

1 This matter is before the Board on the motion to dismiss
2 submitted by Respondent City of Roseburg and Intervenor Chris
3 Cline and Daisy Belle Cline. The Motion to Dismiss is made on
4 two grounds: first, respondents say the Land Use Board of
5 Appeals lacks jurisdiction over this matter as the decision
6 appealed was not a "land use decision" within the meaning of
7 Oregon Laws 1979, ch 772, sec 3; and, second, respondents urge
8 dismissal of this matter because there has not been a "final
9 decision or determination within the meaning of Oregon Laws
10 1979, ch 772, sec 3 and the rules of this Board. The
11 applicable portion of the LUBA rules is found at Rule 3(C):

12 " (C) "Final decision or determination" means a
13 decision or determination which has been reduced to
14 writing and which bears the necessary signatures of
the governing body."

15 . Petitioner replies that the dispute involves a land use
16 decision because it involves application of Resolution 80-6.
17 Resolution 80-6 adopts standards for the improvement of
18 "unimproved dedicated and platted street right-of-way" and
19 provides an appeal procedure from those standards. Petitioner
20 urges that as respondent states in his supplemental memorandum
21 to the motion to dismiss that the intent of Resolution 80-6
22 "was to allow for procedure on handling street right-of-way
23 questions until the new comprehensive plan . . . could be
24 included," application of that resolution is a land use
25 decision within the meaning of Oregon Laws 1979, ch 722. In
26 response to the second ground for dismissal, the petitioner

1 says that the city never intended to issue any findings as
2 "[T]his would admit to a land use decision and hence, to
3 jurisdiction." That latter assertion of fact is in direct
4 contradiction to the claim by the City Attorney that he had
5 been charged with drafting an agreement to facilitate the
6 decision along with a resolution approving that agreement. See
7 Motion to Dismiss, p. 3.

8 FACTS

9 Intervenor Chris Cline was interested in purchasing four
10 parcels of property upon which he might build two houses. By
11 his testimony, he approached the city public works director and
12 the city engineer with his plan to put in a private driveway.
13 The city apparently approved, at least orally, his proposal.
14 Mr. Cline purchased the property. Transcript of City Council
15 Meeting of April 14, 1980, pp. 1-2. However, on January 28,
16 1980, the city adopted Resolution 80-6 incorporating street
17 standards as set forth in the "Roseburg Major Street Traffic
18 Safety Program" dated September 29, 1978. Pursuant to the
19 adoption of those standards, the city engineer advised Mr.
20 Cline by letter of certain improvements that had to be made.
21 Mr. Cline objected to those improvements and appealed the
22 decision of the city engineer to the city council. At the
23 meeting of April 14, the city council overturned portions of
24 the city engineer's decision and granted Mr. Cline his appeal.
25 No findings of fact or conclusions of law were made and no
26 "decision" was made in writing. The only memorialization of

1 the grant of the appeal appears in the minutes of the city
2 council proceedings for that date.

3 The comprehensive plan for the City of Roseburg provides
4 certain street standards applicable to "local streets." City
5 of Roseburg Comprehensive Plan pages 51-53. It provides that
6 local streets shall have pavement width from 28 to 36 feet.
7 The record in this case, however, shows a curb face to curb
8 face width of 20 feet for Mr. Cline's street improvement. See
9 letter to Mr. Cline from the City Engineer dated February 19,
10 1980, contained in the supplementary addition to the record.
11 It is not clear whether the City Engineer is in violation of
12 the Comprehensive Plan by providing for a lesser width or
13 whether the particular street improvement requested simply does
14 not fall within the city's definition of a local street. The
15 only other reference to street improvements is contained in the
16 city's subdivision ordinance. That ordinance appears to
17 control street standards only with respect to streets created
18 for the purpose of partitioning or subdividing land. As
19 mentioned above, the city asserts that neither the
20 comprehensive plan nor the subdivision ordinance is applicable
21 in this case and that as a consequence, this action does not
22 fall within the definition of a "land use decision."
23 Petitioners have not asserted that Resolution 80-6 implements
24 the existing comprehensive plan.

25 RESOLUTION 80-6 AS A LAND USE ORDINANCE

26 The legislature did not refine the definition of "land use

1 decision" beyond that in Oregon Laws 1979, ch 772, sec 3(1),
2 which states:

3 "(1) 'Land use decision' means:

4 "(a) A final decision or determination made by a
5 city, county or special district governing body that
6 concerns the adoption, amendment or application of:

7 "(A) The state-wide planning goals;

8 "(B) A comprehensive plan provision; or

9 "(C) A zoning, subdivision or other ordinance
10 that implements a comprehensive plan; or

11 "(b) A final decision or determination of a
12 state agency other than the Land Conservation and
13 Development Commission, with respect to which the
14 agency is required to apply the state-wide planning
15 goals."

16 Not all issues that somehow affect property may be said to
17 be subject to or "implement" statewide land use goals and
18 comprehensive plans. However, streets and improvement of
19 streets can have an effect on land development within a local
20 government's jurisdiction. Indeed, the definition of
21 comprehensive plan requires inclusion of "transportation
22 systems" with the "coordinated land use map" that is the
23 comprehensive plan.

24 "(5) 'Comprehensive plan' means a generalized,
25 coordinated land use map and policy statement of the
26 governing body of a state agency, city, county or
27 special district that interrelates all functional and
28 natural systems and activities relating to the use of
29 lands, including but not limited to sewer and water
30 systems, transportation systems, educational systems,
31 recreational facilities, and natural resources and air
32 and water quality management programs. 'Comprehensive'
33 means all-inclusive, both in terms of the geographic
34 area covered and functional and natural activities and

1 systems occurring in the area covered by the plan.
2 'General nature' means a summary of policies and
3 proposals in broad categories and does not necessarily
4 indicate specific locations of any area, activity or
5 use. A plan is 'coordinated' when the needs of all
6 levels of governments, semipublic and private agencies
7 and the citizens of Oregon have been considered and
8 accommodated as much as possible. 'Land' includes
9 water, both surface and subsurface, and the air." ORS
10 197.015(5).

11 Streets seem to us to be part of a "transportation system." As
12 such, streets and street improvements, arguably, should be included
13 in comprehensive plans. Street improvements are subjects "relating
14 to the use of lands". ORS 197.015(5).

15 We must now consider whether Resolution 80-06 controls the use
16 of lands significantly enough to become a matter of statewide goal
17 or comprehensive plan implementation.¹ Two recent Oregon cases
18 provide guidance as to what measure of effect or control is needed
19 before an act comes within the province of statewide goals or
20 comprehensive plans.

21 In Peterson v. Klamath Falls, 279 Or 249, 566 P2d 1193 (1977),
22 the court said that planning and zoning responsibilities refer not
23 only to comprehensive plans but to "all other local planning
24 activities which will have a significant impact on present or
25 future land uses" 279 Or at 253-4. In Jurgenson v. Union
26 County Court, 42 Or App 505, 600 P2d 1241 (1979), the court said
that not only was a land use act an event that had a significant
impact on present or future land uses in and of itself, but that
the court would look to the "cumulative impact" of decisions to
determine whether or not those decisions might together have a

1 "significant impact on present or future land uses." 42 Or App at
2 508.

3 Authority to control city streets is most often provided for in
4 the city charter. Additionally, ORS ch 373 provides some authority
5 for city street construction and improvement. City streets are
6 also controlled, at least in matters of policy, by comprehensive
7 plans. However, it is not necessarily the case that each and every
8 decision involving a city street will have itself, or even in
9 concert with other similar decisions, a significant impact on the
10 land use activities within that city. In the case at bar, the
11 street improvement is for a driveway to give access to two building
12 sites. As such, the grant or denial of a variance as to width,
13 storm drains and what have you, is a matter of very isolated and
14 minimal significance to the entirety of the city. However, the
15 adoption of standards controlling all such improvements might well
16 have an impact on portions of the City of Roseburg having dedicated
17 rights of way or private right of ways that are unimproved. The
18 improvement of each of those rights of way may well open up or
19 restrict housing and other land use activities within individual
20 portions of the city that together add up to a significant impact
21 on city development.

22 It is the Board's view that Resolution 80-6 does establish
23 control over certain street improvements within the City of
24 Roseburg and that control in turn cumulatively significantly
25 affects land use activities in the City of Roseburg. It is our
26 view, therefore, that decisions (and appeals) made under that

1 resolution are "land use decisions" within the meaning of Oregon
2 Laws 1979, ch 772, sec 3. See also Order on Motion to Dismiss in
3 Home Builders Assn. v. Corvallis, LUBA NO. 79-002 (1980).

4 We believe this view is strengthened by the discussion in the
5 Roseburg Comprehensive Plan of "local streets." It is to be noted
6 in this regard that the definition of a "local street" in the plan
7 is a street that provides "direct access to abutting property
8" It seems to us that a right of way or street providing
9 direct access for dwelling units as here, would fall within the
10 definition of "local street" within the plan. Without further
11 qualification of the definition of "street" within the plan, we
12 conclude that Resolution 80-6 does implement the Roseburg
13 comprehensive plan. The resolution provides refinement of the
14 standards for construction of certain kinds of "local streets",
15 those "unimproved, dedicated and platted" street rights of way.
16 Consistency between Resolution 80-6 and the plan is not an issue in
17 this case.

18 NO FINAL DECISION OR DETERMINATION HAS YET BEEN MADE

19 The petitioner and the city are in dispute as to whether the
20 city ever intends to adopt findings of fact and conclusions of law
21 or any other "writing" to memorialize its grant of Mr. Cline's
22 appeal. We will defer to the city in this matter for four
23 reasons. First, the city attorney claims that such findings must
24 be made. Second, the motion made and passed granting Mr. Cline his
25 appeal took the form of an amendment to a draft agreement submitted
26 for council consideration in November of 1979. That draft

1 agreement, included in the record as "Exhibit C" must necessarily
2 bear the signatures of persons in authority in the city.
3 Conceivably, that signed agreement could be a "land use decision"
4 appealable to this Board. However, the city attorney asserts that
5 a resolution authorizing that agreement must also be signed. There
6 is nothing in the record to show that either event has occurred.

7 Third, and most important, the street standards for the City of
8 Roseburg relative to this case are established by resolution 80-6.
9 Application of those standards to a particular case results in a
10 procedure that we believe falls within the definition of
11 "quasi-judicial" as found in Fasano v. Bd. of Comm. of Wash. Co.,
12 264 Or 574, 587 P2d 23 (1973) and Neuberger v. City of Portland, 37
13 Or App 13, 586 P2d 351 (1980). Given that characterization,
14 findings of fact and conclusions are necessary and must necessarily
15 be given to the person affected before any "decision" can said to
16 have been made. Heilman v. City of Roseburg, 39 Or App 71, 591 P2d
17 390 (1979). This requirement is codified in ORS 227.173 wherein
18 the grant or denial of any "discretionary permit" must be
19 accompanied by findings.

20 "(1) Approval or denial of a discretionary
21 permit application shall be based on standards and
22 criteria, which shall be set forth in the development
23 ordinance and which shall relate approval or denial of
24 a discretionary permit application to the development
25 ordinance and to the comprehensive plan for the area
26 in which the development would occur and to the
development ordinance and comprehensive plan for the
city as a whole.

"(2) Approval or denial of a permit application
shall be based upon and accompanied by a brief
statement that explains the criteria and standards

1 considered relevant to the decision, states the facts
2 relied upon in rendering the decision and explains the
justification for the decision based on the criteria,
standards and facts set forth.

3 "(3) Written notice of the approval or denial
4 shall be given to all parties to the proceeding." ORS
227.173.

5 We view a variance from a street standard as an exercise of
6 discretion that makes "a material change in the use or
7 appearance of a structure or land." ORS 227.215

8 The minutes of the city council meeting of April, 1980, do
9 not constitute findings of fact and conclusions of law. There
10 has been no decision by the City of Roseburg appealable to this
11 Board.

12 For the reason stated above, this matter is dismissed.
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FOOTNOTE

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We do not find the label "ordinance" or "resolution" important in this case. We believe an act, whatever its title, falls within the definition of "land use decision" if it implements and controls land use activities under statewide goals or comprehensive plans. See Fifth Avenue Corp. v. Washington Co., 282 Or 591, 581 P2d 50 (1978).