

LAND USE
BOARD OF APPEALS

BEFORE THE LAND USE BOARD OF APPEALS ~~OCT 11~~ 8 43 AM '82
OF THE STATE OF OREGON

1
2
3 CLIFFORD P. LAMB and
DONALD REICH,

4 Petitioners,

5 vs.

6 LANE COUNTY,

7 Respondent,

8 and

9 PHILIP SHELLEY,

10 Intervenor.

LUBA No. 82-046

FINAL OPINION
AND ORDER

11
12 Appeal from Lane County.

13 Gail L. Achterman, Portland, filed the Petition for Review
on behalf of Petitioners.

14 William A. Van Vactor, Eugene, waived appearance on behalf
15 of Respondent Lane County.

16 Michael E. Farthing, Eugene, waived appearance on behalf of
Intervenor Shelley.

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

19 Remanded.

10/11/82

20
21 You are entitled to judicial review of this Order.
22 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 Lane County Board of
4 Commissioners approving the partition of a 125 acre tract of
5 land into 65 acre, 55 acre and 5 acre parcels. The present
6 zoning on the property is forestry potential (F-2) and general
7 rural .1 (GR-1).

8 FACTS

9 The 125 acre parcel of land is located in the Spencer Creek
10 subarea. The property is vacant, but a portion serves as a
11 tree farm. The northern half of the property is zoned F-2, and
12 the southern half of the property is zoned GR-1. The 5 acre
13 parcel (Parcel 1) is zoned GR-1, the 55 acre parcel (Parcel 2)
14 and the 65 acre parcel (Parcel 3) are split approximately in
15 half between the F-2 and GR-1 zones.

16 The Lane County Development Review Committee approved the
17 proposed partition. The case was then appealed to the Lane
18 County hearings officer. The hearings officer heard the appeal
19 on September 10 and October 22, 1981. He rendered his decision
20 approving the partition on November 2, 1981. The hearings
21 officer found that the soils on the property come within SCS
22 agricultural soils classification I through IV "but the
23 property is mainly covered with trees and has no recent history
24 of agricultural activity on it." Record Attachment 1. The
25 hearings officer found the soil on parcel 1 is forest site
26 class 3 for timber production. He stated parcels 1 and 2 are

1 composed of soils which have no site class designation higher
2 than class 3. The hearings officer stated that he found the
3 soils on parcel 1 and 2 "are such that they will produce some
4 timber but due to location and soils this will probably be of
5 marginal commercial value for proposed parcels 1 and 2."

6 The hearings officer noted that the Lane County Spencer
7 Creek Subarea Plan had not been acknowledged at the time of the
8 application.¹ The hearings officer stated that he recognized
9 that he must apply the goals separately until acknowledgment.
10 The hearings officer then went on to say:

11 "However, the forest lands goal does not require
12 that no residences be built on any property that will
13 grow a Douglas Fir. The Spencer Creek Subarea Plan
14 has carefully identified substantial Rural I property
15 adjacent to major arterials for rural residential
16 living. The southern portion of this property is so
17 identified. Approval of this petition, at least in
18 regard to the 5 acre parcel, carries out existing
19 development patterns to the west of this property and
20 farther down the road on both Fox Hollow and MacBeth
21 Roads."

22 He added that much of the information submitted by the
23 petitioner, Clifford Lamb, was "accurate." The hearings
24 officer stated, however, that he felt Mr. Lamb's comments were
25 more appropriately to the issue of what the comprehensive plan
26 should provide "as opposed to what can be approved under the
27 plan as adopted." The hearings officer then added:

28 "The statewide goals certainly must be applied
29 but when I am examining a Lane County plan that has
30 been adopted by the Commissioners and proports [sic]
31 to apply the statewide goals and comply with them, I
32 am very reluctant to use the generally stated goals as
33 the only basis for denying an application that

1 conforms not only with the plan designation but with
the zoning adopted in accordance with it."

2
3 Mr. Lamb, appeared before the hearings official and
4 testified that the State Department of Revenue designated all
5 of the subject property as forest land. The Department of
6 Revenue apparently has its own forest land classification
7 system, and has classed the property FF and FE. Record
8 Attachment 2, p. 14, map record 34. The Department of Revenue
9 classification is comparable with the Douglas Fir site class
10 system. Record p. 33. Mr. Lamb testified that all of the
11 soils on this property with the exception of a small rock
12 outcropping meet a 20 cubic foot of timber per acre of annual
13 growth standard. This standard, testified Mr. Lamb, is
14 recommended by the Lane County Landowners Association and the
15 State Department of Forestry in its "Field Instructions for
16 Integrated Forest Survey and Timber Management Inventories -
17 Oregon, Washington and California, 1974." Record Attachment 1,
18 p. 56. Mr. Lamb also testified that he inspected the property
19 himself, and concluded that there is Douglas Fir throughout the
20 property.

21 Mr. Lamb also introduced an article from the Journal of
22 Forestry by Richard P. Thompson and J. Greg Jones, Attachment
23 1, which concludes that non-industrial private forest land is
24 dependent upon the "economies of tract size." The article
25 states that a "sharp transition in the extent of management may
26 occur at a point between tracts of 25 and 50 acres in size.

1 Below this point, the diseconomies make forestry investments
2 unattractive for many landowners. Above the point, tracts
3 would generally be large enough for owners to take advantage of
4 the economies associated with silvicultural practices and
5 timber sales." Ibid.

6 Mr. Lamb appealed the decision of the hearings officer on
7 November 12, 1981. A hearing was held before the county
8 commission on February 17, 1982, and the county board issued a
9 decision on May 5, 1982, denying Mr. Lamb's appeal and
10 approving the petition. The county board made findings of its
11 own, and incorporated the findings of the hearings officer.
12 The county board found that the hearings official applied both
13 the comprehensive plan and the statewide planning goals to the
14 application, and applied them correctly. The county found two
15 of three parcels were not suitable for commercial forest
16 production and concluded that the hearings official was
17 therefore correct in not applying the county's administrative
18 procedure for determining land division compliance with Goal
19 4. See Item 2, Supplements to the Record.²

20 The county board recited the applicant's argument that
21 the 65 acre parcel (parcel 3) was suitable for commercial
22 timber production but that the remaining two parcels of 5
23 acres (Parcel 1) and 55 acres (Parcel 2) were not so
24 suitable. The county board apparently agreed with the
25 hearings official that parcels 1 and 2 have soils that will
26 produce some timber because of their location and soils, and

1 that such production will be of "marginal commercial value."

2 ASSIGNMENT OF ERROR No. 1

3 "1. The GR-1 Zone and This Partition Are Inconsistent
4 with the Spencer Creek Subarea Plan."

5 "2. The Partition Does Not Optimize Parcel Sizes in
6 the F-2 Zone for Commercial Production of Wood
7 Fiber and Fails to Consider Increased Wildfire
8 Hazard."

9 Petitioner begins by reminding us that the Spencer Creek
10 Subarea Plan has not been acknowledged by LCDC. Petitioner
11 cites a Department of Land Conservation and Development
12 acknowledgment letter, Attachment 1, p. 6-10, in which the
13 department specifically rejects Lane County's exception to
14 Goals 3 and 4 for this subarea, noting that the committed lands
15 criteria have not been met and that the county failed to
16 explain how agricultural and forest land in the subarea was
17 irrevocably committed to non-forest use. The hearings officer
18 and the county commissioners concluded that the unacknowledged
19 plan should control under these circumstances. Petitioner
20 argues that the county used the incorrect standard. Petitioner
21 claims that the standard that should be applied is the
22 statewide planning goals. Petitioner further argues that even
23 if the plan and implementing ordinances are to be applied, the
24 implementing ordinances must be consistent with the
25 comprehensive plan. Petitioner argues that the Spencer Creek
26 Subarea Plan describes F-2 land as land that has "the
capability to produce timber...limited in commercial value by
either productive capacity or impact from conflicting uses."

1 Petitioner argues the whole tract should be zoned F-2 because
2 the whole tract meets the criteria for the F-2 zone.

3 Petitioner says the Spencer Creek Subarea Plan recognizes
4 forests as the area's most important resource, and further
5 recognizes "the problems of landlocking timber-producing
6 regions behind small tracts." Petition for Review at 13. See
7 Item 1, Spencer Creek Subarea Plan, "Timber Resources" Findings
8 A1 and 5. Petitioner argues that dividing this tract "into two
9 separate zones, one of which permits residential development as
10 of right, is not consistent with the Spencer Creek Subarea Plan
11 * * * *" Petition for Review at 13. Petitioner adds that the
12 division is inconsistent with plan recommendations emphasizing
13 a need to maintain large parcels in timber management.³

14 Under subheading 2 to this assignment of error, petitioner
15 argues that the decision violates Lane Code, Section 10.104,
16 controlling partitions in the F-2 zone. Lane Code 10.104-40
17 requires that land divisions in F-2 zones be approved only upon
18 a showing that either 1) the parcels are of the optimum size
19 for commercial production of forest products, or 2) that the
20 land is not suitable for large scale commercial production of
21 wood products but will nonetheless continue to remain in forest
22 use as a commercial producer of wood products, or 3) that the
23 land is not suitable for commercial production of wood products
24 but will continue to remain in forest use. Certain findings
25 must be made in support of one of the three headings.
26 Petitioners argue that Mr. Lamb introduced evidence showing

1 that the entire tract will support commercial forest production
2 and that the proposed parcels were not sufficiently large to do
3 so. None of the findings required for partitions in the F-2
4 zone were made, according to the petitioner, and none can be
5 made based on this record.⁴

6 We note that the Spencer Creek Subarea Plan included as
7 Item 1 of this record does appear to designate this particular
8 property as Forest Land II (F2) and Rural Land I (GR-1). If
9 petitioners are attacking the adequacy of this plan
10 designation, we believe they have not adequately articulated a
11 timely challenge to that portion of the Spencer Creek Subarea
12 Plan. As to the claim the zoning of the property is
13 inconsistent with the plan, we find the map of the subject
14 property in the record appears to be consistent with the zoning
15 appearing in the plan. We therefore deny the first part of
16 petitioners' first assignment of error insofar as it attacks
17 the Spencer Creek Subarea Plan or zoning under it.

18 As to petitioners' argument that the partitioning is not
19 consistent with the plan, we find the zoning ordinance and not
20 the plan specifically control in this case. The plan provision
21 to which petitioners refer is a plan recommendation that seeks
22 to minimize the effects of parcel division. See Footnote No.
23 3, supra. However, this recommendation is incorporated in the
24 Lane Code 10.104-40. The Lane Code then is the standard
25 against which to test this partitioning as Lane Code 10.104-40
26 implements the plan on the matter of parcel division. As

1 discussed below, however, the county failed to meet the
2 requirements of Lane Code 10.104-40.

3 As to the second part of petitioners' first assignment of
4 error, we agree that the criteria in Lane Code 10.104-40 have
5 not been met. We decline, however, to say the county was
6 obliged to choose one particular criteria of the three
7 available for land division under Lane Code 10.104-40. Since
8 parcel 3 and parcel 2 cross the zoning boundary between the F-2
9 and the GR-1 zones, we believe it is imperative that the county
10 explain the partitioning in terms of compliance with Section
11 '10.104-40. The fact that the property, or part of it, bears an
12 F-2 zoning is sufficient, we believe, to require the county to
13 make findings addressing one or more of the three criteria for
14 divisions within the F-2 zone. See page 7, supra. If the
15 county has utilized some other procedure controlling divisions
16 of property where the property bears two zones, the county has
17 not explained this other procedure. Without such an
18 explanation or compliance with Section 10.104-40, we must find
19 the county to have violated the provisions of the F-2 zone as
20 alleged.

21 The first assignment of error is denied in part and
22 sustained in part.

23 ASSIGNMENT OF ERROR No. 2

24 "1. The Entire Tract Is Forest Land Which Must Be
25 Retained for Production of Wood Fiber and Other Forest
26 Uses."

1 "2. The Parcels Created by the Partition Will Not Be
2 Large Enough for Commercial Use."

3 "3. The Parcels Created by the Partition and the
4 Proposed Residential Use Will Adversely Impact
5 Commercial Forest Use on Surrounding Property."

6 In this assignment of error, petitioner relies on evidence
7 submitted by petitioner Lamb "which was never refuted by the
8 applicant or the county that the subject property is existing
9 forest land suitable for commercial forest uses, specifically
10 the production of trees and the processing of forest
11 products." Petition for Review at 15 and 16. Petitioner
12 argues that the whole tract is subject to Goal 4 which requires
13 that the tract be preserved for forest uses. Petitioner says
14 the partitioning does not preserve the property for forest
15 uses. As part of petitioner's argument, petitioner cites to
16 Lemon v Clemens, 57 Or App 583, ___ P2d ___ (1982), Meyer v
17 Lord, 37 Or App 59, 586 P2d 367 (1978), and other cases
18 claiming that when one applies Goal 3 (and here Goal 4), "local
19 governments must consider the suitability of the entire tract
20 of property for agricultural or forest use as a unit, rather
21 than considering the tract on a parcel-to-parcel basis."
22 Petition for Review at 16. Petitioner argues that the soils
23 maps and classifications upon which the county and the
24 applicant relied show that the majority of soils on the parcel
25 are suitable for Douglas Fir production. Petitioner argues
26 that once evidence is introduced showing the property is forest
land, "the burden is on the applicant and the county to show

1 how the proposed partitioning will comply with Goal 4."
2 Petition for Review at 17. Where there is no such showing,
3 petitioner says a goal exception is necessary. Petitioner
4 advises that we have no choice but to conclude the property is
5 forest land "subject to protection under Goal 4 and must be
6 designated and managed as such."

7 Further, petitioner argues there is no consideration of any
8 of the other forest uses for which forest lands are to be
9 preserved. That is, the county appears to have spent its
10 energy on deciding whether or not the property would support
11 "commercial" forest uses instead of exploring in addition other
12 forest uses described in Goal 4.⁵

13 We agree with petitioner that the county has inadequately
14 explained how it is that this property is not subject to the
15 protection of Goal 4. The county's findings show there are
16 trees on the property, and that some of the property bears a
17 forest site classification of from 1 to 3. We do not know why
18 the county chose to stop at forest site classification 3 (there
19 are five grades) and not explain or detail what site
20 classification exists on other portions of the property. Had
21 the county been of the view that in this particular area only
22 certain forest site classifications were appropriate for
23 consideration under Goal 4, the county should have so explained.
24 Without this explanation, we are unable to review the county's
25 decision for compliance with applicable legal standards.

26 Hoffman v Dupont, 49 Or App 699, 621 P2d 63, rev den 290 Or

1 651, (1981).

2 We also believe that where property is identified as forest
3 land, the county is under an obligation to explain how it is
4 that the property should not be preserved not only for timber
5 production, but also for "other forest uses" under Goal 4.
6 That is, if the county believes forest land to be exempt from
7 Goal 4 protection, the county must exhaust the Goal 4 uses for
8 the property; or, if unable to do so, take an exception to Goal
9 4. Such explanations or an exception is missing here.⁶

10 Because of the inadequacy of the county's findings, we are
11 unable to answer the second part of petitioners' assignment of
12 error, that the parcels created will not be large enough for
13 commercial use. Evidence was introduced by petitioner Lamb as
14 to the size of parcel necessary for commercial production, and
15 the county and the hearings officer did not address this
16 evidence. We believe that where the petitioner has introduced
17 evidence in a proceeding showing that parcels of less than a
18 particular size will not be commercially feasible, as here, the
19 county has an obligation to address that evidence. Gruber v
20 Lincoln County, 2 Or LUBA 180 (1981); Lee v City of Portland, 3
21 Or LUBA 31 (1981).

22 As to the third portion of petitioners' second assignment
23 of error, that the parcels will adversely impact commercial
24 forest use on surrounding property, we only note that there are
25 no findings on the effect of this proposed division on
26 surrounding properties. It is our understanding from a review

1 of the Spencer Creek Subarea Plan, that this property is
2 located in an area of forest land, and we believe some comment
3 as to the impact of the division on surrounding properties is
4 appropriate and necessary.

5 The second assignment of error is sustained insofar as the
6 petitioner has alleged the county has failed to make adequate
7 findings of fact and conclusions of law showing compliance with
8 applicable legal criteria.

9 ASSIGNMENT OF ERROR No. 3

10 "This Partition Violates Statewide Goal 3 by Failing
11 to Consider Agricultural Land Suitability."

12 Petitioners here argue that the property contains
13 agricultural land soils.⁷ Petitioners argue that in the
14 absence of an acknowledged comprehensive plan, where
15 agricultural land is found to exist, Goal 3 must be applied.
16 Petitioners cite Meyer v Lord, 37 Or App 59, 586 P2d 367 (1978)
17 in support of this proposition. The hearings officer adopted
18 the applicant's analysis as to Goals 3, 4 and 5, but
19 petitioners argue that the applicant's analysis contains no
20 findings as to Goal 3 but simply states "in conclusory [sic]
21 fashion that a small percentage of these soils are of limited
22 agricultural use..." Petition for review at 23.

23 We agree that the county was under an obligation to explain
24 how it is that Goal 3 is, or is not, applicable on this piece
25 of property. Where land is suitable for either timber
26 production or agricultural production, the county is under an
obligation to explain its choice of comprehensive plan

1 designation. See 1000 Friends of Oregon v Douglas County Board
2 of Commissioners, 1 Or LUBA 42 (1980), Flury v Land Use Board,
3 50 Or App 263, 623 P2d 671 (1981).

4 ASSIGNMENT OF ERROR No. 4

5 "This Partition Violates Statewide Goal 2 Because No
6 Exception Was Taken to Goals 3 and 4 in this
7 Proceeding or the Spencer Creek Subarea Plan."

8 Petitioner argues that as the land consists of both
9 agricultural and forest land, land use decisions should provide
10 adequate protection for both agricultural and forest uses.
11 Petitioner notes that the Department of Land Conservation and
12 Development denied acknowledgment of Lane County's
13 Comprehensive Plan and in its letter of denial, took note of
14 the inadequacy of the county exceptions to application of Goals
15 3 and 4 of the Spencer Creek Subarea. Petitioner quotes the
16 letter as saying that the county's "detailed exceptions do not
17 provide compelling reasons and facts that demonstrate
18 irrevocable commitment to nonfarm or nonforest uses for all of
19 the areas including in the Mohawk-Camp Creek and Spencer Creek
20 Subarea plans." Petition for Review at 26, Record Attachment
21 1, p. 25.

22 We agree that without findings showing compliance with Goal
23 3 and 4, the county was required to take an exception to Goals
24 3 and 4. Here, the county relied on an unacknowledged
25 comprehensive plan for compliance with the goals. It may be
26 that the county and the applicant could show that the
partitioning of this property would not result in

1 non-agricultural and non-forest uses, but we do not believe the
2 county's findings adequately explain how the partitioning will
3 comply with Goals 3 and 4. Without this detailed explanation,
4 or a valid exception to the goals, we are not able to sustain
5 the county's decision, and we must remand the matter for
6 further proceedings.

7 ASSIGNMENT OF ERROR No. 5

8 "The Board Erred by Not Allowing Petitioners to Submit
9 Objective, Refined Soils Data for Purposes of Goal 4
and Violated Lane Code 14.025(8)."

10 Petitioner argues that the county commissioners improperly
11 relied on Lane Code, Section 14.025(8) for its refusal to allow
12 Mr. Lamb to reopen the record and submit additional information
13 on forest site class and its soils. The county board stated
14 the evidence was available at the time of the initial hearing,
15 and should therefore not be admitted later. Petitioner argues
16 that the standard in Lane Code, Section 14.025(8)(b) is
17 "convenience or availability" of the evidence at the time of
18 the initial hearing. Petitioner argues that the Oregon State
19 Department of Forestry's information on its method for
20 determining forest site class was not available to Mr. Lamb,
21 but would be available from the district forester if the county
22 requested it. Petitioner claims the Oregon State Department of
23 Forestry's information was therefore "unavailable" under the
24 ordinance and should have been accepted later. Petitioner also
25 claims that the Soil Conservaton Service soil map relied upon
26 by the hearings officer was of questionable accuracy. This

1 claim is based on an inspection of the property and aerial
2 photograph showing the land to be heavily forestered where the
3 Soil Conservation Service map shows poor forest soils to
4 exist. The hearings official himself found that there was some
5 question as to the accuracy of the maps. Petitioner claims the
6 board had a duty to obtain more reliable information, citing
7 Meyer v Lord, 37 Or App 59, 586 P2d 367 (1978).

8 We do not believe the county board was under an obligation
9 to reopen the record for the purpose of allowing Mr. Lamb to
10 present this information. As far as the county board was
11 concerned, it had all the information it needed regarding the
12 property, and it apparently relied on that information in
13 making its decision. The county is not under an obligation to
14 actively seek out information that is the applicant's
15 obligation, or the opponents obligation, to present. The fact
16 that the Oregon State Department of Forestry would not do a
17 survey without the county's request does not make the
18 information "unavailable" or create an "inconvenience" to Mr.
19 Lamb that forces the county to reopen its record.⁸ Lane
20 County Code Provision 14.025(8)(b) is permissive.⁹ The
21 county is not required under that provision of the code to
22 reopen its hearing.

23 Assignment of error number 5 is denied.

24 This case is remanded to the county for further proceedings
25 not inconsistent with this opinion.

FOOTNOTES

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The plan has still not been acknowledged.

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The "administrative procedure for determining land division compliance with Goal 4 and minimum lot sizes in forest areas is a set of criteria to be used by the application to test whether his proposal meets the requirements of Goal 4 and county requirements for minimum lots sizes in forest areas.

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"To minimize the effects of parcel division, small parcels may be created (without regard to minimum size) if (a) of land marginally productive for growing timber, (b) the division does not appreciably affect the economic manageability of the remaining parcel, (c) house site capability exists on the parcel separated, (d) area social facilities and services can support the anticipated increased population utilizing the newly created parcels." Spencer Creek Subarea Plan "Timber Resources, Recommendations #3."

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Our analysis of this first assignment of error is hampered somewhat by the fact that the county and the applicant have chosen not to appear.

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GOAL 4: "To conserve forest lands for forest uses."

"Forest land shall be retained for the production of wood fiber and other forest uses. Lands suitable for forest uses shall be inventoried and designated as forest lands. Existing forest land uses shall be protected unless proposed changes are in conformance with the comprehensive plan.

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24 * * *

"Forest Lands - are (1) lands composed of existing and potential forest lands which are suitable for commercial forest uses; (2) other forested lands

1 needed for watershed protection, wildlife and
2 fisheries habitat and recreation; (3) lands where
3 extreme conditions of climate, soil and topography
4 require the maintenance of vegetative cover
5 irrespective of use; (4) other forested lands in urban
6 and agricultural areas which provide urban buffers,
7 wind breaks, wildlife, and fisheries habitat,
8 livestock habitat, scenic corridors and recreational
9 use."

10 "Forest Uses - are (1) the production of trees and the
11 processing of forest products; (2) open space, buffers
12 from noise, and visual separation of conflicting uses;
13 (3) watershed protection and wildlife and fisheries
14 habitat; (4) soil protection from wind and water; (5)
15 maintenance of
16 clean air and water; (6) outdoor recreational activities
17 and related support services and wilderness values
18 compatible with these uses; and (7) grazing land for
19 livestock."

20 6

21 We decline petitioner's invitation to declare this land
22 subject to Goal 4 protection. The county must make findings of
23 fact and conclusions about the land, not this Board. The
24 county's error was in failing to explain itself sufficiently,
25 not in a failure to zone the land in a particular fashion.
26

27 7

28 Goal 3: "To preserve and maintain agricultural lands."

29 Agriculture lands shall be preserved and maintained for
30 farm use, consistent with existing and future needs for
31 agricultural products, forest and open space. These lands
32 shall be inventoried and preserved by adopting exclusive
33 farm use zones pursuant to ORS Chapter 215. Such minimum
34 lot sizes as are utilized for any farm use zones shall be
35 appropriate for the continuation of the existing commercial
36 agricultural enterprise with the area. Conversion of rural
37 agricultural land to urbanizable land shall be based upon
38 consideration of the following factors: (1) environmental,
39 energy, social and economic consequences; (2) demonstrated
40 need consistent with LCDC goals; (3) unavailability of an
41 alternative suitable location for the requested use; (4)
42 compatibility of the proposed use with related agricultural
43 land; and (5) the retention of Class I, II, III and IV
44 soils in farm use. A governing body proposing to convert
45 rural agricultural land to urbanizable land shall follow
46

1 the procedures and requirements set forth in the Land Use
2 Planning goal (Goal 2) for goal exceptions."

3 AGRICULTURAL LAND - in western Oregon is land predominately
4 Class I, II, III and IV soils and in eastern Oregon is land
5 of predominately Class I, II, III, IV, V and VI soils as
6 identified in the Soil Capability Classification System of
7 the United States Soil Conservation Service, and other
8 lands which are suitable for farm use taking into
9 consideration soil fertility, suitability for grazing,
10 climatic conditions, existing and future availability of
11 water for farm irrigation purposes, existing land use
12 patterns, technological and energy inputs required, or
13 accepted farming practices to be undertaken on adjacent or
14 nearby lands, shall be included as agricultural land in any
15 event."

16 _____
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18 . The "inconvenience," presumably, to Mr. Lamb is having to
19 secure his own forest site class soil study.

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22 "Limited Additional Testimony. The Board of County
23 Commissioners may admit additional testimony and other evidence
24 without holding a de novo hearing, if it is satisfied that the
25 testimony or other evidence could not have been presented at
26 the initial hearing. In deciding such admission, the Board of
27 County Commissioners shall consider:

- 28 "(a) Prejudice to parties.
29 "(b) Convenience or availability of evidence at the time of
30 the initial hearing.
31 "(c) Surprise to opposing parties.
32 "(d) When notice was given to other parties of the intended
33 attempt to admit the new evidence.
34 "(e) The competency, relevancy and materiality of the
35 proposed testimony or other evidence.
36 "(f) Whether the matter should be remanded for a de novo
37 hearing under LC 14.025(g) below."