

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

3
4 VIRGINIA PETERSEN,)
5) LUBA No. 96-234
6 Petitioner,)
7) FINAL OPINION
8 vs.) AND ORDER
9)
10 CITY OF EUGENE,) (MEMORANDUM OPINION)
11) ORS 197.835(16)
12 Respondent.)
13)

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16 Appeal from City of Eugene.

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18 H. Thomas Evans, Eugene, filed the petition for review
19 and argued on behalf of petitioner.

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21 Emily K. Newton and Glenn Klein, Eugene, filed the
22 response brief and argued on behalf of respondent. With
23 them on the brief was Harrang Long Gary Rudnick.

24
25 HANNA, Chief Referee; GUSTAFSON, Referee, participated
26 in the decision.

27
28 AFFIRMED 04/24/97

29
30 You are entitled to judicial review of this Order.
31 Judicial review is governed by the provisions of ORS
32 197.850.

1 Opinion by Hanna.

2 **DISCUSSION**

3 Petitioner appeals a decision of the city hearings
4 officer denying her application for a cluster subdivision.
5 The proposed cluster subdivision is dependent on use of the
6 square footage of a private access street as "semi-private
7 open space" for purposes of calculating the total square
8 footage of lots in the subdivision. The hearings officer
9 determined that the private street could not be considered
10 open space for purposes of calculating the square footage
11 required, and therefore denied the application for failure
12 to meet average minimum lot size requirements.

13 Petitioner challenges the hearings officer's
14 determination that a private street is not open space for
15 purposes of meeting the square footage requirements for a
16 cluster subdivision. She also contends generally that she
17 has been denied equal protection because the city planning
18 director approved other cluster subdivisions using private
19 streets as open space. Finally, she argues that the
20 decision effects a taking of her property because the city
21 eventually would like to use part of her property for a
22 public street.

23 The hearings officer's determination that a private
24 street does not qualify as semi-private open space is
25 reasonable and correct interpretation of the city's code.
26 McCoy v. Linn County, 90 Or App 271, 752 P2d 323 (1988),

1 Jackson County Citizen's League v. Jackson County, ___ Or
2 LUBA ___ (LUBA No. 96-050, November 27, 1996). Petitioner
3 has not presented the factual or legal predicate necessary
4 to establish an equal protection or takings claim.

5 The city's decision is affirmed.