

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

3
4 PATRICIA A. BACHELET,)
5)
6 Petitioner,)
7)
8 and)
9)
10 JAMES C. SHIELDS,)
11)
12 Intervenor-Petitioner,) LUBA
13 No. 97-177
14)
15 vs.) FINAL OPINION
16) AND ORDER
17 JACKSON COUNTY,)
18) (MEMORANDUM OPINION)
19 Respondent,) (ORS 197.835(16))
20)
21 and)
22)
23 JACKSON COUNTY CITIZENS' LEAGUE,)
24)
25 Intervenor-Respondent.)

26
27
28 Appeal from Jackson County.

29
30 Patricia A. Bachelet, Ashland, and James C. Shields,
31 Salem, filed a petition for review on their own behalf.
32 James C. Shields argued on his own behalf.

33
34 No appearance by respondent.

35
36 Charles Swindells, Portland, filed the response brief
37 and argued on behalf of intervenor-respondent.

38
39 LIVINGSTON, Administrative Law Judge; GUSTAFSON, Chief
40 Administrative Law Judge, participated in the decision.

41
42 AFFIRMED 11/26/97

43
44 You are entitled to judicial review of this Order.
45 Judicial review is governed by the provisions of ORS

1 197.850.

1 Opinion by Livingston.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a decision of the county hearings
4 officer denying her application for a nonfarm dwelling.

5 **MOTION TO INTERVENE**

6 James C. Shields (Shields) moves to intervene on the
7 side of the petitioner. Jackson County Citizens' League
8 (JCCL) moves to intervene on the side of the respondent.
9 There is no opposition to the motions, and they are allowed.

10 **FACTS**

11 On January 30, 1997, petitioner applied for a nonfarm
12 dwelling on 12.51 acres zoned for exclusive farm use (EFU).
13 The county followed the procedure set forth in ORS
14 215.416(11)(a) for decision on an application for a permit
15 without a hearing.¹ After staff recommended tentative
16 approval with conditions, the county mailed notice on May

¹ORS 215.416(11)(a) provides:

"The hearings officer, or such other person as the governing body designates, may approve or deny an application for a permit without a hearing if the hearings officer or other designated person gives notice of the decision and provides an opportunity for appeal of the decision to those persons who would have had a right to notice if a hearing had been scheduled or who are adversely affected or aggrieved by the decision. Notice of the decision shall be given in the same manner as required by ORS 197.763 or 197.195, whichever is applicable. An appeal from a hearings officer's decision shall be to the planning commission or governing body of the county. An appeal from such other persona as the governing body designates shall be to a hearings officer, the planning commission or the governing body. In either case, the appeal shall be a de novo hearing." (Emphasis added.)

1 22, 1997 to parties entitled to notice under ORS 197.763.
2 On May 30, 1997, JCCL appealed the approval by letter, which
3 stated:

4 "We are appealing the approval of the non farm
5 dwelling (File 97-2-NF). Please send the staff
6 report and other material to both JCCL and * * *.

7 "Payment of \$250 for the appeal." Record 105.

8 The county gave notice that there would be a public
9 hearing before the county hearings officer on June 20, 1997.
10 On June 19, 1997, petitioner filed a motion to dismiss the
11 local appeal on the ground that "[JCCL] has no standing to
12 request the hearing because they do not own property within
13 the notification area and do not represent any landowner or
14 resident within said area." Record 88.

15 JCCL responded to the motion to dismiss on June 27,
16 1997. Record 66-67. On July 1, 1997, Shields filed a
17 memorandum in which he contended JCCL lacks standing under
18 both Jackson County Land Development Ordinance (JCLDO)
19 285.110(3), which grants standing to parties entitled to
20 notice under JCLDO 285.110(2) and ORS 215.416(11), which
21 grants standing both to parties "who would have had a right
22 to notice if a hearing had been scheduled" and to parties
23 "adversely affected or aggrieved by the decision." Record
24 57-63. On July 15, 1997, the county hearings officer issued
25 a reasoned "Memorandum Opinion and Order on Applicant's
26 Motion to Dismiss Request for a Hearing" (memorandum
27 opinion). Record 37-55. The hearings officer concluded

1 JCCL did have standing as an aggrieved party to request a
2 hearing.

3 After a hearing on 25, 1997, the hearings officer
4 denied the application for a nonfarm dwelling. This appeal
5 followed.

6 **DISCUSSION**

7 Shields makes three assignments of error, all of which
8 pertain to the hearings officer's denial of the motion to
9 dismiss. In the first assignment, Shields contends the
10 findings in support of the denial, particularly the finding
11 that JCCL is an aggrieved party, are not supported by
12 substantial evidence. In the second assignment, Shields
13 contends the memorandum opinion inadequately explains the
14 basis for denying the motion to dismiss. In the third
15 assignment, Shields relies on the JCLDO notice requirements
16 pertaining to community organizations to support his
17 contention that the hearings officer erred in concluding
18 JCCL had standing to request a hearing.

19 Shields makes essentially the same arguments to LUBA as
20 he made to the hearings officer. We agree with the hearings
21 officer's reasoning and conclusion in the memorandum
22 opinion.

23 The county's decision is affirmed.