

1 BAGG, Referee.

2 NATURE OF THE DECISION

3 The land use decision on review to this Board is a decision
4 of the Lane County Board of Commissioners that Petitioner
5 Clifford Lamb lacks standing to appeal a subdivision
6 application to the Lane County Board of Commissioners.¹

7 One John W. Pickett appealed the decision of the Lane
8 County Land Development Review Committee denying Mr. Pickett's
9 application for a subdivision of some 300 acres of land into 14
10 parcels of 20 acres each "to be managed under an agreement for
11 the raising of timber." Findings of the Lane County Board of
12 Commissioners, page 2. The hearings officer heard the appeal
13 on August 25, 1981 and rendered a decision on December 18,
14 1981. The decision overruled that of the Land Development
15 Review Committee denying the subdivision application. As part
16 of the hearings officer's order, the hearings officer
17 specifically found that Clifford Lamb had "standing."

18 Mr. Lamb appealed the hearings official's decisions on
19 December 28, 1981. On January 5, 1982, the applicant made
20 objection to Clifford Lamb's standing and raised other
21 procedural issues, and the county heard the matter on March 3,
22 1982. The county dismissed the appeal on the ground that Mr.
23 Lamb did not have standing under provisions of the Lane Code
24 controlling standing to bring land use appeals.² This appeal
25 followed.

1 FACTS

2 As illustrated by the findings in the record herein, the
3 county's dismissal rested on its belief that Mr. Lamb was not
4 "adversely affected or aggrieved" by the decision as that term
5 is used in the county ordinance. The county recognized that
6 Mr. Lamb's claim of aggrievement comes from

7 "the alleged increase in the market value of timber
8 land in southern Lane County resulting from the
9 county's granting Applicant permission to develop a
 coordinated, managed plan for multi-owned 20-acre
 parcels." Findings, Page 2.

10 The county found

11 "d. Mr. Lamb has experienced difficulty finding
12 forest land to purchase at prices he is willing to
13 pay, though he might be interested in purchasing
14 timberland in Lane County. Mr Lamb claims the price
15 of forest land in Lane County is highly inflated with
16 development values. The Board believes that there are
17 many factors which affect the market price of
18 timberland in Lane County. The development values may
19 have some effect on the market prices, but
20 insufficient evidence was presented from which the
21 Board could determine with a reasonable degree of
22 certainty the extent, if any, of the effect the
23 development value made on the market price of forest
24 land.

 "e. No clear comparison was shown as to the
19 difference in market value between 20-acre parcel
20 prices and 300 acres. There has not been an adequate
21 showing that the granting of Applicant's request will
22 reasonably likely raise the price of land in Lane
23 County used for growing timber.

 "f. Mr. Lamb presented no evidence that the
23 decision in this case uniquely affected him, as
24 distinguished from all persons or entitites which may
25 purchase timberland in Lane County." Findings, pp.
26 2-3.

25 The county included a discussion of its view of the meaning of
26 "adversely affected or aggrieved" as the terms appear in the

1 Lane Code. The county board found that by adoption of Lane
2 Code 14.010, it intended a requirement that the applicant be

3 "a property owner in reasonably close proximity -- as
4 within sight and sound of a proposed area of land. It
5 [the county] intended to narrow the right of appeal
6 which existed in the predecessor code provision phrase
7 'any interested person.'" Findings, p. 4.

8 The county recited Mr. Lamb resided over 20 miles south of
9 the applicant's site and could not see the applicant's property
10 or hear activities conducted on the property. The county went
11 on to explain that the adverse effect must be unique or
12 specific to the applicant and not to a large class of persons
13 "such as all timber land owners in Lane County." Findings,
14 page 4. The county board said the zoning ordinance "was not
15 intended to protect the interest of individuals against the
16 economic effect on the market price of land concerning resource
17 land for concentrated resource uses." Ibid.

18 In its findings, the county board took pains to distinguish
19 its view of standing from holdings by the Land Use Board of
20 Appeals and the Court of Appeals. The county stated that the
21 Land Use Board's holding in 1000 Friend of Oregon v. Benton
22 County, 2 Or LUBA 324 (1981) is not applicable. The county
23 said the petitioner in the Benton County case owned
24 agricultural land in the general vicinity of the subject
25 property, and Mr. Lamb does not own land in the general
26 vicinity of Mr. Pickett's property. The county cites with
27 approval Warren, et al v. Lane County, 5 Or LUBA 227 (LUBA No.
28 81-102, Order on Standing, 1982), wherein the Board announced

1 that parties appealing land use decisions must have "a personal
2 stake in the decision." Also, Warren is cited for the view
3 that the decision must be one that "will impact a person in a
4 way different from other members of the community." Warren, 5
5 Or LUBA at 223; Findings, p. 4. As we understand the county's
6 findings, they say Mr. Lamb can claim no effect unique to him
7 given the facts in this case. The county also mentions Duddles
8 v. West Linn, 21 Or App 310, 535 P2d 583 (1975) wherein the
9 Court of Appeals stated that a person wishing to appeal a local
10 decision by writ of review must suffer an "injury of some
11 substantial right." The county claims the court did not limit
12 qualification of standing to contiguous land ownership "but
13 only to that of a property owner in reasonably close proximity
14 -- as within sight or sound of the proposed use of land." The
15 county quoted the court as stating that

16 "the city council is free to adopt its own standards
17 governing standing to appear before it, i.e., to
18 provide who is and who is not entitled to remonstrate
19 for the city council, so long as those standards are
20 consistent with due process requirements." Duddles,
21 21 Or App at 329.

22 The county, as noted above, found Mr. Lamb's land is not in
23 reasonably close proximity to the subject property.

24 We note the record in this case includes Mr. Lamb's
25 submittals to the Lane County hearings official and to the
26 county board of commissioners. Mr. Lamb's submittals include
figures showing forest land values in Lane County, figures Mr.
Lamb claims were obtained from the Department of Revenue. Also

1 included is a graph that purports to show advertised price data
2 of properties advertised in the Register-Guard (newspaper) from
3 December, 1981 to February, 1982. Mr. Lamb claimed to the
4 county that the graph shows that prices go up as acreage goes
5 down.³

6 ASSIGNMENT OF ERROR

7 "Lane County improperly found that Lamb lacked
8 standing to appeal the decision of the hearings
officer."

9 The point of petitioner's argument against the county's
10 decision is that the county misapplied the applicable law.
11 According to petitioner, the county too narrowly interpreted
12 the term "party" and the term "adversely affected or
13 aggrieved." Petitioner argues that a person's right to appeal
14 local planning and zoning decisions is controlled by ORS
15 215.402 to 215.422, notwithstanding restrictive definitions
16 that may appear in the Lane County ordinance.⁴ The county
17 may not, according to petitioner, adopt a restrictive
18 definition of "party" contrary to that contained in the statute
19 and thereby prevent a person from appealing under ORS 215.402
20 to ORS 215.422. Petitioner argues that if the county is
21 allowed to adopt a restrictive definition of "party," it could
22 arguably cutoff a right of an appeal to the Land Use Board of
23 Appeals by restricting a "party's" right to appeal below.

24 Petitioner then argues the county mistakenly interpreted
25 "adverse effect" and "aggrievement" and reminds the Board of
26 its decision in Friends of Benton County v. Benton County, 3 Or

1 LUBA 165, 167 (1981), aff'd, Benton County v. Friends of Benton
2 County, 56 Or App 567, 642 P2d 358 (1982), wherein we held

3 "The test for standing rests not so much on the
4 likelihood of the injury in an absolute sense, but the
5 likelihood of the injury should the facts plead be
6 true." Friends, 3 Or LUBA at 167.

7 Petitioner, pointing to evidence in the record, states Mr. Lamb
8 is a tree farmer actively attempting to find additional land
9 for tree farming. Petitioner adds that Mr. Lamb owns two tree
10 farms, one at Fox Hollow near Eugene and one at Dorena
11 Reservoir east of Cottage Grove. The petitioner advises that
12 the Fox Hollow tree farm is the same driving distance from the
13 subject property.⁵ Petitioner claims, therefore, that the
14 subject property "is within the radius of lands Lamb might
15 purchase and operate, and, a fortiori, it is close enough to
16 Lamb's base of operations to affect the price of other tracts
17 of land Lamb might purchase * * * " Petition for Review at
18 12. This price effect would occur both through the reduction
19 and supply of suitable tracts and speculative pressures on
20 remaining suitable tracts.

21 Petitioner concludes that the facts in the present case are
22 close to those in 1000 Friends of Oregon v. Benton County,
23 supra, a case in which the petitioner was not within sight or
24 sound of the subject property, but was within "the zone of
25 potential economic effects" from the challenged subdivision.
26 Petition for Review at 13. Petitioner's allegation in the 1000
Friends of Oregon v. Benton County case was that the creation

1 of small "hobby farms" would increase the cost of farming in
2 the area by raising the cost of land to buy or rent. The Board
3 found petitioner McDowell had standing to appeal the matter
4 because

5 "these allegations demonstrate that there is a
6 reasonable likelihood that McDowell would suffer
7 economic injury if development on parcels of
8 agricultural land in rural Benton County is not made
9 consistently with the policies expressed in Goal 3 and
10 elsewhere. It is upon adherence to these policies by
11 the planning officials in Benton County that farmers
12 such as Edna McDowell depend for their economic well
13 being. We believe that Edna McDowell is a person who
14 has demonstrated that Benton County's decision may
15 adversely affect her interests within the meaning of
16 Oregon Laws 1979, ch 772, 4(3)." 2 Or LUBA at 328.

17 In further support of his position, petitioner refers to
18 the petitioner's testimony and "charts to show the correlation
19 between small parcel size and high per/acre cost of forest
20 land." Petition for Review at 13.

21 Respondent argues that the criteria for standing is
22 different in the county than before LUBA. Respondent refers to
23 finding 5 in which the county commissioners explain that their
24 intent in adopting the standing section of their ordinance was
25 to narrow the scope of persons who might appeal a hearings
26 official's decision to the county commissioners. Respondent
reminds the Board that the county commissioners are the proper
interpreters of their own ordinance, and the commissioners
interpreted their ordinance to mean that Mr. Lamb was not
adversely affected or aggrieved by the hearings officer's
decision.⁶ The county's view rests on its opinion that a

1 potential petitioner must be within "close proximity" to the
2 subject property. The county believes the petitioner fails in
3 his bid for standing on the ground that he simply is not close
4 enough to the subject property to be adversely affected or
5 aggrieved by the decision. See footnote 3 supra. Respondent
6 also argues that Mr. Lamb is not a person who is adversely
7 affected or aggrieved because if Mr. Lamb is correct that the
8 price of tree farm land will increase as a result of the
9 partition, then the subdivision is a benefit to Mr. Lamb
10 because it increases the value of his land. Respondent further
11 argues that it is conjecture that any division of the Pickett
12 property would have any effect on the price of land which Mr.
13 Lamb may wish to purchase in the future. Respondent's point is
14 that there are many factors that go into the price of a piece
15 of property. Respondent does not appear to deny Lamb's
16 assertion that as parcel size decreases, the price increases,
17 but respondent believes that the land size is most certainly
18 not the only factor. Respondent says there is no "impact" or
19 "injury" to Mr. Lamb from this decision. See Warren v. Lane
20 County, 5 Or LUBA 227, supra.

21 DECISION

22 We believe Mr. Lamb has standing under the county
23 ordinance. We agree with respondent's statement that "the
24 makers of the ordinance are the best persons to interpret the
25 ordinance." See Clatsop County v. Morgan, 19 Or App 173, 176,
26 526 P2d 1393 (1974) and Bienz v. City of Dayton, 29 Or App 761,

1 566 P2d 904 (1977). This deference exists, however, so long as
2 the county interpretation is not contrary to law. 5th Ave.
3 Corp. v. Washington Co., 282 Or 591, 581 P2d 50 (1978); Theland
4 v. Multnomah County, 4 Or LUBA 284 (1981). We understand that
5 the commissioners adopted their standing ordinance before case
6 law articulating, as respondent considers it, a more
7 "sophisticated" tests such as those in Warren v. Lane County,
8 supra. The fact remains, however, that the language is the
9 same; and the county has not supplied its own definition in its
10 ordinance. The words, therefore, must be interpreted by their
11 plain meaning. Davis v. Wasco County IED, 286 Or 261, 593 P2d
12 1152 (1979); 4 Sands, Statutory Construction, Sec 46.01 (4th
13 ed., 1975). The words have taken on additional legal
14 significance because of judicial interpretation. They have
15 come to mean something more complicated than the probable,
16 direct, substantial injury to a potential petitioner urged by
17 respondents. The test for standing utilizing the "adverse
18 affect" or "aggravement" standard is (1) is there a
19 possibility that the petitioner will be impacted by the
20 decision; and (2), if so impacted, will the impact be adverse
21 to the petitioner. Warren v Lane County, 5 Or LUBA 227, supra,
22 Benton County v. Friends of Benton County, 56 Or App, supra.
23 The county misconstrues this standard and limits it to persons
24 in close proximity to the subject property. The county bases
25 this conclusion on an erroneous interpretation of the Duddles
26 decision. Duddles does not limit standing as suggested by this

1 finding. In Duddles, close proximity (sight and sound) created
2 a "presumption" of standing, and standing certainly was not
3 limited to those in close proximity to the subject property.
4 See Benton County v. Friends of Benton County, ____ Or
5 App ____ (1982), wherein the court cautioned against
6 construing the "sight and sound" language "too narrowly." It
7 may be that the county may adopt such a limited definition of
8 adverse effect or aggrievement, but it must first do so in
9 appropriate legislative proceedings. In this case, Mr. Lamb
10 has introduced evidence, not refuted or contradicted by the
11 county, that divisions of property result in increased prices
12 per acre for the remaining smaller parcels. Mr. Lamb has
13 introduced evidence that he is in the market to increase his
14 tree farm holdings, and that therefore, an increase in price of
15 suitable property would result in higher prices to him. We
16 believe, therefore, that Mr. Lamb has shown the possibility of
17 an impact upon him by this decision and that that impact will
18 be adverse. The county did not find there would be no impact
19 on Mr. Lamb. Indeed, its findings appear to concede the
20 possibility Mr. Lamb may be impacted. We can agree with the
21 county that many factors enter into land prices, but for the
22 purposes of establishing standing to appeal a land use decision
23 under the standard applicable in this case, we do not believe
24 it necessary to show a more direct line from the act complained
25 of to the aggrievement. We do not believe it should be
26 necessary to wait until sufficient subdivisions have occurred

1 to be able to establish a clear statistical correlation between
2 the next land division and a dollar increase in price before a
3 person, such as Mr. Lamb, alleging facts as Mr. Lamb has
4 alleged, should be allowed to challenge the decision.⁷

5 Because we hold that the county's ordinance incorporates
6 the same "adversely affected or aggrieved standard" as state
7 law, we need not address petitioner's additional concern that
8 the county has somehow attempted a too restrictive definition
9 of "party." That is, as the county's standing requirements and
10 ours are the same, petitioner's fear that the county could cut
11 off an individual's right to appeal to LUBA is unfounded. We
12 note, however, that even should a county write a restrictive
13 definition of standing, a majority of the Board has held that
14 such a definition will not serve to limit an individual's right
15 of appeal under 1979 Or Laws, ch 772, sec 4, as amended by 1981
16 Or Laws, ch 748.⁸

17 The decision of Lane County Board of Commissioners is
18 reversed.

FOOTNOTES

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4 The parties agreed to submit only this standing matter to
LUBA.

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6 Lane Code 14.030(1) defines "parties" as
7 "The following persons are hereby defined as 'parties'
8 and shall be entitled with themselves or through
9 counsel, to a full hearing before the Hearings
Official and upon such continued participation, to
review by the Board of County Commissioners.

10 "(a) Any person entitled to appeal the decision under
11 LC 14.010 and who made an appearance before the
Hearings Official and requested orally or in
12 writing a copy of the Hearings Official decision.

13 "(b) The applicant."

14 Lane Code 14.020 and 14.025(1) under Board Procedures state:

15 "14.020 Appeal to Board of County Commissioners. The
16 Board of County Commissioners has jurisdiction to hear
17 appeals of the Hearings Official's decision arising
18 from LC 10.315-57, 10.317-60, 10.320-60, 10.322-45,
19 10.325-60, 10.700-515(2), 10.700-615(3) and 14.010(6)
or any other matter heard by the Hearings Official
pursuant to the Lane Code.

20 "14.025 Appeal Procedure

21 "(1) Who May Appeal. An appeal may be filed by any
22 County Official as defined in LC 14.050(1), or any
23 Party within the meaning of LC 14.030(1). Such appeal
24 shall be filed either on forms provided by the
Planning Division, or by written documents substantially
similar thereto with the Planning Division within 10
days of the date of the Hearings Official's written
decision as that date is set forth in the decision.
The appellant shall also mail a true copy of the
Notice of Appeal to the Hearing's Official."

25 Lane Code 14.010(1) under Hearings Official Procedures
26 states:

1 "Appeal Procedure.

2 "(1) an appeal may be made to the Hearings
3 Official by the applicant or any person who is
4 adversely affected or aggrieved by the decision or
5 County Official as defined in LC 14.050(1). Such
6 appeal shall be filed in written form with the
7 Planning Division within 10 days of the Director's
8 action, stating how the Director erred in application
9 of the requirements of the Lane Code." (Emphasis
10 added).

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12 We do not know how to read the graph. The county does
13 not challenge this graph or the information Mr. Lamb
14 claims it conveys in its findings or before us, however.

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16 ORS 215.422 states:

17 "Review of action of a hearings officer; when final
18 determination of county.

19 "(1)(a) A party aggrieved by the action of a hearings
20 officer may appeal the action to the planning
21 commission or county governing body, or both, however
22 the governing body prescribes. The appellate
23 authority on its own motion may review the action.
24 The procedure and type of hearing for such an appeal
25 or review shall be prescribed by the governing body.

26 "(b) Notwithstanding paragraph (a) of this
27 subsection, the governing body may provide that the
28 decision of a hearings officer is the final
29 determination of the county.

30 "(2) A party aggrieved by the final determination may
31 have the determination reviewed in the manner provided
32 in sections 4 to 6, chapter 772, Oregon Laws 1979, as
33 amended by sections 35 to 36a, chapter 748, Oregon
34 Laws 1981."

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36 Respondents do not challenge this assertion.

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Oregon Laws 1979, ch 772, sec 4(3)(b), as amended by Oregon Laws 1981, ch 748 states:

"(3) Any person who has filed a notice of intent to appeal as provided in subsection (4) of this section may petition the board for review of a quasi-judicial land use decision if the person:

"* * *

"(b) Was a person entitled as of right to notice and hearing prior to the decision to be reviewed or was a person whose interests are adversely affected or who was aggrieved by the decision."

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We stress again that respondent has not denied the possibility exists and, more importantly, respondent has not denied Mr. Lamb's assertion that there is a relationship between parcel size and land acquisition costs.

We recognize that there may indeed be other factors that affect the cost of land. Our point, however, is that this land acquisition factor must be considered true because it has been testified to by Mr. Lamb, is unrefuted in the evidence, and not denied by the county's findings.

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See Clemens v. Lane County, 4 Or LUBA 63, 65-66 (1981); Weber v. Clackamas County, 3 Or LUBA 327 (1981); Warren v. Lane County, 5 Or LUBA 2327 (1982) and Gallagher v. Benton County, ___ Or LUBA ___ (LUBA No. 81-104, 1982). Under the majority opinion in the cases cited in the text, however, the standing requirements that may be imposed by a local government may not operate to restrict the standing to appeal a land use decision to this Board. As stated in Gallagher, supra:

"If the person who wants to appeal the planning commission decision to the Board of Commissioners has an administrative remedy available (i.e., can meet the county's standing requirements), then the person must exhaust this remedy prior to seeking LUBA review. Conversely, if the person cannot meet the county's standing requirements, then no local administrative remedy is available to be exhausted, the county's decision with respect to that individual is 'final'

1 and appeal to LUBA of the planning commission's
2 decision would be the appropriate course to follow.

3 "We recognize that some confusion may result from
4 a person who may be unsure of his or her ability to
5 demonstrate standing to the county's satisfaction. A
6 prudent individual would probably have to appeal both
7 to the county governing body and to LUBA in order to
8 be quite certain of preserving his or her right of
9 appeal. The county ordinance may, in this manner,
10 serve to complicate the review of land use decisions
11 in Benton County. We find, however, nothing in the
12 law that prohibits the county from selectively
13 choosing which appeals it will consider on its own."
14 Gallagher, ___ Or LUBA at _____ (LUBA No. 81-104, Slip
15 Opinion at 12-13.)

16 The parties do not raise possible interpretation of Lane
17 Code 14.030(1) that would bind the county commission to a
18 determination of standing reached by the hearings official.
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