

1 REYNOLDS, Chief Referee.

2 NATURE OF THE PROCEEDING

3 Petitioner appeals Coos County's approval of a conditional
4 use permit to allow the construction and operation of a
5 neighborhood store. Petitioner contends respondent's decision
6 violates Goal 14 because it authorizes an urban use outside any
7 urban growth boundary. Petitioner also contends the approval
8 fails to comply with the county's conditional use ordinance
9 which requires that a "conditional use will conform with the
10 comprehensive plan or is not reasonably expected to conflict
11 with the proposed comprehensive plan."

12 STATEMENT OF FACTS

13 Mr. and Mrs. James Scriven applied to Coos County for a
14 conditional use permit in order to construct and operate a
15 neighborhood store on their 4 plus acre parcel of land located
16 in the county and bordering on Seven Devils Road.¹ The
17 application received favorable approval from the planning
18 commission and was appealed by Petitioner Conarow to the board
19 of county commissioners. The board of county commissioners
20 approved the planning commission's decision and adopted an
21 order setting forth the basis for the decision.

22 Sewerage service for the proposed store will be provided by
23 a septic system. Water is to be provided by a well and the
24 site is served by the Bandon Rural Fire Protection District.

25 As part of its consideration of the statewide goals the
26 county made the following findings concerning Goals 12, 13

1 and 14:

2 "4. Granting this conditional use permit is
3 consistent with statewide planning Goal 12,
4 Transportation, because the imposition of the
5 conditions described below will guarantee that the
6 proposed development does not interfere with the
7 convenience, safety or economy of the transportation
8 system. Additionally, making groceries available in
9 this area will reduce the amount of traffic to nearby
10 cities by residents of this area, thereby improving
11 the safety and economy of the transportation system.

8 "5. Granting this conditional use permit is
9 consistent with statewide planning Goal 13, Energy
10 Conservation, because the proposed neighborhood store
11 will make common food staples available to people in
12 the immediate vicinity. This will avoid the necessity
13 of local residents making a lengthy automobile trip to
14 purchase such staples.

12 "6. Granting this conditional use permit is
13 consistent with statewide planning Goal 14,
14 Urbanization, because a neighborhood store is
15 compatible with the rural residential character of the
16 surrounding area, and does not require or foster a
17 need for the provisions [sic] of urban services. The
18 proposed development will not lead to "lep [sic]
19 frogging" of the type which Goal 14 seeks to prevent.
20 A neighborhood store, by its very nature, is not an
21 "urban" land use. Approving this conditional use
22 permit will therefore not alter the transition from
23 urban to rural land uses."²

18 The county further found that the conditional use "will
19 conform with the proposed comprehensive plan, because the
20 conditional use is consistent with the statewide planning goals
21 upon which the comprehensive plan will be based."

22 OPINION

23 Petitioner's first assignment of error is that the county
24 violated Goal 14 in authorizing an urban use of land outside an
25 urban growth boundary. No definitive test has as yet been
26 adopted for determining whether a given use of land is "urban"

1 or "rural" within the context of the statewide planning goals.
2 In City of Sandy v. Board of County Commissioners of Clackamas
3 County, LCDC 79-029, Final Order of March 20, 1980, LCDC stated
4 that a 90,000 square foot shopping center was clearly an
5 "urban" use and should not, therefore, be located outside an
6 urban growth boundary. The decision in City of Sandy, supra,
7 provides little guidance, however, for purposes of determining
8 whether a 2,500 square foot building containing a grocery store
9 and a residence constitutes an urban use of land such that it
10 must, consistent with Goal 14, be located within an urban
11 growth boundary.³

12 Rural land is defined in the statewide goals as follows:

13 "Rural lands are those which are outside the
14 urban growth boundary and are:

15 (a) Non-urban agricultural, forest or open
space lands or,

16 (b) Other lands suitable for sparse
17 settlement, small farms or acreage homesites with
18 no or hardly any public services, and which are
not suitable, necessary or intended for urban
use."

19 The above definition of "rural lands" also provides little
20 guidance as to whether a neighborhood store as defined by Coos
21 County constitutes a rural or urban use of land. One thing is
22 clear from the above definition, however, and that is if land
23 which is to be developed is to be considered "rural," the
24 development must require "no or hardly any public services."
25 The neighborhood store proposed in this case fits this
26 definition, in that sewerage service is provided by means of a

1 septic system and water service provided by means of a well.

2 We can find nothing in Goal 14 or in the definition of
3 rural or urban lands which would prohibit per se the siting of
4 a commercial use such as a neighborhood or convenience store
5 outside any urban growth boundaries. In determining whether a
6 commercial use should be allowed outside an urban growth
7 boundary, we believe the jurisdiction should consider whether
8 the use is appropriate for, but limited to, the needs and
9 requirements of the rural area to be served.⁴ This is
10 essentially the requirement in Goal 11 for the provision of
11 public facilities and services in rural areas. Goal 11
12 prohibits provision of an urban level of services to rural
13 areas, but permits:

14 "public facilities and services appropriate for,
15 but limited to the needs and requirements of
the...rural areas to be served."

16 Thus, if the commercial use is deemed to be appropriate for
17 serving the needs of rural residents in the area, while not
18 serving as a magnet to attract residents outside the rural area
19 to be served, then authorization of the commercial use would
20 seem to be consistent with the intent of the statewide planning
21 goals. This assumes, of course, that the public facilities and
22 services necessary to serve the commercial use can be provided
23 consistent with Goal 11.

24 The county's order approving the conditional use permit as
25 it relates to Goal 14 addresses the compatibility of the store
26 with the rural residential character of the area and the level

1 of services to be provided. The order also addresses in its
2 findings on Goals 12 and 13 the need for a store in this area
3 to serve the rural needs of the residents who reside in the
4 area. The only question which remains is whether the county's
5 findings indicate whether the proposed store is appropriate for
6 but limited to those needs. The county argues that the
7 definition of neighborhood store is such that it is limited to
8 what one would expect to find in a rural store intended to
9 serve as a convenience to the neighbors. We basically agree
10 with the county's position. By definition and by virtue of its
11 limited size it is highly unlikely a neighborhood store of the
12 size proposed here would serve as a magnet to attract shoppers
13 from outside the rural area in which the store is located.
14 Petitioner has neither argued nor pointed to any evidence in
15 the record which would indicate that the store would serve as a
16 magnet. Accordingly, we conclude the county's findings are
17 sufficient to demonstrate that the neighborhood store proposed
18 by the applicant is appropriate for and limited to the needs of
19 the rural residential area in which it is proposed to be
20 located. As such it is not an urban use of land which must be
21 included within an urban growth boundary to avoid violation of
22 Goal 14.

23 Petitioner's second assignment of error appears to be that
24 the county has failed, as required by its conditional use
25 ordinance, to show how this "commercial activity" is "not
26 reasonably expected to conflict with" the residential use

1 designation of the property in the county's proposed
2 comprehensive plan.

3 The county argues, however, that its findings adequately
4 address the issue of whether the neighborhood store would
5 conflict with the county plan's designation of this property
6 for rural residential use. The county's position, as clarified
7 during oral argument, is that the rural residential use
8 classification in the proposed plan does not say one way or the
9 other whether a neighborhood store would be an acceptable use
10 within a rural residential area. The list of permissible uses
11 is to be made at the implementing stage when zoning to carry
12 out the rural residential use designation in the plan is
13 adopted. This implementation has not yet been accomplished.
14 All the county had to go on as to permissible uses within a
15 rural residential area was section 3.520 of the county's
16 present zoning ordinance specifying permissible conditional
17 uses within the IRR-5 zone, a rural residential zone. A
18 neighborhood store is listed as a permissible conditional use
19 within the IRR-5 zone. Because of this, the county argues it
20 was reasonable for the county to conclude that a neighborhood
21 store would not reasonably be expected to conflict with the
22 proposed comprehensive plan which, like the IRR-5 zone,
23 designates this property as suitable for rural residential
24 development.

25 For purposes of complying with the county's conditional use
26 ordinance, we believe the county acted reasonably in construing

1 its conditional use ordinance so as to conclude the
2 neighborhood store would not reasonably be expected to conflict
3 with the proposed comprehensive plan. The proposed
4 comprehensive plan did not change the residential use
5 designation of the property, and the proposed use is presently
6 conditionally allowed within the rural residential
7 designation. Also, we have not been directed to anything in
8 the proposed plan which would prohibit future neighborhood
9 stores within rural residential areas. The only provisions of
10 the proposed comprehensive plan cited to us which could be
11 construed as prohibiting neighborhood stores from being located
12 within an area designated for rural residential appear in
13 section 7.16 of the plan at pages FF 41 and 42. This is an
14 "issue and answers" section of the plan: it sets forth issues
15 and then provides implementation strategies to address the
16 issues. One issue concerns commercial business activities in
17 rural areas:

18 "Commercial business activities are generally
19 considered to be urban uses. However, some retail
20 operations have traditionally been conducted in rural
21 Coos County in order to serve the business needs of
22 farmers (grain, supplies, etc.) as well as the
23 convenience shopping needs of nearby rural residents
24 (gas stations, groceries, taverns, etc.). Some of
25 these rural, commercial uses are located within 'rural
26 centers', while others are 'dispersed.'

23 "What can the county do to ensure sufficient
24 commercial sites appropriate for both urban and rural
25 areas?"

25 The implementation strategy addressing this issue states:
26

1 "Coos County shall (1) permit limited expansion of
2 commercial uses in Rural Centers and (2) designate
3 existing dispersed rural commercial businesses as uses
4 permitted outright. This strategy shall be realized
5 through implementing zoning measures. The limited
6 areal extent of some of the existing dispersed rural
7 commercial uses shall enjoy the benefits of a plan
8 designation as commercial.

9 "This strategy recognizes (1) that commercial
10 expansion within rural centers may be necessary to
11 provide neighborhood shopping to the residents of
12 rural centers and surrounding areas as well as
13 providing limited traveler services for tourists, and
14 (2) that a "commercial" designation rather than a
15 'nonconforming use' designation (grandfathering) is
16 necessary to ensure that the integrity of these
17 existing dispersed rural commercial uses is given
18 maximum protection." (Emphasis in original).

19 We do not believe this plan provision must be read to
20 require that all future neighborhood stores in rural areas be
21 located within rural centers. The strategy only provides that
22 expansion of commercial uses must be allowed to take place in
23 rural centers. It does not necessarily prohibit commercial
24 uses in other than rural centers. We cannot say that Coos
25 County would be violating this strategy if it enacted an
26 ordinance allowing a commercial use outside rural centers as a
27 conditional use. Thus, Coos County interpreted its proposed
28 comprehensive plan reasonably in concluding allowance of the
29 neighborhood store in an area not designated as a rural center
30 does not conflict with the proposed comprehensive plan.
31 Lacking unreasonableness in the county's interpretation of its
32 proposed comprehensive plan, the decision must be affirmed.
33 Bienz v. City of Dayton, 29 Or App 761, 566 P2d 904 (1977).

34 Affirmed.

FOOTNOTES

1
2
3 1
4 The parties concede that the area, although outside any
5 urban growth boundary, is committed to non-resource use by
6 virtue of residential development within the area.

7 2
8 Neighborhood store is defined in section 1.715 of the Coos
9 County Interim Zoning Ordinance of 1975 as follows:

10 "1.715 Neighborhood Store: A retail business
11 selling primarily food products and household supplies
12 which is operated in conjunction with the residential
13 use of the same building used by the owner, operator
14 or employee and occupying no more than 2,500 square
15 feet of building space."

16 3
17 It is unclear from the definition of "neighborhood store"
18 whether 2,500 square feet is the maximum limit on the building
19 or on the store area of the building. Respondent's counsel,
20 however, advised the Board during oral argument that the 2,500
21 square feet referred to total building square footage. In any
22 event, the applicant's proposal is for a store 28 feet by 52
23 feet, or 1,456 square feet.

24 4
25 Determining whether the commercial use (i.e., neighborhood
26 store) is "appropriate for, but limited to, the needs and
27 requirements of the rural area" is a relevant consideration in
28 this case. However, this finding should not be considered a
29 standard for distinguishing between urban and rural uses in all
30 cases. The "appropriate for, but limited to" finding may not
31 be a sufficient means by itself to identify the urban or rural
32 character of other types of uses (e.g., industrial,
33 transportation, recreation uses). Also, other findings may be
34 relevant in determining the urban or rural character of other
35 types of uses.

BEFORE THE
LAND CONSERVATION AND DEVELOPMENT COMMISSION
OF THE STATE OF OREGON

LAND USE
BOARD OF APPEALS

JAN 19 12 55 PM '81

ROBERT E. CONAROW,

Petitioner,

v.

COOS COUNTY,

Respondent.

LUBA 80-114

DEPARTMENT OF LAND CONSERVATION
AND DEVELOPMENT RECOMMENDATION

The Department recommends a footnote be added to line 9, page 5 to clarify the intent and scope of the opinion in LUBA No. 80-114:

⁴Determining whether the commercial use (i.e., neighborhood store) is "appropriate for, but limited to, the needs and requirements of the rural area" is a relevant consideration in this case. However, this finding should not be considered a standard for distinguishing between urban and rural uses in all cases. The "appropriate for, but limited to" finding may not be a sufficient means by itself to identify the urban or rural character of other types of uses (e.g., industrial, transportation, recreation uses). Also, other findings may be relevant in determining the urban or rural character of other types of uses.

DATED THIS 13 DAY OF January, 1981.


W. J. Kvarsten, Director
For the Commission

WJK:RS:cp
4110A