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

BONNIE BRODERSEN,)
)
Petitioner,)
) LUBA No. 95-196
vs.)
) FINAL OPINION
CITY OF ASHLAND,) AND ORDER
)
Respondent.)

Appeal from City of Ashland.

Bonnie Brodersen, Ashland, represented herself.

Paul Nolte, Ashland, City Attorney, represented respondent.

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

DISMISSED 05/20/96

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

1 Opinion by Hanna.

2 Petitioner challenges the city's decision to provide
3 electrical services to a dwelling on a parcel of property
4 located adjacent to the city's urban growth boundary. The
5 city moves to dismiss this appeal on the grounds that it is
6 not a land use decision subject to LUBA's jurisdiction.

7 Many of the facts underlying this dispute are set forth
8 in this Board's opinion in Broderson v. Jackson County, 28
9 Or LUBA 645 (1995), aff'd 134 Or App 414 (1995) (Broderson
10 I). That case involved the same petitioner's challenge of
11 the Jackson County planning department's issuance of a
12 building permit for the dwelling which is the subject of
13 this appeal. The county conditionally approved the dwelling
14 on July 23, 1992, and petitioner did not appeal that
15 decision. On October 18, 1994, the county issued the
16 building permit for the dwelling, and petitioner's first
17 appeal followed. In Broderson I, this Board dismissed
18 petitioner's appeal for lack of jurisdiction, finding that
19 the county's decision to approve a building permit was not
20 subject to any discretionary land use standards, and was
21 therefore excluded from the definition of a land use
22 decision under ORS 197.015(10)(b)(B). Id. at 652.

23 Petitioner's current appeal arises out of the city's
24 decision to provide electrical services to the permitted
25 dwelling. Like the county in Broderson I, the city has
26 moved to dismiss this appeal for lack of jurisdiction,

1 arguing that the decision to supply electricity is not a
2 land use decision under ORS 197.015(10).

3 This Board has jurisdiction over appeals of land use
4 decisions and limited land use decisions. ORS 197.825(1).
5 The definition of land use decision is set forth at ORS
6 197.015(10), which provides, in relevant part:

7 "Land use decision":

8 "(a) Includes:

9 "(A) A final decision or determination made
10 by a local government or special
11 district that concerns the adoption,
12 amendment or application of:

13 "(i) The goals;

14 "(ii) A comprehensive plan provision;

15 "(iii) A land use regulation;

16 "(iv) A new land use regulation; or

17 "(B) A final decision or determination of a
18 state agency other than the commission
19 with respect to which the agency is
20 required to apply the goals;

21 "(b) Does not include a decision of a local
22 government:

23 "(A) Which is made under land use standards
24 which do not require interpretation or
25 the exercise of policy or legal
26 judgment;

27 "(B) Which approves or denies a building
28 permit issued under clear and objective
29 land use standards;

30 "* * * * *"

31 As the party seeking review, petitioner has the burden

1 of establishing that LUBA has jurisdiction. 1000 Friends of
2 Oregon v. Columbia County, 29 Or LUBA 597, 598 (1995).
3 Petitioner contends that the city's decision to provide
4 electrical services to the property in question satisfies
5 the statutory definition of a land use decision because it
6 concerns the application of the city's land use regulations
7 and comprehensive plan. Petitioner's primary argument
8 appears to be that the city's "proposal to provide
9 electricity to property outside the urban growth boundary
10 and outside the city limits violates various comprehensive
11 plan provisions." Petitioner's Response to Motion to
12 Dismiss 10. Petitioner cites numerous sections of the
13 city's comprehensive plan (plan) which deal with the
14 provision of utility services, but are not relevant to the
15 actual decision challenged in this appeal.¹

¹For example, petitioner relies upon chapter IX, policy 3 of the plan, which provides that it is the city policy to

"[p]revent urban sprawl and 'leap-frogging' by providing full services in a staged manner: first to areas within the City limits, then to the areas within the Urban Growth Boundary."

Petitioner asserts that this policy prohibits the city from extending electrical services to any dwelling outside of the UGB. Petitioner urges too broad an application of the city's comprehensive plan policies implementing Statewide Planning Goal 11, which is generally intended to prevent the extension of urban-level facilities and services onto rural lands. See, e.g., 1000 Friends of Oregon v. LCDC, 301 Or 447, 508, 724 P2d 268 (1986). Under Goal 11, the term "urban facilities and services" is defined by LCDC as "key facilities," which are the basic facilities "essential to the support of more intensive development, including public schools, transportation, water supply, sewage and solid waste disposal." LCDC Goals, Definitions. The policy relied upon by petitioner does not apply to the extension of electrical service to an individual residence just beyond the city limits.

1 The decision to provide electrical service was made by
2 the city's director of electric utilities (director). The
3 city has submitted the director's affidavit, in which he
4 testifies that the decision to provide electrical service is
5 not subject to any city land use regulations; rather,
6 electrical service is automatically provided to any property
7 owner who has been issued a valid building permit. The
8 director does not apply or interpret the city's
9 comprehensive plan or land use regulations. The decision to
10 provide electrical service is a ministerial decision, which
11 does not involve land use standards and does not require
12 interpretation or the exercise of policy or legal judgment.
13 Accordingly, the director's decision is excluded from the
14 definition of a land use decision by ORS 197.015(10)(b)(A).

15 We also reject petitioner's contention that the
16 challenged decision is a land use decision under the
17 "significant impact" test set forth in City of Pendleton v.
18 Kerns, 294 Or 126, 653 P2d 992 (1982). Under that analysis,
19 LUBA jurisdiction may be appropriate over local planning
20 activities which will have a "significant impact on present
21 or future land uses." Id. at 133 (emphasis added).
22 Petitioner asserts that the city's decision to provide
23 electricity to the subject property will have a significant
24 impact on petitioner and her family due to increased levels
25 of electromagnetic fields (EMFs) in their neighborhood.
26 However, petitioner does not establish that the anticipated

1 increase in EMFs will result in a significant impact on
2 present or future land uses. Petitioner also asserts that
3 her neighborhood will be significantly impacted by this
4 decision due to the "digging up and widening of the road,"
5 and the possibility of inadequate fire protection for the
6 area. However, these are general development issues which
7 are unrelated to the decision being appealed. Petitioner
8 has not established that the city's decision to provide
9 electrical service to a residence in Jackson County will
10 have a significant impact on present or future land uses.

11 The city's motion to dismiss is granted.