

1 REYNOLDS, Chief Referee.

2 INTRODUCTION

3 Petitioner appeals the county's denial of his request for
4 approval of a tentative subdivision plat for a 38 lot rural
5 residential subdivision adjacent to Collard Lake, a coastal
6 lake in Lane County. The county's denial was based upon its
7 finding that the proposed subdivision did not comply with the
8 county's Coastal Subarea Plan and did not comply with certain
9 statewide planning goals, principally, Goals 4 (Forest Lands)
10 and 17 (Coastal Shorelands). Petitioner alleges that the
11 county's conclusions were in error. We conclude that the
12 county's decision that the proposed subdivision violated the
13 Coastal Subarea Plan was correct and that the county's decision
14 to deny petitioner's tentative subdivision plat must,
15 therefore, be affirmed.

16 STATEMENT OF FACTS

17 Petitioner owns approximately 90 acres near Collard Lake, a
18 small coastal lake in Lane County. The property, for the most
19 part, slopes toward Collard Lake and is separated from Collard
20 Lake by two previously approved subdivisions that border the
21 lake: Collard Lake Acres, First Edition, and Collard Lake
22 Heights. Collard Lake feeds into Clear Lake which serves as
23 the water supply for the Haceta Water District.

24 Petitioner proposed to divide his property into 38 lots.
25 Twenty-six of the lots would slope toward Collard Lake and 12
26 lots would slope away from Collard Lake. The 26 lots sloping

1 toward Collard Lake would be separated from the remaining 12
2 lots by a road proposed to pass through the subdivision on the
3 ridgeline. Hence, 26 lots would be located west of the road,
4 between the road and Collard Lake, and 12 of the lots would be
5 located east of the proposed road.

6 In 1978 petitioner applied to Lane County for an unzoned
7 area development permit which is a permissive first step to
8 obtaining preliminary subdivision plat approval in an area
9 which has no zoning. The West Lane Planning Commission
10 approved the permit but only to the ridgeline (i.e., the
11 location of the proposed road). This decision was appealed to
12 the Board of County Commissioners by a person who was opposed
13 to the granting of the permit. In December of 1978, the Board
14 of Commissioners approved the unzoned area development permit
15 to the edge of petitioner's property, thereby increasing the
16 size of the permit area approved by the planning commission.
17 (Record 245). The board's order approving the permit was based
18 upon 7 findings of fact. One of the findings states:

19 "The applicable comprehensive plan is the Coastal
20 Subarea Plan. This plan designates the property as
21 RURAL RESIDENTIAL. The plan further recommends that
development in such an area be consistent with
physical and environmental constraints."

22 Apparently, after the Board of Commissioners's action in
23 December, 1978, petitioner hired a surveyor and engineer to
24 perform certain preliminary work in order that petitioner could
25 submit a subdivision plat which would minimize or eliminate
26 erosion problems caused by development of the subdivision.

1 Petitioner went so far as to pinpoint within the 38 lots the
2 actual sites for development and the driveways accessing those
3 sites. Petitioner expended approximately \$25,000 to have this
4 rather detailed work performed.

5 Petitioner then filed his request for preliminary
6 subdivision plat approval with the county. The Land
7 Development Review Committee (LDRC) recommended to the West
8 Lane Planning Commission (WLPC) that the subdivision be
9 approved. WLPC considered the petitioner's application for
10 preliminary approval but dismissed the application for reasons
11 unrelated to the merits of the application request. During the
12 course of its consideration of the request, however, the
13 planning staff submitted to WLPC a memorandum which raised, for
14 the first time during the application process, the question of
15 compliance with the county's Coastal Subarea Plan. Under the
16 heading "Plan Designations," the memo stated as follows:

17 "Plan Designations: Uncertain. The Coastal
18 Subarea Plan Diagram show [sic] about 45% of the site
19 in NATURAL RESOURCE: FOREST, about 25% in
20 CONSERVATION, RECREATION AND OPEN SPACE, and about 30%
21 in RURAL RESIDENTIAL. However, WLPC meeting minutes
22 of January 25, 1978 indicate that the WLPC voted to
23 designate RURAL RESIDENTIAL at least some of the area,
24 because '...the east side of Collard Lake is currently
25 developed.' (p. 12, West Lane Planning Commission,
26 Jan. 25, 1978). It is not clear that the WLPC
intended the RURAL RESIDENTIAL designation to include
anything beyond the 'currently developed' area. On
the other hand, Harry Sickler testified at the June
14, 1978, WLPC meeting that Phil Bredeson (the subarea
planner) intended the Collard Lake and Clear Lake
watersheds to be CONSERVATION, RECREATION, OPEN SPACE
with the NATURAL RESOURCE: FOREST to extend east from
the ridgeline only. Mr. Wysong referred to the
January meeting and indicated that the '...motion was

1 made to include this area in the RURAL RESIDENTIAL
2 classification to the ridgeline.' (p. 2, WLPC
minutes, June 14, 1978)."

3 WLPC's decision to dismiss the subdivision application
4 without reaching the merits was appealed by the petitioner to
5 the Board of Commissioners. The minutes of the Board of
6 Commissioners' meeting indicate that it voted to return this
7 request to the planning commission "in order to get it back on
8 the right track." Instead of going to the planning commission,
9 however, the request was referred to the Land Development
10 Review Committee. LDRC voted to deny the subdivision
11 application request on the basis of conflicts with statewide
12 planning Goals 4, 5, 7 and 17.

13 Petitioner appealed LDRC's denial of preliminary plat
14 approval to the Board of Commissioners. At this hearing,
15 petitioner presented considerable evidence concerning statewide
16 Goals 4, 5, and 17. Petitioner also argued that the question
17 of compliance with the subarea comprehensive plan had been
18 decided when Lane County approved the unzoned area development
19 permit and concluded that the property was designated in the
20 subarea plan as rural residential.

21 The Board of Commissioners denied the preliminary
22 subdivision plat request on the basis that the request violated
23 the subarea comprehensive plan as well as statewide Goals 4, 5,
24 and 17. The Board of Commissioners also concluded that the
25 applicant's subdivision was not necessary to meet housing needs
26 in the area and for that reason denial was consistent with Goal

1 10.

2 Concerning its subarea comprehensive plan, the county made
3 the following findings:

4 "8. The subject property is designated Natural
5 Resource: Forest; Conservation, Recreation and Open
6 Space; and Rural Residential on the Coastal Subarea
7 Plan Diagram. According to table 2, page 72, Rural
8 Residential uses are non-conforming uses with the
9 Natural Resource: Forest; and the Conservation,
10 Recreation and Open Space categories. Table 2 states
11 that because of plan non-conformity, a plan amendment
12 is needed if conformance is to be achieved.

13 "According to table 1, page 72, the intent and
14 purpose of both the Natural Resource: Forest
15 designation and the Conservation, Recreation and Open
16 Space designation is to maintain and enhance natural
17 resources. The former designation allows for resource
18 extraction, the latter provides for limited resource
19 extraction. It is clear from the face of these two
20 tables that neither plan designation is compatible
21 with the residential uses proposed on the subject
22 property. (See also Findings of Facts Nos. 13, 14).

23 "9. Based on evidence discussed in Findings of
24 Fact No. 8, the Board finds that the proposed
25 partition fails to conform to the Coastal Subarea
26 Plan."

27 OPINION

28 Petitioner's first assignment of error is that the county
29 erred in concluding that the preliminary subdivision plat
30 conflicted with the Lane County Coastal Subarea Plan.
31 Petitioner argues that the decision as to whether the proposed
32 subdivision complied with the Coastal Subarea Plan was made by
33 the Board of Commissioners on December 28, 1978, when the Board
34 of Commissioners approved the unzoned area development permit.
35 Petitioner argues the approval of this permit was not appealed,
36 and the decision became final. The county could not, as part

1 of the preliminary plat approval proceedings, change its mind,
2 according to petitioner. We disagree.

3 The purpose of an unzoned area development permit under
4 Lane County's zoning scheme is set forth in Lane Code, sec.
5 9.700, as follows:

6 "Many major land use activities proposed for
7 unzoned areas within Lane County may have (1) a
8 potential critical impact upon natural resources,
9 community facilities, orderly development or
10 livability within Lane County, or (2) significant
11 nuisance potential for surrounding persons and
12 properties. The Development Permit is intended to
13 allow the County to review, and control when necessary
14 such major land use and potential nuisance activities
15 proposed for unzoned lands and to allow land owners
16 and residents of any particular area of the County an
17 opportunity to participate in a permit hearing process
18 for these activities. Nothing herein shall be
19 construed to require the granting of a Development
20 Permit."

21 Lane Code, sec. 9.710 states preliminary subdivision
22 applications as defined by Lane Code, chapter 13 are one of the
23 uses and activities subject to a development permit. That
24 section also states:

25 "The application for a preliminary subdivision
26 and a development permit may be filed and processed
concurrently."

Lane Code, sec 9.715 sets forth the criteria to be considered
in granting an unzoned area development permit. Section
9.715(2) states that after the adoption of a subarea
comprehensive plan covering a particular piece of property, a
development permit may be granted upon a showing of compliance
with the comprehensive plan and LCDC statewide Goal 3.

While the foregoing provisions of Lane Code permit an

1 applicant to first request and receive an unzoned area
2 development permit before applying for preliminary subdivision
3 plat approval, nothing in these provisions binds the county
4 during preliminary plat approval to any determination made as
5 part of the unzoned area development permit process. In the
6 absence of such a self-imposed limitation, we are aware of no
7 authority which would hold the county could not make findings
8 different from those made during an earlier but related
9 proceeding. As far as we have been able to determine, the rule
10 is that a jurisdiction may always reconsider whether a proposed
11 use complies with applicable legal criteria unless and until a
12 vested right has been established. Cf Anderson, American Law
13 of Zoning, 2nd Edition, sec 615, 6.24.

14 Petitioner argues he expended a large sum of money in
15 preparing the information required of him by the unzoned area
16 development permit, and as a result of the expenditure of this
17 money, the county could not change its previously stated
18 position that the development complied with the subarea
19 plan.¹ If petitioner is attempting here to argue that the
20 county is estopped from changing its position, we are unable to
21 agree. Petitioner has cited no authority, and we have been
22 able to find none, to suggest estoppel applies against the
23 county under the circumstances presented here.²

24 To the extent petitioner may also be arguing that Lane
25 County was erroneous as a matter of fact in concluding that the
26 proposed subdivision was in violation of the Coastal Subarea

1 Plan, we disagree with petitioner. Even if we were to adopt
2 petitioner's interpretation of what was intended by the Lane
3 County Planning Commission, it is clear that the planning
4 commission intended, at best, only to designate petitioner's
5 property as rural residential to the ridgeline. East of the
6 ridgeline was to be designated Natural Resource: Forestry.
7 Yet, 12 of petitioner's 38 lots lie east of the ridgeline in an
8 area in which there is no dispute that the plan designation was
9 intended to be forestry and which appears on the plan diagram
10 to, in fact, be forestry. As the county found, rural
11 residential uses are, by the terms of the subarea plan,
12 incompatible with forestry uses.

13 Moreover, we believe the plan diagram, although not a model
14 of specificity, does provide support for the county's position
15 that much of petitioner's property west of the ridgeline is not
16 designated rural residential but is designated Conservation,
17 Recreation and Open Space. Comparing the plan diagram
18 contained in the Coastal Subarea Plan with the development plan
19 submitted by petitioner, we conclude that at least 11 and
20 probably as many as 15 of petitioner's proposed lots west of
21 the ridgeline are designated Conservation, Recreation and Open
22 Space in the subarea plan. While there may be some conflict
23 between what the planning commission intended and what the
24 Board of County Commissioners ultimately adopted and approved
25 for this area, it is the Coastal Subarea Plan Diagram which
26 must control unless there is some ambiguity with respect to the

1 plan diagram. As previously mentioned, while the plan diagram
2 is not as specific as it could be, it is reasonably clear that
3 the plan diagram does designate at least some of the lots
4 contained in petitioner's proposed subdivision as Conservation,
5 Recreation and Open Space. Because some of the lots are
6 designated Conservation, Recreation and Open Space, some of the
7 lots are designated Forestry, and the Coastal Subarea Plan
8 states that rural residential uses are incompatible with these
9 designations, we find Lane County was correct in concluding
10 that petitioner's proposed subdivision is inconsistent with the
11 Lane County Coastal Subarea Plan.

12 For the foregoing reasons, Lane County's decision to deny
13 petitioner's application for preliminary plat approval is
14 affirmed.

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FOOTNOTES

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Petitioner does not claim in his petition for review he has a "vested right" to his development. At the hearing, however, he asserted this interest. We are not satisfied that this assertion is timely, and we reach no conclusion as to any possible vested right. We note that Oregon Laws 1979, ch 772 does not suggest this Board has jurisdiction to resolve such a claim.

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The foregoing assumes we have jurisdiction to resolve estoppel claims, a matter which we do not now decide.