

BOARD OF APPEALS
APR 21 3 37 PM

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

LEAGUE OF WOMEN VOTERS OF)
OREGON, JAMES A. TAYLOR, JR.,)
and 1000 FRIENDS OF OREGON,)
Petitioner,) LUBA NO. 80-164
v.)
WASHINGTON COUNTY and) FINAL OPINION
WASHINGTON COUNTY LANDOWNERS') AND ORDER
ASSOCIATION,)
Respondents.)

Appeal from Washington County.¹

Robert E. Stacey, Jr., Portland, Attorney for Petitioners.

John M. Junkin, Hillsboro, Acting County Counsel for
Washington County.

David G. Frost, Hillsboro, Attorney for Respondent
Washington County Landowners' Association.

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

Dismissed. 4/21/81

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).

1 Cox, Referee.

2 Petitioners filed a Notice of Intent to Appeal the November
3 4, 1980 decision of Washington County voters creating by
4 initiative a land use ordinance. The purpose of the "Lot of
5 Record Land Use Ordinance" is

6 "to insure that owners of lawfully created lots of
7 record, in those limited areas of the county outside
8 of urban growth boundaries which were zoned AF-5 or
9 AF-10 under the provisions of the 1973 comprehensive
10 land use plan, can establish a single family dwelling
11 on such lots by right subject to other provisions of
12 law. This ordinance shall be liberally construed to
13 effect this purpose."

14 The ordinance purports to take a Goal 2 exception to
15 Goals 3 and 4 which would otherwise require the subject
16 lots to be held for exclusive farm or forest use.

17 Respondents have moved to dismiss the proceeding on the
18 grounds that the initiative enactment is not a land use
19 decision within the jurisdiction of this Board.

20 The Land Use Board of Appeals' responsibility for
21 reviewing land use decisions is set forth in Oregon Laws
22 1979, ch 772. The Land Use Board of Appeals is a
23 statutorily created agency whose primary purpose is set
24 forth in section 1a of Oregon Laws 1979, ch 772 as follows:

25 "It is the policy of the Legislative Assembly that
26 time is of the essence in reaching final decisions in
27 matters involving land use and that those decisions be
28 made consistently with sound principles governing
29 judicial review. It is the intent of the Legislative
30 Assembly in enacting sections 1a to 6a of this 1979
31 Act to accomplish these objectives."

32 The Legislature has limited LUBA's jurisdiction to the review

1 of "land use decisions." Land use decisions are defined as:

2 "(a) A final decision or determination made by a
3 city, county or special district governing body that
concerns the adoption, amendment or application of:

4 "(A) The state-wide planning goals;

5 "(B) A comprehensive plan provision; or

6 "(C) A zoning, subdivision or other ordinance
7 that implements a comprehensive plan; or

8 "(b) A final decision or determination of a
9 state agency other than the Land Conservation and
10 Development Commission, with respect to which the
11 agency is required to apply the state-wide planning
12 goals.

13 "(2) 'Person' means any individual, partnership,
14 corporation, association, governmental subdivision or
15 agency or public or private organization of any
16 kind." Oregon Laws 1979, ch 772, sec 3.

17 A fair reading of Oregon Laws 1979, ch 772 indicates the
18 Legislature intended that LUBA review only land use decisions
19 "made by a * * * governing body." If the 1979 Legislature had
20 intended to provide LUBA with review authority over initiative
21 enactments relating to local government comprehensive plans, it
22 would have so stated. Land use decisions established through
23 the initiative process are not made by a governing body and,
24 thus, are not matters subject to LUBA review.

25 As further evidence of the lack of LUBA jurisdiction over
26 initiative measures, LUBA procedures require review of the
record of a final decision or determination of a governing
body. As is set forth in Oregon Laws 1979, ch 772, sec 5(4),
this Board is required to reverse or remand a land use decision
under review if:

1 "(a) The board finds that the city, county or
2 special district governing body:

3 "* * * *

4 "(C) Made a decision that was not supported by
5 substantial evidence in the whole record; * * * *"

6 Given the fact that there is no record to review in an
7 initiative measure, if Oregon Laws 1979, ch 772 applied to
8 initiative measures any person who opposed the successful
9 initiative provision could defeat the adopted measure by filing
10 an appeal with the Land Use Board of Appeals.

11 Dismissed.

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

FOOTNOTE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1 This Board requested amicus briefs on this matter from the League of Oregon Cities, Association of Oregon Counties, Bureau of Governmental Research and the Department of Land Conservation and Development. None of these entities decided to provide input into the Board's decision.