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

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DESCHUTES DEVELOPMENT)
COMPANY and)
NORTHWOODS LANDS, INC.,)
Petitioners,)
vs.)
DESCHUTES COUNTY)
Respondent.)

LUBA No. 79-018

FINAL OPINION
AND ORDER

Appeal from Deschutes County.

Robert S. Lovlien, Bend, filed the Petition for Review on behalf of Petitioners.

Richard L. Isham, Bend, filed the brief on behalf of Respondent.

REYNOLDS, Chief Referee; COX, Referee; BAGG, Referee; participated in this decision.

AFFIRMED

3/19/82

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 REYNOLDS, Chief Referee.

2 INTRODUCTION

3 Petitioner appeals the county's comprehensive plan and
4 zoning designation of RR-10 (Rural Residential, 10 acre minimum
5 lot size) for petitioner's property . Petitioner's property is
6 known as the Deschutes River Woods Subdivision containing 2,114
7 platted parcels located on 2,340 acres. The property is five
8 miles south of the Bend urban growth boundary. The parcels on
9 the property average approximately one acre in size, although
10 there are a few parcels within the subdivision which appear to
11 be 20 acres or more in size. Petitioner's property was first
12 platted in 1962.

13 The comprehensive plan and zoning designation on
14 petitioner's property which petitioner challenges was
15 acknowledged as in compliance with the statewide planning goals
16 by the Land Conservation and Development Commission on May 11,
17 1981. The predecessor to the Deschutes County Year 2000 Plan,
18 the 1990 Plan, also designated petitioner's property as rural
19 residential but the implementing zoning ordinance placed a five
20 acre minimum lot size on petitioner's property.

21 OPINION

22 The assignments of error section of petitioner's brief is
23 divided into four parts as follows:

- 24 A. "The Deschutes County Year 2000
25 Comprehensive Plan has failed to adequately
26 address the Deschutes River Woods
Subdivision."

1 B. "The only consideration given by respondent
2 to Deschutes River Woods was whether its
3 exceptions policy relating to soils'
4 classifications I - VI meant the subdivision
5 should be zoned MUA-10 rather than RR-10."

6 C. "The respondent's comprehensive plan does
7 not adequately protect existing subdivisions
8 whose parcel sizes are smaller than the
9 parcel size minimums of the overlaying zone."

10 D. "There is no evidence to support contention
11 that further subdivision activity with
12 Deschutes River Woods should be prohibited."

13 We can find no basis in petitioner's assignments of errors for
14 remanding or reversing the county's adoption of its Year 2000
15 Comprehensive Plan and implementing zoning ordinance, and
16 therefore, affirm the county's decision.

17 Petitioner's first assignment of error is that the county
18 inadequately addressed the Deschutes River Woods Subdivision.
19 Petitioner says, in effect, the county ignored the present
20 nature of the subdivision in adopting the comprehensive plan.
21 The 1990 Plan recognized the subdivision for what it is - a
22 "suburban residential area of a significant magnitude."
23 Petition for Review at 3. The present plan and zoning
24 designations are not consistent with what presently exists at
25 Deschutes River Woods,¹ says petitioner.

26 We cannot tell what legal theory petitioner is advancing to
support this assignment of error. There are, however, a number
of possibilities. One possibility is that petitioner is
claiming a vested right to a different plan and zone
designation because of the level of development on the property

1 at the time of the adoption of the Year 2000 Plan and zoning
2 designation.² Another possibility is that the county's
3 decision was contrary to the evidence in the record and
4 unreasoned, and was thus arbitrary and capricious. A third
5 possibility is that the decision violated Goal 2, Land Use
6 Planning, in not being based on the evidence in the record.

7 We will not speculate as to the legal basis or bases upon
8 which petitioner is attempting to structure its case. It is
9 petitioner's responsibility, we believe, to not only allege the
10 facts which support his claim but also to tell us the basis
11 upon which we might grant relief. It is not our function to
12 supply petitioner with legal theories or to make petitioner's
13 case for petitioner. Petitioner has failed in its first
14 assignment of error to state a basis upon which we might grant
15 relief. Petitioner's first assignment of error is denied.

16 Petitioner's second assignment of error seems, again, to be
17 couched in terms of the county's asserted failure to adequately
18 consider Deschutes River Woods. Petitioner says the county
19 only considered whether the subdivision should be designated
20 MUA (Multiple Use Agriculture) or RR (Rural Residential).
21 Petitioner says consideration of the parcel as agriculture
22 should hardly have been necessary because the subdivision is 20
23 years old and has over 2,000 platted lots. The county, argues
24 petitioner, should have given Deschutes River Woods more
25 consideration; yet, considering whether the parcel should be
26 agriculture or rural residential was the only specific

1 consideration given to Deschutes River Woods by the county.

2 As with petitioner's first assignment of error, no legal
3 basis is set forth by which we might be able to say the county
4 erred. We cannot supply that legal basis for petitioner.

5 Petitioner's third assignment of error is that the Year
6 2000 Plan does not adequately protect existing subdivisions
7 "whose parcel sizes are smaller than the parcel size minimum of
8 the overlaying zone." Petition for Review at 7. The zone for
9 petitioner's property calls for a ten acre minimum lot sizes
10 but the existing lots are approximately one acre in size.

11 Petitioner chastises the county for adopting only the following
12 policy to deal with this situation:

13 "Pre-existing status shall be granted to
14 subdivisions and partitions with at least preliminary
15 approval and buildings with at least an issued
16 building permit at the time of plan adoption by the
17 Board of County Commissioners." Record at 57.

18 Petitioner believes it is unclear what "pre-existing status"
19 means or whether the provision applies to "existing final plats
20 or only plats with preliminary approval at the time of plan
21 adoption." Petitioners say the savings clause probably does
22 more harm than good because of the confusion and uncertainty
23 which it causes.

24 First, we have difficulty agreeing with petitioner's
25 assertion that the above provision in the plan is the only
26 provision which speaks to existing subdivisions. Page 51 of
27 the plan (Record at 55) also addresses this issue as follows:

28 "Parcels legally existing at the time of this

1 plan's adoption shall continue to function as legal
2 lots and will not be unduly affected by the new lot
3 size. The county will develop mechanisms to encourage
4 the replatting of existing rural subdivisions to
5 cluster the dwellings in a more efficient manner; this
6 shall apply primarily in the La Pine and Sisters."

7
8 Second, we again fail to see any legal basis asserted by
9 petitioner upon which we might reverse or remand the county's
10 plan and zoning designation for petitioner's property. This
11 assignment of error is, therefore, denied.

12
13 Petitioner's final contention is that there is no evidence
14 which supports the county's determination that further
15 subdivision activity should be prohibited within Deschutes
16 River Woods. Petitioner argues that it submitted for the
17 county's consideration certain areas within Deschutes River
18 Woods that could be resubdivided for additional residential
19 lots. Petitioner argues that the county, however, took the
20 position that it would refuse to allow further subdivision.
21 Petitioner argues Deschutes River Woods is "probably a primary
22 source" of less expensive building lots and is certainly an
23 urbanized area even though not within an urban growth
24 boundary. Petitioner impliedly asserts that to ignore the
25 residential development potential of Deschutes River Woods
26 might be at odds with the requirement of Goal 10 that a variety
of housing types be encouraged.

27
28 First, we disagree that the county has prohibited any
29 further subdivision activity within Deschutes River Woods in
30 adopting its comprehensive plan and zoning designation. The

1 portion of the record referred to by petitioner as support for
2 the county's position (Record at 249) is a partial transcript
3 of the county's discussion of whether petitioner's property
4 should be designated MUA-10 or RR-10. There is no statement in
5 that discussion that further subdivision activity on
6 petitioner's property will be prohibited.

7 Second, even if the ultimate effect of the county's action
8 in designating petitioner's property RR-10 would be to prohibit
9 further subdivision activity, there is some basis for the
10 county's determination. We believe the plan adequately states
11 why further subdivision activity in rural areas (outside urban
12 growth boundaries) of Deschutes County should be restricted or
13 prohibited. The plan identifies present excess supply of rural
14 residential lots (approximately 14,000) over what is needed to
15 fill the need to the year 2000 (approximately 3,000). This
16 over supply furnishes some basis for understanding why the
17 county acted as it did. See City of Gresham v Realty
18 Investment, 55 Or App 527, ___ P2d ___ (1982). Petitioner does
19 not challenge the findings in the plan with respect to present
20 supply of lots or lots needed to the year 2000.

21 If, by petitioner's oblique reference to Goal 10,
22 petitioner is trying to raise a goal issue, we may not consider
23 the issue. The county's plan has been acknowledged by LCDC.
24 We lack authority after acknowledgment of a comprehensive plan
25 to review goal issues related to the plan. Fujimoto v MSD, 1
26 Or LUBA 93, 1980, aff'd, 52 Or App 875, 630 P2d 364 (1981).

1 For the foregoing reasons, we conclude the decision of
2 Deschutes County adopting a comprehensive plan and zoning
3 designation for petitioner's property is affirmed.

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FOOTNOTE

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Petitioner cites the following characteristics of Deschutes River Woods as making it worthy of specific consideration: The subdivision has public facilities and services such as power, phone and roads already in place. It is five minutes from Bend via Highway 97. Another arterial, Sunnyside Blvd., will ultimately serve the development. The subdivision is registered with the office of Interstate Land Sales, the California Department of Real Estate and has an exemption from the Oregon Real Estate Division.

2

Compare MSD v Clackamas County, 2 Or LUBA 139 (1981).