

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

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4                   JIM BOEDER,  
5                   *Petitioner,*

6  
7                   vs.

8  
9                   CITY OF CORVALLIS,  
10                  *Respondent.*

11  
12                  LUBA No. 2020-028

13  
14                  FINAL OPINION  
15                  AND ORDER

16  
17                  Appeal from City of Corvallis.

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19                  Micheal M. Reeder, Eugene, represented petitioner.

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21                  James K. Brewer, Corvallis, represented respondent.

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23                  RYAN, Board Member; RUDD, Board Chair; ZAMUDIO, Board  
24 Member, participated in the decision.

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26                  TRANSFERRED                   06/23/2020

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

**NATURE OF THE DECISION**

Petitioner appeals a city council decision denying an appeal of a city manager decision denying petitioner's request for a waiver or reduction of fees assessed on petitioner's property.

**BACKGROUND**

The challenged decision is the city council's January 21, 2020 oral vote, memorialized in subsequently adopted meeting minutes, to deny petitioner's appeal of a city manager decision denying a waiver or reduction of fees that were assessed against petitioner's property for infrastructure improvements. Notice of Intent to Appeal (NITA), Exhibit 1. Briefly, Corvallis Municipal Code (CMC) chapter 2.18 codifies Ordinance 2000-27, and requires property owners to reimburse the city for the city's construction of public improvements that benefit the property (Infrastructure Cost Recovery fees). CMC 2.18.040 provides a methodology for calculating fees and allows for collection of fees at the time the benefited property is developed. In a 2016 decision that was not appealed, the city approved petitioner's application for a minor replat, and as part of the approval, imposed a condition requiring the property owner to pay Infrastructure Cost Recovery fees prior to issuance of a building permit, pursuant to CMC chapter 2.18.

Petitioner subsequently sought building permits, and the city required payment of the fees prior to issuance of a building permit. Petitioner then sought

1 a waiver or reduction of the fees from the city manager. The city manager denied  
2 the waiver. Motion to Dismiss, App 9-10. Petitioner appealed that denial to the  
3 city council, pursuant to CMC chapter 1.11.<sup>1</sup> The city council in an oral vote  
4 approved a motion to deny petitioner’s appeal of the city manager’s decision.  
5 Petitioner then appealed the minutes of the city council’s oral decision to LUBA.

6 **JURISDICTION**

7 The city moves to dismiss the appeal on the basis that the challenged  
8 decision is not a “[l]and use decision” within the meaning of ORS  
9 197.015(10)(a). As relevant here, LUBA has statutory authority to review “land  
10 use decision[s].” ORS 197.825(1). A “[l]and use decision” is:

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

- 14 “(i) The goals;
- 15 “(ii) A comprehensive plan provision;
- 16 “(iii) A land use regulation; or
- 17 “(iv) A new land use regulation[.]” ORS 197.015(10)(a)(A).

18 The city argues that the challenged decision did not apply and was not required  
19 to apply any statewide planning goals, provisions of the Corvallis Comprehensive

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<sup>1</sup> CMC chapter 1.11 sets out the procedures for an appeal of a board, commission, committee, hearings officer, and city official decision to the city council.

1 Plan, or existing or new provisions of the Corvallis Land Development Code  
2 (LDC). The city argues that CMC chapter 2.18 is not a “[l]and use regulation” as  
3 defined in ORS 197.015(11).<sup>2</sup>

4 As the party seeking review by LUBA, petitioner has the burden of  
5 establishing that LUBA has jurisdiction. *Billington v. Polk County*, 299 Or 471,  
6 475, 703 P2d 232 (1985). Petitioner filed a conditional motion to transfer the  
7 appeal pursuant to OAR 661-010-0075(11), but has not otherwise responded to  
8 the city’s motion to dismiss.

9 We agree with the city that the challenged decision is not a land use  
10 decision. The city council’s decision did not apply a goal, comprehensive plan  
11 provision, or a land use regulation. CMC chapter 2.18 is not included as part of  
12 the LDC and as far as we can tell, does not “establish[] standards for  
13 implementing [the] comprehensive plan.” ORS 197.015(11). It is not a land use  
14 regulation. The only other provision that applied to the city council’s decision is  
15 CMC 1.11.010, which establishes appeal procedures for, as relevant here, a  
16 decision by “an official of the City[.]” CMC 1.11.010 is not a part of the LDC,  
17 and is also not a land use regulation. Absent any argument from petitioner

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<sup>2</sup> ORS 197.015(11) defines “[l]and use regulation” to mean “any local government zoning ordinance, land division ordinance adopted under ORS 92.044 or 92.046 or similar general ordinance establishing standards for implementing a comprehensive plan.”

1 establishing that the challenged decision is a land use decision, we conclude that  
2 it is not.

3 **MOTION TO TRANSFER**

4         Petitioner requests that if LUBA determines that it lacks jurisdiction over  
5 the appeal, that the decision be transferred to circuit court pursuant to ORS  
6 34.102(4) and OAR 661-010-0075(11). The appeal is transferred to Benton  
7 County Circuit Court.