

LAND USE
BOARD OF APPEALS
AUG 26 4 00 PM '87

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

3	WILLIE D. OWENS,)	
)	
4	Petitioner,)	LUBA No. 87-036
)	
5	vs.)	FINAL OPINION
)	AND ORDER
6	CITY OF DUNDEE,)	
)	
7	Respondent.)	

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9 Appeal from City of Dundee.

10 Willie D. Owens, Dundee, filed the petition for review and argued on his own behalf.

11 K. D. Brand, McMinnville, filed a response brief and argued on behalf of Respondent City.

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

14 AFFIRMED 08/26/87

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

1 commission meeting was held to consider petitioner's
2 application.⁴ The Yamhill County Planning Commission voted
3 to approve petitioner's application. The city's planning
4 commission recommended the application be denied. On March 25,
5 1987, Yamhill County adopted Ordinance 443 approving
6 petitioner's application.⁵ Following a May 4, 1987 hearing
7 before the Dundee City Council, the petitioner was notified by
8 letter dated May 12, 1987 that his application had been denied
9 by the city. This appeal followed.

10 FIRST ASSIGNMENT OF ERROR

11 Petitioner contends he did not get a timely hearing on his
12 application. It is not clear whether petitioner claims he
13 failed to receive a timely hearing during the proceedings that
14 led to adoption of Yamhill County Ordinance 438 on December 31,
15 1986, the proceedings that led to the city's denial of his
16 application for a UGB amendment on May 4, 1987, or both. We
17 assume petitioner objects to both proceedings.

18 Ordinance 438

19 Petitioner apparently wished to be included in the city's
20 application to Yamhill County for amendments to the UGB. After
21 the county adopted Ordinance 438 on December 31, 1986,
22 petitioner continued to argue at the city council meeting on
23 January 7, 1987, that his application was timely and should
24 have been included in the city's requested UGB amendments.
25 Petitioner claims the city agreed to "hold up on the process
26 until petitioner's case could be heard."⁶ Petitioner's Brief

1 at 11.

2 As far as we can tell from the record, Ordinance 438 became
3 final on December 31, 1986. Petitioner has not appealed
4 Ordinance 438 or any subsequent decisions regarding that
5 ordinance. See ORS 197.640 et seq. (establishing procedures
6 and standards for periodic review of acknowledged comprehensive
7 plans). If petitioner's complaint in the first assignment of
8 error is that he was not included in the city's requested UGB
9 amendments or did not receive a timely hearing in that
10 proceeding, he has appealed the wrong decision.

11 May 4, 1987 Decision

12 A hearing on petitioner's separate application for
13 inclusion in the UGB was held February 19, 1987. The city
14 denied petitioner's application on May 4, 1987.⁷

15 Petitioner does not explain why the February 19, 1987
16 hearing was not a timely hearing on his application. Lacking
17 any basis for concluding the February 19, 1987 hearing was not
18 a proper and timely hearing, we will assume that it was.⁸

19 The first assignment of error is denied.

20 SECOND ASSIGNMENT OF ERROR

21 Under this assignment of error, petitioner states the UGB
22 amendments approved by the City of Dundee and Yamhill County
23 were not submitted to LCDC 45 days before final action as
24 required by ORS 197.610(1).

25 We assume petitioner is challenging Yamhill County
26 Ordinance 438. Respondent City contends petitioner lacks

1 standing to challenge that ordinance, fails to name the county
2 in the notice of intent to appeal and filed the notice of
3 intent to appeal long after the 21 day limit for filing a
4 notice of intent to appeal.

5 Ordinance 438 became final on December 31, 1986.
6 Petitioner's notice of intent to appeal was filed on May 26,
7 1987. The notice did not identify Ordinance 438 as the
8 decision being appealed. Because petitioner neither identified
9 Ordinance 438 as the decision being appealed nor filed a timely
10 notice of intent to appeal Ordinance 438, he may not challenge
11 that decision in this appeal. ORS 197.830(7); OAR
12 660-10-015(1); Cope v. City of Cannon Beach, ___ Or LUBA ___
13 (LUBA No. 87-022, August 7, 1987).

14 The second assignment of error is denied.

15 THIRD ASSIGNMENT OF ERROR

16 In this assignment of error petitioner complains that his
17 application for a UGB amendment was not submitted to LCDC 45
18 days before the joint hearing before the Yamhill County and
19 City of Dundee Planning Commissions. The city responds that it
20 knows of no requirement for such notice.

21 ORS 197.610(1) provides, in part:

22 "A proposal to amend a local government acknowledged
23 comprehensive plan...shall be forwarded to the
24 director at least 45 days before the final hearing on
25 adoption."

26 Even if we assume petitioner refers to this statute, it
provides no basis for us to reverse or remand the city's denial.

1 Failure to provide such notice may have consequences if the
2 plan amendment is approved. See ORS 197.610(2)(b)(eliminating
3 certain standing requirements). But here the application was
4 denied. Failure to give such notice provides no basis for a
5 remand of the city's decision to deny the request.

6 The third assignment of error is denied.

7 FOURTH ASSIGNMENT OF ERROR

8 In this assignment of error, petitioner again complains
9 that he wanted to be included in the city's process that led to
10 adoption of Ordinance 438. The city refused and instead
11 required petitioner to submit an application for a plan
12 amendment. Under the plan, a fee of \$800 is required to
13 request a plan amendment.⁹

14 We do not understand petitioner to argue that the \$800
15 application fee is an improper amount to charge for a plan
16 amendment application. Rather, petitioner complains that he
17 should have been allowed to include his property in the city's
18 earlier legislative proceeding so that no application fee would
19 have been required at all.

20 While petitioner may have had a basis for challenging the
21 city's refusal to include his property in the city's
22 application or the county's adoption of Ordinance 438 which
23 excluded his property, those decisions were not appealed.
24 Having elected to pursue his own application rather than appeal
25 the city's decision to not include his property in the city's
26 application, petitioner was obliged to pay the application fee

1 to comply with the requirements for periodic review under ORS
2 197.640 et seq.

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5 The city gave the petitioner notice of its decision in a
6 letter dated May 12, 1987.

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9 In the city's brief in this appeal, the city assumed
10 petitioner's objection under this assignment of error was the
11 city's failure to render its decision within 120 days. ORS
12 227.178(1) requires action within 120 days on "an application
13 for a permit or zone change." The city's final decision was
14 rendered on May 4, 1987--138 days after the completed
15 application was completed on December 18, 1986.

16 A UGB amendment is not an "application for a permit or a
17 zone change." An amendment of a UGB requires amendment to the
18 comprehensive plan. See Goal 14. Therefore, the city was not
19 required by ORS 227.178(1) to act on the application for a UGB
20 amendment within 120 days.

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23 The city advised the Board at oral argument that the \$800
24 fee for a plan amendment in this case represented a \$400 fee to
25 the city and a \$400 fee to the county.