

BOARD OF APPEALS
MAR 15 11 46 AM '82

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

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KEN HOLLIDAY,)
)
Petitioner,) LUBA No. 81-123
)
vs.)
)
GRANT COUNTY,) FINAL OPINION
) AND ORDER
)
Respondent.)

Appeal from Grant County.

Ken Holliday, John Day, filed the Petition for Review on his own behalf.

Foster A. Glass, Canyon City, filed the respondent's brief.

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

REMANDED 3/15/82

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 Grant County's decision to allow a
4 partition of an 11.48 acre parcel into two parcels of 5 and
5 6.48 acres. Petitioner complains that the decision violates
6 Goals 2 and 3. Petitioner argues that the county failed to
7 comply with Goal 3 because it failed to determine that the
8 parcels would be large enough for commercial agriculture or
9 that the division met the non-farm standards in ORS
10 215.213(3). The decision does not comply with Goal 2, says
11 petitioner, because the county failed to follow the proper
12 procedures or apply the standards for taking an exception.

13 STATEMENT OF FACTS

14 The county's decision contains few pertinent facts. The
15 parcel is located in Pine Creek Park Subdivision, and access to
16 the parcel must be by private easement. In addition to the
17 foregoing, the county made the following "finding:"

18 "WHEREAS Public hearing was held on Wednesday,
19 September 23, 1981, on the application on partition
20 and it was found that numerous small parcels already
21 exist in the Pine Creek Park Subdivision and the
character of the present land will not change by
creation of an additional lot as this area has been
previously committed to rural development;***"

22 Following the above finding, the county's decision ordered that
23 the major partitioning be approved subject to the creation of a
24 30 foot easement.

25 Although not appearing in the county's decision, the record
26 shows that the 11.48 acre parcel consists of Class II, III and

1 IV soils. Petitioner operates a commercial farm operation
2 which adjoins the 11.48 acre parcel and is one of nine large
3 agricultural pieces in the area of Pine Creek Park
4 Subdivision. The subdivision itself consists of 22 lots
5 ranging from 5 to 70 acres with an average size of 17 acres.
6 Petitioner testified that he would purchase the 11.48 acre
7 parcel for addition to his ranch. Respondent notes in its
8 brief that while the soils on the parcels may consist of Class
9 II to IV soil, intermingled with this soil is a lot of rock and
10 boulders "requiring grading in order to hay the land."

11 OPINION

12 It appears from that portion of the county's order quoted
13 above and is argued by the respondent in its brief, that the
14 county determined the 11.48 acre parcel was committed to rural
15 development. Respondent also argues in its brief that the
16 property is not subject to Goal 3 because it cannot be
17 profitably farmed within the meaning of Hillcrest Vineyard v
18 Board of Commissioners of Douglas County, 45 Or App 285, ___
19 P2d ___ (1980), because of the property's inclusion within Pine
20 Creek Park Subdivision, the rocky nature of the soil and the
21 absence of any water rights to the property.

22 We do not address respondent's arguments because they
23 relate to what the record allegedly shows in this case and not
24 what the county found in its order approving this major
25 partitioning. Where the commitment test is used to justify
26 exempting land with agricultural soils from the application of

1 Goal 3, the findings must address such factors as adjacent
2 uses, parcel size and ownership patterns, public services,
3 neighborhood and regional characteristics, natural boundaries
4 and other relevant factors. The findings must then explain in
5 detail why it is these factors would compel a reasonable person
6 to conclude the property cannot be used for some agricultural
7 purpose. See: 1000 Friends of Oregon v Clackamas County, 3 Or
8 LUBA 281 (1981); 1000 Friends of Oregon and City of Sandy v
9 Clackamas County, 3 Or LUBA 316 (1981); 1000 Friends of Oregon
10 v Douglas County, ___ Or LUBA ___ (LUBA No. 81-011, Slip Op
11 9/30/81); Coleman v Lane County, ___ Or LUBA ___ (LUBA No.
12 81-005, Slip Op 1/25/82). The county's findings in this case
13 do not address the requisite factors, much less explain why it
14 is these factors lead the county to conclude the property is
15 committed. The failure of the findings to address the
16 requisite factors or contain an adequate explanation is
17 particularly critical in this case because the petitioner's
18 commercial farming operation adjoins the parcel, and
19 petitioner, according to the record, has offered to purchase
20 the parcel. It appears from the record, therefore, that the
21 11.48 acre parcel, through sale or lease, may have some
22 resource potential. See: Cohen v Clackamas County, 3 Or LUBA
23 26 (1981).

24 Grant County Order No. 81-13 is remanded for futher
25 proceedings not inconsistent with this opinion.



STATE OF OREGON

INTEROFFICE MEMO

TO: MEMBERS OF THE LAND CONSERVATION AND DEVELOPMENT COMMISSION DATE: 2/23/82

FROM: THE LAND USE BOARD OF APPEALS

SUBJECT: HOLLIDAY V. GRANT COUNTY
LUBA NO. 81-123

Enclosed for your review is the Board's proposed opinion and final order in the above captioned appeal.

The Board is of the opinion that oral argument would not assist the commission in its understanding or review of the statewide goal issues involved in this appeal. Therefore, the Board recommends that oral argument before the commission not be allowed.



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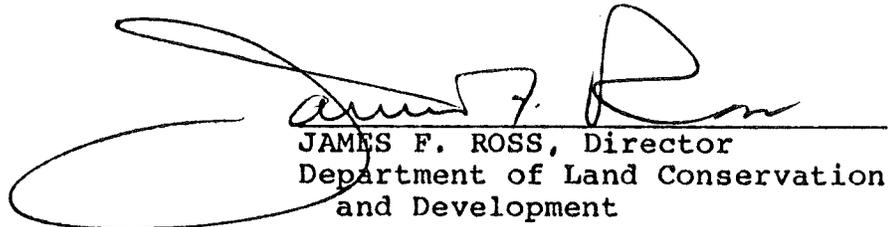
BEFORE THE LAND CONSERVATION AND DEVELOPMENT COMMISSION
OF THE STATE OF OREGON

KEN HOLLIDAY,)	
)	
Petitioner,)	LUBA No. 81-123
)	
v.)	LCDC DETERMINATION
)	
GRANT COUNTY,)	
)	
Respondent.)	

The Land Conservation and Development Commission hereby approves the recommendation of the Land Use Board of Appeals in LUBA case No. 81-105.

DATED this 15th day of March, 1982.

For the Commission:


JAMES F. ROSS, Director
Department of Land Conservation
and Development