

LAND USE
BOARD OF APPEALS

BEFORE THE LAND USE BOARD OF APPEALS

MAR 26 12 53 PM '86

OF THE STATE OF OREGON

3	WILLIAM BURRELL and JAMES H.)	
	BURRELL,)	
4)	LUBA No. 86-005
	Petitioners,)	
5)	ORDER ON
	vs.)	MOTION TO DISMISS
6)	
	CITY OF SALEM and THE URBAN)	
7	RENEWAL AGENCY OF THE CITY)	
	OF SALEM,)	
8)	
	Respondents.)	

Respondent City of Salem moves for dismissal of this review proceeding on the ground the decision on appeal, Ordinance No. 6-86, is not a land use decision subject to our review.

FACTS

The decision on review is an amendment to the Riverfront-Downtown Urban Renewal Plan (R-DURP). The amendment designates certain real property within Block 25 of the city for acquisition. The particular urban renewal project contemplated in this amendment is a parking facility for 750 vehicles.

Before this amendment, the R-DURP made no provision for parking lots in this area of the city (known as Region 1).¹ However, the city's comprehensive plan and zoning ordinance includes this property in the Central Business District zone. Parking structures are a permitted use in this zone.²

MOTION TO DISMISS

Respondent City of Salem argues the decision on review meets neither the statutory test for a land use decision found

1 in ORS 197.015(10)³ nor the significant impact test as
2 articulated by the Supreme Court in Peterson v. Klamath Falls,
3 279 Or 249, 566 P2d 1193 (1977). See Also Billington v. Polk
4 County, 299 Or 471 ___ P2d ___ (1985)

5 Respondent insists the decision is not a land use decision
6 under the statutory test because it does not involve the
7 application, amendment or application of the statewide planning
8 goals, a comprehensive plan or any existing land use
9 regulation. The comprehensive plan and implementing ordinances
10 for the City of Salem are entirely separate from the R-DURP,
11 according to respondent. See Footnote 2, supra.

12 Respondent adds that the decision has no significant impact
13 on present and future land uses. The amendment does not
14 authorize construction, it only permits the city to buy land,
15 according to respondent. Respondent acknowledges the
16 completion of a parking structure may indeed have some
17 considerable impact in Salem, however, a parking structure is a
18 permitted use within the zone applicable to this property.
19 According to respondent, the comprehensive plan and zoning
20 designation for this property is the land use action which will
21 impact the area, not the city's decision to buy land. This
22 decision is more akin to a fiscal decision, in respondent's
23 view. See e.g., Westside Neighborhood Quality Project, Inc. v.
24 School District 4J, 58 Or App 154, 647 P2d 962, rev den 294 Or
25 78 (1982).

26 The amendment to the R-DURP is a land use decision subject

1 to our review. The parties acknowledge that ORS 457.095(3)⁴
2 requires any substantial urban renewal plan amendment to
3 conform to the comprehensive plan. We believe the designation
4 of Block 25 for acquisition is a substantial change to the
5 R-DURP. The decision on review opens the door to construction
6 of a publicly-financed parking structure for a significant
7 number of vehicles. Before the amendment, the city lacked
8 authority to purchase the property for this purpose as part of
9 its urban renewal program.⁵

10 The city's decision will eventually result in displacement
11 of some businesses and is likely to change traffic patterns as
12 people make use of the new parking structure.⁶ Because of
13 these changes, the amendment represents a substantial change in
14 the R-DURP. In addition, the context in which the decision was
15 made shows that it is a critical component of a much larger
16 redevelopment project. The record shows the proposed parking
17 facility is needed to support a very large commercial retail
18 construction project nearby.

19 Under the provisions of ORS 457.220 and 457.095(3), the
20 city's decision must therefore include findings showing
21 conformity to the city's comprehensive plan. Because plan
22 conformity is required, this decision is an exercise of
23 planning and zoning responsibility under ORS 197.175(1). It is
24 also a land use decision reviewable by LUBA. See Tides Unit
25 Owners Association, supra, 11 Or LUBA at 89. See also ORS
26 197.015(10)(a)(A)(i).

1 Further, we believe this decision will have a significant
2 impact on land use. As noted above, the construction of this
3 facility will represent a significant change in parking and
4 traffic in Downtown Salem. Therefore, the decision meets the
5 test articulated in Peterson, supra, and also City of Pendleton
6 v. Kerns, 294 Or 126, 134, 653 P2d 992 (1982).⁷

7 The motion to dismiss is denied.

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

FOOTNOTES

1
2
3 _____
4 1
5 Region 1 includes Block 25.

6
7 _____
8 2
9 In an attachment to the amendment, the city discusses the
10 relationship of the R-DURP to other plans. The Salem Area
11 Comprehensive Plan is the controlling policy document for the
12 city's development, and the Regional Parking and Circulation
13 Plan for the Downtown Capitol Mall Area describes traffic
14 patterns and future potential parking locations. The Regional
15 Parking and Circulation Plan is, according to the report, in
16 the process of being revised. "The revisions anticipate not
17 only the parking structure currently proposed for Block 25 but
18 also other parking areas anticipated for future development."
19 Report on the Propoposed Amendment to the Riverfront-Downtown
20 Urban Renewal Plan, May 30, 1985, page 3.

21
22 _____
23 3
24 ORS 197.015(10) states:
25 "(10) 'Land use decision':
26 "(a) Includes:
27 (A) A final decision or determination made by a
28 local government or special district that
29 concerns the adoption, amendment or application
30 of:
31 "(i) The goals;
32 "(ii) A comprehensive plan provision;
33 "(iii) A land use regulation; or
34 "(iv) A new land use regulation; or
35 "(B) A final decision or determination of a state
36 agency other than the commission with respect
37 to which the agency is required to apply the
38 goals."

1
4

2 ORS 457.220(2) provides:

3 "Any substantial change made in the urban renewal plan
4 shall, before being carried out, be approved and
recorded in the same manner as the original plan."

5 ORS 457.095(3) provides that urban renewal plans must be
6 adopted by ordinance. The ordinance shall include
determinations and findings that:

7 "The urban renewal plan conforms to the comprehensive
8 plan and economic development plan, if any, of the
municipality as a whole and provides an outline for
9 accomplishing the urban renewal projects the urban
renewal plan proposes;"

10
5

11 We note R-DURP itself defines substantial changes as:

12 "major revisions in project boundaries, land uses, and the
13 basic pattern of streets and other modifications which will
materially change the basic planning principles of this
plan."

14 We find the amendment makes such a substantial change in
15 "land uses."

16
6

17 The parties do not dispute that substantial changes to an
18 urban renewal plan are reviewable under our holding in Tides
Unit Owners Association v. City of Seaside, 11 Or LUBA 84
19 (1984). See also ORS 457.220(2) requiring a substantial plan
amendment must be proved in the same manner as the plan.

20
7

21 We do not accept respondent's argument that this amendment
22 represents "mere planning." This decision is more than a
study. It results from a determination that a need exists "to
23 provide public improvements and facilities." R-DURP, Section
600, p. 10.