

6/22/81

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

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2  
3 1000 FRIENDS OF OREGON )  
the assumed name of Oregon )  
4 Land Use Project, Inc., )  
an Oregon nonprofit )  
5 corporation, FAITH LATTA, )  
MILLIE B. SCOTT, )  
6 ERICH and THERESE HARTFEIL, )  
7 Petitioners, )  
8 vs. )  
9 CLACKAMAS COUNTY )  
BOARD OF COMMISSIONERS, )  
10 Respondent. )  
11

LUBA No. 81-051

ORDER  
PARTICIPANT'S MOTION  
TO DISMISS

12 Participant Jim Johnson has moved the Board for an order  
13 dismissing this appeal upon the ground that Order No. 81-578 of  
14 the Board of Commissioners for Clackamas County is not a final  
15 decision as defined in Rule 3(c), (d) and (E) of the Board's  
16 rules. Participant Johnson contends that everything in the  
17 order is expressly conditioned on approval by two other  
18 governmental entities, the Metropolitan Service District and  
19 the Portland Area Boundary Commission. As a result of these  
20 conditions, Participant Johnson contends that the appeal of  
21 Order No. 81-578 is premature.

22 On March 19, 1981, Clackamas County adopted Order No.  
23 81-578 which, by the terms of the order, takes the following  
24 actions:

25 "1. Contingent upon approval by the Metropolitan  
26 Service District, the urban growth boundary is amended  
to included [sic] the subject property; and further,

1 the county shall apply to MSD for such approval;

2 "2. Upon its inclusion in the UGB the property  
3 shall be designated on the comprehensive plan for low  
4 density residential and these findings shall be  
5 incorporated in the plan as the basis for that  
6 designation;

7 "3. Upon amendment of the comprehensive plan,  
8 the property shall be zoned future urbanizable; and

9 "4. The county shall recommend to the Boundary  
10 Commission and to Oregon City that the property be  
11 included in the Tri-Cities' sewer district."

12 The county's order states that it is based upon "the  
13 attached findings which are incorporated herein by reference."  
14 These findings are single spaced and approximately thirty-five  
15 pages in length. They basically attempt to justify the need to  
16 expand the Metropolitan Urban Growth Boundary in order to  
17 provide mobile home developments for senior citizens.

18 We conclude that Clackamas County's order is a land use  
19 decision within the meaning of Oregon Laws 1979, chapter 772,  
20 section 3. A Notice of Intent to Appeal that land use decision  
21 was filed within thirty days of the date of the decision.  
22 Accordingly, this Board has jurisdiction to review Clackamas  
23 County Ordinance No. 81-578.

24 Oregon Laws 1979, chapter 772, section 3 provides:

25 "As used in sections 4 to 6 of this 1979 Act:

26 "(1) 'Land use decision' means:

(a) 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;

1 (B) A comprehensive plan provision; or

2 (C) A zoning, subdivision or other  
3 ordinance that implements a comprehensive  
4 plan;..."

4 Oregon Laws 1979, chapter 772, section 4(4) states:

5 "A Notice of Intent to Appeal a land use decision  
6 shall be filed not later than thirty days after the  
7 date the decision sought to be reviewed becomes final."

7 In Hazen Investments, Inc. v Lane County, 2 Or LUBA 151  
8 (1980), we said that the time within which a Notice of Intent  
9 to Appeal must be filed is not governed by the date a land use  
10 decision becomes effective but the date the land use decision  
11 becomes final. Finality of a land use decision is governed by  
12 LUBA Rule of Procedure 3(C) which provides:

13 "'Final decision or determination' means a  
14 decision or determination which has been reduced to  
15 writing and which bears the necessary signatures of  
16 the governing body."

16 We said, construing our rule:

17 "This Board interprets its own rule in the above  
18 set forth provision of Oregon Laws 1979, chapter 772  
19 to mean that the decision sought to be reviewed  
20 becomes 'final' for the purposes of appeal on the date  
21 that it is enacted rather than the date it becomes  
22 effective. It is on the date that it is enacted that  
23 the decision is reduced to writing and signed by the  
24 necessary members of the governing body."

21 In participant's motion to dismiss, participant confuses  
22 the issue of when a land use decision becomes effective with  
23 when it becomes final. In the present case, the decision as to  
24 what land use designation a parcel of property should have has  
25 already been made by Clackamas County. The decision is  
26 supported by lengthy findings. While the effective date of the

1 land use designation is contingent upon incorporation of the  
2 property into the Metro UGB, that decision is separate and  
3 distinct from, and has no bearing on, the finality of the  
4 decision made by Clackamas County.

5 The county's decision to change the comprehensive plan and  
6 zoning designation is unlike a city's passage of a resolution  
7 requesting a boundary commission to annex land to the city.  
8 See Ehlen v City of Portland, 1 Or LUBA 134 (1980). A city's  
9 decision to request a boundary commission to annex land to the  
10 city has no force or effect with respect to the use of the land  
11 either immediate or prospective. It is only the boundary  
12 commission's decision which may in any way impact the use of  
13 the land. The city's decision is only a preliminary step in  
14 the process and will never, by itself, affect the use of the  
15 land. The county's decision in this case will by itself, upon  
16 the happening of the condition, affect the use of the land.  
17 Whether or when the condition will occur only has a bearing on  
18 the point at which the decision becomes effective.

19 Participant argues that the county's decision in this case  
20 is not ripe for review. Participant says it may never be  
21 necessary to review the county's decision because the property  
22 may not be incorporated into the Metro UGB.

23 The problem with this position is that the county's  
24 decision became a final decision on the date it was reduced to  
25 writing and signed. LUBA Rule of Procedure 3(C). A Notice of  
26 Intent to Appeal must be filed within thirty days of the date

1 the decision was reduced to writing and signed. Oregon Laws  
2 1979, chapter 772, section 4(4); LUBA Rule 4(C). The record  
3 must be transmitted to the Board within twenty days of the date  
4 the Notice was filed. Oregon Laws 1979, chapter 772, section  
5 4(5); LUBA Rule 6(B). The Petition for Review must be filed  
6 within twenty days of the date the record is transmitted to the  
7 Board. Oregon Laws 1979, chapter 772, section 4(6); LUBA Rule  
8 7(A). The Board must issue a decision within ninety days of  
9 the date the Petition for Review is filed. Oregon Laws 1979,  
10 chapter 772, section 4(8). Even though it may be that this  
11 Board may never need to reach the merits of the decision made  
12 by Clackamas County in this case because incorporation into the  
13 Metro UGB may never occur, we have no authority by statute to  
14 wait.<sup>1</sup> We believe also that Petitioner would be guilty of  
15 missing the thirty day filing requirement were it to await  
16 action by Metro to amend the urban growth boundary before  
17 challenging Clackamas County's decision. By the time Metro  
18 were to act, the county's decision may be six months old, one  
19 year old or more.

20 In summary, the county adopted an ordinance which required  
21 it to consider, among other things, the statewide planning  
22 goals. It adopted extensive findings addressing the applicable  
23 goals. It is the date this action is taken, not the date  
24 certain conditions may occur, which dictates the finality of  
25 the county's decision. Participant's motion to dismiss is  
26 denied.<sup>2</sup>

FOOTNOTES

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The only discretion which the Board has to exercise in terms of delaying the proceedings, absent a stipulation of all the parties, is to grant an extension of time for transmittal of the record. While we doubt that it would be appropriate in a case such as this to order that the record need not be transmitted to the Board until Metro were to make a decision concerning amendment of the Metro UGB, the Board certainly has no authority to order that the county may not transmit the record to the Board before such a decision were made. In any event, the record in this case has already been transmitted to the Board.

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We note many land use decisions have one or more conditions contained within them. For example, a decision may contain a requirement that the Department of Environmental Quality grant septic tank approval or that the Department of Geology and Mineral Industries approve a reclamation plan for a mining operation. To say that just because an ordinance or order contains conditions causes the decision to not be "final" would create chaos in the orderly and timely review of land use decisions.