

1 Opinion by Bagg.

2 NATURE OF THE DECISION

3 Intervenor-petitioners, hereafter petitioners, challenge a
4 Jackson County decision permitting operation of a commercial
5 motor racing facility.

6 FACTS

7 The property is within the Open Space Reserve Zone and is
8 near the county-owned Jackson County Sports Park. Section
9 214.030 of the county Land Development (Zoning) Ordinance
10 allows new commercial motor racing facilities as a conditional
11 use within the Open Space Reserve Zone provided the track is in
12 or near the Jackson County Sports Park. This ordinance
13 provision amended the zone in 1984. Prior to the amendment,
14 motor racing in the park was limited to existing facilities.

15 COMBINED ASSIGNMENTS OF ERROR

16 Between them, the three petitioners allege 35 assignments
17 of error. Most assignments of error challenge compliance with
18 county conditional use ordinance provisions requiring the
19 proposed use to have "minimal adverse impact" on the
20 surrounding area." Section 260.040(2).¹ Specifically,
21 petitioners allege that the race track will be too noisy, that
22 it will diminish property values and that it lacks adequate
23 sewage disposal. Petitioners also allege the county did not
24 provide petitioners with an adequate opportunity to present
25 their views prior to the grant of approval.

1 MAJOR ASSIGNMENTS OF ERROR

2 The Decision Violates Noise Standards

3 The county made extensive findings on noise levels
4 generated by the existing drag strip at the Jackson County
5 Sports Park. The county also made findings on expected noise
6 levels from motor sports events at the proposed raceway. The
7 county's findings conclude

8 "that noise associated with the relocated raceway
9 would not be excessive or offensive to the extent that
10 health, safety, and welfare on nearby residences may
11 be jeopardized." Record at 4.

12 The standard of approval for noise is found in the
13 environmental element of the county plan. "Normally
14 acceptable" noise is measured at between 50 to 60 dBA
15 (Ldn).² The county found that noise from the facility, at
16 its worst, would not reach 60 Ldn if measured from the nearest
17 residence. Record 002.

18 The county's order included a number of conditions
19 controlling hours of race operation. An earthen berm must be
20 constructed to block track noise. Also, sound testing is
21 required when the track is in operation. The restrictions and
22 testing is to insure that noise standards are not exceeded.
23 The order provides that if any residences fall within a 65 Ldn
24 noise contour level, additional noise mitigation measures may
25 be imposed on the facility.

26 We do not find the county to have erred as alleged. The
applicable standard is in the county ordinance. Petitioners'

1 complaints take issue with noise levels which are legally
2 permissible. If the noise standards are incorrect or
3 inadequate, an amendment to the ordinance may be in order.
4 However, we have no power to reverse or remand when the county
5 decision is in compliance with applicable criteria.

6 Land Values

7 The county found that the proposed raceway will have no
8 more than a "minimal effect" on land values. Record at 005.
9 This finding is supported by testimony from a real estate
10 appraiser. Recore at 632. Petitioners introduced testimony of
11 a real estate agent that the race track will have a negative
12 effect on value. However, the county was entitled to find this
13 evidence unpersuasive and to rely on the evidence furnished by
14 the appraiser. Home Builders v. Metropolitan Service District,
15 54 Or App 60, 633 P2d 1320 (1981). We find no error as
16 alleged.

17 Waste Disposal

18 Petitioners are concerned that sewage disposal is
19 inadequate for the facility. Petitioners believe Ordinance
20 Section 5.090(1) controls the proposal and requires sewers.
21 However, we find that Section 05.090(1) does not apply to this
22 proposal. Ordinance Section 05.090(1) applies to subdivision
23 approval. We are cited to no requirement elsewhere in the
24 county's land use regulations which would prohibit chemical
25 toilets at this site.³

26 Without some showing that the use of chemical toilets is

1 not permitted under county land use regulations, we conclude
2 that the county has not erred in approving chemical toilets.

3 County Procedure

4 Petitioners claim that the county failed to provide
5 adequate time for rebuttal of the applicant's evidence about
6 noise. Petitioners' complaint focuses on certain material
7 presented on June 5, 1985. On that date, the county board
8 indicated it would not permit documents submitted by the
9 applicant to be received. We understand petitioners wanted to
10 rebut this evidence notwithstanding the county board's refusal
11 to accept it.

12 However, the county board later changed its mind and
13 permitted not only the applicant's document but also evidence
14 which former Petitioner Ann Todd wished to introduce.⁴ From
15 June 5 to June 19, the date of the next hearing, the Board
16 received and considered evidence on noise submitted by
17 opponents. Under these circumstances, we fail to see any
18 procedural error. See Turner v. Washington County, 70 Or App
19 575, 689 P2d 1318 (1984). Petitioners were not denied an
20 opportunity to rebut the applicant's evidence.

21 OTHER ASSIGNMENTS OF ERROR

22 Ordinance Validity

23 Petitioners complain that an August 1984 amendment to the
24 county's zoning ordinance allows "spot zoning." The amendment
25 made possible new racing facilities, such as this one in the
26 Open Space Reserve Zone.

1 The time to challenge the ordinance amendment has long
2 passed, at least on the grounds asserted here. A land use
3 decision, including the amendment to a zoning ordinance, must
4 be challenged within 21 days of its enactment. ORS
5 197.830(7). Because the ordinance enactment occurred long
6 before the notice of intent to appeal was filed in this case,
7 we are unable to review the amendment.

8 Violation of State of Oregon and U.S. Constitution

9 Petitioners complain that the decision violates the Oregon
10 and United States Constitutions by granting to the applicant
11 privileges not granted to petitioners. Specifically,
12 petitioners complain that they are not permitted to make use of
13 chemical toilets, yet applicants are so privileged.

14 We find no violations. Regulations controlling the use of
15 septic tanks and sewer systems apply differently depending on
16 the use and zoning designation. See the Environmental Quality
17 Element of the county's plan. There is no claim the county is
18 prohibited from making choices as to the kind of sewage
19 disposal suitable for various uses. Here, the county acted
20 within the legislative framework created by the ordinance.

21 Violation of Statewide Planning Goals 5 and 14

22 Petitioners allege Statewide Planning Goal 5, concerning
23 natural resources, and Statewide Planning Goal 14, controlling
24 urbanization, are violated by permitting what is essentially an
25 urban use in a rural area.

26 The Jackson County Comprehensive Plan and Land Use

1 Regulations have been acknowledged by the Land Conservation and
2 Development Commission as being in compliance with all
3 statewide planning goals. As a consequence, we cannot review
4 this decision for compliance with the statewide planning
5 goals. ORS 197.835(3). Fujimoto v. Land Use Board of Appeals,
6 52 Or App 875, 630 P2d 364, rev den 291 Or 662 (1981). The
7 applicable criteria are found in the county's comprehensive
8 plan and zoning ordinance.

9 Illegal Partitioning

10 Petitioners attack creation of a roadway to serve the
11 racing facility. The private roadway was included as a
12 condition of approval. Petitioners complain that the private
13 road effectively partitions the property in violation of the
14 county partitioning ordinance.

15 We do not find a violation as alleged. The county has not
16 created a road to permit a division of land, but has mandated
17 improved access to the park along with certain improvements to
18 county roads. Requiring a developer to create a private access
19 and to improve public roadways does not alone result in a
20 partitioning.⁵

21 The Use Belongs in an Urban Setting

22 Petitioners argue the use is best suited for an urban
23 area. Petitioners also say the conditional use ordinance
24 requires a finding that the use must be situated in a rural
25 area. Petitioners argue such a finding cannot be made for a
26 racing facility.

1 We find no error. When the county adopted its zoning
2 amendment it made a legislative determination that a race track
3 is a conditional use in the Woodland Resource Zone. No finding
4 explaining the rural qualities of the use is necessary given
5 this legislative framework.

6 The decision of the Jackson County Board of Commissioners
7 is affirmed.

FOOTNOTES

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"260.040 STANDARDS AND CRITERIA FOR ACTION ON APPLICATION"

"In order to grant a conditional use permit, the County must make the following findings:

- 7 "1) That the permit would be in conformance with the
8 Jackson County Zoning Ordinance in which the
9 proposed development would occur, and the
10 Comprehensive Plan for the county as a whole.
11 "2) That the location, size, design, and operating
12 characteristics of the proposed use will have
13 minimal adverse impact on the liveability, value,
14 or appropriate development of abutting properties
15 and the surrounding area.
16 "3) The permit will be in compliance with other
17 required findings, if any, which may be listed in
18 the zone in which the use is proposed to be
19 located.
20 "4) The proposed use will either provide primarily
21 for the needs of rural residents and therefore
22 requires a rural setting in order to function
23 properly or the nature of the use requires a
24 rural setting, such as an aggregate operation,
25 even though the use may not provide primarily for
26 the needs of rural residents.

"Finding (4) may be waived only when:

- 20 "A) The applicant substantiates to the
21 satisfaction of the County, that one or more
22 suitable alternative urban sites are not
23 available, and the proposed location is
24 central to the likely area of service for
25 the proposed use; or
26 "B) The proposed use is to be located within
Light Industrial, General Commercial, and
General Industrial zones or within Urban
Growth or Urban Containment Boundaries (UGBs
or UCBs).

1 "C) The proposed conditional use is for a single
2 family dwelling and application of this
standard is deemed inappropriate."

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4 dBA and Ldn are noise measurement levels with the higher
5 number representing louder noise.

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7 The county found that use of chemical toilets will comply
8 with public facility policies in the plan. We note the
9 comprehensive plan does not limit sewage disposal methods but
10 encourages experimental methods. See the Environmental Quality
11 Element of the county plan.

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13 Ann Todd was the original petitioner in this case. Her
14 petition for review was dismissed on December 16, 1985 because
15 her petition for review was filed after the time allowed by OAR
16 661-10-30(1).

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18 The new roadway was not created for the purpose of
19 partitioning the park or any other property. It serves to
20 route traffic, not to provide a means of access to a newly
21 created parcel. While it may create a physical division of the
22 land around it, no legal division of land is made by this
23 roadway. See ORS 92.010(2), (4) and Ordinance Section 00.040
24 "Partition." We are cited to no prohibition against private
25 roadmaking under these circumstances.
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