

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

3 IAN AND MARTHA BRYDON,
4 Petitioners,
5 vs.
6 CITY OF PORTLAND and
7 MONTMORE HOME OWNERS
8 ASSOCIATION,
9 Respondent.

)
) LUBA NO. 79-008
)
) ORDER ON
) MOTION FOR DISMISSAL
) AND ON
) MOTION TO SUPPLEMENT
) PETITION FOR REVIEW
)
)
)

9 I.

10 The first matter is before the Board on the motion of
11 Montmore Home Owner's Association, by and through its attorney
12 John G. Holden. The motion asserts that the Board lacks
13 jurisdiction to consider this matter firstly because at the
14 time of the City of Portland's decision giving rise to this
15 appeal the city had no comprehensive plan and, secondly,
16 because the city's decision did not concern the application of
17 the statewide goals. The basis for respondent's motion is that
18 the Board's jurisdiction is limited to review of land use
19 decisions that concern:

20 ". . . the adoption, amendment, or application of:

21 "(A) The statewide planning goals;

22 "(B) A comprehensive plan provisions; or

23 "(C) A zoning, subdivision or other ordinance
24 that implements a comprehensive plan. . . ." Oregon
25 Laws 1979, ch 772, § 3(1).

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1 It is the Board's view that even if the City of Portland
2 did not have a comprehensive plan, that fact would not deprive
3 the Board of jurisdiction under the facts of this case. An
4 acknowledged comprehensive plan is a document that incorporates
5 the statewide planning goals and is a guide to land use
6 decisions. If no comprehensive plan exists, or if a plan
7 exists but is not acknowledged by LCDC to be in compliance with
8 statewide goals, any land use decision must nonetheless comply
9 with the statewide planning goals. Sunnyside Neighborhood v.
10 Clackamas Co., 380 Or 3, 569 P2d 1063 (1977). To say otherwise
11 and accept the respondent's position would be to allow
12 decisions affecting land use to be taken without regard to
13 statewide goals during the interim period when local
14 governments are moving to bring plans and ordinances into
15 existence and compliance with statewide goals. Therefore, a
16 "subdivision or other ordinance" will necessarily implement a
17 comprehensive plan or the statewide goals whether or not that
18 plan happens to be in existence and whether or not any existing
19 plan happens to be acknowledged at the time the particular land
20 use action is taken.

21 The fact that no goal allegations were made in the petition
22 in this case does not deprive this Board of jurisdiction.
23 Because of our view that a subdivision ordinance necessarily
24 involves the application of statewide goals, any action taken
25 under the subdivision ordinance is "a land use decision" within
26 the meaning of Oregon Laws 1979, ch 772, § 3(1). As a "land

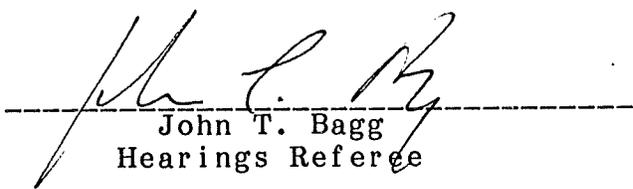
1 use decision" it is reviewable not only for violation of
2 statewide planning goals but also for "other allegations of
3 error" as found in Oregon Laws 1979, ch 772, § 5.

4 The motion to dismiss is denied.

5 II.

6 The second matter is petitioners' request to supplement his
7 brief. At oral argument on the merits of this case held on
8 March 14, 1980, petitioner said the supplement to the brief was
9 to be effective only if we granted the motion to dismiss. As
10 the motion to dismiss is not granted, the "supplement to
11 petitioner's brief" is not considered.

12 Dated this 5th day of May, 1980.

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17 John T. Bagg
18 Hearings Referee
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