

LAND USE
BOARD OF APPEALS

BEFORE THE LAND USE BOARD OF APPEALS

DEC 10 11 58 AM '80

OF THE STATE OF OREGON

3 CITY OF ASHLAND and)
 4 JACKSON COUNTY,)
)
 5 Petitioners,)
)
 6 vs.)
)
 7 BEAR CREEK VALLEY)
 SANITARY AUTHORITY,)
)
 8 Respondent.)

LUBA NO. 80-094

FINAL OPINION
AND ORDER

9 Appeal from Bear Creek Valley Sanitary Authority.

10 Ronald L. Salter, Ashland, and Robert E. Stacey, Portland,
11 and John L. Dubay, Medford, filed a petition for review and
argued the cause for Petitioners.

12 Manville M. Heisel, filed a brief and argued the cause for
13 Respondent.

14 Bagg, Referee; Reynolds, Chief Referee; Cox, Referee;
participated in the decision.

15 Remanded.

12/18/80

16 You are entitled to judicial review of this Order.
17 Judicial review is governed by the provisions of Oregon Laws
1979, ch 772, sec 6(a).

1 BAGG, Referee.

2 This is a review of ordinance no. 80-9 of the Bear Creek
3 Valley Sanitary Authority of Jackson County, Oregon. The
4 ordinance authorizes the authority to "construct sanitary sewer
5 lines within the Bear Creek Valley Sanitary Authority in the
6 area served by the North Ashland Interchange Project No. 79-3 *
7 * *." BCVSA Ordinance No. 80-9.

8 FACTS

9 Ordinance 80-9 of the Bear Creek Valley Sanitary Authority
10 authorizes construction of sanitary sewer lines in the area
11 known as the North Ashland Interchange Project. The project
12 lies along Highway 99 North, Jackson Road and Valley View Road
13 north of the City of Ashland and consists of about 350 acres.
14 190 acres of that total is vacant or in farm use and the rest
15 of the property is developed including three mobile home parks
16 with 88 occupied trailers, 22 rural residences and 18 lots with
17 existing commercial uses of varying size. The area in question
18 is outside the City of Ashland's urban growth boundary.

19 The ordinance defines the area of the project and makes
20 reference to the authority's "Manager's Report" of June 18,
21 1980 as the document in which the plans and specifications are
22 contained. The ordinance specifies the estimated cost of
23 construction and how the project will be funded. The ordinance
24 calls for publication of its text and sets a time for receipt
25 of written remonstrances "against the proposed construction by
26 owners of the land within the area directly benefited * * *."

1 BCVSA Ordinance 80-9.

2 This procedure in Ordinance 80-9 follows the District's
3 Ordinance No. 72-1. Ordinance No. 72-1 lays out the procedure
4 for making public improvements within the district. The first
5 step in that procedure is the preparation of a Manager's
6 Report, a document that includes a description of the property
7 and matters relevant to the project including possible methods
8 of financing. The Manager's Report is reviewed by the
9 District's Board of Directors and is either accepted, accepted
10 and modified or the proposed improvement is rejected and
11 abandoned. If the board approves the Manager's Report, either
12 as presented or as modified, the Board makes a resolution
13 describing the project and the area to be assessed and directs
14 the publication of public notice of the improvement. The
15 notice includes a call for public hearing and a call for
16 remonstrances. At the time of the public hearing, if written
17 remonstrances exceed a certain level the project will be
18 abandoned. If there are not sufficient remonstrances to defeat
19 the project, then the board prepares an ordinance

20 "specifying the improvement to be constructed for the
21 area, directing the manager to have engineering plans
22 and specifications prepared by a registered
23 professional engineer and approved by the Health
Division of the Department of Human Resources and the
Department of Environmental Quality of the State of
Oregon * * *."

24 The ordinance additionally specifies the method of financing
25 the project and apportioning costs. The ordinance is
26 published, and additional time is given for remonstrances

1 against the project. It is this later ordinance in the process
2 that is on review in this case.

3 Ordinance No. 80-9 contains no particular findings
4 regarding statewide goals or the necessity for the project
5 itself. As mentioned earlier, the ordinance references the
6 Manager's Report of June 19, 1980, and it references Resolution
7 80-18 made July 16, 1980. A review of the Manager's Report and
8 of Resolution 80-18 does not reveal facts that suggest the
9 district reviewed the proposed project against any of the
10 statewide land use goals. What is contained in the Manager's
11 Report and the resolution is a statement that the project is
12 necessary for the protection of the public health, safety and
13 welfare of the area. There is, however, no specific
14 declaration of a health hazard.

15 ASSIGNMENT OF ERROR NO. 1

16 Assignment of error no. 1 alleges that the district failed
17 to adopt findings and conclusions addressing applicable
18 statewide planning goals. Petitioners allege their interest to
19 be substantially prejudiced because of this failure. The
20 district responds by claiming that the operating policies of
21 the district and the district sewer plan guide its decision
22 making.¹ Respondent quotes a portion of the comprehensive
23 sewer plan that specifies factors which must be reviewed before
24 any project is undertaken and alleges that the review policies
25 therein were developed to meet statewide planning goals.² In
26 other words, a test of the proposed sewer project against the

1 listed factors will result in a decision to build or not to
2 build that meets statewide goals.

3 Even if we were to agree that the district's comprehensive
4 plan met all statewide goals, we would be unable to accept
5 respondent's defense. Ordinance 80-9 and the Manager's Report
6 it references do not contain facts and conclusions showing
7 clearly that the factors to be "reviewed" were indeed
8 "reviewed". For example, the district plan requires a review
9 of "environmental impacts" upon farmlands. As noted above,
10 much of the project area is vacant or in farm use. However,
11 there is no assessment of the impact of the proposed
12 development upon the vacant land and farmland in the area.
13 This failure not only constitutes a violation of the Plan's
14 call for a "review" of project impacts, but strongly suggests a
15 violation of goal 2 as well.

16 We agree with petitioners when they say that their rights
17 have been prejudiced by a failure to make findings showing
18 compliance with applicable standards. Parties are entitled to
19 a statement of standards and reasons for a local government
20 decision, and without that statement, interested persons are
21 deprived of their right to know that the appropriate standards
22 have been considered and met. Sunnyside Neighborhood v.
23 Clackamas Co. Comm., 280 Or 3, 569 P2d 1063 (1977); Heilman v.
24 Roseburg, 39 Or App 71, 591 P2d 390 (1979).

25 Without findings showing compliance with an acknowledged
26 plan, or, in the absence of an acknowledged plan, without

1 findings showing compliance with applicable statewide goals, we
2 are unable to review the ordinance for goal compliance. This
3 case must be returned to the district for the development of
4 such findings. Sunnyside Neighborhood v. Clackamas Co. Comm.,
5 supra.

6 ASSIGNMENT OF ERROR NO. 2

7 The second assignment of error alleges a violation of Goals
8 3, 11 and 14 on the ground that the district has authorized
9 what amounts to an urban level of facilities to serve rural
10 agricultural lands.

11 Because the ordinance and its supporting documents lack
12 findings showing goal consideration and compliance, we are
13 unable to evaluate petitioners' second assignment of error.
14 Without knowing precisely what the district has done, our
15 comments on petitioner's second assignment of error would be
16 very general and might well not be applicable to the particular
17 facts found to be true by the Bear Creek Valley Sanitary
18 Authority.

19 CONCLUSION

20 This matter is remanded to the Bear Creek Valley Sanitary
21 Authority for action consistent with this opinion.
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FOOTNOTE

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The district also claims that the case of Westside Sanitary District v. LCDC, 289 Or 393, _____ P2d _____ (1980) tells us that the implementation of this particular ordinance to alleviate a health hazard is not a program relating to land use and reviewable by the Land Use Board of Appeals and LCDC. It is our view that the Westside Sanitary District case is not on point. The Westside Sanitary District case involved annexation of territory to a city upon a finding of a health hazard within the provisions of ORS 222.850 to ORS 222.915. No such finding of the existence of a health hazard was made by the Bear Creek Valley Sanitary Authority, and apparently the district was not relying upon its powers to act in the event of a health hazard under ORS 431.705 to ORS 431.760. ORS 431.705 to 431.760 provide for the annexation of territory in the event of a health hazard. The statutes also provide for the involvement of the Health Division of the State Department of Human Resources, and we note nothing in the record to suggest that the Health Division was involved in declaring a health hazard to exist in the area covered by this appeal.

2

"Construction to be undertaken for the purpose of meeting current needs and sized for future use if the drainage area that could be served by the initial installation exceeds the area of current need, must first be reviewed in light of the following factors:

"a) The existence and magnitude of current pollution problems within the area.

"b) Current or potential health problems related to failing septic tanks or inadequate sewage collection and treatment systems in the area to be served by the installation.

"b-1) Density of development compared with septic tank suitability areas as determined by the Soil Conservation District is a feasible method of predicting problem areas. Sampling of ground water, barrow ditch flows, and stream monitoring are all useful in determining problem areas.

1 "b-2) Research of records in the County
2 Sanitarions Office is usually productive
3 in investigating possible problem areas.

4 "b-3) Property owner input both in the area in
5 question and adjacent areas is a good
6 information source.

7 "c) A determination as to whether the need for a
8 sewage collection system is sufficiently
9 compelling to enable adoption of a financing
10 method to meet the construction costs which is
11 acceptable to a majority of the property owners
12 to be served by the installation and to the
13 Sanitary Authority.

14 "d) The financial, social, or environmental impacts,
15 if any, upon unimproved, farm, or agricultural
16 lands.

17 "After consideration of the foregoing factors, the
18 Board of Directors of the Sanitary Authority may act
19 affirmatively on the proposed project in accordance
20 with ORS 450.705 to 450.980 and BCVSA ordinances and
21 policies.

22 "Construction by extending systems constructed for
23 current needs for the purpose of serving predominantly
24 new development and construction of new systems
25 predominantly for new development must be first
26 reviewed in light of the following factors:

"a) Whether the proposed development is approved by
the Jackson County Department of Planning and
Development as being compatible with the Jackson
County Comprehensive Plan, which is certified to
be in conformity with LCDC Goals. Such approval
would be mandatory before undertaking sewer
construction for such project.

"b) If the proposed project would serve development
consistent with the Jackson County Comprehensive
Plan which is certified to be in conformity with
the LCDC Goals, the Board of Directors of the
Sanitary Authority may act affirmatively on the
proposed project in accordance with ORS 450.705
to 450.980 and BCVSA ordinances and policies."

BCVSA Comprehensive Sewer Plan 1976, pages 11-13)

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LCDC Goal 2 requires land use decisions and actions to have "an adequate factual base."

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BEFORE THE
LAND CONSERVATION AND DEVELOPMENT COMMISSION
OF THE STATE OF OREGON

LAND USE
BOARD OF APPEALS

Dec 15 3 46 PM '80

CITY OF ASHLAND AND JACKSON COUNTY)

Petitioner(s),)

v.)

BEAR CREEK VALLEY SANITARY AUTHORITY)

Respondent.)

LUBA 80-094
LCDC Determination

The Land Conservation and Development Commission hereby adopts the
recommendation of the Land Use Board of Appeals in LUBA 80-094.

DATED THIS 15th DAY OF December, 1980.


W. J. Kvarsten, Director
For the Commission

WJK:ER:cp
3958A