

APR 21 11 39 AM '87

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

ESTATE OF PAUL GOLD, JOSEPHINE)
COHEN, HANNAH DAVIS, ETHEL GOLD,)
and JACK GOLD,)

LUBA No. 86-102

Petitioners,)

FINAL OPINION
and ORDER

vs.)

CITY OF PORTLAND,)

Respondent.)

Appeal from City of Portland.

Diane Spies, Portland, filed the petition for review and argued on behalf of petitioners. With her on the brief were Diane Spies & Associates.

Kathryn Beaumont Imperati, Portland, and Jeannette M. Launer, Portland, filed a joint response brief and argued on behalf of respondent.

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

AFFIRMED

04/21/87

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 Petitioners seek review of Ordinance No. 159232 which adopts
4 the Tenth Amendment to the Downtown Waterfront Urban Renewal
5 Plan (DURP). The ordinance authorizes the Portland Development
6 Commission (PDC) to proceed with condemnation of portions of
7 Block 51 within the City of Portland.

8 FIRST ASSIGNMENT OF ERROR

9 "It is irreversable [sic] error for the city council
10 to allow introduction of evidence by the city staff
11 after the hearing was closed without opportunity of
the landowners to address or rebut."

12 Petitioners begin by arguing that the adoption of the Tenth
13 Amendment required a quasi-judicial process. In such a process,
14 affected property owners, such as petitioners, have a right to
15 the opportunity to present and rebut evidence. See Fasano v.
16 Washington County, 264 Or 574, 507 P2d 23 (1973). Petitioners
17 argue that after the close of the public hearing on this issue
18 on December 10, 1986, legal counsel for the city and the
19 Portland Development Commission provided additional evidence and
20 findings to support the recommendations of the development
21 commission. Petitioners argue this process defeats the purpose
22 of the quasi-judicial process and prejudices the substantial
23 rights of the property owners. ORS 197.935(8).

24 Respondent argues the decision was not quasi-judicial, but
25 legislative. The Portland City Council amended an existing
26 urban renewal plan by adding specific properties, but the

1 council was not obliged to do so. That is, there was no
2 application pending before the council, and the council was free
3 to abandon the process at any point. The process, then, was not
4 "bound to result in a decision," a hallmark of quasi-judicial
5 proceedings. See Strawberry Hill Four Wheelers v. Benton
6 County, 287 Or 591, 602, 601 P2d 769 (1979). See also Union
7 Station Business Community Association v. City of Portland, ____
8 Or LUBA ____ (LUBA No. 86-011, September 2, 1986).

9 Respondent argues that the process is controlled by ORS
10 457.095. The statute requires the council to hold a public
11 hearing and to consider public testimony. The council did so,
12 according to respondent, and this process was sufficient.

13 Whether or not the process may be characterized as
14 quasi-judicial or legislative, we find no violation as alleged.
15 The documents PDC submitted to the city council on December 10th
16 were previously presented to the planning commission during its
17 deliberations on the Tenth Amendment and were then made part of
18 a record. See transcript appendent to respondent's brief, pp.
19 43 and 44. The fact that petitioners' attorney had little time
20 to review the documents and make comment on them does not mean
21 she was prevented from doing so by any action of the city. See
22 Apalategui v. Washington County, 14 Or LUBA 261, aff'd 80 Or App
23 508, 723 P2d 1021 (1986).

24 Also, petitioners do not explain what, if anything, would
25 have been done differently had petitioners' attorney more time
26 to review the record. Without such an explanation, petitioners

1 have not shown prejudice to their substantial rights.

2 We therefore deny this assignment of error.

3 SECOND ASSIGNMENT OF ERROR

4 "It is error by the city council in a quasi-judicial
5 action to fail to make adequate findings of fact and
6 conclusions of law, supported by clear reasons when a
substantial amendment under ORS 457 is requested."

7 This assignment of error depends upon a holding that the
8 process was quasi-judicial. We regard the action as
9 legislative. As we noted in Union Station Business Community
10 Association, supra, the urban renewal statutes in ORS 457 do not
11 require the governing body take action on an urban renewal plan
12 submitted by the urban renewal agency. Rather, the statutes
13 allow the governing body to postpone or drop consideration of a
14 plan or a plan amendment. This discretion to "either act or set
15 the matter aside indicates the proceeding is legislative." Slip
16 Op at 13-14. We therefore conclude that no findings are
17 specifically required in order to sustain this decision.

18 What is required in testing a legislative decision is that
19 there be sufficient evidence in the record to support the
20 decision. In this case, petitioners challenge the sufficiency
21 of the evidence that 1) the urban renewal area is blighted, 2)
22 if acquisition of real property is provided for, then it is
23 necessary, 3) proceeding with the urban renewal plan is
24 economically sound and feasible, 4) the plan complies with the
25 comprehensive plan and the economic development plan of the
26 municipality, and 5) a report submitted to the city council

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26 municipality, and 5) a report submitted to the city council

1 about the proposed amendment meets statutory requirements.

2 There is evidence that buildings on the block are
3 deteriorated, and the property is underutilized. Record 4, 32,
4 22-23. There is also evidence that acquisition of the property
5 is necessary to carry out the "Morrison Street Project." See
6 record 12, 24, 162-164, 94. This evidence includes an analysis
7 of Block 51 as the location of a necessary public parking
8 facility for the Morrison Street area. There is evidence that
9 proceeding to obtain portions of Block 51 and proceeding with
10 the project is economically sound and feasible. The record
11 shows public funds are available to build the parking garage.
12 Record 26, 10. We therefore find no error with respect to
13 petitioners' charges 1 - 3 above.

14 With respect to the charge that the plan does not conform to
15 the comprehensive plan and the economic development plan of the
16 municipality, petitioners do not allege how the plan is
17 deficient. We therefore do not reach this subassignment of
18 error.¹

19 Finally, as to petitioners' fifth claim, we note the report
20 required by ORS 457.085 need not be adopted by the governing
21 body, but must accompany the plan amendment. See ORS 457.095
22 and Union Station Business Community, supra at 17, fn 5. We
23 therefore do not review the "report" for its adequacy under ORS
24 457 or other applicable regulations.²

25 The city's decision is affirmed.

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FOOTNOTES

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1
The report accompanying the amendment does include evidence about economic issues. See Record 161-164.

2
Petitioners' claim that the report submitted to the council is incomplete is based upon petitioners' view that the plan does not include a physical impact statement and a relocation plan. We note there is a physical impact statement appearing at Record 21-23 and a relocation plan that appears on page 40 of the record. Whether or not these statements are sufficient is a separate issue, but we do not understand petitioners to charge the reports do not meet the requirements of ORS 457.085.