

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

3
4 GARY LEWIS,
5 *Petitioner,*

6
7 vs.

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9 CITY OF BEND,
10 *Respondent.*

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12 LUBA No. 2003-088

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14 FINAL OPINION
15 AND ORDER

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17 Appeal from City of Bend.

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19 Gary Lewis, Bend, represented himself.

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21 James Forbes, Bend, represented respondent City of Bend.

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23 HOLSTUN, Board Member; BASSHAM, Board Chair; BRIGGS, Board Member,
24 participated in the decision.

25
26 DISMISSED

07/30/2003

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

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NATURE OF THE DECISION

Petitioner appeals a city decision creating a local improvement district (LID) to construct a sewer system.

MOTION TO INTERVENE

On June 7, 2003, David Boespflug moved to intervene on the side of petitioner. The motion to intervene did not include a certificate of service. On June 12, 2003, LUBA requested that movant provide the certificate of service that our rules require. Movant has not filed a certificate of service or otherwise indicated that copies of his motion to intervene were served on the other parties in this appeal. The motion to intervene is denied.

FACTS

The City of Bend authorized the creation of an LID to extend city sewer service to the Larkwood Subdivision. The subdivision was originally approved and platted approximately 25 years ago, when it was outside of the city limits, and city sewer service was not available. The property has since been annexed into the city, but it is still served by individual septic systems, many of which are malfunctioning. Petitioner’s property is located within the subdivision and is subject to assessment under the LID. The decision anticipates that the cost of improvements will total over \$217,000 and estimates assessments for individual property owners of over \$15,500. Petitioner opposed the formation of the LID before the city council. This appeal followed.

MOTION TO DISMISS

The city moves to dismiss the appeal, arguing that the challenged decision is not a land use decision that is subject to LUBA review. LUBA has jurisdiction over “land use decisions” as that term is defined in ORS 197.015(10). Land use decisions also include those decisions that have a “significant impact” on land use. *See City of Pendleton v. Kerns*, 294 Or 126, 133-34, 653 P2d 992 (1982) (local government decisions that have a “significant

1 impact on present or future land uses” constitute land use decisions subject to LUBA
2 review).

3 Petitioner does not argue that the city’s decision meets the statutory definition of
4 “land use decision,” and we do not see that it does. Petitioner argues that the decision is a
5 “significant impact” land use decision. Petitioner argues that the LID will have a significant
6 impact because it “will radically change the nature of the infrastructure of an entire
7 subdivision of the City.” Opposition to Respondent’s Motion to Dismiss 2. Petitioner also
8 argues that there will be a significant impact because each resident will be assessed over
9 \$15,500.

10 To satisfy the significant impact test, a petitioner must show that the effect of the
11 decision on present or future land uses is “qualitatively or quantitatively significant.” *Fraser*
12 *v. City of Joseph*, 28 Or LUBA 217, 224 (1994). A petitioner must also establish a
13 relationship between the decision and the projected impacts, and demonstrate that the
14 projected impacts are likely to occur. *Id.*

15 We have generally held that “fiscal” decisions pertaining to the financing of public
16 infrastructure improvements, such as LIDs and reimbursement districts, do not constitute
17 land use decisions. *Jesinghaus v. City of Grants Pass*, 42 Or LUBA 477, 483 (2002)
18 (creation of reimbursement district is not a land use decision); *Hazelnut A Partners v. City of*
19 *Woodburn*, 42 Or LUBA 474, 475-76 (2002) (LID is not a statutory or significant impact
20 land use decision); *Baker v. City of Woodburn*, 37 Or LUBA 563, 568-69, *aff’d* 167 Or App
21 259, 4 P3d 775 (2000) (creation of reimbursement district is not a statutory or significant
22 impact land use decision). In the present case, petitioner has not identified a qualitative or
23 quantitative significant impact on present or future land uses, nor has he demonstrated that
24 such impacts are likely to occur. Petitioner does not explain, nor do we see, how a decision
25 to finance a sewer system for a long-established subdivision will have a significant effect on
26 present or future land use. Furthermore, the fact that the LID may create a financial burden

1 for petitioner does not implicate the significant impact test. *Hashem v. City of Portland*, 34
2 Or LUBA 629, 631 (1998) (focus of significant impact test is on impacts to land use, not
3 economic or property interests). Even if petitioner had demonstrated that the challenged
4 decision met the significant impact test, the decision is a “fiscal” decision, and we lack
5 jurisdiction to review “fiscal” decisions even if such decisions would otherwise satisfy the
6 significant impact test. *Jesinghaus*, 42 Or LUBA at 483; *The Petrie Company v. City of*
7 *Tigard*, 28 Or LUBA 535, 540 n 11 (1995).

8 In conclusion, we do not have jurisdiction over this appeal as either a statutory or
9 significant impact test land use decision. Petitioner did not move to transfer the case to
10 circuit court in the event we reached this conclusion. OAR 661-010-0075(11). Therefore,
11 this appeal is dismissed.