

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

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DEPARTMENT OF LAND CONSERVATION)
AND DEVELOPMENT,)
Petitioner,)
vs.)
COLUMBIA COUNTY,)
Respondent.)

LUBA No. 86-085
FINAL OPINION
AND ORDER

Appeal from Columbia County.

David G. Ellis, Salem, filed the petition for review on behalf of petitioners.

No briefs were filed by Respondent and Participants.

DuBAY, Chief Referee; BAGG, Referee; KRESSEL, Referee; participated in the decision.

REMANDED

02/25/87

You are entitled to judicial review of this Order.
Judicial review is governed by the provisions of ORS 197.850.

1 Opinion by DuBay.

2 NATURE OF THE DECISION

3 The county changed the comprehensive plan designation of
4 23.86 acres from "Forest Resource" to "Rural Residential" and
5 changed the zoning designation from "Primary Forest 76" to
6 "Rural Residential 5 Acre." Because the land is forest land as
7 defined in Statewide Goal 4, an exception to Goal 4 was
8 required.

9 FACTS

10 The parcel was once excepted from Goal 4 in the county's
11 comprehensive plan but was later deleted from the list of
12 exception areas. The deletion occurred after the Land
13 Conservation and Development Commission (LCDC) determined the
14 land should be zoned for resource use. See LCDC Continuance
15 Order 83-Cont-024, Petition for Review, App 1-14.

16 After hearing testimony on an application for the plan and
17 zone changes, the county made the following findings:

18 "The Board believes the evidence supports the
19 conclusions that it is impractical to use the 23 acres
20 for forestry uses. The parcel is long and irregular
21 shaped. There are existing, on adjoining properties,
22 land zoned Rural-Residential. There are two (2)
23 easements across the property. The Greens Point Water
24 Association has an easement for their water lines and
25 holding tanks. The property is subject to digging and
26 rerouting lines. There are five (5) water shares
available to the property.

"The second easement is to Mayger T.V., that has a
tower on the property. Additional wires and poles may
be set to accomodate [sic] new subscribers.

"In addition to the two (2) easements, there is an old
mail road that crosses the property lengthwise. This

1 land was once a part of a road system and trees still
2 do not grow in the road bed.

3 "In conclusion, the presence of the easements, and
4 towers and water reservoirs; the existance of the road
5 bed, (still in use), church, cemetery and other rural
6 development in the Mayger area makes it difficult to
7 consider the parcel is readily usable for commercial
8 timber usage."

9 "This parcel was included in the County's first
10 submittal of built and committed lands and it still is
11 appropriate to have an exception granted." Record 8.

12 FIRST AND SECOND ASSIGNMENTS OF ERROR

13 The first assignment of error charges the above findings
14 and conclusions fail to explain how evidence in the record
15 satisfies the criteria for irrevocable commitment in ORS
16 197.732 and OAR 660-04-028.¹ The second assignment of error
17 alleges the findings of fact are not supported by substantial
18 evidence in the record.

19 An exception to a statewide goal on the ground that land is
20 irrevocably committed to nonresource use requires findings that
21 "existing adjacent uses and other relevant factors make use
22 allowed by the applicable goal impracticable...." ORS
23 197.732(1)(b). See also Goal 2, Part II(b). Petitioner says
24 the county made no findings that forest use of the property is
25 impracticable. Petitioners say that:

26 "Rather, the county concluded that it is 'difficult to
consider the parcel readily usable for commercial timber
usage' (Record 6). This conclusion is irrelevant to the
consideration of irrevocable commitment. 'Difficult to
consider a parcel readily usable' does not address
impracticability. Even if this test is read to mean the
same thing as impracticable, the conclusion does not
address Goal 4 uses other than forestry." Petition at
11.

1 Goal 4 states in part:

2 "Forest lands shall be retained for the production of
3 wood fiber and other forest uses."

4 Forest uses are described in Goal 4 as follows:

5 "(1) The production of trees and the processing of
6 forest products; (2) Open space, buffers from noise,
7 and visual separation of conflicting uses; (3)
8 Watershed protection and wildlife and fisheries
9 habitat; (4) Soil protection from wind and water; (5)
10 Maintenance of clean air and water; (6) Outdoor
11 recreational activities and related support services
12 and wilderness values compatible with these uses; and
13 (7) Grazing land for livestock."

14 The county's conclusion about availability of the property
15 for commercial timber usage indicates a limited consideration
16 of forest uses defined in Goal 4. The findings fail to explain
17 why forest uses other than commercial timber production are
18 impracticable on the property. For this reason alone, the
19 order is insufficient to meet the requirements for an exception
20 based on irrevocable commitment to nonresource uses.

21 In addition, petitioner alleges the findings fail to
22 explain how the shape of the parcel, the existence of the two
23 easements and a road, the availability of water shares and
24 suitability of the soils for subsurface sewage disposal make
25 forest uses impracticable on the property. We agree that the
26 connection between these land characteristics and the legal
standard for a goal exception is not self-evident.

The city's recitation of these facts does not meet the
standards for adequacy of findings to support a land use
decision. LCDC's exception rules require that exception

1 decisions articulate the rationale for concluding the facts
2 justify the decision. OAR 660-04-028(4) specifies that local
3 government must include "a statement of reasons explaining why
4 the facts support the conclusion that uses allowed by the
5 applicable goal are impracticable in the exception area." In
6 addition, legal precedent is well established that findings
7 must (1) state the facts relied upon, and (2) explain how the
8 facts meet the criteria. Home Plate, Inc. v. OLCC, 20 Or App
9 188, 530 P2d 862 (1975). The county's listing of facts it
10 relied upon to reach its conclusion does not meet this standard.

11 Without an explanation, we are unable to review whether the
12 facts relied upon by the county support a conclusion that
13 forest uses are impracticable on the 23.86 acres. For these
14 reasons we sustain the first assignment of error.

15 Because the county's findings are inadequate, no purpose
16 would be served by discussing the additional allegations that
17 these findings are not supported by substantial evidence.

18 McNulty v. City of Lake Oswego, 14 Or LUBA 366 (1986)

19 Remanded.
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FOOTNOTES

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ORS 197.732(1)(b) provides:

"A local government may adopt an exception to a goal when:

"(b) The land subject to the exception is a irrevocably committed as described by commission rule to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goals impracticable.