

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3  
4 WILLIAM ARLIN PHILLIPS,  
5 *Petitioner,*

6  
7 vs.

8  
9 CITY OF HERMISTON,  
10 *Respondent.*

11  
12 LUBA No. 2000-178

13 FINAL OPINION  
14 AND ORDER

15  
16 Appeal from City of Hermiston.

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18 Rustin A. Brewer, Hermiston, represented petitioner.

19  
20 Gary Luisi, Hermiston, represented respondent.

21  
22 BASSHAM, Board Member; BRIGGS, Board Chair; HOLSTUN, Board Member,  
23 participated in the decision.

24  
25 DISMISSED

03/22/2001

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

29

2 **NATURE OF THE DECISION**

3 Petitioner appeals a city resolution authorizing the acquisition of a 0.01-acre portion  
4 of petitioner’s property by eminent domain.

5 **MOTION TO DISMISS**

6 The city moves to dismiss this appeal, on the grounds that the challenged decision is  
7 not subject to LUBA’s jurisdiction as a land use or limited land use decision as defined at  
8 ORS 197.015(10) and (12), or as a “significant impact” land use decision as described in *City*  
9 *of Pendleton v. Kerns*, 294 Or 126, 653 P2d 992 (1982).

10 We derive the following facts from the parties’ pleadings and the record. In  
11 December 1999, the city adopted a transportation system plan (TSP) that, among other  
12 things, proposes an extension of East 4th Street. The city thereafter acquired the right-of-  
13 way for the extension from the title owners, and began construction. Petitioner’s property is  
14 adjacent to the East 4th Street right-of-way, where that right-of-way intersects with East  
15 Theater Lane. Petitioner filed a quiet title action that claimed ownership of a portion of the  
16 right-of-way adjacent to his property, apparently under a theory of adverse possession. In  
17 response, the city adopted the challenged decision on October 23, 2000, as Resolution 1610.  
18 The decision resolves to acquire from petitioner by eminent domain a triangle of land  
19 approximately 10 feet on each side, at the intersection of East 4th Street and East Theater  
20 Lane.<sup>1</sup> The resolution authorizes the city attorney to commence legal proceedings to acquire  
21 the property.

22 Petitioner makes no attempt to argue that the challenged decision “concerns the  
23 adoption, amendment or application” of a comprehensive plan provision or land use  
24 regulation, or otherwise falls within the definition of a “land use decision” at

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<sup>1</sup>The purpose of the acquisition is apparently to provide a rounded corner at the intersection.

1 ORS 197.015(10)(a). Neither does petitioner argue that the challenged decision is a limited  
2 land use decision, as defined at ORS 197.015(12). However, petitioner does argue that the  
3 challenged decision is a decision subject to LUBA’s review under the “significant impact”  
4 test. According to petitioner, the extension of East 4th Street will have a significant impact  
5 on present and future land uses. Petitioner notes that the city has recently received and is  
6 considering an application for preliminary subdivision plat approval for a parcel across the  
7 street from petitioner, to which East 4th Street will presumably provide access.

8 The significant impacts test in *Kerns* is met if the decision creates an actual,  
9 qualitatively or quantitatively significant impact on present or future land uses. *Carlson v.*  
10 *City of Dunes City*, 28 Or LUBA 411, 414 (1994). The difficulty with petitioner’s argument  
11 under *Kerns* is that the decision challenged in this case authorizes acquisition of a very small  
12 portion of property to facilitate placement of a rounded corner. It does not authorize the  
13 extension or decide the location of East 4th Street. Those determinations were presumably  
14 made in other decisions. However, petitioner has not appealed those decisions, nor explained  
15 how those decisions can be challenged by appealing Resolution 1610. Petitioner has not  
16 established that the acquisition of a 0.01-acre portion of land to facilitate a previously  
17 authorized transportation improvement itself has qualitative or quantitative significant  
18 impacts on present or future land uses.

19 The appeal is dismissed.