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

EDWARD DONALDSON, ELIZABETH)
DONALDSON, MARIE GRAY, THOMAS)
HEINTZ, JOHN C. NEELY, JR.,)
WANDA SIMMONS and JOHN I.)
MEHRINGER,)

Petitioners,

LUBA NO. 82-017

v.

FINAL OPINION
AND ORDER

LANE COUNTY,

Respondent.

Appeal from Lane County.

John I. Mehringer, Eugene, filed a petition for review and argued the cause for petitioners. With him on the petition for review was Schmerer & Mehringer.

William A. Van Vactor, Eugene, filed a brief and argued the cause for respondent.

COX, Board Member; BAGG, Board Member; participated in the decision.

Affirmed.

3/29/83

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of Oregon Laws 1979, ch 772, sec 6(a), as amended by Oregon Laws 1981, ch 748.

1 COX, Board Member.

2 NATURE OF PROCEEDING

3 Petitioners seek a remand of certain amendments to the Lane
4 County Metropolitan Plan (comprehensive plan). The amendments
5 petitioners are concerned about were adopted by Ordinance No.
6 856 on February 3, 1982 and affect the River Road and the Santa
7 Clara areas of Lane County.

8 STANDING

9 Respondent Lane County contests petitioners' standing to
10 appeal the Metropolitan Plan amendments on the ground that they
11 have not established how their interests are adversely affected
12 or aggrieved. This is a legislative proceeding in that the
13 amendments contested by petitioners are part of the Lane County
14 Metropolitan Plan and affect all people similarly situated to
15 petitioners. The standard which petitioners must meet in order
16 to establish standing to appeal to this Board is set forth in
17 Oregon Laws 1979, ch 772, sec 4(2), as amended by Oregon Laws
18 1981, ch 748. Section 2 states:

19 "Except as provided in subsection (3) [relating to
20 quasi-judicial actions] of this section, any person
21 whose interests are adversely affected or who is
22 aggrieved by a land use decision and who has filed a
notice of intent to appeal as provided in subsection
(4) of this section may petition the board for review
of that decision."

23 Respondent does not contest the timely filing of a notice
24 of intent to appeal but rather bases its opposition to
25 petitioners' standing solely on a lack of allegations of
26 adverse affect or aggrievement. We disagree with respondent

1 and grant petitioners standing. Among other things,
2 petitioners allege that their interests have been adversely
3 affected

4 "in that the continuing uncertainty of when, if ever,
5 development will be allowed in the area continues to
6 depress property values, causes reluctance on the part
7 of potential immigrants to move to and purchase
8 property in the area, and causes present residents to
9 have an inability to plan for their personal and
10 economic futures. * * *

11 "In addition to the higher tax rate connected
12 with being part of the City of Eugene, Petitioners
13 will face the prospect of special assessments for
14 sewers, curb and gutter, sidewalks, street lighting,
15 and other assessable items. Petitioners, if annexed
16 into the City, will have the individual cost of
17 connecting to the sewer line, a private expense borne
18 by each property owner, not subject to Bancrofting, as
19 are the assessment expenses."

20 Respondent in its brief does not specifically contest
21 petitioners' allegations of facts. We will therefore, for the
22 purpose of determining standing, consider the allegations above
23 quoted to be well pled. Based on those statements or
24 allegations, we find that petitioners have established standing
25 to appeal a legislative action by Lane County.

26 ALLEGATIONS OF ERROR

Petitioners set forth their assignments of error as follows:

27 "First Assignment of Error: The Commission erred in
28 adopted Ordinance No. 856, in that it violated
29 State-wide Goal 1, Citizen Involvement."

30 "Second Assignment of Error: The Board erred in
31 adopting interpretations of data forwarded to them
32 second hand by LCDC from DEQ, which were in turn DEQ's
33 interpretation of data contained in a locally produced
34 and funded water quality study."

35 "Third Assignment of Error: The Board erred in

1 adopting plan provisions contrary to State Law."

2 FACTS

3 Petitioners concerns are about a provision in the
4 Metropolitan Plan setting forth the manner in which sewage
5 treatment and related development will take place in the Santa
6 Clara/River Road area. The sewage treatment problem arose as a
7 result of some concern about the groundwater contamination that
8 allegedly is taking place or has taken place in the area.
9 Petitioners in their statement of facts go through a long
10 history of the Metropolitan Plan development and their concerns
11 about how sewage in the area will be treated. In general,
12 petitioners seem to be professing that residents of the River
13 Road/Santa Clara area should be allowed to determine the best
14 way of dealing with the sewerage problems. Petitioners feel
15 they should have more flexibility in deciding how to deal with
16 their sewer and ground water concerns than allowed by
17 Metropolitan Plan provisions. The provision most annoying to
18 petitioners is a requirement that the City of Eugene will
19 design, construct and maintain ownership of the entire sanitary
20 system which serves the River Road and Santa Clara area.

21 DECISION

22 First Assignment of Error

23 Petitioners first assert they were denied sufficient notice
24 and hearing during the planning process leading up to acknow-
25 ledgment of the Metropolitan Plan. Petitioners also allege
26 that materials upon which the Board of County Commissioners

1 made its decision were not released to the public in enough
2 time to allow comment and testimony thereon. Petitioner argue
3 these errors constitute a violation of Statewide Goal No. 1.

4 The Land Conservation and Development Commission
5 acknowledged the Metropolitan Plan on August 23, 1982. That
6 acknowledgment carried with it the determination that the
7 Metropolitan Plan was in compliance with all statewide goals.
8 Petitioners' concern that Statewide Goal 1 has been violated
9 was, therefore, answered by LCDC during its acknowledgment.
10 Once the Metropolitan Plan was acknowledged to be in compliance
11 with Goal 1, petitioners proper remedy would have been to
12 appeal the acknowledgment to the Court of Appeals. The Land
13 Use Board of Appeals is not the appropriate forum for appealing
14 acknowledgment decisions. We have no authority to review
15 allegations such as presented by petitioners. As the Court of
16 Appeals stated, in affirming this Board, in Fujimoto v. Land
17 Use Board, 52 Or App 875, 878, 879 (1981):

18 "When the petition was filed, the acknowledgment had
19 already been made. There was nothing left for LUBA to
20 review in any effective way, for it is not part of the
statutory scheme for LUBA to have power to second
guess an acknowledgment. * * *

21 "LUBA has no appellate function from LCDC, and it
22 has no advisory function to LCDC except in the narrow
23 context of section 6 of the 1979 Act. Whether this
24 proceeding was rendered 'moot' by the acknowledgment
or whether LUBA was simply ousted of jurisdiction is,
in this instance, an irrelevant matter of semantics.
It simply had no function to perform."

25 Based on the foregoing, petitioners' first allegation of
26 error is denied.

1 Second Assignment of Error

2 Petitioners allege that the Lane County Board of
3 Commissioners erred in adopting interpretations of data
4 forwarded to them secondhand by LCDC from the Department of
5 Environmental Quality (DEQ). Petitioners claim the DEQ
6 material was itself merely an interpretation of data contained
7 in a locally produced and funded water quality study.
8 Petitioners then trace the history of the information on which
9 the water quality study was based. Petitioners claim that what
10 started out as an inventory of groundwater quality subsequently
11 became a mandate for sewerage of the entire Santa Clara/River
12 Road area. As we understand this assignment of error,
13 petitioners assert the county should have made its own
14 inventory of water quality rather than relying on that of a
15 state agency. This failure amounts to a violation of Statewide
16 Goal No. 2.¹

17 As we held in ruling on their first assignment of error,
18 this Board has no function to perform in reviewing petitioners'
19 concerns. Fujimoto, supra. The material to which petitioners
20 refer is the basis for LCDC's acknowledgment of the
21 comprehensive plan of Lane County regarding the sewerage
22 question. This Board was not given authority to review the
23 data used by LCDC in making its acknowledgment determination.
24 Assignment of error denied.

25 Third Assignment of Error

26 Petitioners in this assignment of error claim Lane County

1 "violated Oregon Revised Statutes for land use
2 planning documents of a general nature, by naming
3 particular agencies or government entities to be the
4 providers of essential urban services."

5 In support of their argument petitioners cite ORS 199.410
6 which states:

7 "Policy. (1) The Legislative Assembly finds that:

8 "(a) A fragmented approach has developed to
9 public services provided by local government and such
10 an approach has limited the orderly development and
11 growth of Oregon's urban areas to the detriment of the
12 citizens of this state.

13 "(b) The programs and growth of each unit of
14 local government affect not only that particular unit
15 but also the activities and programs of a variety of
16 other units within each urban area.

17 "(c) As local programs become increasingly
18 intergovernmental, the state has a responsibility to
19 insure orderly determination and adjustment of local
20 government boundaries to best meet the needs of the
21 people.

22 "(d) Local comprehensive plans define local land
23 uses but may not specify which units of local
24 government are to provide public services when those
25 services are required.

26 "(2) The purpose of ORS 199.410 to 199.519 area
to:

"(a) Provide a method for guiding the creation
and growth of cities and special service districts in
Oregon in order to prevent illogical extensions of
local government boundaries;

"(b) Assure adequate quality and quantity of
public services and the financial integrity of each
unit of local government;

"(c) Provide an impartial forum for the
resolution of local government jurisdictional
questions; and

1 "(d) Provide that boundary determinations are
2 consistent with local comprehensive planning, in
3 conformance with state-wide planning goals. However,
4 when the proposed boundary commission action is within
5 an acknowledged urban growth boundary, the state-wide
6 planning goals shall not be applied. The commission
7 shall consider the timing, phasing and availability of
8 services in making a boundary determination."
9 (Emphasis added)

10 Pointing to Section 1(d) of ORS 199.410, petitioners claim
11 the respondent erred when it stated in its contested
12 Metropolitan Area General Plan that the City of Eugene shall
13 provide urban services to the River Road and Santa Clara
14 neighborhoods upon annexation. Petitioners claim they brought
15 the existence of this apparent conflict to the attention of the
16 planning commission and the Board of Commissioners. They claim
17 the issue has not been addressed by the local government.

18 Respondent counters the argument by saying the petitioners
19 rely on Section 1(d) out of context and that to properly
20 understand the meaning of 1(d), sections 2(a)(b)(c) and (d)
21 must be considered. By this argument, respondent claims it is
22 clear the legislature intended local governments to, in fact,
23 determine who is responsible for providing which public
24 service. Respondent also points to the legislative policy as
25 they interpret it in the ORS 197.015(1) definition of
26 comprehensive plan. ORS 197.015(5) states

27 "'Comprehensive Plan' means a generalized,
28 coordinated land use map and policy statement of the
29 governing body of a local government that interrelates
30 all functional and natural systems and activities
31 relating to the use of lands, including, but not
32 limited to, sewer and water systems, transportation
33 systems, educational facilities, recreational

1 facilities, and natural resources and air and water
2 quality management programs. 'Comprehensive' means
3 all-inclusive, both in terms of the geographic area
4 covered and functional and natural activities and
5 systems occurring in the area covered by the plan.
6 'General nature' means a summary of policies and
7 proposals in broad categories and does not necessarily
8 indicate specific locations of any area, activity or
9 use. A plan is 'coordinated' when the needs of all
10 levels of governments, semipublic and private agencies
11 and the citizens of Oregon have been considered and
12 accommodated as much as possible. 'Land' includes
13 water, both surface and subsurface, and the air."

8 Finally respondent points to various statewide goal and
9 guideline provisions from the statewide goals to argue that
10 state law and statewide goals require determination of who
11 shall provide services. Respondent concludes that petitioners'
12 assertion to the contrary is violative of Oregon's land use
13 planning scheme. Respondent bases its reasoning to some
14 extent on the fact that the terminology in ORS 199.410 preceded
15 the advent or adoption of the statewide planning goals.

16 We agree with respondent and, therefore, deny petitioners'
17 third assignment of error. ORS 199.410(1)(d) is merely a list
18 of policy reasons to have local government boundary commissions
19 (LGBC). As such it does not create, as petitioners would
20 argue, legislative prohibition or mandates.

21 ORS 199.410 (1)(d) is not only a declaration of policy, it
22 uses the word "may" which in the context of the whole of ORS
23 199.410, simply recognizes a condition: that not all local
24 comprehensive plans specify which jurisdiction will provide
25 which public service. If the legislature had meant section
26 1(d) to establish a policy of prohibition against such

1 specificity in local plans, it would have used the word
2 "shall."

3 There are very few existing LGBCs and to interpret ORS
4 199.410 as proposed by petitioners would make the necessity to
5 coordinate comprehensive plans difficult if not impossible.
6 The localities without LGBCs could never tell developers, under
7 petitioners' argument, where to obtain public services.

8 Since ORS 199.410 is declaration of policy, its terms come
9 into play when interpreting the statutory provisions in the
10 remainder of ORS 199.410 to 199.519. ORS 199.410(2)(d) supra
11 requires that boundary determinations, made by a boundary
12 commission, to be consistent with local comprehensive plans and
13 in conformance with statewide planning goals. To interpret the
14 provisions as proposed by petitioners, would in effect
15 eliminate the provision in Section 2(d) and destroy the
16 consistency required under that provision.

17 Based on the foregoing, we deny petitioners' third
18 assignment of error and affirm the decision of Respondent Lane
19 County.

FOOTNOTE

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1 Statewide Goal 2, in pertinent part, states:

"All land use plans shall include identification of issues and problems, inventories and other factual information for each applicable state-wide planning goal, evaluation of alternative courses of action and ultimate policy choices, taking into consideration social, economic, energy and environmental needs. The required information shall be contained in the plan document or in supporting documents. The plans, supporting documents and implementation of ordinances shall be filed in a public office or other place easily accessible to the public. The plans shall be the basis for specific implementation measures. These measures shall be consistent with and adequate to carry out the plans. Each plan and related implementation measure shall be coordinated with the plans of affected governmental units."


CERTIFICATE OF MAILING

I hereby certify that I served the foregoing Final Opinion and Order for LUBA No. 82-017, on March 29, 1983, by mailing to said parties or their attorney a true copy thereof contained in a sealed envelope with postage prepaid addressed to said parties or their attorney as follows:

John I. Mehringer
Schmerer & Mehringer
931 River Road
Eugene, OR 97404

William A. Van Vactor
County Counsel
Office of Legal Counsel
Public Service Bldg.
125 E. 8th
Eugene, OR 97401

Dated this 29th day of March, 1983.



Jeanne Hubbard
Secretary to the Board

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

LAND USE
BOARD OF APPEALS

MAR 17 10 53 AM '83

EDWARD DONALDSON,
ELIZABETH DONALDSON, MARIE GRAY,
THOMAS HEINTZ, JOHN C. NEELY, JR.,
WANDA SIMMONS AND JOHN I. MEHRINGER,

Petitioners,

v.

LANE COUNTY,

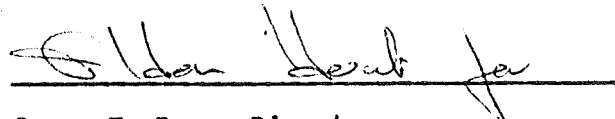
Respondent.

LUBA NO. 82-017
LCDC DETERMINATION

The Land Conservation and Development Commission hereby approves the
recommendation of the Land Use Board of Appeals in LUBA No. 82-017.

DATED THIS 18 DAY OF MARCH 1983.

FOR THE COMMISSION:



James F. Ross, Director

Department of Land Conservation and
Development

JFR:RE:af

3267B-3/63C

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

3 EDWARD DONALDSON, ELIZABETH)
DONALDSON, MARIE GRAY, THOMAS)
4 HEINTZ, JOHN C. NEELY, JR.,)
WANDA SIMMONS and JOHN I.)
5 MEHRINGER,)
)
6 Petitioners,)
)
7 v.)
)
8 LANE COUNTY,)
)
9 Respondent.)

LUBA NO. 82-017

PROPOSED OPINION
AND ORDER

10 Appeal from Lane County.

11 John I. Mehringer, Eugene, filed a petition for review and
12 argued the cause for petitioners. With him on the petition for
review was Schmerer & Mehringer.

13 William A. Van Vactor, Eugene, filed a brief and argued the
14 cause for respondent.

15 COX, Board Member; BAGG, Board Member; participated in the
decision.

16 2/22/83

17 You are entitled to judicial review of this Order.
18 Judicial review is governed by the provisions of Oregon Laws
19 1979, ch 772, sec 6(a), as amended by Oregon Laws 1981, ch 748.

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

LAND USE
BOARD OF APPEALS

MAR 17 10 53 AM '83

GERALD and MARY BRADY, CAROL and
ROBERT SANDERS, JAMES and
MARY COOKMAN, GEORGE WENDERROTH,
SAM BRADY, GEORGE and
HEIDI CAVAGNARO, REX and
FRANKIE MORNINGSTAR and GEORGE and
ELEANOR ROGERS,

Petitioners,

v.

DOUGLAS COUNTY,

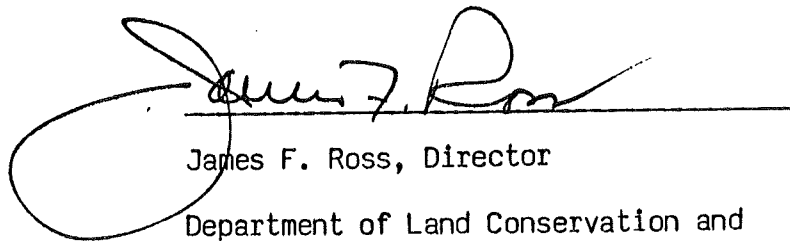
Respondent.

LUBA NO. 82-072
LCDC DETERMINATION

The Land Conservation and Development Commission hereby approves the
recommendation of the Land Use Board of Appeals in LUBA No. 82-072.

DATED THIS 16 DAY OF MARCH 1983.

FOR THE COMMISSION:



James F. Ross, Director

Department of Land Conservation and
Development

JFR:RE:af

3267B-1/63C