

Opinion by Sherton.

NATURE OF THE DECISION

Petitioner appeals a Medford City Council resolution affirming a decision of the city planning commission approving a zone change from SFR-4 (Single-Family Residential - 4 units per acre) to MFR-20 (Multiple-Family Residential - 20 units per acre) for an approximately six acre parcel.

MOTION TO INTERVENE

John Schleining moves to intervene in this proceeding on the side of respondent. There is no objection to the motion, and it is allowed.

FACTS

On November 15, 1989, intervenor-respondent (intervenor) filed an application for a zone change from SFR-4 to MFR-20 for the subject parcel. The Medford Comprehensive Plan (plan) map designates the subject parcel Urban High Density Residential.

On December 14, 1989, after a public hearing, the planning commission adopted a resolution approving the requested zone change. The planning commission's decision was appealed. According to the notice of appeal to the city council, the appellants were "all those individuals and their collective organization who testified in opposition to the proposal." Record 46.

On March 1, 1990, after an appeal hearing based on the

record established before the planning commission, the city council adopted a resolution affirming the planning commission's decision and approving the requested zone change. This appeal followed.

STANDING OF PETITIONER

The petition for review includes the following statements addressing petitioner's standing:

"Petitioners are those individuals and their collective organization who testified in opposition to the zone change. Petitioners have standing because they appeared in the initial proceedings and/or are property owners within 250 feet of the proposed zone change and, therefore, have interests adversely effected [sic] by the decision." Petition for Review 5.

Intervenor challenges petitioner's standing. Intervenor contends the petition for review fails to state "the facts that establish that petitioner has standing," as required by ORS 197.830(11)(a). Intervenor points out, notwithstanding the references in the petition for review to petitioners in the plural, the only petitioner named in the notice of intent to appeal filed with LUBA is "East McAndrews Neighborhood Association." Intervenor argues there is nothing in the record which establishes that petitioner East McAndrews Neighborhood Association appeared before the planning commission or city council, as required by ORS 197.830(2)(b). According to intervenor, there is no reference whatsoever in the record to "East McAndrews Neighborhood Association." Intervenor further contends

nowhere in the petition for review or record are petitioner's members identified and, therefore, there is nothing establishing that any of petitioner's members appeared below.

Petitioner did not request the opportunity to file a reply brief on the issue of standing.¹ However, at oral argument, petitioner pointed out that the notice of appeal to the city council identifies the appellants as "all those individuals and their collective organization who testified in opposition to the proposal." (Emphasis added.) Record 46. Petitioner contends this reference to a "collective organization" is sufficient to constitute an appearance by East McAndrews Neighborhood Association. Petitioner also argues that members of petitioner appeared below and voiced their objections with specificity.

ORS 197.830(2)(b) provides in relevant part:

"* * * a person may petition the board for review of a land use decision if the person:

"* * * * *

"(b) Appeared before the local government, special district or state agency orally or in writing."

There is only one petitioner in this case -- East

¹Petitioner did file a memorandum of supplemental argument on standing on July 13, 1990, 24 days after the oral argument in this case, and seven days before the Board's final opinion was due to be issued. However, we decline to consider this untimely filed memorandum, for the reasons stated in our order dated July 25, 1990.

McAndrews Neighborhood Association.² There is nothing in the record which demonstrates that East McAndrews Neighborhood Association appeared before either the planning commission or city council below.³ Petitioner is correct that the notice of appeal to the city council refers to a "collective organization who testified in opposition to the [proposed zone change]."⁴ However, there is nothing in the record to support petitioner's contention that the East McAndrews Neighborhood Association, or any "collective organization" for that matter, appeared before the planning commission, as stated in the local notice of appeal.⁵

²Petitioner East McAndrews Neighborhood Association does not allege in its petition for review that it is entitled to representational standing on behalf of members who themselves appeared in the proceedings below. However, we agree with intervenor that in any case there is nothing in the record or petition for review which establishes who petitioner's members are and, therefore, whether any of those members appeared below.

³In fact, at oral argument, petitioner indicated "East McAndrews Neighborhood Association," as such, did not exist until the time its notice of intent to appeal was filed with LUBA.

⁴The local notice of appeal states:

"The Appellants are all those individuals and their collective organization who testified in opposition to the proposal. The Appellants have standing as required by [Medford Code] Section 10.051 because (1) they have appeared in the initial proceedings in writing, and/or (2) are property owners within 200 feet of the proposed changed [sic] and, therefore, have interests adversely affected by the [planning commission's] decision." Record 46.

⁵The record does contain a letter of opposition to the proposed zone change signed by numerous individual property owners. Record 133-163. However, there is no mention in the letter of East McAndrews Neighborhood Association, and nothing to indicate that some or all of these property owners collectively constitute East McAndrews Neighborhood Association.

Petitioner did not appear before the city in the proceedings below and, therefore, lacks standing to seek review of the city's decision by this Board. ORS 197.830(2)(b).

This appeal is dismissed.