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

DENNIS JOHNSON and
JACK GRAFF,

Petitioners,

vs.

THE CITY OF BEAVERTON,

Respondent.

LUBA NO. 80-112

FINAL OPINION
AND ORDER

Dennis R. Johnson and Jack Graff, Beaverton, filed a brief on their own behalf. Nelson D. Atkin, Portland, representing petitioners, argued the cause.

Eleanore S. Baxendale, Beaverton, filed a brief and argued the cause of their own behalf.

Bagg, Referee; Reynolds, Chief Referee; Cox, Referee; participated in the decision.

Dismissed.

1/26/81

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of Oregon Laws 1979, ch 772, sec 6(a).

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1 Bagg, Referee.

2 STATEMENT OF THE CASE

3 This case is about a decision by the City of Beaverton to
4 amend its comprehensive plan to allow that

5 "131st Avenue [be] disconnected on the north by a
6 cul-de-sac between Hart Road on the north and S.W.
7 31st Street on the south.

8 "31st Street [be] disconnected by placing a double
9 cul-de-sac on it between Southwest Highland Way and
10 Southwest 131st Avenue." Order No. GP8-10-80/204.
11 Record, pages 7 and 8.

12 The effect of these changes is to alter the street traffic
13 pattern in the area.

14 NATURE OF THE DECISION AND FACTS

15 It is important at this point to discuss whether this
16 decision is to be characterized as quasi-judicial or
17 legislative. The City of Beaverton gave this particular plan
18 amendment treatment as a quasi-judicial plan amendment under
19 the provisions of ordinance no. 3132. Ordinance 3132 amends
20 the Beaverton comprehensive plan (Ordinance No. 1800) by
21 providing procedures for plan amendments. Ordinance No. 1800,
22 as amended, in section 7(4) provides that quasi-judicial
23 amendments to the plan require notice by publication, posting
24 and

25 "(c) By mailing notice to property owners and
26 residents included in the proposed change and within
an area enclosed by lines parallel to and 300 feet
from the exterior boundary of the property for which
the change is contemplated."

Mr. Johnson was apparently sent notice of the hearings

1 pursuant to the 300 foot notice rule, although in his statement
2 on standing, petitioner Johnson alleges that he lives within
3 "500 feet of the cul-de-sacs called for in the local
4 improvement district and general plan amendment which is at
5 issue." Petition for Review, page 1.

6 The city's treatment of this case as quasi-judicial, at
7 least in the manner in which the city gave notice, is
8 consistent with the amendment as a quasi-judicial act. We note
9 also the amendment affects a relatively small section of the
10 City of Beaverton. It is the kind of decision that necessarily
11 involves fact finding and the application of city comprehensive
12 general plan policies relative to streets. In sum, we conclude
13 the amendment was the end result of a quasi-judicial
14 proceeding.¹

15 STANDING

16 Standing to challenge a quasi-judicial decision before the
17 Land Use Board of Appeals requires that the petitioner have

18 "(a) Appeared before the city, county or special
19 district governing body or a state agency orally or in
writing; and

20 "(b) Was a person entitled as of right to notice
21 and hearing prior to the decision to be reviewed or
22 was a person whose interests are adversely affected or
who was aggrieved by the decision." Oregon Laws 1979,
ch 772, sec 4(3)(a)(b).

23 There is no allegation in the petition that either of the
24 petitioners ever appeared before the city governing body,
25 whether orally or in writing. Indeed, it was stated at the
26 hearing in this matter that neither of the petitioners had

1 appeared before the City Planning Commission or the City
2 Council during the pendency of this plan amendment.
3 Petitioners argue that their failure to appear should not
4 prevent them from having standing because they are involved
5 with a group of persons, members of which have appeared before
6 the City to voice similar objections to the plan amendment.

7 We do not view these allegations sufficient to confer
8 standing on either of the petitioners. It is our view that the
9 petitioners had to have appeared as provided for in the above
10 quoted provision in Oregon Laws. If the petitioners seek
11 standing through an organization, that organization must itself
12 appeal the decision. No such organization has come forward and
13 challenged the city's actions. Also, we are cited to no legal
14 theory or precedent wherein a person can claim standing to
15 challenge an act through legally unrelated and separate third
16 parties who themselves could have but did not make a challenge.

17 For these reasons, we are required to dismiss this case.

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FOOTNOTE

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1 See also Kerns v. Pendleton, Proposed Opinion, LUBA No. 80-138 (1981) wherein the Board found an extension of a street to be a quasi-judicial act.