

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

ROBERT WARREN, TONY COLE,
GINGER COLE, EDWARD MYROWITZ,
OREGON WILDERNESS COALITION,
an Oregon corporation, and
DONNA SHELTON,

Petitioners,

vs.

LANE COUNTY,
VICTOR RENAGHAN and
LINDA RENAGHAN,

Respondents.

LUBA No. 81-102

SUPPLEMENTAL
ORDER ON STANDING

On May 4, 1982, the Board conducted an evidentiary hearing to determine whether the factual allegations to support the standing of Petitioner Tony Cole were true.¹ Specifically, the issues addressed at the hearing were whether as a result of the land use decision on appeal, Petitioner Cole would be subjected to temporary road blockages or delays in travelling to and from his property.

In our previous two orders on standing, we said Petitioner Cole's allegations that Big Creek Road would be blocked temporarily and there would be delays caused by construction equipment were adequate to show Petitioner Cole had a personal stake in the outcome of the decision. Temporary blockage or delays were assumed to adversely affect petitioner's interest in ingress or egress to his property and, hence, his use of his property.

After issuance of the Board's order, the parties were

1 informed during a conference held on Tuesday, April 27, that
2 the Board wanted the parties to address the following questions:

- 3 1) What is the petitioner's interest which is
4 allegedly impacted?
- 5 2) Does the land use decision possibly impact that
6 interest? If so,
- 7 3) Could the impact be reasonably said to be adverse?

8 Based, we believe, on the Board's orders, Petitioner Cole
9 assumed that proof of the possibility of temporary road
10 blockages or delay in his travel would obviate the need to
11 present independent proof that these possible impacts would be
12 adverse to him.

13 Having listened to the evidence presented on the issue of
14 what, if any, delays or obstructions to travel on Big Creek
15 Road will occur we believe our earlier orders need
16 clarification. We do not believe every delay or the
17 possibility of minor obstruction of a roadway is, per se,
18 injurious to a person. A rebuttable presumption exists that
19 one who is delayed in traveling to and from his residence is
20 adversely affected. However, the evidence in a particular case
21 may indicate the presumption should not apply, and the person
22 who is subject to being delayed must prove that his interests
23 will be adversely affected by being delayed.²

24 We believe such proof is necessary in this case. The
25 evidence indicates Petitioner Cole will probably suffer some
26 delay in traveling to and from his residence by reason of the
27 construction activity on Big Creek Road. Reduced speed would

1 be caused by the existence of only a single lane of travel
2 during the performance of certain work and the presence of
3 construction signs, flaggers and construction activity. There
4 was no direct testimony, however, as to how much delay would
5 result from having to slow down.³ The evidence does show the
6 probability is very slight that Petitioner Cole will have to
7 stop because of tree felling or because of oncoming vehicles
8 during times of one-lane travel.

9 The evidence reveals Big Creek Road in the winter months is
10 subject to land slides and falling trees blocking the roadway
11 causing delays in travel. In addition, maintenance work occurs
12 on the roadway in the summer months which further creates the
13 possibility of delay to travelers such as Petitioner Cole.

14 We cannot say that Petitioner Cole is, necessarily,
15 adversely impacted by being subjected to the potential for
16 additional delays. He appears to live with the potential for
17 delay in travel on Big Creek Road caused by landslides, trees
18 blocking the road and normal maintenance on the road. We
19 believe it is incumbent on Petitioner Cole to produce evidence
20 showing how it is that a potential delay in addition to those
21 which he normally must face is adverse to him.

22 The Board believes its earlier orders and instructions to
23 the parties may not have been clear on the question of whether
24 petitioner would be required to show not only that there might
25 be delay, but also that the delay is adverse to him. In what
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1 may be an over abundance of caution and to avoid any claim of
2 procedural unfairness, we believe petitioner should be allowed
3 the opportunity to explain how it is that any delay will affect
4 him adversely. The hearing must be reopened to allow
5 petitioner this opportunity. During the reopened hearing,
6 respondents will be allowed the right of cross-examination.

7 Dated this 7th day of May, 1982.

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10 Michael D. Reynolds
11 Chief Hearings Referee
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FOOTNOTES

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4 No evidence was offered to support the allegations of
5 standing of Petitioner Ginger Cole.

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7 This presumption is similar to the presumption that one who
8 is within sight or sound of property which is the subject of a
9 land use decision is adversely affected by the decision. See
10 Duddles v City of West Linn, 21 Or App 310, 535 P2d 583 (1975);
11 Van Volkinburg v Marion County, 2 Or LUBA 112 (1980), affirmed;
12 Merrill v Van Volkinburg, 54 Or App 873, ___ P2d ___ (1981).
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16 The evidence does not suggest what a reasonable speed of
17 travel would be on Big Creek Road near its intersection with
18 Highway 101 without construction activity or with construction
19 activity. The delay might be 22 1/2 seconds as would occur
20 from a reduction in speed from 40 mph to 20 mph for a distance
21 of 1/4 mile, more than 22 1/2 seconds or less than this
22 amount. All the evidence does suggest is that a reasonable and
23 prudent driver would slow down.
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