

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

3  
4       RICHARD D. FIELD,                           )  
5    )  
6                    Petitioner,                    )  
7    )  
8            vs.                                    )  
9    )  
10       GRANT COUNTY,                            )  
11    )  
12                    Respondent.                    )  
13

LUBA No. 96-152  
FINAL OPINION  
AND ORDER

14  
15            Appeal from Grant County.

16  
17            Richard D. Field, Prairie City, represented himself.

18  
19            Edward M. Holpuch, Jr., District Attorney, Canyon City,  
20       represented respondent.

21  
22            HANNA, Chief Referee; GUSTAFSON, Referee; LIVINGSTON,  
23       Referee, participated in the decision.

24  
25                    DISMISSED                            01/27/97

26  
27            You are entitled to judicial review of this Order.  
28       Judicial review is governed by the provisions of ORS  
29       197.850.

1 Opinion by Hanna.

2 **NATURE OF THE DECISION**

3 Petitioner appeals the county's decision to grant a  
4 conditional use permit for a non-resource dwelling in an  
5 Exclusive Farm Use (EFU) zone.<sup>1</sup>

6 **FACTS**

7 The county planning commission authorized a conditional  
8 use permit after a public hearing on June 13, 1996. The  
9 county court upheld the permit after a hearing on July 24,  
10 1996. Petitioner appealed to this Board.

11 **MOTION TO DISMISS**

12 The county moves to dismiss this appeal for lack of  
13 standing, based on petitioner's failure to make an  
14 appearance as required by ORS 197.830(2)(b).<sup>2</sup> Petitioner  
15 did not submit written comments or oral testimony at either  
16 the planning commission or county court hearings.  
17 Petitioner alleges standing in this case based on his visit

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<sup>1</sup>Bob Kimberling filed a motion to intervene to which the county objected. Because we dismiss this appeal, it is not necessary for use to consider the motion to intervene.

<sup>2</sup>ORS 197.830(2) provides:

"Except as provided in ORS 197.620(1) and (2), a person may petition the board for review of a land use decision or limited land use decision if the person:

"(a) Filed a notice of intent to appeal the decision as provided in subsection (1) of this section; and

"(b) Appeared before the local government, special district or state agency orally or in writing."

1 to the planning director's office on June 13, 1996, before  
2 the planning commission's hearing scheduled for later that  
3 evening. Petitioner met with the planning director to  
4 inform him that there was an error in the staff report  
5 regarding a soil type on the subject property. Petitioner  
6 states that he "wanted [his] objection to be noted as part  
7 of the record." Petitioner's Affidavit 2. The planning  
8 director specifically asked petitioner if he wanted to  
9 "submit a protest or opposition to the proposed conditional  
10 use permit." Respondent's Affidavit 2. Petitioner  
11 responded by stating that he "simply wanted to note that the  
12 soil classification \* \* \* was incorrect," because it was  
13 important to the planning commission's decision.  
14 Petitioner's Affidavit 2. The planning director asserts  
15 that petitioner then stated that he was not in opposition to  
16 the conditional use permit, and that he just wanted to  
17 clarify the soil type.<sup>3</sup> Respondent's Affidavit 2.

18 Petitioner contends that upon reading the minutes of  
19 the planning commission's hearing, he discovered that the  
20 soil type issue had not been addressed to his satisfaction.  
21 Petitioner states that the planning director only addressed  
22 his concern at the hearing by noting that a typographical  
23 error existed in the United States Natural Resources

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<sup>3</sup>Although not directly relevant to the issue of petitioner's standing, we note that the planning director alerted petitioner to the fact that an appearance at the hearing or a statement in writing was needed to preserve a right to appeal the planning commission's decision.

1 Conservation Service soil book, rather than noting that the  
2 staff report incorrectly classified the soil type on the  
3 subject property. Based on his June 13, 1996 contact with  
4 planning director, petitioner now alleges that he has met  
5 the appearance requirement of ORS 197.830(2)(b), and  
6 therefore has standing to appeal the county court's final  
7 decision.

8 The issue before us is whether petitioner's oral  
9 statement to the planning director in his office on the day  
10 of the public hearing constitutes an "appearance before the  
11 local government" sufficient to afford standing to appeal  
12 the governing body's quasi-judicial land use decision to  
13 LUBA.

14 The minimum requirements for "appearing" have not been  
15 determined in a bright line fashion. McKay Creek Valley  
16 Assoc. v. Washington County, 19 Or LUBA 537, 546 (1990).  
17 However, in the context of appealing quasi-judicial land use  
18 decisions, the Oregon Supreme Court has interpreted  
19 "appearance before the local government" to require that the  
20 petitioner appear "orally or in writing before the local  
21 body making the decision to be reviewed \* \* \*." Jefferson  
22 Landfill Comm. v. Marion County, 297 Or 280, 283 (1984). If  
23 no writing is submitted, a person must at least make a brief  
24 oral statement at the public hearing objecting to some  
25 aspect of the decision in order to gain standing based on an  
26 oral appearance before the local government. Lester v. City

1 of Eugene, 26 Or LUBA 453, 456 (1994). In this case, the  
2 oral statement to the planning director before the hearing  
3 does not constitute an appearance before the local  
4 government as required by ORS 197.830(2)(b).

5 Because petitioner did not appear before the local  
6 government as required by ORS 197.830(2)(b), petitioner has  
7 not established standing to appeal.

8 The appeal is dismissed.