

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

3 CITY OF CANNON BEACH,)
)
4 Petitioner,) LUBA NO. 83-079
)
5 v.)
)
6 CLATSOP COUNTY, OREGON,) ORDER ON MOTION TO
) APPEAR AMICUS CURIAE
7 Respondent.)

8 This matter is before the Board on motion of the Department
9 of Land Conservation and Development. The Department requests
10 permission to file a brief amicus curiae. The Department
11 argues it has broad responsibility to administer Oregon's land
12 use planning program subject to the direction of the Land
13 Conservation and Development Commission. That responsibility
14 includes assistance in local application of statewide planning
15 goals and the coordination of land use planning activities
16 generally among units of local government. The Department
17 asserts it possesses "expertise and experience that could be of
18 value to the Board in its review of this case."

19 DLCD advises it would offer its interpretation of the
20 statewide planning goals as they may apply to the facts in this
21 proceeding. DLCD acknowledges it would prepare a
22 recommendation on the goal issues in the case for LCDC's
23 consideration in any event. The effect of filing a brief
24 amicus curiae here would be to provide "an earlier and fuller
25 opportunity to consider DLCD's interpretation of how the goals
26

1 apply in this particular case," according to the Department."¹

2 A conference call was held on August 11, 1983, to discuss
3 the matter. At the conference call, Participant Camjeran, Inc.
4 objected to the proposed limited appearance by the Department.
5 Participant urged that there is no provision in Oregon Laws
6 1979, ch 772, as amended by Oregon Laws 1981, ch 748 or Board
7 rule to allow for such an appearance.

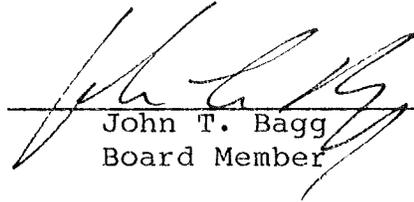
8 The Board has had occasion to consider a request for an
9 appearance amicus curiae before. In Meyer v. Portland, 7 Or
10 LUBA 411 (1983), the Board denied a request to appear amicus
11 curiae on the ground no provision exists for such appearance.
12 The Board held its controlling law provides for intervention,
13 but the law makes no provision "for appearances by persons who
14 may wish to act as friends of the agency without satisfying the
15 usual standing requirements." Meyer, 7 Or LUBA at 412. It is
16 only those persons who have interests that are adversely
17 affected or who are aggrieved or who file a notice of intent to
18 participate that are allowed to become parties to a proceeding
19 before LUBA. Ibid; LUBA Rule 5 (OAR 661-10-020); 1979 Or Laws,
20 ch 772, sec 4(2-3), as amended by 1981 Or Laws, ch 748.

21 Whether it would be appropriate policy for the Board to
22 consider limited appearances or, in particular, limited
23 appearances by the Department of Land Conservation and
24 Development is not something the Board may now consider.
25 Without a law or rule providing for limited appearances, the
26 Board has no means to allow the request. Pacific Northwest

1 Bell v. Davis, 43 Or App 999, 608 P2d 547 (1979).

2 The motion to appear amicus curiae is denied.²

3 Dated this 26th day of August, 1983.

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7 John T. Bagg
8 Board Member
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FOOTNOTES

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1 Oregon Laws 1979, ch 772, sec 6, as amended by Oregon Laws 1981, ch 748, provides in part that the Board will prepare a recommendation to the Land Conservation and Development Commission on any alleged violation of statewide planning goals contained in the petition for review. Routinely, DLCD provides comment on the Board's proposed opinion, and that comment is furnished to all the parties. The commission reviews the Board's proposed opinion, the recommendation of DLCD and any exceptions that may have been filed to the Board's proposed opinion before issuing a determination on statewide planning goal violations.

2 Note that Oregon Laws 1983, ch _____, (HB 2296, Sec. 31) will permit LCDC (and DLCD) to participate in a case in similar circumstances.