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

CHARLES R. GODE,)	
)	LUBA No. 97-010
Petitioner,)	
)	FINAL OPINION
vs.)	AND ORDER
)	
CLACKAMAS COUNTY,)	(MEMORANDUM OPINION)
)	(ORS 197.835(16))
Respondent.)	

Appeal from Clackamas County

Jon S. Henricksen, Gladstone, filed the petition for review and argued on behalf of petitioner.

Susie L. Huva, Assistant County Counsel, Oregon City, filed the response brief and argued on behalf of respondent.

GUSTAFSON, Referee; HANNA, Chief Referee, participated in the decision.

AFFIRMED 07/31/97

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

1 Opinion by Gustafson.

2 **NATURE OF THE DECISION**

3 Petitioner appeals the county's subdivision approval.

4 **DISCUSSION**

5 The county hearings officer approved a five-lot
6 residential subdivision, subject to conditions of approval
7 that require, in part, the applicant to construct "half-
8 street improvements" along the subdivision's eastern
9 property line. The street improvements will "stub" at, but
10 not extend onto, petitioner's property. The county's
11 findings state that the improvements are to facilitate
12 continuation of the street system at such time as properties
13 to the east are developed.¹

¹The findings that appear to be the basis of petitioner's appeal state:

"Conditions of approval assure that this development provides for the continuation of arterial, collector and local streets, as required by [Zoning and Development Ordinance (ZDO)] subsection 1014.03(D). Of particular concern, as it relates to this proposed subdivision, is the determination by staff that it is necessary and appropriate to provide for the future redevelopment of those oversized lots which [lie] southerly of Westview Avenue and easterly of the subject property. To accomplish this future access, staff has requested that the applicant construct a new road southerly from Westview Avenue along the easterly property line. Construction of this new street will assure continuation of the local street system for future redevelopment in this immediate area. There are no continuation issues for collector or arterial streets.

"* * * [T]he preliminary plat provides for what is effectively a street stub into the remainder of the underdeveloped lots to the east, as required by subsection 1014.03(E). A condition of approval will require that [a] new street to the boundary of the subdivision terminate in a reserve strip which shall be deeded to the County to permit County control of the access, as

1 Petitioner owns property immediately east of the
2 subdivision property. Several properties to the east,
3 including petitioner's, are underdeveloped at this time,
4 with single-family homes on oversized lots. During public
5 hearings before the county hearings officer and in written
6 testimony, petitioner objected to the construction of the
7 half-street improvements.

8 Petitioner requests that we reverse the subdivision
9 approval; however, his assignments of error challenge only
10 the requirements regarding the street improvements.
11 Petitioner makes four assignments of error: (1) that the
12 county misconstrued ZDO 1014.03(D),² and that its findings
13 fail to identify evidence upon which the findings are based
14 and are not supported by substantial evidence; (2) that the
15 county's findings regarding ZDO 1014.03(E) misconstrue the
16 criteria and are not supported by substantial evidence;³ (3)

required by subsection 1014.03(F). [The county department of transportation and development] DTD has correctly determined that no street stubs are required to the south, as those lands are fully developed and access through this subdivision to those land is not required, nor would it be appropriate." Supplemental Record 4-5.

²ZDO 1014.03(D) states:

"The layout of streets shall provide for the continuation of arterial, collector, and local streets within the development and between adjoining developments. When access to adjoining property is likely, this access shall be improved and dedicated to the County."

³ZDO 1014.03(E) states:

1 that the county erroneously failed to address ZDO 1001.01,
2 the "Purpose" section of the ZDO Chapter 1000 development
3 standards; and (4) that the county deprived petitioner due
4 process of law by failing to adequately consider his
5 property interests in its decision.

6 Petitioner has provided no basis for remand or reversal
7 of the county's decision. The county's interpretations of
8 ZDO 1014.03(D) and (E) are both reasonable and correct; the
9 county sufficiently identified the evidence upon which it
10 based its decision, and those findings are supported by
11 substantial evidence in the record. The county was not
12 required to adopt findings of compliance with ZDO 1001.01,
13 because that purpose section contains no mandatory approval
14 criteria. Finally, petitioner has not established that he
15 has not been provided due process in this case. Petitioner
16 does not assert the county made procedural errors in the
17 processing of this application which prejudiced petitioner's
18 substantial rights. Nor has petitioner established that his
19 right to due process has otherwise been violated.

20 Pursuant to ORS 197.835(16), the county's decision is
21 affirmed.

"Street stubs shall be provided to allow for future access to adjacent undeveloped property as deemed necessary by the Department of Transportation and Development."