

LAND USE
BOARD OF APPEALS

BEFORE THE LAND USE BOARD OF APPEALS

DEC 29 4 41 PM '80

OF THE STATE OF OREGON

3	MICHAEL CANNADY,)	
)	
4	Petitioner,)	LUBA NO. 80-107
)	
5	vs.)	FINAL OPINION
)	AND ORDER
6	CITY OF ROSEBURG,)	
)	
7	Respondent.)	

8 Michael Cannady, Roseburg, filed a brief and argued the
9 cause on his own behalf.

10 David Aamodt, Roseburg, filed a brief and argued the cause
11 on behalf of Respondent City.

12 Bagg, Referee; Reynolds, Chief Referee; Cox, Referee;
13 participated in the decision.

14 Reversed. 12/29/80

15 You are entitled to judicial review of this Order.
16 Judicial review is governed by the provisions of Oregon Laws
17 1979, ch 772, sec 6(a).
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1 BAGG, Referee.

2 NATURE OF THE PROCEEDING

3 This case is about the grant of a variance from certain
4 street construction standards within the City of Roseburg. The
5 variance was granted under the provisions of Resolution 80-6.
6 Resolution 80-6 establishes street standards in the City of
7 Roseburg and includes within it procedures for obtaining
8 variances from those standards.

9 STANDING

10 Standing of petitioners has not been challenged in this
11 proceeding.

12 FACTS

13 Mr. Chris Cline was interested in purchasing four parcels
14 of property upon which he might build two houses. In 1978, he
15 approached the City Public Works Director and the City Engineer
16 with a plan to put in a driveway to serve the parcels. The
17 City apparently approved his proposal, orally, and Mr. Cline
18 purchased the property. On January 12, 1978, the City Engineer
19 and the Director of Public Works advised Mr. Cline in writing
20 that the plan was acceptable, but concluded that "there are
21 certain particulars which will require more specific details
22 before approval can be given by the City." Those details
23 included plans of the construction work and a number of
24 improvements that had to be made in the course of Mr. Cline's
25 project.

26 Sometime in March of 1979, construction on the work

1 commenced, but later in March work stopped because the
2 requirements of the January 12 letter had not been met. If any
3 work was done pursuant to the letter of January 12, 1978 and
4 before March of 1979, no reference is made in the record. In
5 June of 1979, construction of a water line began; and shortly
6 thereafter the work was terminated by the City because further
7 written plans were required on the lots.

8 On January 28, 1980, the City adopted Resolution 80-6. See
9 Appendix A. The resolution incorporated street standards set
10 forth in the "Roseburg Major Street Traffic Safety Program"
11 dated September 29, 1978. Because of the adoption of
12 Resolution 80-6 and its incorporation of those street
13 standards, the City Engineer advised Mr. Cline that certain
14 improvements had to be made in his project. These improvements
15 were more extensive than the ones contemplated in the
16 engineer's letter of January 12, 1978, and included curbs,
17 gutter and a drainage system. The engineer did allow, however,
18 a reduction in the required 28 foot street width because of the
19 limited right of way available. Mr. Cline found some of the
20 improvements (especially curbs, gutters and the drainage
21 system) objectionable and appealed the engineer's decision to
22 the City Council. His appeal, in sum, requested he be
23 permitted to make only the improvements required in the January
24 12, 1978 letter. His appeal to the City Council was pursuant
25 to a provision in Resolution 80-6 allowing such an appeal.

26 The City Council took up the appeal at its meeting on April

1 14, 1980, and overturned portions of the City Engineer's
2 decision. The city eliminated the improvements required by the
3 city engineer relating to curbs and gutters and also allowed a
4 simplified drainage system. The city's action was to allow the
5 project to proceed under the conditions and standards
6 referenced in the January 12, 1978 letter. Also, a contract
7 was made wherein Mr. Cline agreed to improve the right-of-way
8 and be responsible for all maintenance. Findings of Fact and
9 Conclusions of Law were adopted, and this appeal followed.¹

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11 ASSIGNMENT OF ERROR

12 Petitioner asserts the City made a decision that was not
13 supported by substantial evidence in the record. The
14 petitioner also says the city improperly construed "the
15 applicable law regarding vested rights and economic hardship."

16 The assignment of error does not point to the written
17 decision of the City of Roseburg, and it does not tie that
18 written decision to the standards for issuing variances
19 contained in Resolution 80-6. From the whole of petitioner's
20 discussion and from his presentation at oral argument, it is
21 our understanding petitioner's complaint is that no evidence
22 exists in the record from which the city might conclude the
23 city's standards should be varied. In order to grant a
24 variance, Resolution 80-6 requires a showing that the
25 "standards are impractical due to geographic, physical, or
26 other external non-economic constraints." Resolution 80-6.

1 There is no evidence to show the standards to be "impractical
2 due to geographic, physical or other external non-economic
3 constraints . . . ," therefore, justifying relief.

4 Petitioner is of the view that the City's decision was based
5 only upon its notion that Mr. Cline had acquired a right to
6 develop his property in reliance on the letter from the
7 Director of Public Works and the City Engineer of January 12,
8 1978. Petitioner's characterization may be correct as the
9 city's findings note "Mr. Cline relied" on the representations
10 of the city in that letter "in the planning for the development
11 of his property." The city's findings conclude

12 "[A]n exception to the city street standard
13 requiring a minimum street width of 28 feet, curbs and
14 gutters, and full sized drainage facilities is
 necessary based on the reliance of the appellant on
 previous positions of the City of Roseburg."

15 The City also concludes that removing the subject streets from
16 the City's maintenance program and turning maintenance over to
17 Mr. Cline pursuant to the contract with the City would be "in
18 the public interest."

19 Respondent claims the issue in the case is "whether the
20 City of Roseburg can honor a previous commitment to withdraw a
21 portion of street right-of-way when the standards have been
22 revised since the original commitment was made." Respondent
23 goes on to characterize the matter as one more of "detrimental
24 reliance" or "estoppel" than one involving Mr. Cline's vested
25 rights. Respondent asserts purchase of the property was based
26 on city assurances regarding access thereto. Presumably, the

1 city is arguing that the purchase is sufficient to show
2 detrimental reliance on the city's promises.

3 Included in the city's defense is the view that Resolution
4 80-6 does not necessarily control in the case. Respondent
5 finds the commitment to Mr. Cline preexisted the Resolution and
6 was consistent with the City's policies at that time. The
7 decision should be upheld, according to respondent, because
8 notwithstanding the existence of resolution 80-6, the city is
9 always free to exercise powers given to it under its charter.
10 As the control of streets and street standards is given the
11 City under its charter, the City may do as it pleases,
12 notwithstanding the existence of Resolution 80-6.

13 The Board views Resolution 80-6 as controlling in this
14 case. The fact the City may have been granted powers under its
15 charter to do essentially as it pleases with its streets does
16 not also mean that the City can completely ignore its own
17 legislative acts, particularly where those acts purport to
18 control the City's procedures and standards relative to
19 streets. See generally 5 McQuillin, Municipal Corporations,
20 sec 15.14 (3rd ed 1969). The City has not argued that
21 Resolution 80-6 is a nullity, and the city provides us with no
22 authority to suggest that it may ignore the resolution.

23 Given Resolution 80-6 is effective and applicable to this
24 proceeding, the City's order must be tested against the
25 standards established in the Resolution. As mentioned earlier,
26 the Resolution requires a showing that the street standards are

1 "impractical due to geographic, physical or other external
2 non-economic constraints . . . " to obtain a variance. The
3 only portion of the City's findings of fact and conclusions of
4 law that address this standard are those portions noting Mr.
5 Cline relied on representations of the City in allowing him to
6 proceed in accordance with the January 12, 1978 letter of the
7 Public Works Director and the City Engineer. That January 12,
8 1978 letter was not, however, a permit to proceed. The letter
9 only outlines "certain particulars which will require more
10 specific details before approval can be given by the City."
11 Letter of January 12, 1978. No mention is made of the physical
12 characteristics of the property or any other matter that would
13 make adherence to City standards impossible or impractical.
14 Additionally, the city does not cite us to any facts in the
15 record that might show "external non-economic constraints"
16 making compliance with the Resolution "impractical."

17 Perhaps, the city wants us to hold Mr. Cline should be
18 permitted to proceed under the conditions set out in the 1978
19 letter even though no formal approval was given under that
20 letter. We decline to so hold. The 1978 "approval" was
21 conditional. The final approval was only granted after a
22 change in applicable standards was made by Resolution 80-6. To
23 adopt the city's view would be to prohibit the city from
24 enforcing new street standards against anyone who obtained a
25 letter outlining conditions of future approval. Standards
26 adopted before approval of a project (or after approval but

1 before substantial investment is made) must be met. See
2 generally 8 McQuillin, Municipal Corporations, sec
3 25.155-25.157 (3d Ed) 1976; Clackamas County vs. Holmes, 265 Or
4 193, 508 P2d 190 (1973). Here, the approval was not given;
5 and, even if we consider the approval to have been given in
6 1978, substantial work on the project simply was not
7 undertaken. Whether work on the project might have been
8 undertaken had Mr. Cline been more aggressive with the City in
9 having his plans approved under the conditions outlined in the
10 January 12, 1978 letter is a matter for conjecture only.²

11 In short, the City's findings simply do not show compliance
12 with Resolution 80-6 or, in the alternative, how it is that
13 Resolution 80-6 can be ignored.

14 This case is reversed.

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FOOTNOTE

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This appeal was subject to an earlier appeal. The Board dismissed the earlier appeal, LUBA No. 80-051, because the city had not yet issued its findings of fact and conclusion of law. Without a written order, there was "no land use decision" for Board review.

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We question the applicability of "detrimental reliance" and "estoppel" as asserted by the city in this matter. We find no facts showing anything like detrimental reliance to exist in this case. Aside from the fact that the city gave Mr. Cline no definitive "approval" upon which he might rely to his detriment, the findings do not show Mr. Cline to have changed his position to his personal loss. Mr. Cline might not have purchased the property had he thought no approvals would be forthcoming, but there is no finding by the city showing us how that purchase has hurt Mr. Cline.