

MAR 29 3 23 PM '82

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

GREG STOUT and  
NELLIE MAE STOUT,  
Petitioners,

vs.

KLAMATH COUNTY,  
RALPH DAUSTER,  
TOM GERBING, and  
JOYCE BALDWIN,

Repondents.

LUBA No. 82-004

FINAL OPINION  
AND ORDER

Appeal from Klamath County.

Richard Fairclo, Klamath Falls, filed the Petition for Review on behalf of Petitioners.

Richard L. Garbutt, Klamath Falls, filed the brief and argued the cause on behalf of Respondents Dauster, Gerbing and Baldwin.

Klamath County did not file a brief or make an appearance at the oral argument.

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

Dismissed

3/29/82

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 BAGG, Referee.

2 NATURE OF THE DECISION

3 Petitioners appeal an order of the Klamath County Board of  
4 Commissioners revoking Conditional Use Permit No. 80-33  
5 allowing Petitioners to retain two cougars in a residential  
6 area.

7 FACTS

8 In January of 1981, the Klamath County Board of  
9 Commissioners approved a conditional use permit to allow  
10 petitioners to hold two cougars in a Residential-Agricultural  
11 (RA) Zone in Klamath County. One of the conditions placed upon  
12 the approval was that the applicants construct "a closed fenced  
13 all around the property, and have until June 1, 1981, to do  
14 so." This order was appealed and was the subject of Concerned  
15 Property Owners of Rocky Point v Klamath County, 3 Or LUBA 182  
16 (1981). The county approval was remanded on a procedural  
17 matter not important to this appeal.

18 The petitioners claim to have constructed a fence around  
19 the property as required. The order of the county, however,  
20 recites that the planning department "received letters from  
21 neighbors pointing out that applicant was not following one of  
22 the conditions of the order," and the condition not followed  
23 was the fencing requirement. The county found the applicant  
24 "had violated the intent of the fencing condition of the  
25 Conditional Use Permit Order No. 80-33." The Board of  
26 Commissioners further found that the applicant had been

1 notified of the violation but had chosen to do nothing further  
2 "about rectifying the condition." The county's order does not  
3 explain how the "intent" of the condition was violated, and the  
4 order does not recite facts supporting this conclusion.

5 Petitioners say that the order found only the "intent" of  
6 the condition was violated and not the condition itself.  
7 Further, even if "intent" could be violated, the purpose of the  
8 fence was to shield the animals from the public. Petitioners  
9 appear to be arguing that this purpose was fulfilled.

10 Petitioners also claim that the county failed to address  
11 land use planning goals, particularly Goal 2. Petitioners do  
12 not explain how it is that the goals are applicable to this  
13 decision.

14 The respondent moves for dismissal on the ground that LUBA  
15 lacks jurisdiction to consider the appeal. Respondent claims  
16 that a local decision is reviewable by LUBA only if it concerns  
17 "adoption, amendment or application of statewide goals." At  
18 oral argument, respondent included local comprehensive plan  
19 adoption, amendment or application appeals are within our  
20 jurisdiction. Respondent cites Fisher v Colwell, 51 Or App  
21 301, \_\_\_ P2d \_\_\_ (1981) for this proposition.

22 We agree that we do not have jurisdiction to consider this  
23 matter, but not for the reason advanced by respondent. Under  
24 Or Laws 1979, ch 772, sec 4-6 as amended by Oregon Laws 1981,  
25 ch 748, we may review a land use decision if it concerns not  
26 only statewide planning goals, but also application of a local

1 comprehensive plan, zoning, subdivision or other ordinance  
2 implementing a comprehensive plan. See ORS 197.015(10). It is  
3 our view that a local ordinance controlling conditional uses is  
4 such an implementation ordinance and the application of such an  
5 ordinance is properly a subject for our review.

6 In this case, however, we are cited to no provision in the  
7 county ordinance controlling revocations of permits or other  
8 similar proceedings. The issue before the county was not  
9 whether to grant a conditional use permit which would require  
10 application of its conditional use permit ordinance. Here, the  
11 county undertook merely to determine whether or not a condition  
12 it had imposed upon petitioners when granting the conditional  
13 use permit had been broken. As such, the county's action did  
14 not involve the adoption, amendment or application of the  
15 statewide planning goals, a comprehensive plan provision or the  
16 terms of its own ordinances.

17 Since we lack jurisdiction to hear this matter, we do not  
18 reach petitioners' assignments of error.

19 This appeal is dismissed.

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