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

THOMAS P. DENNEHEY,)
)
Petitioner,) LUBA NO. 86-098
)
vs.) FINAL OPINION
) AND ORDER
CITY OF PORTLAND,)
)
Respondent.)

Appeal from City of Portland.

Gregory J. Howe, Portland, filed the petition for review and argued on behalf of petitioner. With him on the brief were Pfister, Tripp & Mendez, P.C.

Kathryn Beaumont Imperati, Portland, filed a response brief and argued on behalf of Respondent City.

Jeannette M. Launer, Portland, filed a response brief and argued on behalf of Respondent-Participant Portland Development Commission.

BAGG, Referee; DuBAY, Chief Referee; participated in the decision.

AFFIRMED 04/09/87

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

1 Opinion by Bagg.

2 NATURE OF THE DECISION

3 Petitioner appeals an amendment to the city's Downtown
4 Waterfront Urban Renewal Plan. The amendment, Ordinance No.
5 159232, rescinds the Ninth Amendment to the city's Downtown
6 Waterfront Urban Renewal Plan (DWURP) and adopts a Tenth
7 Amendment. The Tenth Amendment to the DWURP allows a portion
8 of Block 51 to be added to a list of properties to be acquired
9 with urban renewal funds. The intended use of this property is
10 a parking garage. The project replaces that contemplated by
11 the Ninth Amendment to the DWURP.

12 STANDING

13 Petitioner alleges he appeared during the course of the
14 proceedings leading to adoption of this ordinance, is aggrieved
15 by its enactment and his interests are adversely affected by
16 it. Respondent City challenges petitioner's standing claiming
17 that petitioner spoke in favor of the proposed amendment before
18 the city and is not, therefore, "aggrieved" by the decision.
19 According to respondent, Jefferson Landfill Committee v. Marion
20 Co., 297 Or 280, 686 P2d 310 (1984) provides that a potential
21 petitioner must not only appear before the local government but
22 must assert a position on the merits which is contrary to that
23 adopted in the enactment.

24 We do not believe petitioner's comment during the course of
25 the proceedings before the city prevents petitioner from
26 claiming that the ordinance causes him aggrievement. While

1 petitioner may have said, "I support this," the statement does
2 not indicate his approval of the city's action. Petitioner
3 Dennehey went on to state that

4 "...I believe that every urban renewal plan that you
5 adopt, and every substantial amendment, must be
6 approved by Multnomah County. The PDC Council
7 disagrees, and we are heading for the Court of Appeals
8 and for LUBA and everything else that relates to South
9 Shore. That's the issue that is already joined." Tr.
10 15.

11 This statement is hardly a ringing endorsement of the city's
12 action.

13 We conclude that the petitioner asserted the position
14 contrary to that taken by the city and therefore stated
15 sufficient grounds for aggrievement under Jefferson Landfill,
16 supra.

17 ASSIGNMENT OF ERROR

18 "Respondent fails to follow applicable procedures and
19 misconstrues applicable law by not obtaining Multnomah
20 County's approval of respondent's Tenth Amendment to
21 its Downtown Waterfront Urban Renewal plan prior to
22 recording it and carrying it out."

23 Petitioner alleges the Tenth Amendment to the Downtown
24 Waterfront Urban Renewal Plan is a "substantial change" within
25 the meaning of ORS 457.220(2). The statute provides:

26 "Any substantial change made in the urban renewal plan
shall, before being carried out, be approved and
recorded in the same manner as the original plan."

Petitioner then cites to ORS 457.085(6) which provides that an
urban renewal plan shall not be carried out until it has been

"approved by the governing body of each municipality
in which any portion of the urban renewal plan is
situated pursuant to ORS 457.095 and 457.105."

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In addition, ORS 457.125 provides:

"A copy of the ordinance approving an urban renewal plan under ORS 457.095 shall be sent by the governing body of the municipality to the urban renewal agency. A copy of the resolution approving an urban renewal plan under ORS 457.105 shall be sent by the governing body of a municipality to the urban renewal agency. Upon receipt of the necessary approval of each municipality [sic] governing body, the urban renewal plan shall be recorded by the urban renewal agency with the recording officer of each county in which any portion of an urban renewal area within the plan is situated."

Petitioner argues that the sum of these statutes requires the City of Portland to seek and obtain approval of Multnomah County prior to recording the Tenth Amendment and prior to acting upon it. This argument is based on the proposition that the area affected by the urban renewal plan is in the county.

Respondent's argument does not directly contest petitioner's assertion that the affected area is in the county. Instead, respondent argues that the county's role is a passive one. It is limited to receipt of the proposed urban renewal plan or amendment and the accompanying report provided for in ORS 457.085(5). That statute provides

"an urban renewal plan and accompanying report shall be presented to the governing body of each taxing district affected by the urban renewal plan."

Respondent argues there is no power vested in the county to approve or disapprove the city's plan because the county has no responsibility to create, implement or fund the plan. To read the statutes as petitioner does, according to the city, "gives a county veto power over a city's development." Brief of

1 Respondent at 8.

2 Respondent buttresses its argument by citing ORS 457.105
3 which provides that the governing body of

4 "each other municipality in which any portion of the
5 area of a proposed urban renewal plan is situated may
6 approve the plan by proper resolution." (Emphasis
supplied.)

7 Respondent argues that the permissive "may" in ORS 457.105,
8 when contrasted with the mandatory language of ORS 457.085(6),
9 creates uncertainty as to whether the county's approval of the
10 city's plan is mandatory. Given that uncertainty, respondent
11 argues that petitioners reading of the statute creates an
12 absurd result and should not be followed. See Johnson v. Star
13 Machinery Company, 270 Or 694, 530 P2d 53 (1974).¹

14 Respondent's understanding of the statutory scheme is the
15 more convincing. ORS 457.085(6) indeed provides that no urban
16 renewal plan

17 "shall be carried out until the plan has been approved
18 by the governing body of each municipality in which
19 any portion of the area of the urban renewal plan is
situated pursuant to ORS 457.095 and 457.105."

19 In addition, ORS 457.105 provides

20 "In addition to the approval of a plan by the
21 governing body of the municipality under ORS 457.095,
22 the governing body of each other municipality in which
23 any portion of the area of a proposed urban renewal
plan is situated may approve the plan by proper
resolution."

24 We understand these statutes to require approval of the
25 governing body of the municipality for which the urban renewal
26 is created (in this case the City of Portland) and in addition,

1 the approval of any other municipality in whose jurisdiction a
2 portion of the land subject to the proposed plan is
3 situated.² We do not believe the legislature intended that a
4 plan affecting only territory within a city must obtain
5 approval of the county in which the city is located. Were that
6 to be the case, there would be no reason for the language
7 limiting the approval requirement to those municipalities "in
8 which any portion of the area of a proposed urban renewal plan
9 is situated." ORS 457.085(6), 457.125.³ There is nothing to
10 indicate to us that the legislature intended to provide
11 counties a voice in city urban renewal plans unless the
12 county's unincorporated lands are part of the urban renewal
13 plan.

14 The city's decision is affirmed.

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FOOTNOTES

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1 Respondent cites to portions of the legislative history of the current statute arguing the legislature intended to require county approval of a city urban renewal plan only when the plan included territory within the unincorporated county. Further, respondent argues that had the legislature wished to give county greater control over adoption and amendment of the city plan, it would have provided explicitly for such control.

2 Urban renewal agencies have authority outside the city limits of the city for which they are created to the same extent as housing authorities under ORS 456.060. ORS 457.035(2).

3 The use of "may" in ORS 457.105 does not, we believe, indicate that an affected municipality need not approve a plan as a condition for its recordation and effectiveness. Rather, the "may" appears to be permission to grant the approval by resolution rather than by formal ordinance as in the ordinance requirement found in ORS 457.095.