

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

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J. R. GOLF SERVICES, INC.,)
)
Petitioner,)
)
HECTOR MACPHERSON, MARJORIE)
NOFZINGER, NORMAN COON,)
)
Petitioners-Intervenors,)
)
v.)
)
LINN COUNTY,)
)
Respondents,)
)
OREGON STATE UNIVERSITY,)
OREGON STATE UNIVERSITY)
FOUNDATION,)
)
Respondents-Applicants.)

LUBA NO. 81-112

FINAL OPINION
AND ORDER

Appeal from Linn County.

Robert L. Liberty, Portland, and Richard H. Renn, Albany, filed a petition for review and Robert L. Liberty argued the cause for Petitioner and Petitioners-Intervenors.

Robert T. Scott, Albany, and Karen Christianson, Deputy County Counsel, Albany, filed a brief and argued the cause for Respondents-Applicants and Respondent respectively.

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

Affirmed. 2/17/82

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 NATURE OF PROCEEDING

3 Petitioners seek reversal of the Linn County Board of
4 Commissioners September 2, 1981 grant of a conditional use
5 permit to Oregon State University and Oregon State University
6 Foundation to allow an 18-hole golf course to be located on 165
7 acres of land zoned exclusive farm use. The land is located
8 immediately east of the Willamette River and the City of
9 Corvallis, Oregon.

10 STANDING

11 Respondent-Applicant Oregon State University and Oregon
12 State University Foundation (hereinafter "OSU") contend that
13 the petitioner J.R. Golf Services and all intervenors lack
14 standing before this Board because they have made no showing
15 that their interests have been adversely affected or that they
16 have been aggrieved by the contested action.

17 Petitioner J.R. Golf Services, Inc.

18 In the Petition for Review, Petitioner J. R. Golf Services,
19 Inc. alleges standing as follows:

20 "Petitioner J. R. Golf Services, Inc., is an
21 Oregon for-profit corporation which operates a public
22 golf course in a market area that includes the site of
23 the proposed golf course. Representatives of the
24 corporation participated in hearings before the Linn
25 County Planning Commission and respondent Board of
26 Commissioners leading to approval of a conditional use
27 permit for the golf course.

"The conditional use permit will adversely affect
and aggrieve petitioner by authorizing a publicly
owned, publicly subsidized golf course in competition
with petitioner's golf course. The O.S.U. course will

1 draw customers away from petitioner's course to
petitioner's detriment." Petition for Review 6.

2
3 OSU contends that J.R. Golf Services, Inc. has failed to
4 allege sufficient facts to establish standing. OSU does not
5 contest the accuracy of the facts alleged by J.R. Golf
6 Services, Inc. but argues that the facts, even if true, do not
7 establish standing. As OSU says:

8 "The fact that OSU will be competing for the
9 recreation dollar with J.R. Golf Enterprises, Inc.,
10 does not mean that J. R. Golf Enterprises has been
11 aggrieved by this land use decision. The fact that
12 the OSU site will be used for a public golf course
13 affects the Petitioner no more than the location of
14 any new golf course within the Corvallis-Albany
15 area." Respondent's Brief 6.

16 OSU argues that the proposed golf course differs
17 significantly from the course owned by Petitioner J. R. Golf
18 Services, Inc. OSU contends that petitioner's golf course was
19 characterized in the record "as short and flat with few
20 hazards, a fun course enjoyed by 95 percent of the golfers."
21 The proposed course, argues OSU, on the other hand was
22 characterized as "long and difficult, replete with sand traps
23 and water, a challenge which, according to Petitioner, would be
24 enjoyed by only a few golfers."

25 OSU claims the petitioner must be affected by the land use
26 decision contested, and the only land use decision involved in
this case is the placement of a golf course on a specific
site. OSU argues there is nothing in the record to show that
the location of the course "on that particular site" will have

1 any effect on Petitioner. OSU reasons that if such an
2 allegation is sufficient to grant standing, the respondent
3 would have standing no matter where a new golf course would be
4 located within the petitioner's market area. OSU argues that
5 petitioner may be affected by the laws of the market place but
6 that alone should not confer standing to participate in this
7 review.

8 We deny respondent's motion to strike the standing of J.R.
9 Golf Services, Inc. The issue here is not, as respondent puts
10 it, whether Petitioner J. R. Golf Services is entitled to a
11 guarantee of non-competition or even whether petitioner's
12 motives are pure. The issue is whether the petitioner has a
13 stake in the outcome of the case. Petitioner meets the
14 requirements of Oregon Laws 1979, ch 772, sec 4(3) which states:

15 "(3) Any person who has filed a notice of intent
16 to appeal as provided in subsection (4) of this
17 section may petition the board for review of a
18 quasi-judicial land use decision if the person:

19 "(a) Appeared before the city, county or special
20 district governing body or state agency orally or in
21 writing; and

22 "(b) Was a person entitled as of right to notice
23 and hearing prior to the decision to be reviewed or
24 was a person whose interests are adversely affected or
25 who was aggrieved by the decision."

26 Petitioner participated in the hearings before the county
commission and planning commission and has testified there to
the effect of competition on its business. As such, it has
established an adverse affect which the Court of Appeals
recognized in Thunderbird Motel v. City of Portland, 40 Or App

1 697 (1979) as sufficient to confer standing upon petitioner.
2 In Thunderbird Motel, Inc., supra, the plaintiff challenged the
3 City of Portland's contract with a firm which was in the
4 process of building a hotel, tennis courts and other
5 improvements which would have the effect of competing with
6 petitioner. Defendant had argued "neither the general interest
7 of a taxpayer absent some special injury not shared by other
8 taxpayers nor the alleged negative effect of increased
9 competition is sufficient to confer standing." The Court of
10 Appeals stated that while Thunderbird's allegations might not
11 have been adequate to confer taxpayer standing,

12 "we hold that the alleged negative effect of increased
13 competition is sufficient to confer standing. See
14 Oregon Newspaper Publishers v. Petersen, 244 Or 116,
15 121, 415 P2d 21 (1966)." 40 Or App at 703.

16 Intervenors MacPherson, Nofziger and Coon.

17 In their petition for review Intervenors MacPherson,
18 Nofziger and Coon allege they are full-time farmers in Linn
19 County. The petition for review states:

20 "All farm land they own and parcels they lease from
21 other landowners. Leased parcels lie in all parts of
22 Linn County, including the vicinity of the proposed
23 golf course. Macpherson has purchased alfalfa and
24 crop residues from the farm adjqning the O.S.U. land
25 holdings. He has also purchased alfalfa from O.S.U.
26 Members of the Coon family attempted to rent the
27 property on which the golf course is proposed but were
28 turned down because O.S.U. was holding the property
29 for the course."

30 The intervenors all assert that the supply of land for
31 leasehold in Linn County is limited. They allege that further
32 reduction in the supply of available land in the face of

1 constant and growing demand increases the price of leased land
2 to area farmers. They further allege that the conditional use
3 permit which is the subject of this proceeding adversely
4 affects and aggrieves them because it takes 165 acres of land
5 from that available to them for leasing and otherwise reduces
6 the supply of leaseable land which, in turn, results in it
7 being more difficult and expensive to carry out their farm
8 operations. Intervenors also allege that they each
9 participated in the hearings before Respondent Linn County.

10 While respondent OSU appears in its response brief to
11 contest the facts alleged by intervenors in their petition for
12 review at a subsequent oral argument on petitioner's motion for
13 an evidentiary hearing, the respondent stated that it was not
14 contesting the truth of the facts plead but rather the legal
15 sufficiency of those facts to confer standing upon
16 intervenors. At oral argument on the merits, respondents
17 reiterated their position that they were not contesting the
18 truth of the facts plead but rather their legal sufficiency.
19 Consequently, we will treat respondent's argument contesting
20 intervenor's standing as one which merely goes to the
21 sufficiency of the facts alleged rather than the truth or
22 untruth of the facts themselves.

23 OSU argues the evidence is unrebutted that in 1980 there
24 were 217,530 acres of land in use for agricultural production
25 in Linn County. OSU argues that removal of 110 acres from
26 production (the amount of land that will actually be used for

1 recreational purposes under the proposal) would remove only
2 3/100 of 1 percent of the total number of acres available for
3 agricultural production in Linn County. OSU argues it is
4 unlikely the removal of such a small percentage of agricultural
5 land for production would have an adverse economic effect on
6 the intervenors.

7 We decline to accept OSU's argument that petitioners'
8 standing should be denied. The test for standing is not
9 whether the intervenor's interests are adversely affected or
10 aggrieved in a "significant" manner. The test is merely
11 whether those persons' interests are adversely affected or
12 aggrieved, regardless of how trifling that adverse affect or
13 aggrievement may be. For the above stated reasons, we find
14 that the petitioner and intervenors all have stated sufficient
15 facts to establish standing to proceed with this appeal. See
16 Davis', Administrative Law of the Seventies, Chapter 22 at 507
17 (1976).

18 ALLEGATIONS OF ERROR

19 "First Assignment of Error: Linn County's finding
20 that the proposed golf course will not remove land
21 suitable for agricultural crop production is
22 unsupported by substantial evidence in the record.

23 "A. The criteria contained in Section 21.450 must be
24 satisfied before the conditional use permit can
25 be granted

26 "B. Linn County's finding that the proposed golf
course satisfied Section 21.450 of the Linn
County Zoning Ordinance is unsupported by
substantial evidence in the record

1 "Second Assignment of Error: The Linn County Board of
2 Commissioners failed to satisfy all the criteria
3 contained in Section 21.870 of the Linn County Zoning
4 Ordinance governing issuance of Willamette Greenway
5 development permits.

6 "Third Assignment of Error: Linn County's grant of
7 the CUP was in violation of the criteria contained in
8 LCDC's interim orders four and five, governing
9 developments in the Willamette Greenway during the
10 pre-acknowledgment period."

11 FACTS

12 On February 17, 1981, OSU applied for a conditional use
13 permit and a Greenway Development Permit to allow construction
14 of an 18-hole championship golf course on 165 acres of land
15 owned by OSU, across the Willamette River from the City of
16 Corvallis. The land is slightly rolling and lies within an
17 exclusive farm use zone and the Willamette River Greenway. The
18 soil is predominantly SCS Class II. On April 28, 1981, the
19 Linn County Planning Commission held a public hearing on the
20 CUP application. The proposed golf course was described as
21 providing a place for Oregon State University students to
22 conduct research in turf development with the cooperation of
23 local grass seed growers. On June 9, 1981, the Linn County
24 Planning Commission denied the requested CUP. On June 18,
25 1981, the applicants filed an appeal with the Linn County Board
26 of Commissioners and on August 12, 1981, a public hearing on
27 the appeal was held. On September 2, 1981, the Board of
28 Commissioners issued their order reversing the planning
29 commission and granting the CUP.

30 A history of the property indicates that Oregon State

1 University purchased a 241 acre parcel on the east bank of the
2 Willamette River in 1951. The minutes of a 1950 State Board of
3 Higher Education meeting reflect that, among other things, the
4 purpose of the purchase of the property was to provide property
5 for agricultural research, physical education and golf. It was
6 not until recently that a sufficient amount of funds was
7 available to go forward with a golf course project. In 1977, a
8 private grant was made to the Oregon State University
9 Foundation with the restriction that the proceeds from the sale
10 of the granted property be used for the construction of a
11 "first-rate championship golf course" on the site. Because,
12 prior to 1977, financing for the project had not been
13 available, 110 acres of the 165 acres which is being projected
14 for golf course use has been farmed by private individuals on a
15 lease basis. The balance of the 165 acres (55 acres) has been
16 used during that period as a driving range and for nonfarm
17 uses.

18 The 165 acre site is directly across the Willamette River
19 from the City of Corvallis. It is bounded on the west and
20 north by the Willamette River, on the south by Highway 34 and
21 on the east by an Oregon State University agricultural research
22 facility, agricultural uses and widely scattered residences.
23 The property is located within the 100 year floodplain and
24 within the Willamette River Greenway. It has a greenway
25 classification as "urban land," except for 5.23 acres in the
26 northeast corner of the property which is classified as "rural

1 land."

2 The maps which are in the record outline the Greenway
3 boundaries and the "urban" and "rural" areas. The "rural area"
4 is a narrow strip of land adjacent to the river in the
5 northeast corner of the proposed golf course. Aerial
6 photographs reveal that approximately two-thirds of the 5.23
7 acre "rural area" consists of natural vegetative fringe
8 adjacent to the riverbank. By the terms of the county's order,
9 the vegetative fringe will remain unchanged. The remainder of
10 the "rural area" consists of a strip of land, perhaps 50 feet
11 wide which will be on the edge of one fairway of the proposed
12 golf course. No buildings will be constructd in that area. It
13 will be simply planted in grass.

14 DECISION

15 First Assignment of Error

16 Petitioners' first assignment of error is two-fold.
17 Petitioners contend that first, Linn County Ordinance Section
18 21.450 must be satisfied before the county can grant the
19 conditional use permit. Petitioners then argue that Section
20 21.450 has not been satisfied, and the county finding that it
21 has been is unsupported by substantial evidence in the record.
22 The threshold question, therefore, is whether Linn County
23 Zoning Ordinance Section 21.450 is applicable to this
24 proceeding. Respondents take the position that Section 21.450
25 is not applicble and that the findings made by Linn County
26 Board of Commissioners addressing Section 21.450 are mere

1 surplusage and should be disregarded by this Board on appeal.
2 We agree with respondents and, therefore, deny petitioners'
3 first assignment of error. We find it unnecessary to address
4 the second part of petitioner's first assignment of error. The
5 question of substantial evidence need not be addressed since
6 the criteria are not applicable.

7 Section 21.450 fits within Linn County Ordinance
8 Sub-Article 21.4 entitled "Residences and Divisions of Land in
9 the FCM, EFU & F/F Districts." Section 21.410 entitled
10 "Statement of Purpose" states as follows:

11

12 "The purpose of this Sub-Article shall be to
13 provide criteria and procedures for the location of
14 residences and the division of land in the Forest
15 Conservation Management, Exclusive Farm Use and
16 Farm-Forest Districts, which both allows for the
17 utilization of non-productive lands for rural
18 residential use while protecting these agricultural
19 and forest areas from an unwarranted influx of rural
20 residential development." (Emphasis added)

17

18 Unlike this purpose statement which limits the "sub-article's"
19 scope to "residential" development, Section 21.450 does not
20 specifically refer to only residences but also contains the
21 word "use."¹ It is the inclusion of the word "use" which
22 causes confusion and requires that we review Section 21.450 in
23 the context of the other provisions of the Linn County
24 Ordinance.

25 / /

26 / /

1 First of all, the similarity between the criteria set forth
2 in Linn County Ordinance Section 21.450 and the criteria set
3 forth in ORS 215.213(3) should be noted.² Respondents
4 contend that Section 215.450 does not apply to golf courses.
5 Pointing to its "purpose" statement, supra, respondents argue
6 that Sub-Article 21.4 is simply not applicable to a request to
7 develop a golf course but rather is limited in its scope to the
8 location of residences and certain divisions of land within the
9 districts governed by the sub-article. Respondents argue that
10 since no residence is being proposed and no division of land is
11 being requested, Section 21.450 is not applicable. Respondents
12 further argue that Sub-Article 21.4 is but one of a series of
13 "Sub-Articles" under Article 21 which were developed to deal
14 with "specific" conditional uses in "specific" zoning
15 districts.³ Respondents argue it is readily apparent from
16 reviewing the special conditional review "Sub-Articles" that
17 golf courses do not require special consideration.

18 Respondents contend their argument that Sub-Article 21.4 is
19 not applicable to a request to develop a golf course is further
20 supported when Linn County Ordinance Section 6.040, which lists
21 the uses permitted conditionally in an exclusive farm use
22 district, is examined.⁴ Respondents point out that items 1
23 through 5 of Section 6.040 list residential uses permitted
24 conditionally in the exclusive farm use district. Each of
25 those items, (1 through 5), indicates that certain provisions
26 of Sub-Article 21.4 apply. As an example, consider Section

1 6.040(3) which permits:

2 "One single-family dwelling or one mobile home not in
3 conjunction with a farm or forest use on a parcel of
4 less than 40 acres, pursuant to provisions of
Sub-Article 21.4, Section 21.450 of this Ordinance."
(Emphasis added).

5 Respondents further reason that items 10-12 of Section 6.040
6 list uses permitted conditionally in the exclusive farm use
7 zone, "subject to special conditional use review." Those
8 subsections, argue respondents, identify uses which are also
9 the subject of specific sub-articles under the special
10 conditional use review procedures of Article 21.

11 By contrast, point out respondents, items 6, 7, 8, 9, 13
12 and 14 of Section 6.040 list uses permitted conditionally in
13 exclusive farm use districts with no reference to special
14 conditional use review or to Article 21 or the sub-articles
15 thereunder, i.e. Sub-Article 21.4. Included in item 14 of
16 Section 6.040 are golf courses. Section 6.040(14) states:

17 "Private parks, playgrounds, hunting and fishing
18 preserves, campgrounds and golf courses." (Emphasis
added).

19 Since 6.040(14) does not state that special conditional use
20 review procedures are required for golf courses and since golf
21 courses are not one of the special uses identified by any of
22 the sub-articles to Section 21, it follows that no special
23 rules apply to golf courses. Therefore the respondents
24 conclude that the only criteria to be applied are those set out
25 in Linn County Ordinance Section 20.035 (Conditional Use
26 Permit: Criteria for Approval) and do not as petitioners

1 contend, include those listed in Section 21.450.

2 We agree with respondents and conclude that the only
3 criteria which applies to the development of a golf course in
4 the EFU zone are those set forth in Linn County Zoning
5 Ordinance Section 20.035 which states:

6 "A Conditional Use Permit may be granted only if
7 the proposal conforms to all of the following general
8 criteria, as well as to all other applicable criteria
9 set forth under the Special Conditional Use Review
10 Procedures of Article 21 of this Ordinance:

11 "1. That the location, size, design, and operating
12 characteristics of the proposed development will
13 be compatible with and will not adversely affect
14 the livability or the appropriate development of
15 abutting properties and the surrounding
16 neighborhood.

17 "2. That the location, design, and site planning of
18 the proposed development will be as attractive as
19 the nature of the use and its location and
20 setting warrants.

21 "3. That the proposed development will provide a
22 basic service to the community or region."

23 We find nothing in the Linn County zoning ordinances to support
24 petitioner's argument that the special conditional use review
25 procedures of Article 21 apply to a golf course. In addition
26 to the respondents analysis set forth above we find our
conclusion is supported by a review of ORS 215.213(2) which
allows the establishment of golf courses in an EFU zone subject
to the approval of the governing body or its designate. This
Board has held in prior decisions that the term "subject to the
approval of the governing body" requires that standards be
established by which that approval may be granted. Those

1 standards have generally been held to be sufficient if they are
2 equivalent to the local government's conditional use
3 provisions. Scappoose Drainage District v. Columbia County, 2
4 Or LUBA 174 (1981); Kalmiopsis Audubon Society v. Curry
5 County, ___ Or LUBA ___ (LUBA No. 81-067, 1981). The general
6 conditional use standards set forth in Linn County Zoning
7 Ordinance Section 20.035 were applied to this decision by Linn
8 County and petitioners do not attack the county's findings in
9 support of its conclusion that 20.035 has been complied with.
10 For the above stated reasons we deny petitioners' first
11 assignment of error.

12 Second Assignment of Error

13 The petitioners next claim that Linn County failed to
14 satisfy all the criteria contained in Section 21.870 of the
15 Linn County Zoning Ordinance governing issuance of Willamette
16 Greenway Development Permits. There are 18 criteria under
17 Section 21.870 but petitioners contend only that the first one,
18 "agricultural land shall be preserved and maintained for farm
19 use," has not been met. Petitioners argue that none of the
20 findings by the Linn County Board of Commissioners addresses
21 the requirement that the land be "preserved and maintained for
22 farm use." Petitioners argue that "the golf course will take
23 agricultural land out of production just as effectively as if
24 the entire area was paved for a parking lot." They argue they
25 have established the current and potential use of the land for
26 agricultural production and that the granting of the

1 conditional use permit will eliminate agricultural lands
2 maintained for farm use and substitute a non-agricultural
3 recreational use in violation of the Respondent Linn County's
4 Zoning Ordinance.

5 Respondents argue, however, that not only is the golf
6 course a farm use as the Linn County Board of County
7 Commissioners found but that the use of the property for a golf
8 course is compatible with the legislative policy for enacting
9 ORS 390.310 through 390.368 inclusive ("Willamette River
10 Greenway").⁵ Respondents also argue that the allowance of a
11 golf course in the Greenway is within the scope of Statewide
12 Goal No. 15 ("Willamette River Greenway") Overall Goal
13 Statement."

14 In pertinent part, Linn County Zoning Ordinance Section
15 21.870 states:

16 "In reviewing an application for a Greenway
17 Development Permit, compliance with the following
18 criteria shall be required.

19 "1. Agricultural lands shall be preserved and
20 maintained for farm use."

21 In relation to the Section 21.870, the Linn County Board of
22 Commissioners made findings on all 18 criteria. Since
23 petitioners only address criterion no. 1, our scope of review
24 will be limited to Linn County's findings regarding that
25 standard. Specifically, Linn County Board of Commissioners
26 found as follows:

"Finding: The proposed golf course will provide areas
for testing and maintenance of grass crop under field

1 conditions to determine the suitability of such
2 grasses for use by golf courses. This information
3 will be utilized by the grass seed industry and
4 marketing grass species for such uses.

5 ** * * *

6 "Legal Conclusion: Development of the golf course
7 will result in benefits to local grass seed producers
8 through provision of areas demonstrating and testing
9 field grasses.

10 "Legal Conclusion: The location of gravel knolls
11 limits the potential for use of tax lot 600 for
12 agricultural purposes.

13 "Legal Conclusion: Should a need for agricultural
14 land develop, 97 percent of area not developed with
15 buildings and pavement can be converted to
16 agricultural use.

17 "CRITERIA: Section 21.450(2).* The use will not
18 seriously interfere with usual and normal farm or
19 forest practices which may occur on adjacent
20 agricultural lands, such as hazardous pesticide or
21 herbicide applications, noise, dust, smoke or
22 offensive odors. [*We note that Section 21.450 did
23 not need to be addressed. See discussion supra.]

24 ** * * *

25 "Finding: Faculty members of the OSU Agricultural
26 Experimentation Station indicated that sufficient land
27 exists for continued use of the area for agricultural
28 experimentation, and that horticultural
29 experimentation would be enhanced on adjacent lands;

30 "Finding: Golf courses are composed of green spaces
31 and trees, shrubs and grasses. Such green spaces are
32 common in areas under agricultural use.

33 "Finding: Development of the proposed golf course
34 will provide an educational facility, and will enhance
35 existing educational opportunities in turf management
36 and physical education offered at Oregon State
37 University, including courses in turf management,
38 application of pesticides and herbicides, cultural
39 practices, seed testing and golfing.

40 ** * * *

1 "Legal Conclusion: The proposed golf course will
2 enhance agricultural experimentation opportunities at
3 OSU by providing both educational facilities for
4 instruction in turf management and for demonstration
5 of grass capabilities under working conditions. Such
6 uses will not interfere with surrounding agricultural
7 uses." Record 4-6.

8 Petitioners do not contend that these findings are
9 unsupported by substantial evidence in the record. Their
10 allegation of error merely is that "none of these findings
11 addresses the requirement the land be preserved and maintained
12 for agricultural use." We disagree. The findings indicate
13 that the property will be used for agricultural purposes such
14 as experimentation in grass seed production and herbicide and
15 pesticide experimentation as well as field condition testing of
16 golf course grasses. For the above stated reasons,
17 petitioners' second assignment of error is denied.

18 Third Assignment of Error

19 Petitioners next allege that Linn County's grant of the
20 conditional use permit is in violation of the criteria
21 contained in LCDC's interim orders 4 and 5 governing
22 developments in the Willamette Greenway during the
23 pre-acknowledgment period. It appears petitioners are arguing
24 that the proposed golf course is an "intensification, change of
25 use or development" within the meaning of OAR 660-20-017. If
26 the golf course is an "intensification, change of use or
27 development" then a "Rural Area Greenway Extraordinary
28 Exception" was required and petitioners argue Linn County did
29 not properly take such an exception.⁶ OAR 660-20-017 provides

1 in part:

2 "Rural Areas: No intensification, change of use, or
3 development shall be permitted in rural areas within
4 150 feet of the ordinary low-water line nor for
5 commercial manufacturing, industrial, or subdivision
6 purposes within the Greenway boundaries, except in
7 such cases as may be authorized by a county under the
8 rural area Greenway Extraordinary Exception procedures
9 set forth in 660-20-030. Intensification, change of
10 use, or development for other than commercial,
11 manufacturing, industrial, or subdivision purposes
12 beyond 150 feet of the ordinary low water line may be
13 permitted by a county in a rural area when authorized
14 under the Greenway Conditional Use Procedure set forth
15 in 660-20-025 of this order. Changes, modifications,
16 and other practices customarily related to farm use, *
17 * * shall not be considered an intensification, change
18 of use, or development for the purpose of this order."

19 Citing 660-20-017(3)(d), respondents contend that no
20 extraordinary exception was required since the golf course will
21 "protect, conserve, enhance and maintain the public
22 recreational" uses on public lands and, therefore, fits within
23 an exception to the provisions of OAR 660-20-017. As such,
24 they argue, the golf course is not considered an
25 "intensification, change of use, or development." Respondents
26 point out the record is unrebutted that the golf course will be
a "public recreational" facility. The record also contains a
letter which indicates that the Oregon Department of
Transportation, which has ultimate responsibility for the
Greenway (ORS Chapter 390) has recognized the property to be in
public ownership.

27 OAR 660-20-017(3)(d) states:

28 "(3) Intensification, Change of Use, or
29 Development Exception. Intensification, change of
30

1 use, or development in urban and rural areas do not
2 include:"

3 "(d) Activities to protect, conserve, enhance,
4 and maintain public recreational, scenic, historical,
5 and natural uses on public lands;"

6 We agree with respondents. The county findings as a whole
7 indicate the golf course will protect, conserve, enhance, and
8 maintain public recreational, scenic, historical and natural
9 uses on public land. There is no magical form for findings in
10 a land use action. Sunnyside Neighborhood v. Clackamas Co.
11 Comm., 280 Or 3, 569 P2d 1063 (1977). The record supports such
12 findings.

13 Furthermore, even if the golf course were not exempt, the
14 activity proposed to be undertaken on "rural land" does not
15 fall within the definitions of change of use, intensification
16 or development. OAR 660-20-005(1) defines "change of use" as
17 follows:

18 "* * * making a different use of the land or water
19 than that which existed on December 6, 1975. It
20 includes a change which requires construction,
21 alterations of the land, water, or other areas outside
22 of existing buildings or structures and which
23 substantially alters or affects the land or water. It
24 does not include a change of use of a building or
25 other structure which does not substantially alter or
26 affect the land or water upon which it is situated.
Change of use shall not include the completion of a
structure for which a valid permit has been issued as
of December 6, 1975, and under which permit
substantial construction has been undertaken by July
1, 1976. The sale of property is not in itself
considered to be a change of use. An existing open
storage area shall be considered to be the same as a
building.

1 "Landscaping, construction of driveways,
2 modifications of existing structures, or the
3 construction or placement of such subsidiary
4 structures or facilities as are usual and necessary to
5 the use and enjoyment of existing improvements shall
6 not be considered a change of use for the purposes of
7 this order." (Emphasis added).

8 OAR 660-20-005(5) defines "intensification" as:

9 "* * * any additions which increase or expand the
10 area or amount of an existing use, or the level of
11 activity. * * * Landscaping, construction of
12 driveways, modification of existing structures, or
13 construction or placement of such subsidiary
14 structures or facilities adjacent to the residence as
15 are usual and necessary to such use and enjoyment
16 shall not be considered an intensification for the
17 purposes of this order. Seasonal increases in gravel
18 operations shall not be considered an intensification
19 of use." (Emphasis added).

20 "Development" by definition under 660-20-005(2)

21 "means the act, process, or result of developing.
22 (The definitions of 'develop' and 'development' should
23 be read in harmony with the definitions of
24 'intensification' and 'change of use', since it is not
25 the intention of the Commission to include in the
26 definitions of 'develop' and 'development' any of the
27 items excluded specifically from the meanings of
28 'intensification' or 'change of use'.)"

29 The facts reveal that the only activity that will be taking
30 place on the 5.23 acre portion of the golf course now
31 designated "rural area" will be leveling and the planting of
32 some grass that does not now exist. The leveling and planting
33 activity will take place only on a small part of the five plus
34 acre portion. The activity is equivalent to landscaping which
35 the definitions above cited indicate is not a change of use,
36 intensification or development. Finally, the leveling and
37 planting activity is not a change which appears to

1 "substantially alter or affect the land or water upon which it
2 is situated."

3 For the foregoing reasons, petitioners' third assignment of
4 error is denied.

5 Affirmed.

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FOOTNOTES

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SECTION 21.450 states:

"CRITERIA FOR REVIEW OF NON-FARM OR NON-FOREST RELATED USES"

"In a Forest Conservation and Management (FCM), Exclusive Farm Use (EFU), or Farm-Forest (F/F) District, the location of a non-farm or non-forest related residence or use may be permitted through Hearings Board or Planning Commission review and approval if the following criteria for approval can be met:

- "1. The use will not remove land suitable for agricultural or forest resource crop production.
- "2. The use will not seriously interfere with usual and normal farm or forest practices which may occur on adjacent agricultural lands, such as hazardous pesticide or herbicide applications, noise, dust, smoke or offensive odors.
- "3. The use will not materially alter the stability of the overall land use pattern in the area.
- "4. Considering the soil capabilities identified by the Soil Conservation Service, Department of Revenue, and the Department of Forestry, the use will be located on land not generally suitable for the production of farm crops, forest crops, or livestock as conducted in that particular area, considering the soils, slope, vegetation, size, shape or other physical characteristics of the parcel.
- "5. The proposed site has the appropriate physical characteristics such as adequate drainage, proper sanitation and water facilities, and the aesthetic qualities for non-resource use development." (Emphasis added).

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ORS 215.213(3) states:

"(3) Single-family residential dwellings, not provided in conjunction with farm use, may be established, subject to approval of the governing body

1 or its designate in any area zoned for exclusive farm
use upon a finding that each such proposed dwelling:

2 "(a) Is compatible with farm uses described in
3 subsection (2) of ORS 215.203 and is consistent with
4 the intent and purposes set forth in ORS 215.243; and

5 "(b) Does not interfere seriously with accepted
6 farming practices, as defined in paragraph (c) of
7 subsection (2) of ORS 215.203, on adjacent lands
8 devoted to farm use; and

9 "(c) Does not materially alter the stability of
10 the overall land use pattern of the area; and

11 "(d) Is situated upon generally unsuitable land
12 for the production of farm crops and livestock,
13 considering the terrain, adverse soil or land
14 conditions, drainage and flooding, vegetation,
15 location and size of the tract; and

16 "(e) Complies with such other conditions as the
17 governing body or its designate considers necessary."

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The title of the Sub-Articles identify the uses which
require special consideration and the application of special
criteria. Those titles are as follows:

"SUB-ARTICLE 21.1 CARETAKER RESIDENCE IN INDUSTRIAL
DISTRICTS. (App. 9)

"SUB-ARTICLE 21.2 TEMPORARY MEDICAL HARDSHIP MOBILE
HOME. (App. 12)

"SUB-ARTICLE 21.3 OIL, NATURAL GAS AND GEOTHERMAL
EXPLORATION AND EXTRACTION. (App.
16)

"SUB-ARTICLE 21.4 RESIDENCES AND DIVISIONS OF LAND IN
THE FCM, EFU, AND F-F DISTRICTS.
(App. 19)

"SUB-ARTICLE 21.5 EXPANSION OF MOBILE HOME PARKS.
(App. 23)

"SUB-ARTICLE 21.6 EXTRACTION AND PROCESSING OF
AGGREGATE RESOURCES. (App. 27)

"SUB-ARTICLE 21.7 SOLID WASTE DISPOSAL SITES. (App.
31)

1 "SUB-ARTICLE 21.8 CRITERIA AND PROCEDURES FOR
2 WILLAMETTE RIVER GREENWAY
3 DEVELOPMENT PERMITS. (App. 35)

4

4 Section 6.040

5 "USES PERMITTED THROUGH PLANNING COMMISSION
6 CONDITIONAL USE REVIEW

6 "In an Exclusive Farm Use (EFU) District, the
7 following buildings and uses and their accessory
8 buildings and uses are permitted subject to Planning
9 Commission Conditional Use Review pursuant to
provisions of this Ordinance, and subject to the
general provisions and exceptions set forth below:

- 10 "1. One single-family dwelling or one mobile home in
11 conjunction with a farm or forest use on a parcel
12 of less than 40 acres, pursuant to provisions of
Sub-Article 21.4, Section 21.440 of this
Ordinance.
- 13 "2. One single-family dwelling or one mobile home not
14 in conjunction with a farm or forest use on a
15 parcel of 40 acres or greater, pursuant to
provisions of Sub-Article 21.4, Section 21.450 of
this Ordinance.
- 16 "3. "One single-family dwelling or one mobile home
17 not in conjunction with a farm or forest use on a
18 parcel of less than 40 acres, pursuant to
provisions of Sub-Article 21.4, Section 21.450 of
this Ordinance."
- 19 "4. Accessory residences in conjunction with a farm
20 or forest use for persons employed on the
21 premises at a ratio not to exceed one unit per 20
acres, pursuant to provisions of Sub-Article
21.4, Section 21.450 of this Ordinance.
- 22 "5. Farm labor camps as defined in this Ordinance,
23 and pursuant to provisions of Sub-Article 21.4,
Section 21.450 of this Ordinance.
- 24 "6. Churches, schools, parks, playgrounds or
25 community centers owned or operated by a
governmental agency, or private non-profit
26 community organization.

1 "7. Utility facilities necessary for public service
as defined in this Ordinance.

2 "8. Facilities for primary processing of forest
3 resources as defined in this Ordinance.

4 "9. Commercial activities in conjunction with farm
use as defined in this Ordinance.

5 "10. Oil, natural gas and/or geo-thermal resource
6 exploration and extraction subject to Special
Conditional Use Review.

7 "11. Solid waste disposal sites subject to Special
8 Conditional Use Review.

9 "12. Extraction and processing of aggregate resources
subject to Special Conditional Use Review.

10 "13. Private airports and heliports as defined in this
11 Ordinance, including use of such facilities for
skydiving activities.

12 "14. Private parks, playgrounds, hunting and fishing
13 preserves, campgrounds and golf courses."

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15 ORS 390.314(1), (2) and (2)(a), (b), and (e)

16 "(1) The Legislative Assembly finds that, to
17 protect and preserve the natural, scenic and
recreational qualities of lands along the Willamette
18 River, to preserve and restore historical sites,
structures, facilities and objects on lands along the
19 Willamette River for public education and enjoyment
and to further the state policy established under ORS
20 390.010, it is in the public interest to develop and
maintain a natural, scenic, historical and
21 recreational greenway upon lands along the Willamette
River to be known as the Willamette River Greenway.

22 "(2) In providing for the development and
23 maintenance of the Willamette River Greenway, the
Legislative Assembly:

24 "(a) Recognizing the need for coordinated
25 planning for such greenway, finds it necessary to
provide for development and implementation of a plan
26 for such greenway through the cooperative efforts of
the state and units of local government.

1 "(b) Recognizing the need of the people of this
2 state for existing residential, commercial and
3 agricultural use of lands along the Willamette River,
4 finds it necessary to permit the continuation of
5 existing uses of lands that are included within such
6 greenway; but, for the benefit of the people of this
7 state, also to limit the intensification and change in
8 the use of such lands so that such uses shall remain,
9 to the greatest possible degree, compatible with the
10 preservation of the natural, scenic historical and
11 recreational qualities of such lands.

12 "* * * *

13 "(e) Recognizing the lack of need for the
14 acquisition of fee title to all lands along the
15 Willamette River for exclusive public use for
16 recreational purposes in such greenway, finds it
17 necessary to limit the area within such greenway that
18 may be acquired for state parks and recreation areas
19 and for public recreational use within the boundaries
20 of units of local government along the Willamette
21 River."

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6 OAR 660-20-030 states:

"(1) The Rural Area Greenway Extraordinary
Exception is to be used sparingly for unusual cases
only and within the limits prescribed in this order so
as not to adversely affect the Greenway.

"(2) The county governing body may authorize any
Greenway Extraordinary Exception to 660-20-017 of this
order in rural areas and issue a permit when, using the
same procedures provided in 660-20-025(3), the county
governing body finds from record:

"(a) That there is an extraordinary, unnecessary
and unreasonable hardship caused by strict,
enforcement of this order which can be relieved only
by authorizing an Exception to this Order;

"(b) That there are extraordinary circumstances
and conditions applying to the land, building, or use
which do not apply generally to other such lands,
buildings, or uses in the Willamette River Greenway;

1 "(c) That the granting of the Exception will not
2 be materially detrimental to the Willamette River
3 Greenway in the area affected by the proposed
4 Exception;

5 "(d) That the granting of the Exception will be
6 in general harmony with the intent and purpose of this
7 order and will be consistent with the adopted
8 Comprehensive Plan;

9 "(e) That a copy of any application has been
10 sent and processed in the same manner as is provided
11 in 660-20-025(5) of this order; and

12 "(f) That the county makes the same findings as
13 those required in 660-20-025(2)(b)(A), (B), and (C) of
14 this order.

15 "(3) In authorizing a Greenway Extraordinary
16 Exception, the governing body may impose such
17 conditions as it determines to be necessary to insure
18 that the purposes and intent of the Willamette River
19 Greenway are realized.

20 "(4) The governing body authorizing an
21 Extraordinary Exception, shall file a copy with the
22 recording office in which the lands subject to the
23 exception are located for inclusion in the Willamette
24 River Greenway Plan and Program."
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1 "(c) That the granting of the Exception will not
2 be materially detrimental to the Willamette River
3 Exception;

4 "(d) That the granting of the Exception will be
5 in general harmony with the intent and purpose of this
6 order and will be consistent with the adopted
7 Comprehensive Plan;

8 "(e) That a copy of any application has been
9 sent and processed in the same manner as is provided
10 in 660-20-025(5) of this order; and

11 "(f) That the county makes the same findings as
12 those required in 660-20-025(2)(b)(A), (B), and (C) of
13 this order.

14 "(3) In authorizing a Greenway Extraordinary
15 Exception, the governing body may impose such
16 conditions as it determines to be necessary to insure
17 that the purposes and intent of the Willamette River
18 Greenway are realized.

19 "(4) The governing body authorizing an
20 Extraordinary Exception, shall file a copy with the
21 recording office in which the lands subject to the
22 exception are located for inclusion in the Willamette
23 River Greenway Plan and Program."

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3 J. R. GOLF SERVICES, INC.)
4 HECTOR MAC PHERSON, MARJORIE)
5 NOFZIGER, and NORMAN COON,)

6 Petitioners,)

7 v.)

8 LINN COUNTY, OREGON STATE)
9 UNIVERSITY, and OREGON STATE)
0 UNIVERSITY FOUNDATION)

1 Respondents.)

LUBA NO. 81-112

CA A23989

10 * * * * *

11 Submitted on reversal and remand from the Oregon Court of
12 Appeals, March 23, 1983.

13 Judicial Review from the Land Use Board of Appeals.

14 IT IS HEREBY ORDERED that the previous opinion dated
15 February 17, 1982 is vacated and this appeal is hereby remanded
16 consistent with the opinion and order of the Court of Appeals
17 in J. R. Golf Services, Inc. v. Linn County, 62 Or App 360,
18 ___ P2d ___ (1983).

19 Dated this 29th day of June, 1983.