

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON
3

4 W. KIRK BRAUN,)
5)
6 Petitioner,) LUBA No. 94-095
7)
8 vs.) FINAL OPINION
9) AND ORDER
10 CITY OF LA GRANDE,)
11)
12 Respondent.)

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14
15 Appeal from City of La Grande.

16
17 W. Kirk Braun, La Grande, represented himself.

18
19 Stephen Riedlinger, La Grande, represented respondent.

20
21 HOLSTUN, Referee; KELLINGTON, Chief Referee; SHERTON,
22 Referee, participated in the decision.

23
24 DISMISSED 08/04/94

25
26 You are entitled to judicial review of this Order.
27 Judicial review is governed by the provisions of ORS
28 197.850.

1 Opinion by Holstun.

2 The notice of intent to appeal filed in this appeal on
3 June 2, 1994 identifies the challenged decision as
4 "Comprehensive Plan Amendment Recommendation to Amend the La
5 Grande Comprehensive Plan's Transportation Plan * * *." The
6 notice of intent to appeal further describes the challenged
7 decision as "a recommendation to the City Council of a
8 Comprehensive Plan Amendment calling for modifications and
9 traffic restrictions on State Highway 82, also known as the
10 Wallowa Lake Highway in La Grande." Finally, the notice of
11 intent to appeal states the challenged planning commission
12 decision became final on May 24, 1994 and "[t]he La Grande
13 City Council approved the plan amendment on May 16, 1994."¹

14 On June 13, 1994, respondent moved to dismiss this
15 appeal, contending the challenged decision is not final, as
16 required by ORS 197.015(10)(a)(A) and OAR 661-10-015.
17 According to respondent, the final decision on the plan
18 amendment recommended by the planning commission will be
19 made by the city council. In its motion to dismiss,
20 respondent states the city council was tentatively scheduled
21 to take action in this matter on June 15, 1994, but that
22 such action "may be postponed."

¹In view of respondent's motion to dismiss, discussed below, and the above quoted statements in the notice of intent to appeal, we assume the quoted statement in the notice of intent to appeal that the city council approved the plan amendment on May 16, 1994 (i.e. prior to the planning commission's recommendation) is erroneous.

1 Petitioner has not responded to respondent's motion to
2 dismiss. Neither party has advised this Board of what
3 action, if any, the city council has taken on the disputed
4 proposed plan amendment. It is petitioner's responsibility
5 to establish that this Board has jurisdiction over the
6 challenged decision. Billington v. Polk County, 299 Or 471,
7 475, 703 P2d 232 (1985). We have no reason to question
8 respondent's contention that the challenged decision is only
9 a recommendation to the city council. The notice of intent
10 to appeal itself states the challenged decision is a
11 planning commission recommendation to the city council.
12 Therefore, the challenged decision is not a final decision.
13 Because the challenged decision is not a final decision, it
14 is not a land use decision subject to our review
15 jurisdiction. ORS 197.015(10)(a)(A) and OAR 661-10-015; see
16 Tylka v. Clackamas County, 20 Or LUBA 296 (1990); CBH
17 Company v. City of Tualatin, 16 Or LUBA 399, 405 n 7 (1988).
18 This appeal is dismissed.