



1 COX, Referee.

2 NATURE OF PROCEEDING

3 The City of Eugene challenges a quasi-judicial decision by  
4 Lane County granting a major partition. Lane County approved  
5 the major partition of 142 acres of land consisting of Class  
6 I-IV soils. The partition created a road easement and divided  
7 the property into two parcels, one of 5 acres and the other of  
8 137 acres. Petitioner requests that the county's decision be  
9 reversed and that the matter be remanded for further  
10 proceedings.

11 STANDING

12 Standing is not an issue in this case.

13 ALLEGATIONS OF ERROR

14 Petitioners contest the county's decision approving the  
15 partition on the grounds the county violated Statewide Land Use  
16 Goal No. 3 by:

17 (a) Finding that Goal 3, while being applicable to the  
18 partition nevertheless was satisfied by reason of continuation  
19 of the existing commercial/agricultural enterprises on both  
20 parcels created by the partition.

21 (b) Finding that no exception is required to Statewide  
22 Goal 3 because the goal was applied and satisfied.

23 (c) Finding that substantial evidence is contained in the  
24 record to support the approval of the major partition and  
25 demonstrate compliance with all existing rules, regulations and  
26 court decisions.

1 In addition, petitioners allege respondent erred when it  
2 found that the applicant has no present plans to further divide  
3 the subject property and that, therefore, a future development  
4 plan, as normally required under the Lane Code Chapter 13 "Land  
5 Divisions," is not applicable and need not be submitted at this  
6 time. Petitioners claim that substantial evidence to support  
7 the finding is lacking in the record and that the decision of  
8 respondent is based upon an erroneous interpretation of  
9 applicable law.

10 FACTS

11 Intervenor herein applied for a major partitioning of  
12 approximately 142 acres of land containing Class I-IVw soils.  
13 Intervenor made a request to divide the 142 acre parcel into  
14 two parcels consisting of 5 and 137 acres. The record reveals  
15 that the 142 acre parcel was originally a portion of a larger  
16 152 acre parcel, which had in the past been partitioned into  
17 four separate tax lots containing 2, 4, 4.6, and 142 acres.

18 The property is presently zoned by respondent as AV  
19 (Airport Vicinity) and is designated in the respondent's 1990  
20 plan as an "opportunity area" suitable for large scale  
21 development. The property is in the vicinity of Mahlon Sweet  
22 Airport, the commercial airport serving the Eugene-Springfield  
23 Metropolitan area. The City of Eugene presently owns property  
24 directly north of the subject property and is currently  
25 compiling an update to the Mahlon Sweet Field master plan which  
26 includes a recommendation to construct a major runway on a

1 parcel adjacent to the subject property.

2 The proposed 5-acre parcel would continue to be used as a  
3 base for a sheep raising operation. The proposed 137 acre  
4 parcel would continue to be used to raise grass seed and grain  
5 and provide forage for sheep after the seed and grain has been  
6 harvested. Intervenor submitted at the time of his partition  
7 application what has become known as the "future street plan"  
8 showing the property being dissected by three streets 60 feet  
9 in width. The record does not reveal any close correlation  
10 between the "future street plan" and the proposed use of the  
11 parcels.

12 The owner of the property and Intervenor herein is a  
13 retired farmer, who, presently leases out 140 plus or minus  
14 acres for the growing of grain or grass crops. The proposed  
15 5-acre parcel is occupied by a dwelling and barns.

16 DECISION

17 Did respondent properly apply Goal 3?

18 It is uncontested that the property in question consists of  
19 Class I-IVw soils. As such, it is presumed to be agricultural  
20 land. Meyer v. Lord, 37 Or App 59, 586 P2d 367 (1978).  
21 Inasmuch as respondent does not have an acknowledged  
22 comprehensive plan, the statewide goals must be applied to this  
23 partitioning decision. Alexanderson v. Polk County, \_\_\_\_  
24 Or \_\_\_\_ (1980); Jurgenson v. Union County Court, 42 Or App 505,  
25 600 P2d 1241 (1979).

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1 Statewide goal 3 is designed to "preserve and maintain  
2 agricultural lands." The goal goes on to state:

3 "Agricultural lands shall be preserved and  
4 maintained for farm use, consistent with existing and  
5 future needs for agricultural products, forest and  
6 open space. These lands shall be inventoried and  
7 preserved by adopting exclusive farm use zones  
8 pursuant to ORS Chapter 215. Such minimum lot sizes  
9 as are utilized for any farm use zones shall be  
10 appropriate for the continuation of the existing  
11 commercial agricultural enterprise within the area.  
12 Conversion of rural agricultural land to urbanizable  
13 land shall be based upon consideration of the  
14 following factors: (1) environmental, energy, social  
15 and economic consequences; (2) demonstrated need  
16 consistent with LCDC goals; (3) unavailability of an  
17 alternative suitable location for the requested use;  
18 (4) compatibility of the proposed use with related  
19 agricultural land; and (5) the retention of Classes I,  
20 II, III and IV soils in farm use. A governing body  
21 proposing to convert rural agricultural land to  
22 urbanizable land shall follow the procedures and  
23 requirements set forth in the Land Use Planning goal  
24 (Goal 2) for goal exceptions." (Emphasis added).

25 Respondent, in finding no. 18, citing Jurgenson v. Union  
26 County Court, 42 Or App 505 (1979), found that the applicant  
had addressed and satisfied criterion in the goal that lot  
sizes created by the partition will be sufficient for the  
continuation of existing commercial agriculture enterprises in  
the area.<sup>1</sup>

Lane County based finding no. 18 on a December 21, 1979  
letter from Paul Day, Livestock Agent for the Lane County  
Extension Service operated by Oregon State University, which in  
finding no. 8 respondent interpreted as stating:

"The Lane County Extension Service operated by  
Oregon State University, by letter dated December 21,  
1979 from Paul Day, Livestock Agent, acknowledges and

1 confirms that a 5-acre parcel is a typical size of  
2 operation for commercial sheep operators in Lane  
3 County and the entire Willamette Valley. Sheep  
4 operators use the 5-acre parcel as a 'home base' from  
5 which sheep are transported to rented or leased  
6 grazing areas for a majority of their feed and  
7 development. This type of operation is particularly  
8 suited to the Willamette Valley and this portion of  
9 Lane County because of the large amount of grass seed  
10 and grain fields which provide forage and complements  
11 the seasonal feed needs of the sheep producers.\*\*\*\*"  
12 (Emphasis added).

13 A review of the December 21, 1979 Day letter indicates that  
14 finding no. 8 does not accurately reflect the contents of the  
15 letter. The letter states in pertinent part:

16 "Operating a flock of several hundred or a  
17 thousand ewes on a 5-acre farm may at first seem out  
18 of the question. It is, however, possible under  
19 existing circumstances in this area. Most, if not  
20 all, of the major commercial sheep operators in Lane  
21 County operate out of a 'home base' which consists of  
22 barn(s), a stock handling system (corrals, etc.), feed  
23 storage, equipment storage, and a home.\*\*\*\*"

24 "This type of sheep management system is somewhat  
25 unique to the Willamette Valley. It fits well for two  
26 reasons. First, the natural forage production pattern  
through the year meshes closely with the seasonal feed  
needs of sheep production. This allows for nearly  
year around grazing of sheep and eliminates the need  
for extensive feeding and feed storage  
facilities.\*\*\*\*" (Emphasis added)

27 There is nothing in the letter supporting Lane County's  
28 finding that a 5-acre parcel is the typical size of operation  
29 for commercial sheep operators in Lane County. The letter  
30 merely says it is possible to run a base sheep operation on 5  
31 acres. Mr. Day does not indicate whether such an operation  
32 exists elsewhere in the area.

33 As required by goal 3, agricultural lands shall be

1 inventoried and preserved by adopting exclusive farm use zones  
2 pursuant to ORS ch 215. Nowhere in the record is there  
3 revealed any evidence of an inventory indicating the existing  
4 commercial agricultural enterprise and related minimum lot  
5 sizes as called for in the goal. Without such an inventory,  
6 this Board is unable to determine whether the county's decision  
7 is in conformance with Goal 3's requirement that lots be  
8 appropriate for the "continuation of the existing commercial  
9 agriculture enterprise within the area."

10 Since the Board has found is a lack of substantial evidence  
11 to support a finding that the proposed partition will be  
12 sufficient to continue the commercial agricultural enterprise  
13 in the area, and respondent does not base its decision on  
14 either a Goal 2 exception to Goal 3 or on the other tests set  
15 forth in Jurgenson, supra, the decision of the respondent must  
16 be reversed.

17 SECOND ASSIGNMENT OF ERROR

18 Petitioner claims that the county erred in approving the  
19 partition absent a conceptual plan for the entire property.  
20 Petitioner cites as the controlling law, Lane Code 13.130(1)(o)  
21 which states in pertinent part:

22 "This [major partition] application shall contain  
23 information on the following:

24 "\*\*\*\*

25 "(o) An overall conceptual plan for the entire  
26 property if the proposed partition may be further  
divided at a future time."

1 According to the record, applicant's original request for  
2 partitioning was tentatively denied by the planning staff for  
3 failure to address the above ordinance. In response, the  
4 applicant submitted a statement containing information with  
5 respect to a conceptual plan. In that statement, it is said:

6 "The reason for the absence for a development  
7 plan is simple in that the Applicant has no future  
8 development plans for the property at this time. His  
9 intent, as stated on numerous occasions during this  
10 application process, is simply to provide a location  
11 for a base operation for sheep raising in addition to  
12 maintaining the larger parcel in grass seed  
13 production. By submitting no future plan, the  
14 Applicant is, in effect, submitting a plan that at  
15 present he plans no future parcelization or division  
16 of either of these parcels. \*\*\* [t]he Applicant is  
17 merely stating what it appears obvious to him, which  
18 is that there is no future plan for development of  
19 either parcel other than stated in the application  
20 which is for the agricultural uses on both parcels."  
21 (Applicant's statement in support of major partition,  
22 Record 53).

23 Lane County Ordinance 13.130(1) requires "information on  
24 the following." It was the determination of the county  
25 commissioners that the above cited portion of the record was  
26 sufficient to meet their requirement to receive "information  
27 on" the overall conceptual plan for the entire property if the  
28 proposed partition may be further divided at a future time.  
29 As was stated in the Friends of Linn County v. City of  
30 Lebanon, LUBA No. 79-007, this Board will defer to a city's  
31 reasonable interpretation and application of its own ordinance.

32 Based on the foregoing, petitioner's second assignment of  
33 error is hereby denied.  
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FOOTNOTE

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4 "18. "Jurgenson v. Union County Court, 42 Or App 505 (1979,  
5 set forth three criteria which are to be used by the  
6 proponent of a partition in applying Statewide  
7 Planning Goals, especially Goal 3 pertaining to  
8 Agricultural Lands. In order to satisfy Goal 3, the  
9 proponent of a partition must demonstrate or prove any  
10 one of the following:

11 "(a) the predominant soil classes on the property are  
12 other than agricultural land; or

13 "(b) the lot sizes created by the partition will be  
14 sufficient for the continuation of existing  
15 agricultural enterprises in the area; or

16 "(c) the factors in ORS 215.213 have been met  
17 permitting non-farm uses.

18 "The Applicant has addressed and satisfied the second  
19 criterion in that he has demonstrated that the lot  
20 sizes created by this partition are sufficient for the  
21 continuation of existing agricultural enterprises in  
22 the area."  
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