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

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CHESTER A. SWENSON and )  
DELLA I. SWENSON, )  
husband and wife, )  
 )  
Petitioners, )  
 )  
vs. )  
 )  
COUNTY OF LANE, )  
a political subdivision )  
of the State of Oregon, )  
 )  
Respondent. )

LUBA No. 83-035

FINAL OPINION  
AND ORDER OF DISMISSAL

Appeal from Lane County.

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COX, Board Member; BAGG, Board Member; participated in the  
decision.

Dismissed. 5/24/83

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), as amended by Oregon Laws 1981, ch 748.

1 COX, Board Member.

2 This matter is before the Board on motions for dismissal by  
3 Lane County and Participant City of Eugene. Petitioners are  
4 seeking review of a February 16, 1983 letter from the Lane  
5 County hearings official to the manager of Planning and  
6 Community Development for Lane County. That letter dismissed  
7 Metropolitan Wastewater Management Commission's (MWMC) special  
8 use application (HSP 82-269) upon the conclusion the hearings  
9 official lacked jurisdiction over the question. Included in  
10 the February 16, 1983 letter was Lane County Board of  
11 Commissioners' order No. 83-1-26-15 responding to questions the  
12 hearings official had directed to that commission on December  
13 13, 1982. The parties argue issues of notice, exhaustion of  
14 remedies as well as whether a land use decision has even been  
15 made. We do not deal with the questions of notice or  
16 exhaustion of administrative remedies because we find that no  
17 land use decision has been made.

18 Metropolitan Wastewater Management Commission (MWMC) is an  
19 agency of the cities of Eugene and Springfield and was created  
20 under ORS 190.010. MWMC is intending to operate a regional  
21 facility to dispose of seasonal industrial wastewater. The  
22 wastewater primarily will come from the processing of beets,  
23 carrots, beans, corn, onions and cherries at local cannery  
24 operations. The wastewater will be sprayed over an area of 287  
25 acres outside the urban service area and beyond the area known  
26 as the urban reserve. Some of the land is owned by the City of

1 Eugene. At this point petitioners' land (about 47 of the 287  
2 acres) is the subject of a condemnation proceeding. The land  
3 is presently zoned for exclusive farm use.

4 Sometime prior to December 13, 1982, Applicant MWMC  
5 requested a special use permit to allow it to operate. MWMC  
6 was unsure whether the use would officially be considered a  
7 farm use. If it was considered to be a farm use, the planning  
8 director for Lane County could grant construction permits  
9 through ministerial actions. If, however, it was determined  
10 not to be a farm use, then some additional action such as a  
11 conditional use permit request would have to be taken.

12 The criteria for obtaining a special use permit is set  
13 forth in Lane County Code (LC) 10.317-05 et seq. Under LC  
14 10.317-50, the hearings official, prior to holding a special  
15 use permit hearing, may submit questions to the Board of  
16 Commissioners for interpretation and determination. Pursuant  
17 to that provision and after apprising the Lane County Board of  
18 Commissioners of the facts, the hearings official asked the  
19 Board of Commissioners three questions. First he asked:

- 20 1. "Is the proposed use as set forth in the  
21 application a flood control or irrigation project  
22 and facility as those terms are used in Lane Code  
23 10.100-10, Table 1 (18)?"
- 24 2. "Is the use proposed in the application a farm  
25 use within the definition of that term in Lane  
26 Code Chapter 10 definition section?"

25 The hearings official stated that if the answer to the second  
26 question was no, then:

1 "Is the use proposed in the application a local  
2 utility service as that term is used in Lane Code  
3 10.100-10 Table 1 (8)?

4 Initially the hearings official had planned to hold a  
5 hearing on the special use permit January 6 but decided to  
6 delay the hearing until after the questions were answered by  
7 the Board of Commissioners. On January 6, 1983, the Board of  
8 Commissioners sent the petitioners a letter informing them that  
9 a hearing on the questions above mentioned would be held on  
10 January 26, 1983. In addition, the letter stated:

11 The Board will consider the Hearings Official's  
12 request on January 26, 1983. While no public hearing  
13 will be conducted on this matter, the Board will  
14 consider public comment submitted in writing which  
15 address the issues discussed above and the specific  
16 questions raised by the Hearings Official."

17 Further, the notice contained a warning, it stated:

18 "In the event the Board of Commissioners interprets  
19 the use to be a permitted use for the parcel, that  
20 determination will serve as the basis for issuance of  
21 construction permits."

22 Petitioners appeared neither orally nor in writing before the  
23 Board of Commissioners.

24 On February 2, 1983, the Board of Commissioners issued  
25 order no. 83-1-26-15 entitled "In the Matter of Interpreting LC  
26 10.100-10, Table I (18) and 10.020." The order was directed to  
the Lane County Hearings Official and states:

"This matter is returned to the Hearings Official for  
action consistent with our interpretation."

The County held in answering the first question,

1 "The Seasonal Industrial Waste Disposal Project, as  
2 described in the attached Findings, is not a flood  
3 control or irrigation project facility pursuant to LC  
4 10.100, Table I (18)."

5 In answer to the hearings officer's second question, the county  
6 stated:

7 "The Seasonal Industrial Waste Disposal Project, as  
8 described in the attached Findings, is a permitted  
9 farm use pursuant to LC 10.020, ORS 215.203(2) and  
10 LCDC Goal 3, Agricultural Lands."

11 Upon receipt of the Board of Commissioners' order, the  
12 hearings official sent a letter dated February 16, 1983 to the  
13 Lane County Planning and Community Development manager stating:

14 "This acknowledges receipt of your transmittal letter  
15 of February 14, 1983, Lane County Board of  
16 Commissioners' order no. 83-1-26-15 setting forth  
17 findings and responding to the questions I raised on  
18 the above subject to the Board of Commissioners on  
19 December 13, 1982.

20 "Based on the answers to the questions submitted as  
21 adopted by the Board of Commissioners, the application  
22 is hereby dismissed from any jurisdiction I might have  
23 over it as Hearings Officer for Lane County in  
24 accordance with the provisions of Lane Code Chapter 10.

25 "I am holding no original materials in my file and  
26 presume they have all been returned to you."

#### 27 DECISION

28 The February 16, 1983 letter of the hearings official,  
29 which petitioners are attempting to appeal, is merely a  
30 statement, incorporating the above cited order, that he has no  
31 jurisdiction. It is not a final land use decision. The  
32 county's February 2, 1983 order to which the letter refers does  
33 nothing except declare what the county understands to be the

1 operation of its ordinance and the scope of the term farm use.  
2 While it may be the basis for issuance of permits, it does not  
3 itself issue any permit. We hold that no land use decision has  
4 been appealed to this body. Cf. Medford Assembly of God v.  
5 Medford, 6 Or LUBA 68 (1982).

6 Dismissed.

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