

DEC 14 1 06 PM '81

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

JERALD BARTCHY, WANDA BARTCHY, )  
JERRY PIERING, LeANN PIERING, )  
DAVID RICKETTS, JAKE JACKSON, )  
HELEN JACKSON, JERRY FLOWERS, )  
RUTH FLOWERS, ROYCE THORPE, )  
MARY THORPE, RICHARD BETHEL )  
and DEBBY BETHEL, )

LUBA NO. 81-088

Petitioners, )

FINAL OPINION  
AND ORDER

vs. )

CITY OF DALLAS, GORDON C. )  
ENGLISH and CHARLES G. )  
WRIGHT, )

Respondents. )

Appeal from City of Dallas.

Sally L. Avera and Fred E. Avera, II, Dallas, filed a petition for review and Fred E. Avera argued the cause for Petitioners.

Kenneth E. Shetterly, Dallas, filed a brief and Mark Irick argued the cause for Respondents. With him on the brief was Hayter, Shetterly & Irick.

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

Remanded.

12/14/81

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

1 COX, Referee.

2 NATURE OF PROCEEDING

3 Petitioners seek reversal of a Dallas City Council order  
4 approving the Gordon C. English Addition No. 2 mobile home  
5 subdivision plan.

6 ALLEGATIONS OF ERROR

7 Petitioners assert three grounds for a determination of  
8 error which all relate to inadequacy of findings regarding  
9 flooding and street configuration.

10 FACTS

11 In April, 1981, Gordon C. English applied to the Dallas  
12 City Planning Commission to subdivide a 15.69 acre tract into  
13 73 separate lots pursuant to Dallas subdivision ordinance No.  
14 1301. The property is zoned RS (Residential Single-Family).  
15 It is currently undeveloped and is bordered by single-family  
16 residences. Under the plan submitted by the developer, various  
17 existing, non-through streets would be extended to connect with  
18 other existing streets.

19 The subdivision is located within the Ash Creek  
20 floodplain. A Dallas Public Works report, based on a field  
21 study designed to locate required drainage ways, recommended,  
22 after some elevations were "shot," some solutions to storm  
23 drainage problems. The report indicated that an easement for a  
24 drainage system would have to be acquired and an existing  
25 drainage ditch would need to be cleaned and graded, however, no  
26 specific flood elevation data was expressed in the report. To

1 alleviate the drainage/flooding problems on the site, the  
2 developer proposes to install a storm drain system which  
3 addresses the problems identified in the Public Works  
4 Department report.

5 A letter from the Polk County Surveyor, dated May 12, 1981,  
6 indicates, however, that proposed improvements and cleaning of  
7 the storm ditches in the area may not be sufficient to solve  
8 the flood problem since the cause of flooding is not being  
9 addressed.

10 The letter states in pertinent part:

11 "Both the North and South sides of our road are  
12 scheduled for cleaning this summer. I would caution  
13 you that this cleaning will not solve the severe water  
14 problem when extremely heavy rains occur.

15 "As people in that area are well aware, the main  
16 impact to your area comes when the main channel  
17 overflows upstream and adds additional water to the  
18 channel coming through your area as well as the  
19 intersection area.

20 \*\* \* \*

21 "I still believe the answer to the water problem in  
22 your general area is to enlarge the main channel to  
23 sufficient capacity to handle the water and then  
24 maintain the channel to prevent regrowth and  
25 subsequent obstructions."

26 The city made no findings regarding the concerns expressed in  
the letter.

#### DECISION

A fair reading of petitioners' allegations of error  
indicates they believe the city's findings regarding flooding  
and street configuration are inadequate and lack substantial

1 support in the record.

2 Flooding

3 Pointing to Dallas City Ordinance No. 1292 ("An Ordinance  
4 relating to the prevention of flood damage"), petitioners claim  
5 the city erred by failing to apply the ordinance to the  
6 contested decision. We agree and remand the decision.

7 The purpose of Ordinance 1292 is

8 "to promote the public health, safety, and general  
9 welfare, and to minimize public and private losses due  
10 to flood conditions in specific areas \* \* \*" Ord. No.  
11 1292, sec 1.3.

12 There seems to be no dispute that the subject property is  
13 located in a floodplain. As is stated in the Planning  
14 Commission findings as adopted by the City Council:

15 "The area is still located in a flood plain, but when  
16 all drainage ways have been cleaned and are properly  
17 maintained the danger of flooding should be slight.  
18 This is very flat land and will not remove the  
19 standing water problem with excessive rains." (Pg. 1,  
20 Planning Comm. Findings, June 9, 1981).

21 Petitioners argue that Sec 5.1-4(4) of Ordinance 1292  
22 controls and was violated when no base flood elevation data was  
23 considered before granting the subdivision request. The  
24 pertinent parts of Section 5 of Ordinance 1292 entitled,  
25 "Provisions for Flood Hazard Protection" provide:

26 "5.1 GENERAL STANDARDS

"In all areas of special flood hazards, the following  
standards are required:

\* \* \*

"5.1-4 Subdivision Proposals

\* \* \*

1           "(3) All subdivision proposals shall have adequate  
2           drainage provided to reduce exposure to flood  
3           damage; and

4           "(4) Base flood elevation data shall be provided for  
5           subdivision proposals and other proposed  
6           development which contain at least 50 lots or 5  
7           acres (whichever is less)." (Emphasis added)

8           Respondent argues that: (1) Section 5.1 and, therefore,  
9           Section 5.1-4(4), is not applicable to the subject property;  
10          and (2) even if the section is applicable, its provisions are  
11          to be applied by ministerial decision later in the subdivision  
12          process. Respondent first claims that Ordinance 5.1-4 is only  
13          applicable in areas of special flood hazards, and these areas  
14          are established pursuant to Sections 3.1 and 3.2 of the  
15          Ordinance. Those sections provide:

16                "3.1 LANDS TO WHICH THIS ORDINANCE APPLIES

17                        "This ordinance shall apply to all areas of  
18                        special flood hazards within the jurisdiction of  
19                        the City of Dallas.

20                "3.2 BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD  
21                        HAZARD

22                        "The areas of special flood hazard identified by  
23                        the Flood Insurance Study, Polk County, Oregon,  
24                        prepared for the Federal Insurance  
25                        Administration, Department of Housing and Urban  
26                        Development, by the United States Department of  
27                        Agriculture, Soil Conservation Service, dated  
28                        August 173, is hereby adopted by reference and  
29                        declared to be a part of this ordinance. The  
30                        Flood Insurance Study is on file at the office of  
31                        the Director of Community Development in the City  
32                        Hall at Dallas, Oregon."

33          The city argues that since the subject property is not included  
34          in the Flood Insurance Study, Ordinance 1292 doesn't control,

1 and it was not required to address the ordinance provisions.

2 We don't agree with the respondent's argument. Ordinance  
3 No. 1292, sec 2 defines "Area of Special Flood Hazard" to mean:

4 "the land in the flood plain within a community  
5 subject to a one percent or greater chance of flooding  
in any given year."

6 The record indicates this property is located within the  
7 "100-year floodplain."<sup>1</sup> Section 3.2 cited supra by  
8 respondents does not support a conclusion that the subject  
9 property is not governed by 1292. All Sec 3.2 does is  
10 incorporate certain specific areas into the definition of "Area  
11 of Special Flood Hazard." It does not limit the scope of the  
12 ordinance. This conclusion is supported by Section 4.3-2  
13 (Ordinance 1292) which states:

14 "Use of Other Base Flood Data

15 "When base flood elevation data has not been provided  
16 in accordance with Section 3.2 BASIS FOR ESTABLISHING  
17 THE AREAS OF SPECIAL FLOOD HAZARD, the local  
18 administrator shall obtain, review, and reasonably  
19 utilize any base flood elevation data available from a  
20 federal, state or other source, in order to administer  
21 Sections 5.2-1, SPECIFIC STANDARDS, Residential  
22 Construction, and 5.2-2, SPECIFIC STANDARDS,  
23 Nonresidential Construction." (Underlining Added)

24 Respondent's alternative argument that the provisions of  
25 Ordinance 1292 are to apply only after approval of the  
26 "tentative plan" is also unconvincing. First, there is no  
indication the city treated this as a "tentative subdivision  
plan approval." The adopted findings state in pertinent part:

"The Planning Commission [City Council] of the City of  
Dallas feels that approval should be given for English  
Subdivision No. 2 based on the Findings of Fact.

1           \*\* \* \*

2           "The proposal has met the requirements of the zoning  
3           and mobile home subdivision ordinances."

4           The order indicates approval of the mobile home subdivision.  
5           Mobile home subdivisions are controlled in the City of Dallas  
6           by Ordinance No. 1301. Section 15 of Ordinance 1301 sets forth  
7           the "Requirements for Mobile Home Subdivisions." Section 15(N)  
8           states:

9           "Suitability of site, encompassing such factors as  
10           soil conditions, ground water drainage, and topography .  
11           will be part of the review. Mobile home subdivisions  
12           shall meet all the requirements of the Flood Plain  
13           Ordinance of the City of Dallas \* \* \* \*"

14           Even if we were to assume, as respondent argues, that only  
15           a "tentative plan" has been approved, the information required  
16           by the Flood Plain Ordinance must nevertheless have been  
17           addressed. Section 5, Ordinance 1301 governs the information  
18           required for tentative plans. Section 5 requires

19           "(c) The Subdivision Plan. The tentative plan of the  
20           proposed subdivision shall be on a scale of one  
21           inch equals 200 feet, or on a larger scale if  
22           desired, with the following information and data  
23           required.

24           \*\* \* \*

25           "(2) The location of all existing or proposed  
26           roads and streets within or on the boundary  
27           of the proposed subdivision.

28           \*\* \* \* \*

29           "(9) Topography within and adjacent to the  
30           proposed subdivision if considered necessary  
31           by the Commission. If a topographic map or  
32           elevations at designated points are  
33           required, the base for such information

1 shall be the datum obtained from any  
2 official bench mark in Polk County or the  
3 City of Dallas, providing its location,  
description and elevation is furnished."  
(Emphasis added)

4 The provisions of Ordinance 1301, Section 5(c)(9) require  
5 floodplain elevations. Floodplain elevation data is controlled  
6 by Ordinance 1292. Section 4.1 of Ordinance 1292 requires,  
7 among other things,

8 "(1) Elevation in relation to mean sea level, of the  
9 lowest flood (including basement) of all  
structures;

10 "(2) Elevation in relation to mean sea level to which  
11 any structure has been floodproofed; \* \* \* \*"

12 In addition, Section 5.3, Ordinance 1292 requires

13 "Located within areas of special flood hazard  
14 established in Section 3.2 are areas designated as  
15 floodways. Since the floodway is an extremely  
16 hazardous area due to the velocity of flood waters  
17 which carry debris, potential projectiles, and erosion  
18 potential, the following provisions apply:

19 "(1) Prohibit encroachments, including fill, new  
20 construction, substantial improvements, and other  
21 development unless certification by a registered  
22 professional engineer or architect is provided  
23 demonstrating that encroachments shall not result  
24 in any increase in flood levels during the  
25 occurrence of the base flood discharge.

26 "(2) If Section 5.3(1) is satisfied, all new  
construction and substantial improvements shall  
comply with all applicable flood hazard reduction  
provisions of Section 5.0 PROVISIONS FOR FLOOD  
HAZARD REDUCTION.

"(3) Prohibit the placement of any mobile homes,  
except in an existing mobile home park or  
existing mobile home subdivision."

1 Based on the foregoing requirements, it was incumbent on  
2 the city, before approving in any form the requested mobile  
3 home subdivision, to address the dictates of Ordinance 1292.  
4 The findings adopted by the city council do not reveal a  
5 consideration of, among other things, the base flood elevation  
6 data. That data is necessary to answer other questions set  
7 forth in Ordinance 1292. Without properly addressing 1292,  
8 there can be no support, as petitioners have alleged, for the  
9 conclusion that "the flooding problem [could] be virtually  
10 removed."

11 Streets

12 Petitioners next allege that the city approved a street  
13 configuration for the subdivision which violates the terms of  
14 ordinance 1301. Petitioners argue that Sections 3(z)(1), (5)  
15 and (6) of Ordinance 1301 which define collector, arterial and  
16 minor streets have been ignored in approving the subdivision  
17 plan.<sup>2</sup> Petitioners point to Section 23(a) of Ordinance 1301  
18 which provides

19 "The street right-of-way in or along the boundary of a  
20 mobile home subdivision shall have the following  
minimum width, vic.,

21 <u>"Type of Street</u>	<u>Right of Way Width</u>
22 Major streets or arterials	100 feet
23 Collector streets	80 feet
24 Minor streets	60 feet
25 Cul-de-sacs (Min. length 100')	60 feet
26 Turnarounds	45 feet radius with 10 foot easement"

1           Petitioners argue that if the subdivision were to be  
2 approved as it is now proposed Ana Avenue, which presently is a  
3 minor street, would become a collector street once it is linked  
4 to Gordon Street and Gregory Drive and indirectly to Virginia  
5 Drive and Nancy Court. Petitioners reason that Ana Avenue  
6 would become a collector street because it would be used for  
7 access to property along the linked streets and not exclusively  
8 for properties which abut it. Petitioners then argue, pointing  
9 to Section 23(a) of Ordinance 1301, supra, that the presently  
10 platted subdivision only includes Ana Street as 60 feet wide,  
11 rather than the 80 feet width required for a collector street.  
12 Petitioners reason that imposing an additional 20 foot right of  
13 way on Ana Avenue, as well as on other avenues which  
14 petitioners argue should be considered collector streets, would  
15 reduce many of the subdivision lot sizes below the minimum size  
16 requirements set forth in Dallas City Ordinance No. 1201,  
17 Section 15(b). That ordinance provision requires lots to be a  
18 minimum of 6,000 square feet.

19           Respondent first reply that the city was not required to  
20 address the issue of whether Ana Avenue must be a collector  
21 street or a minor street at the tentative plan approval stage.  
22 We disagree with respondents. As we said earlier, it is not  
23 clear that the city only approved a tentative plan because the  
24 order and findings speak in terms of a subdivision approval.  
25 However, even if a tentative plan is all that was approved,  
26 Subdivision Ordinance 1301, sec. 5 requires street widths to be

1 addressed. Section 5(c)(3) provides as follows:

2 "(c) The Subdivision Plan. The tentative plan of the  
3 proposed subdivision shall be on a scale of one  
4 inch equals 200 feet, or on a larger scale if  
5 desired, with the following information and data  
6 required.

7 "(1) The ownership, township, section or donation  
8 land claim and the county in which the  
9 subdivision is located.

10 "(2) The location of all existing or proposed  
11 roads and streets within or on the boundary  
12 of the proposed subdivision.

13 "(3) The total land area of the proposed  
14 subdivision with lot layout giving  
15 approximate dimensions and area of each lot."

16 We fail to see how lot layout with approximate dimensions  
17 can be given without information showing actual street widths.  
18 Thus, the tentative plan would have to indicate the widths of  
19 the streets.

20 In the alternative the city argues that it addressed the  
21 widths of the streets contested by petitioner, and that its  
22 determination that those streets were designated minor was  
23 accurate. A review of the city's findings fails to reveal any  
24 determination of the proper street designation, an issue that  
25 was placed before it by petitioners. The only finding made by  
26 the city is found in the adopted findings of the planning  
27 commission. Under item 5, Streets and Traffic, it states:

28 "This proposed subdivision is adjacent to SE monmouth  
29 Cutoff, which is designated an arterial street, and to  
30 SE Godsey Road, which is designated a collector street  
31 in the Comprehensive Plan. Proposed streets must meet  
32 specifications and construction standards of the City  
33 of Dallas. Portion of Virginia located in the county  
34 must meet Polk County standards. Easements to the

1 City of Dallas from Polk County will be required to  
2 allow for the placement of utilities in the county  
right-of-way."

3 There is no finding addressing the concerns of petitioners  
4 that Ana Avenue and Virginia Drive, plus other streets, have  
5 been insufficiently provided for by developer in the proposed  
6 subdivision plan. If in fact petitioners are correct that the  
7 streets will become collector streets, then the entire  
8 subdivision lot size configuration is incorrect and the  
9 developer will be required to submit a new subdivision  
10 proposal. Since this case must go back because of the flooding  
11 issue, the city at that time can address the petitioners'  
12 concerns regarding street configuration and make the necessary  
13 findings.

14 Based on the foregoing, it is the determination of this  
15 Board that this matter shall be remanded to the City of Dallas  
16 for further proceedings not inconsistent with this opinion.  
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FOOTNOTES

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The record indicates an apparent equation of a one percent chance of flooding in any given year and "100 year floodplain."

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2

Ordinance 1301 states:

"(1) Collector. A street accumulating traffic from minor streets and routing it to an arterial street.

\* \* \*

"(5) Minor Street. A street used exclusively for access to abutting properties.

"(6) Arterial. A thoroughfare or arterial of considerable length primarily for intercommunication between large areas and with a roadway designated to handle a large volume of traffic."

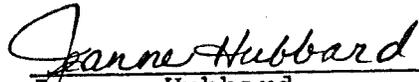
CERTIFICATE OF MAILING

I hereby certify that I served the foregoing Final Opinion and Order for LUBA No. 81-088, on December 14, 1981, by mailing to said parties or their attorney a true copy thereof contained in a sealed envelope with postage prepaid addressed to said parties or their attorney as follows:

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Dated this 14th day of December, 1981.

  
\_\_\_\_\_  
Jeanne Hubbard  
Secretary to the Board