

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

CITY OF NORTH PLAINS,)
)
Petitioner,)
)
and)
)
BERRY EVANS, SUZANNE JOHNSON,)
JOHN STROM, and ALLEN JOHNSON,)
)
Intervenors-Petitioner,)
)
vs.)
)
WASHINGTON COUNTY,)
)
Respondent,)
)
and)
)
UNIFIED SEWERAGE AGENCY,)
)
Intervenor-Respondent.)

LUBA No. 92-131
)
FINAL OPINION
AND ORDER

Appeal from Washington County.

James M. Coleman, Portland, represented petitioner.

John W. Shonkwiler, Tigard, represented intervenors-petitioner.

David C. Noren, Hillsboro, represented respondent.

Timothy J. Sercombe, Portland, represented intervenor-respondent.

KELLINGTON, Referee; SHERTON, Chief Referee; HOLSTUN, Referee, participated in the decision.

DISMISSED 09/28/92

You are entitled to judicial review of this Order.

1 Judicial review is governed by the provisions of ORS
2 197.850.

1 Opinion by Kellington.

2 **NATURE OF THE DECISION**

3 Petitioners appeal a letter of the Washington County
4 planning director approving a request that he initiate an
5 application for a sludge storage facility.

6 **MOTION TO INTERVENE**

7 Berry Evans, Suzanne Johnson, John Strom and Allen
8 Johnson move to intervene on the side of petitioner.
9 Unified Sewerage Agency moves to intervene on the side of
10 respondent. There are no objections to the motions, and
11 they are allowed.

12 **FACTS**

13 Washington County Community Development Code
14 (CDC) 203-1.1 provides that an application for development
15 approval may be initiated by (1) all owners of property
16 subject to the proposed development, (2) the planning
17 director, or (3) the board of commissioners.

18 The subject property is owned by at least two people.
19 On April 30, 1992, intervenor-respondent submitted an
20 application for a sludge storage facility on the subject
21 property. This application was signed by only one of the
22 property owners.¹ Because it was unable to obtain the
23 signature of all property owners, intervenor-respondent
24 requested that the director of the planning department

¹At least one of the other property owners declined to sign that application, and is an intervenor-petitioner in this appeal proceeding.

1 initiate the application for a sludge storage facility on
2 the subject property. On June 4, 1992, the planning
3 director granted intervenor-respondent's request and
4 initiated the application. Petitioner and
5 intervenors-petitioner (petitioners) appeal the planning
6 director's decision to initiate the application to this
7 Board. During the pendency of this LUBA appeal, the county
8 began a public hearing on the sludge storage facility
9 application. However, after the public hearing was opened,
10 the county hearings officer suspended the public hearing on
11 the application, pending our resolution of this appeal.

12 **MOTION TO DISMISS**

13 Intervenor-respondent (respondent) moves that we
14 dismiss this appeal.² Respondent argues this Board lacks
15 jurisdiction to review the challenged letter. Respondent
16 contends the challenged letter is not a land use decision.

17 **A. Statutory Test**

18 This Board's jurisdiction is limited to review of "land
19 use decisions." ORS 197.825(1). Under ORS 197.015(10)(a),
20 a "land use decision" must be a final decision.

21 Respondent argues, among other things, that the
22 challenged letter advising that the application would be
23 initiated by the planning director, is not a final decision
24 by the county.

²The county elected not to participate in the briefing concerning the motion to dismiss.

1 Petitioners cite the Court of Appeals' decision in
2 Breivogel v. Washington County, 114 Or App 55, ___ P2d ___
3 (1992) for the proposition that where a planning director's
4 decision ends a land use proceeding, that decision is a land
5 use decision. Petitioners contend that under Breivogel, if
6 the planning director had refused to initiate the
7 application at issue in this case, then that refusal would
8 be a land use decision. From this, petitioners reason the
9 converse must also be true, i.e. when the planning director
10 decides to initiate an application for development approval,
11 that decision is a land use decision under the reasoning of
12 Breivogel. Petitioners argue the appealed letter is a final
13 decision on whether an application for a sludge storage
14 facility will be processed without the consent of all the
15 owners of the land.

16 There is no question that a planning director's
17 decision refusing to process a local appeal of a hearings
18 officer's decision on a conditional use permit is a land use
19 decision subject to the jurisdiction of this Board.
20 Breivogel, supra. However, the decision at issue in this
21 appeal is quite different. Here the challenged "decision"
22 is simply a determination that the local development review
23 process for a particular use will begin. The appealed
24 planning director letter resulted in the filing of an
25 application for local development review, the mechanism for
26 beginning the local development review process. It is from

1 the local development review process that a final land use
2 decision appealable to this Board will emerge. A decision
3 to initiate a process that will lead to a land use decision
4 is not, of itself, a land use decision. Rather,
5 petitioners' challenges concerning the manner in which the
6 application was initiated must wait until the conclusion of
7 the local review process, including the resolution of all
8 local appeals.³ McKenzie River Guides Assoc. v. Lane
9 County, 19 Or LUBA 207 (1990); see also N.O.P.E. in Mulino
10 v. Port of Portland, 2 Or LUBA 243 (1980) (port district
11 approval of study recommending preferred site for new
12 airport and authorizing further studies is not a final
13 decision). Because the challenged order is not a final
14 decision, it is not a "statutory test" land use decision.

15 **B. Significant Impact Test**

16 A decision which does not satisfy the statutory test
17 may nevertheless, in some circumstances, be a land use
18 decision subject to LUBA review if it will have a
19 significant impact on present or future land uses. See
20 Billington v. Polk County, 299 Or 471, 703 P2d 232 (1985);
21 City of Pendleton v. Kerns, 294 Or 126, 653 P2d 992 (1982).
22 However, even a "significant impacts land use decision" must
23 be a final decision. See City of Pendleton v. Kerns, supra;
24 McKenzie River Guides Assoc. v. Lane County, supra; CBH v.

³The local review process could result in a final local decision that the application was improperly initiated.

1 City of Tualatin, 16 Or LUBA 399, 405 n 7 (1988). We
2 determine above that the challenged letter is not a final
3 decision. Therefore, the planning director's letter may not
4 be reviewed as a significant impacts land use decision.

5 Because we conclude the planning director's order
6 satisfies neither the statutory test nor the significant
7 impact test, the appealed decision is not a land use
8 decision subject to our review.

9 This appeal is dismissed.

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