant of a conditional  
3 use permit and major partition to allow the siting of a  
4 landfill for Marion County south of Salem and just east of I-5  
5 near the Jefferson interchange. Petitioners' standing is  
6 challenged by respondents. Petitioners' allegation of standing  
7 in the petition for review consists of the following paragraph:

8 "The County Commissioners Hearing was  
9 Quasi-Judicial. Petitioner Jefferson Landfill  
10 Committee is a [sic] organization of 157 persons who  
11 studied the conditional use application and major  
12 partitioning request, attended the Commission Hearing,  
13 filed written and oral objections to the proposed  
14 landfill and who live within the Jefferson area most  
15 immediately impacted by the proposed landfill site.  
16 Jeff Fahey is an individual who owns a home in the  
17 vicinity and who was entitled to and did receive  
18 notice of both this site and a nearby site. He  
19 attended the hearing and gave oral and written  
20 testimony and documentary evidence."

21 Respondent Schlitt filed a petition to take the deposition  
22 of petitioner Fahey. The parties agreed, in lieu of taking Mr.  
23 Fahey's deposition, that the following additional facts could  
24 be added to the record in this case:

25 "(1) The distance from the I-5 landfill to Mr. Fahey's  
26 residence to the nearest 1/10th of a mile is 2.5  
miles.

"(2) The facts stating he is entitled to notice are  
that:

"(a) He is aggrieved by the location of the  
proposed landfill at the location because of  
the proximity of his land and home to the  
landfill.

"(b) Mr. Fahey learned of the proposed project  
and received notice thereof, prior to the  
hearing by generalized notice to the public

1           in the paper and via notice of the hearing  
2           to the Jefferson Landfill Committee, of  
3           which he was a member."

4 We understand the intent of the parties was that the above  
5 quoted facts were to be used as evidence concerning petitioner  
6 Fahey's allegations in the petition for review.

7           Respondent Marion County attacks petitioners' standing on  
8 the basis that petitioners' interests have not been adversely  
9 affected and petitioners have not been aggrieved by the  
10 county's decision. The county's position is that there are no  
11 facts in the record to support petitioners' contention relating  
12 to standing. As a result, petitioners have failed to meet  
13 their burden of establishing standing, and the petition for  
14 review should be dismissed.<sup>1</sup>

15           Respondent Schlitt attacks petitioners' standing on the  
16 basis that the allegations in the petition for review are  
17 insufficient in and of themselves to show that petitioners have  
18 standing, and the allegations that are made are untrue.  
19 Concerning the Jefferson Landfill Committee, respondent Schlitt  
20 says there are no allegations which comply with the Court of  
21 Appeals three-part test for an organization to have  
22 representational standing. What must be shown, according to  
23 respondent Schlitt, is the following:

- 24           (1) The organization's members must have standing to  
25           sue in their own right;
- 26           (2) Neither the claim asserted nor the relief sought  
              requires the participation of individual members  
              in the law suit; and

1 (3) The interest the organization seeks to protect  
2 are germane to the organization's purpose.  
3 Benton County v. Friends of Benton County, \_\_\_\_\_  
4 Or App \_\_\_\_\_, \_\_\_\_\_ P2d \_\_\_\_\_ (1982).

5 Respondent Schlitt then argues that if petitioner Jefferson  
6 Landfill Committee is seeking standing as an organization as  
7 opposed to seeking representational standing on behalf of its  
8 members, there are insufficient facts alleged in the petition  
9 to confer organizational standing. Respondent Schlitt, relying  
10 on Clark v Dagg, 38 Or App 71, 588 P2d 1298 (1979), says  
11 petitioner Jefferson Landfill Committee has failed to allege  
12 any facts which would establish the committee's organizational  
13 standing. According to respondent Schlitt, the facts do not  
14 show that the committee's interest are adversely affected or  
15 that it is aggrieved, nor do the facts show that the committee  
16 was entitled to receive notice of a hearing on the conditional  
17 use and major partitioning applications.

18 Respondent Schlitt argues that petitioner Fahey does not  
19 have standing because although he alleges he was entitled to  
20 and did receive notice of the county's hearing, the facts  
21 agreed to by the parties in lieu of Mr. Fahey's deposition  
22 indicate that petitioner Fahey was not entitled to any written  
23 notice. The facts show only that he received notice via  
24 publication in the newspaper and received notification as a  
25 member of the Jefferson Landfill Committee. Respondent Schlitt  
26 argues that this is not the kind of notice that confers  
standing on a person in lieu of a showing of adverse effect or

1 aggrievment under 1979 Or Laws, ch 772, sec 4(3), as amended by  
2 1981 Or Laws, ch 748.

3 The petition for review alleges the county's decision is  
4 quasi-judicial. Standing to appeal a quasi-judicial decision  
5 is governed by 1979 Or Laws, ch 772, sec 4(3), as amended by  
6 1981 Or Laws, ch 748. That section provides as follows:

7 "Any person who has filed a notice of intent to  
8 appeal as provided in subsection (4) of this section  
9 may petition the Board for review of a quasi-judicial  
10 land use decision if the person:

11 "(a) Appeared before the city, county or special  
12 district governing body or state agency  
13 orally or in writing; and

14 "(b) Was a person entitled as of right to notice  
15 and hearing prior to the decision to be  
16 reviewed or was a person whose interests are  
17 adversely affected or who was aggrieved by  
18 the decision."

19 1979 Or Laws, ch 772, sec 4(6), as amended by 1981 Or Laws, ch  
20 748, provides, in pertinent part, as follows:

21 "Within 20 days after the date of transmittal of  
22 the record, a petition for review of the land use  
23 decision and supporting brief shall be filed with the  
24 Board. The petition shall include a copy of the  
25 decision sought to be reviewed and shall state:

26 "(a) The facts that establish that the petitioner  
has standing."

We have repeatedly said that the facts in support of standing  
must appear in the petition for review, failing which, the  
petition must be dismissed. See: Citizens for Planned  
Development v The Dalles, 2 Or LUBA 359 (1981); Parsons v  
Josephine County, 2 Or LUBA 343 (1981).

The petition for review in this case does not set forth

1 facts showing that petitioner Jefferson Landfill Committee has  
2 standing to appeal the county's decision in either its  
3 representational or organizational capacity. Petitioner  
4 Jefferson Landfill Committee does not allege sufficient facts  
5 to confer upon it representational standing. No facts are  
6 alleged which show that the organization's members have  
7 standing to sue in their own right, the first requirement  
8 stated by the Court of Appeals in Benton County v Friends of  
9 Benton County, \_\_\_ Or App \_\_\_, \_\_\_ P2d \_\_\_ (1982). See also:  
10 Citizens for Planned Development v The Dalles, supra. The  
11 Jefferson Landfill Committee does not allege facts to give it  
12 organizational standing. The facts must show that the  
13 committee itself was entitled as of right to notice and hearing  
14 prior to the decision made by the county in this matter, that  
15 the committee had interests which were adversely affected or  
16 that the committee was aggrieved by the county's decision.<sup>2</sup>  
17 Citizens for Planned Development v The Dalles, supra. No such  
18 facts have been alleged.

19 Petitioner Fahey has not alleged in the petition for review  
20 any facts which show how his interests are adversely affected  
21 or how he is aggrieved by the decision. Petitioner Fahey has  
22 alleged that he was entitled as of right to notice of the  
23 county's decision. However, this allegation is not supported  
24 by the facts which the parties have agreed are to be considered  
25 to be part of the record concerning petitioner Fahey's  
26 standing. These facts reveal only that petitioner Fahey

1 received notice via publication in the newspaper and as a  
2 member of the Jefferson Landfill Committee. We believe the  
3 entitlement to notice referenced in 1979 Or Laws, ch 772, sec  
4 4(3)(b), as amended by 1981 Or Laws, ch 748, was intended to  
5 refer to more than notice by publication in a newspaper or  
6 notice as a member of a committee. If notice in a newspaper  
7 were sufficient, anyone within the circulation route of the  
8 newspaper who appeared before the governing body would satisfy  
9 the standing requirement. We are certain the statute was not  
10 intended to be so broad. The statute's purpose, we believe, is  
11 to eliminate the need for a person who lives close to the  
12 property which is the subject of a decision, or who is  
13 otherwise peculiarly affected by the decision and thereby  
14 entitled to some form of special notice, to have to prove that  
15 his or her interests are affected or that s/he is aggrieved.  
16 In effect, entitlement to notice creates a conclusive  
17 presumption that the person's interests are adversely affected  
18 or the person is aggrieved.

19 Petitioner Fahey cannot claim standing on the basis that he  
20 was entitled as of right to notice and a hearing. Petitioner  
21 Fahey has not alleged facts in the petition for review which  
22 show that his interests are adversely affected or that he was  
23 aggrieved by the decision. Accordingly, petitioner Fahey has  
24 failed to demonstrate that he has standing to appeal the  
25 county's decision.

26 Because neither petitioner Jefferson Landfill Committee nor

1 petitioner Fahey has demonstrated standing to appeal the  
2 county's decision, this appeal must be, and is, dismissed.

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FOOTNOTES

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<sup>1</sup> We do not believe the facts in support of a claim of standing must appear in the record of the local government's decision. See: Friends of Benton County v Benton County, 4 Or LUBA 112 (1981).

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<sup>2</sup> 1979 Or Laws, ch 772, sec 4(3), as amended by 1981 Or Laws, ch 748, refers to "any person" having standing if certain facts are established. "Person" is defined in ORS 197.015(14) to include a "public or private organization of any kind." Thus, an organization can have standing in its own right to appeal a quasi-judicial decision if it can show that (1) it appeared and, (2) either its interest are adversely affected or it is aggrieved, or it was entitled to notice and hearing prior to the decision to be reviewed.