

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

3 HOME BUILDERS ASSOCIATION)
4 OF CORVALLIS,) LUBA NO. 79-002
5 Petitioner,)
6 vs.)
7 CITY OF CORVALLIS,) ORDER
8 Respondent.) (Motion to Dismiss)

9 This matter is before the Board on the motion of Respondent
10 City of Corvallis. The motion says that section 88 of the charter
11 of the City of Corvallis is not reviewable by the Land Use Board
12 of Appeals. Respondent argues that section 88 is not a "land use
13 decision" within the meaning of Oregon Laws 1979, ch 772, and even
14 if a land use decision, the charter amendment was passed well in
15 excess of the 30-day jurisdictional limit prescribed for Board
16 review. As a second ground for dismissal, the city says that
17 ordinance 79-62 is not reviewable by the Land Use Board of Appeals
18 because it is not a "land use decision" within the meaning of
19 Oregon Laws 1979, ch 772. The city asserts that the ordinance
20 implements the Corvallis City Charter, and not a comprehensive
21 plan.

22 The motion was argued at the hearing on the merits of
23 this case held February 28 in Eugene.

24 Section 3 of Oregon Laws 1979, ch 772, defines a land
25 use decision as a decision that

26 / /

1 concerns the adoption, amendment or
2 application of:

3 (A) The state-wide planning goals;

4 (B) A comprehensive plan provision; or

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

7 Petitioners respond by calling attention to Petersen v.
8 Klamath Falls and assert that they seek review of the ordinance,
9 not the charter.

10 In Petersen v. Klamath Falls, 279 Or 249, 566 P2d 1193 (1977),
11 the court's treatment of an annexation decision clearly linked at
12 least a portion of that decision to land use planning objectives.
13 The court treated the annexation as an act that would "control
14 growth and development in urban areas." Petersen, supra, 279 Or
15 at 253. As a decision having effect on land use planning,
16 it must comply with a comprehensive plan or, in the absence
17 of an acknowledged comprehensive plan, the statewide planning
18 goals. As an act that must comply with a plan or the goals,
19 the annexation is an "application of" the plan or the statewide
20 goals. An ordinance that sets out procedures for annexation
21 and provides a procedure for evaluating annexation proposals has
22 an effect on "growth and development." The Board concludes that
23 Ordinance 79-62 is such an ordinance.

24 Petitioners, as we understand the Petition for Review and
25 their response to the Motion to Dismiss, have alleged that
26 Ordinance 79-62 is invalid on four bases:

(a) The Ordinance implements an unconstitutional

1 charter provision;

2 (b) The Ordinance itself is unconstitutional;

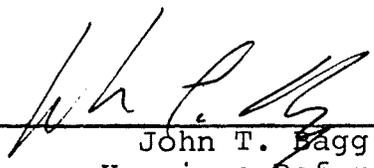
3 (c) The Ordinance implements a charter provision which
4 violates the statewide goals;

5 (d) The Ordinance itself violates the statewide goals.

6 In order to deny the Motion to Dismiss, we need only determine
7 that at least one of the above stated bases is reviewable by this
8 Board and would, if true, be grounds for reversal. We find, for
9 purposes of this motion, that at least (b) and (d) above are
10 reviewable by this Board and would, if true, be grounds for
11 reversal.

12 The motion is denied.

13 Dated this 24th day of March, 1980.

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16 _____
17 John T. Fagg
18 Hearings Referee
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