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

L. L. STEWART, ROBERT P.)
BOOTH, DALE FISCHER, EHRMAN)
GIUSTINA, F. H. STEWART,)
LARRY CHAPMAN and LEO)
RICKARD (hereinafter)
known as "L. L. Stewart,)
et al"),)

Petitioners,)

v.)

METROPOLITAN WASTEWATER)
MANAGEMENT COMMISSION and)
LANE COUNTY METROPOLITAN)
WASTEWATER SERVICE DISTRICT,)
Respondents.)

LUBA No. 81-043

FINAL OPINION
AND ORDER

Appeal from Metropolitan Wastewater Management Corporation.

Michael E. Farthing of Butler, Husk, Gleaves & Swearingen,
Eugene, attorney for Petitioners.

Joseph J. Leahy of Harms, Harold & Leahy, Springfield,
attorney for Participant City of Springfield.

Scott Galenbeck of Wiswall, Svoboda, Thorp & Dennett, P.C.
Springfield, attorney for Respondent Metropolitan Wastewater
Management Commission.

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

Dismissed.

7/1/81

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 BAGG, Referee.

2 This matter is before the Board on the motion to dismiss of
3 Respondent Metropolitan Wastewater Management Commission. The
4 Commission moves to dismiss the appeal on the ground that the
5 subject of the appeal is not (1) a "land use decision" within
6 the meaning of Oregon Laws 1979, ch 772, sec 3; and (2) the
7 decision appealed from is not a "final" decision within the
8 meaning of that same law.

9 The notice of intent to appeal, in this matter states
10 petitioners wish to appeal a motion of the Respondent Commission

11 "to accept consultant's report and acquire site for
12 disposition of a sewerage by-product known as sludge,
13 which became final on March 12, 1981, and which
14 decision involves the Respondent's determination that
15 a portion of Petitioner's real property, located
16 northwest of the City of Eugene, should be acquired by
17 Respondent and used as a site for storage and
18 air-drying of a by-product of the Respondent's
19 metropolitan sewerage plant, [sic] (serving the cities
20 of Eugene and Springfield), which by-product is known
21 as sludge."

22 Respondent says that the simple act of accepting an
23 engineering report does not constitute a "land use decision."
24 Further, the determination to attempt to acquire a parcel of
25 land for some purpose is likewise not a land use decision.
26 Respondent notes that the motion by the Commission was not even
to close a pending real estate transaction, and the minutes of
the meeting at which the matter was considered reveal
considerable question as to whether the site could even be
acquired. Respondent notes the minutes reflect uncertainty as
to the availability of the particular site (Site "C") that was

1 the subject of Respondent Commission's motion. Respondent adds
2 that even if there were a decision to purchase property, that
3 decision alone does not constitute a land use decision. Cited
4 for this proposition is Lane v. City of Prineville, 49 Or App
5 385, 389-390, 619 P2d 940 (1980).

6 As a second ground for dismissal, respondent alleges there
7 has been no final decision. Respondent believes there are "so
8 many obstacles and further steps before actual use by
9 respondent of the subject property, known as 'Site C' that, as a
10 practical matter, nothing has yet happened affecting the land."

11 We agree with the respondent. The motion made and recorded
12 in the minutes is as follows:

13 "Motion was made by Mark Westling that the Commission
14 accept the Brown and Caldwell report and proceed with
15 action to acquire Site C as the sludge management site
16 with a review on the progress to be made in August
17 1981. Motion was seconded by Gary Wright."

18 The motion does not take final action itself, but requires some
19 further "action" to acquire the particular property in
20 question. The motion has not been reduced to writing except in
21 the minutes. We do not believe that the substance of this
22 motion amounts to a land use decision, and the fact that the
23 decision has not been reduced to a final order of the
24 commission, seems to us to substantiate our view. We note that
25 pursuant to Oregon Laws 1979, ch 772, sec 3, a land use
26 decision is defined as a final decision; and, under Board
rules, a decision is not final until it is reduced to writing
and all necessary signatures attached. See Board Rule 3(C).

1 In short, we simply do not believe that authorization of
2 further action amounts to a final land use decision. See
3 N.O.P.E. in Mulino v. Port of Portland, 2 Or LUBA 243 (1981);
4 Grant County v. Oregon Department of Fish and Wildlife, 1 Or
5 LUBA 214 (1980).

6 For these reasons, this appeal is dismissed.

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