

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

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BERT BABB,)	
)	
Petitioner,)	LUBA NO. 83-013
)	
v.)	FINAL OPINION
)	AND ORDER
CITY OF VENETA and)	
C. RUSSELL ROSS,)	
)	
Respondents.)	

Appeal from City of Veneta.

David B. Williams, Eugene, filed a petition for review but waived oral argument on behalf of petitioner. With him on the brief was Robinette, Cleveland, Williams & Gebhardt.

Jeffrey J. Bennett, Portland, filed a brief and argued the cause for Respondent Ross. With him on the brief were Spies & Rune.

Respondent City of Veneta did not appear.

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

Dismissed. 6/16/83

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 Petitioner contests City of Veneta Ordinance No. 241 which
3 was passed and signed into law on December 28, 1982. Ordinance
4 241 amends the Veneta Comprehensive Plan and Veneta Land
5 Development Ordinance by extending the urban growth boundary
6 described in the plan and the ordinance. In addition,
7 Ordinance 241 redesignates the property to be included in the
8 urban growth boundary as Commercial, Industrial-Commercial and
9 Light Industrial.

10 FACTS

11 Veneta's Comprehensive Plan was acknowledged to be in
12 compliance with the statewide goals on April 10, 1980. This
13 petition for review was filed with the Board pursuant to the
14 terms of ORS 197.605 et seq. Under those provisions,
15 petitioners had already filed an action with the Land
16 Conservation and Development Commission regarding this same
17 decision. The petition for review was received by this Board
18 on March 15, 1983. Prior to oral argument before this Board
19 the Land Conservation and Development Commission, on April 29,
20 1983, had issued its final order which in effect negated the
21 validity of Ordinance 241. The stated reasons for the LCDC
22 decision related to the Statewide Planning Goals 2, 3, 4, 9 and
23 14.

24 This Board was not provided a copy of the arguments before
25 LCDC but a review of the LCDC order indicates that many of the
26 same arguments made by petitioner herein were also addressed by

1 the LCDC in its April 29, 1983 order. Petitioner did not
2 attend oral argument and we were, therefore, unable to fully
3 ask petitioner what was left of his case that could be
4 addressed by this Board pursuant to ORS 197.605.¹

5 Respondent Ross did appear and presented oral argument
6 requesting that this Board address some areas that he believes
7 were not addressed by LCDC's decision. Those areas primarily
8 related to the issue of commercial land that was to be included
9 in the urban growth boundary by Ordinance 241.

10 DECISION

11 It might be possible to interpret petitioner's allegations
12 of error before this Board to include matters that were not
13 included in its "objections" before the LCDC. We find that
14 such an interpretation would, however, be based strictly on the
15 Board's unassisted review of the petition for review and LCDC's
16 order which only generally summarizes the objections petitioner
17 presented to it. The petition does not indicate which
18 provision of ORS 197.605 petitioner relies on for this review.
19 For example, is he proceeding under ORS 197.605(3), 197.605(4)
20 or ORS 197.605(5)? See Footnote 1.

21 Respondent Ross' argument that this Board should address
22 some of the commercial lands questions is intriguing and well
23 presented; however, we view our ruling on such questions would
24 be more in the form of an advisory opinion than it would be to
25 address petitioner's allegations of error. Oregon Laws 1979,
26 ch 772, sec 4(6), as amended by Oregon Laws 1981, ch 748,

1 limits this Board's review of land use decisions to the issues
2 petitioner seeks to have reviewed. We interpret respondent's
3 oral argument to, in effect, raise issues that are different
4 from petitioners and, therefore, not within the scope of this
5 Board's authority. We do note, however, that the April 29,
6 1983 decision of the Land Conservation and Development
7 Commission does address the commercial lands issue in general
8 under the subheading "Objection 3." The commission addressed
9 the commercial lands question in relation to the "compelling
10 reasons and facts" tests of Statewide Goal Part II and found
11 that Ordinance 241 failed to adequately consider and amend
12 contradictory data in the acknowledged plan.

13 ORS 197.605 establishes joint jurisdiction between this
14 Board and the Land Conservation and Development Commission on
15 issues arising from amendments of acknowledged comprehensive
16 plans. While we have jurisdiction of the subject matter in
17 this case, we are uncertain after review of the petition for
18 review what issues petitioner believes are unanswered by LCDC's
19 April 29, 1983 order. While LCDC's scope of review under the
20 joint jurisdiction created by ORS 197.605 et seq. is primarily
21 statewide goal oriented, it appears from the material submitted
22 the LCDC order satisfies petitioner's other concerns. That may
23 be the reason petitioner chose not to appear for oral
24 argument. We find, therefore, that this Board's issuing of an
25 opinion on petitioner's allegations of error would be of
26 little, if any, assistance to the parties. In the future if

1 the petitioner wishes to have this Board rule on issues
2 different than those presented before LCDC, it is incumbent
3 upon the petitioner to contrast the issues over which this
4 Board has jurisdiction from those over which LCDC has
5 jurisdiction.

6 Dismissed.

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FOOTNOTES

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4 ORS 197.605 states:

5 "(1) An amendment to an acknowledged
6 comprehensive plan is subject to review for compliance
with the goals under ORS 197.610 to 197.630.

7 "(2) An amendment to an acknowledged land use
8 regulation or a new land use regulation is subject to
9 review for compliance with the goals under ORS 197.610
10 to 197.630. However, if the commission determines
11 under ORS 197.625 (1) that the amendment to an
12 acknowledged land use regulation or the new land use
regulation is consistent with specific related land
use policies contained in the acknowledged
comprehensive plan, the amendment or new land use
regulation shall be considered to be in compliance
with the goals.

13 "(3) A local government land use decision to
14 adopt an amendment to an acknowledged comprehensive
15 plan or land use regulation or a new land use
16 regulation is subject to review on grounds other than
17 compliance with the goals and those provided for in
ORS 197.625 (1) in the manner provided in sections 4
to 6, chapter 772, Oregon Laws 1979, as amended by
sections 35 to 36a, chapter 748, Oregon Laws 1981.

18 "(4)(a) A small tract zoning map amendment is
19 subject to review for compliance with the goals in the
20 manner provided in sections 4 to 6, chapter 772,
Oregon Laws 1979, as amended by sections 35 to 36a,
chapter 748, Oregon Laws 1981, if;

21 "(A) The amendment applies to land outside an
acknowledged urban growth boundary;

22 "(B) The local government has a comprehensive
23 plan that was acknowledged before July 1, 1981; and

24 "(C) The acknowledged comprehensive plan has not
been reviewed under ORS 197.640.

25 "(b) If the board determines that an amendment
26 described in paragraph (a) of this subsection is
consistent with specific related land use policies

1 contained in the acknowledged comprehensive plan or
2 land use regulations, the amendment shall be
3 considered to be in compliance with the goals.

4 "(5) A land use decision other than an amendment
5 to an acknowledged comprehensive plan or land use
6 regulation or a new land use regulation is subject to
7 review for consistency with the acknowledged
8 comprehensive plan and land use regulations under
9 sections 4 to 6, chapter 772, Oregon Laws 1979, as
10 amended by sections 35 to 36a, chapter 748, Oregon
11 Laws 1981.

12 "(6) Notwithstanding any other provision of ORS
13 197.005 to 197.430 and 197.605 to 197.650, a mobile
14 home siting permit, septic tank permit or building
15 permit issued under the state building permit issued
16 under the state building code as defined in ORS
17 456.750 is not subject to review for compliance with
18 the goals under sections 4 to 6, chapter 772, Oregon
19 Laws 1979, as amended by sections 35 to 36a, chapter
20 748, Oregon Laws 1981, if the permit is issued.

21 "(a) For land subject to an acknowledged
22 comprehensive plan and land use regulations;

23 "(b) For lands included within an urban growth
24 boundary acknowledged by the commission under ORS
25 197.251;

26 "(c) For lands within the corporate limits of a
city on August 21, 1981;

"(d) For lands subject to an acknowledged
estuarine plan element; or

"(e) After June 30, 1983, unless the commission
has issued an order under ORS 197.320 requiring a
local government to continue to apply goals to
building permits after that date."