

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON
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4 HAZELNUT A PARTNERS, RENAISSANCE
5 CUSTOM HOMES, TUKWILA PARTNERS,
6 UNITED PROPERTIES OF OREGON, INC.
7 and WITHERS LUMBER COMPANY,
8 *Petitioners,*
9

10 vs.
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12 CITY OF WOODBURN,
13 *Respondent.*
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15 LUBA No. 2002-086
16

17 FINAL OPINION
18 AND ORDER
19

20 Appeal from City of Woodburn.
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22 William C. Cox, Portland, represented petitioners.
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24 N. Robert Shields, Woodburn, represented respondent.
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26 BRIGGS, Board Member; HOLSTUN, Board Chair; BASSHAM, Board Member,
27 participated in the decision.
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29 TRANSFERRED

08/14/2002
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31 You are entitled to judicial review of this Order. Judicial review is governed by the
32 provisions of ORS 197.850.
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Opinion by Briggs.

Petitioners move for a determination by this Board that it does not have jurisdiction to review a city ordinance that establishes a local improvement district to fund street improvements.

LUBA has jurisdiction over “land use decisions” as that term is defined in ORS 197.015(10).¹ Land use decisions include those decisions that have a “significant impact” on land uses. *See City of Pendleton v. Kerns*, 294 Or 126, 133-34, 653 P2d 992 (1982) (local government decisions that have a “significant impact” on present or future land uses constitute land use decisions subject to LUBA review). Petitioners have the burden to establish the Board’s jurisdiction. *Billington v. Polk County*, 299 Or 471, 479, 703 P2d 232 (1985). Petitioners concede that the challenged decision does not apply any city comprehensive plan policies or land use regulations. Petitioners also concede that the decision does not result in a “significant impact” on land use.

In the past, we have held that decisions pertaining to the financing of public infrastructure improvements, such as the establishment and allocation of costs to assessed properties within local improvement districts (LIDs), do not constitute land use decisions when those decisions do not involve the application of comprehensive plan policies or land use regulations. *See Baker v. City of Woodburn*, 37 Or LUBA 563, *aff’d* 167 Or App 259, 4

¹ As relevant, ORS 197.015(10)(a)(A) defines “land use decision” as:

“A final decision or determination made by a local government or special district that concerns the adoption, amendment or application of:

- “(i) The goals;
- “(ii) A comprehensive plan provision;
- “(iii) A land use regulation; or
- “(iv) A new land use regulation[.]”

1 P3d 775 (2000) (establishment of revenue reimbursement district); *Martin v. City of Tigard*,
2 17 Or LUBA 16 (1988) (modification to an existing LID).

3 Petitioners provide no reason for us to believe that the challenged decision is any
4 different from the decisions at issue in those cases. Because petitioners do not argue that the
5 challenged decision is a land use decision, we conclude we do not have jurisdiction to review
6 the city's decision. *See Lindsey v. City of Eugene*, 37 Or LUBA 695, 700 (2000) (where
7 petitioners do not argue that the city applied or should have applied land use standards,
8 LUBA does not have jurisdiction, and the decision will be transferred to the circuit court or
9 the appeal will be dismissed).

10 In the event that we determine that the challenged decision does not constitute a land
11 use decision that is subject to LUBA's jurisdiction, petitioners request that we transfer the
12 decision to the circuit court. The challenged decision is not a land use decision. Accordingly,
13 the challenged decision is transferred.