

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

3 1000 FRIENDS OF OREGON,)
)
4 Petitioner,) LUBA No. 85-081
)
5 vs.) ORDER ON REMAND
)
6 JACKSON COUNTY,)
)
7 Respondent,)
)
8 and)
)
9 STERLING MINE PROPERTIES,)
)
10 Participant.)

11 On remand from the Court of Appeals.

12 Robert Liberty, Portland, filed a memorandum and argued on
13 behalf of petitioner.

14 Wendie L. Kellington, Medford, filed a memorandum and
15 argued on behalf of Respondent County.

16 Karen C. Allan, Medford, filed a memorandum and argued on
17 behalf of Respondent-Participant Sterling Mine Properties.
18 With her on the memorandum were Foster & Purdy.

19 BAGG, Referee; DuBAY, Chief Referee; participated in the
20 decision.

21 AFFIRMED 03/05/87

22 You are entitled to judicial review of this Order.
23 Judicial review is governed by the provisions of ORS 197.850.
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1 Opinion by Bagg.

2 PROCEDURAL HISTORY

3 This matter is before the Board for the second time. On
4 January 21, 1986, we affirmed Jackson County's Comprehensive
5 Plan and Zoning Map change redesignating certain property from
6 Forest Resource (FR) to Woodland Resource (WR).¹ 1000
7 Friends of Oregon v. Jackson County, 14 Or LUBA 212 (1986).
8 The Court of Appeals reversed and remanded our decision for
9 reconsideration. 1000 Friends of Oregon v. Jackson County, 79
10 Or App 93, 99, 718 P2d 753 (1986). The Court returned the case
11 for reconsideration of three Statewide Planning Goal 4 (Forest
12 Lands) compliance issues. Petitioner identifies the three
13 issues as follows:

14 "(1) allegations of goal violations contained in
15 Jackson County's Woodland Resource plan or
16 ordinance provisions 'that simply reiterate
objections that were or could have been made at
the time the provisions were acknowledged';

17 (2) allegations 'that the WR designations of the
18 specific land in question is contrary to Goal 4';
and

19 "(3) whether the addition of this 1000 acres 'of new
20 WR territory constitutes an indirect change to
21 the existing WR provisions which affects their
22 compliance with the goals.'" Petitioner's
Memorandum on Remand, pg. 1, citing the Court's
opinion in 1000 Friends of Oregon v. Jackson
County, supra.²

23 OPINION

24 Petitioner advises LCDC's acknowledgement of the Jackson
25 County Plan settles any issue under Number 1 above. The LCDC
26 acknowledgement of the Woodland Resource zone precludes

1 objections which could have been made during the course of the
2 acknowledgement proceeding. Therefore, the terms of the
3 Woodland Resource zone (as distinct from application of the
4 zone) may not be successfully challenged in this review.

5 The second issue, the application of the Woodland Resource
6 zone to specific lands, is properly a matter for our review.
7 In our original opinion, we understood petitioner's argument to
8 be that the WR zone violated Goal 4. We believed our review
9 was foreclosed by LCDC's acknowledgement of the Jackson County
10 plan. We noted, however, that there were differences between
11 the Forest Resource and the Woodland Resource zones. The
12 differences include standards for forest and nonforest uses and
13 lot sizes. We stated in a footnote that

14 "Indeed, it may be that the application of a zone
15 which complies with Goal 4 with respect to particular
16 property will violate the goal when applied to
17 property with different characteristics. However,
18 petitioner made no such allegation." 14 Or LUBA at
19 216.

20 Our reconsideration of the petition for review and
21 subsequent memoranda submitted by the parties lead us to the
22 same conclusion: that petitioner does not allege that the
23 characteristics of the property make it unsuitable for
24 application of the WR zone. Nowhere in the petition for review
25 does petitioner list the characteristics of the subject
26 property and argue that those characteristics are suitable only
for the FR zone, and not the WR zone.

Certainly, petitioner argues the county should not have

1 applied the WR zone to the subject property, but there is no
2 explanation why the property is not suitable for WR zoning
3 beyond the simple fact that the WR zone fails to provide the
4 same level of protection to forest lands as does the FR zone.
5 More is required before we can find the decision places forest
6 land entitled to Goal 4 (and FR zone) protection in the wrong
7 zone. If petitioner's challenge may be sustained, some other
8 basis for reversal or remand must exist in the petition for
9 review.

10 In its memorandum on remand, petitioner claims the LCDC
11 acknowledgement order forms a basis for reversal or remand.³

12 Petitioner argues the following:

13 "In short, petitioner's two-part contention is that
14 (1) the Woodland Resource designation does not retain
15 forest land for forest uses to an extent sufficient to
16 permit it to be applied to extensive areas of land
17 regulated by Goal 4, and (2) LCDC accordingly limited
18 its application to a small land area with specific
19 ownership size and locational characteristics
20 described in the acknowledgement order. Jackson
21 County failed to demonstrate that this amendment
22 complies with Goal 4 as interpreted in the
23 acknowledgement order. It could have done so only by
24 showing that the 1,000-acre parcel in question is an
25 insignificant addition of land to the WR category and
26 that the 1,000 acres meet the land characteristics for
WR designation approved by LCDC in its order. Jackson
County made neither showing, and its plan amendment
accordingly must be reversed and remanded."
Petitioner's Memorandum on Remand at 4.

22 The LCDC acknowledgement order provides LCDC's
23 justification for acknowledging the two zones as applied in
24 Jackson County. However, the acknowledgement order does not
25 freeze the county's zoning of particular lands. The
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1 plan provides criteria for redesignating properties - a useless
2 exercise if all lands were forever to be as designated at the
3 time of acknowledgement. Also, the acknowledgement order does
4 not ordain that the subject property must be zoned FR. The
5 acknowledgement order is a means of interpreting the goals. It
6 is not a standard for review. ORS 197.835(4)(b) provides that
7 the comprehensive plan amendment is measured against statewide
8 planning goals. Petitioner cites us to no authority suggesting
9 that we are to measure the comprehensive plan amendment against
10 an acknowledgement order. We therefore reject petitioner's
11 challenge.

12 The third issue before us on remand is whether the
13 redesignation constitutes an indirect change to existing WR
14 designations affecting their compliance with the goals. That
15 is, does redesignation of the subject property affect other
16 lands in such a way as to make other unamended provisions of
17 the plan inconsistent with the goals? See the discussion of
18 "secondary effect" in Urquhart v. Lane Council of Governments,
19 80 Or App 176, 721 P2d 870 (1986). Petitioner argues that the
20 WR designation for an additional 1,000 acres of forest land in
21 large parcels, as here, undermines LCDC's conclusion of goal
22 compliance. Petitioner also alleges the change is inconsistent
23 with the commission's interpretation of Goal 4 as related in
24 the Jackson County Acknowledgement Order.

25 We agree that redesignating particular lands may affect
26 whether other lands remain in compliance with the goals (and

1 the local comprehensive plan). These effects may be extant in
2 this case. However, petitioner does not explain what
3 particular secondary effects the change will have on other land
4 within the county nor how the redesignation results in other
5 lands being in noncompliance with Goal 4. It is obvious from
6 the provisions of the WR zone that smaller lot sizes are
7 permitted than in the FR zone. There are no facts cited about
8 the subject property or about its relationship with other lands
9 that might be adversely affected. Without an explanation of
10 these factors we are in no position to conclude thāt (1)
11 secondary effects exist and (2) the secondary effects undermine
12 compliance with Goal 4.

13 In summary, the county made findings justifying its
14 decision. The county found the property unsuitable for
15 commercial forest purposes because of soils, prior mining use,
16 slopes and other issues. Petitioner made no attack against
17 these findings in the original petition for review, and does
18 not attack them in subsequent memorandum. At a minimum, we
19 believe petitioner is required to argue how (1) the findings
20 are defective or fail to show compliance with the goals or (2)
21 the findings, assuming they are sufficient, are not supported
22 by substantial evidence in the whole record. Petitioner has
23 perfected neither challenge. While we are required to review
24 the decision for compliance with Goal 4, petitioner must make
25 sufficient allegations to advise us how the county's decision
26 is flawed. We find petitioner has not done so in this case.

1 The decision of Jackson County is affirmed.

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1 FOOTNOTES

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4 1 The following is a portion of the statement of the facts in
5 our opinion, 1000 Friends of Oregon v. Jackson County, ___ Or
6 LUBA 212, 213 (1986).

7 "The property is composed of primarily Forest Site
8 Class 4 and 5 soils with some Class II through IV
9 Agricultural soils. It is in a forested area, and
10 adjacent lands vary in size from less than 40 acres to
11 600 acres. The county's findings identify the
12 property as forest land.

13 "The county comprehensive plan includes two zones
14 which control land uses on forest lands. The FR Zone
15 is the more restrictive of the two. The plan states
16 as follows:

17 'Forest Resource Lands are areas where sustained
18 timber production and preservation of a
19 self-perpetuating forest environment is
20 considered to be the dominant land use. These
21 lands are principally located in the higher
22 elevations and are described later in this
23 element; and are for the most part owned and/or
24 managed by the Bureau of Land Management, the
25 U.S. Forest Service, or wood products industry
26 for large scale commercial timber production;
' have parcel sizes of 40 acres or greater; are
' specifically assessed as forest land and/or have
' a cubic foot site class rating of between +2 to 5
' (site class is discussed later in the element).'

19 "Generally, Forest Resource Lands are found at and
20 above the 2400 foot level. There are, however, Forest
21 Resource Lands below this level. The subject property
22 lies between 2300 and 3200 feet in elevation.

23 "The county plan describes Woodland Resource Lands as
24 follows:

25 "Woodland Resource land are recognized by Jackson
26 County as a second type of forest land. The
resource has been designated on the comprehensive
plan and zoning maps. Woodland Resource is
defined as those areas where production of timber
and wood fiber is, or can become, a primary use
of land. Guided by multiple use objectives,

1 Woodland Resource lands are generally located at
2 lower elevations; are generally in private
3 nonindustrial ownerships with some wood product
4 industry and less productive publicly owned
5 lands; parcel sizes are predominantly greater
6 than 20 acres; are specially assessed as forest
7 land; or have a cubic foot site class potential
8 for timber production; and occur adjacent to and
9 buffer the Forest Resource.'

10 "The county's findings, not challenged by petitioner,
11 explain that the rezoned property meets the criteria
12 for placement in a WR Zone. The findings discuss
13 forest site class, elevation, rainfall, productivity,
14 history of reforestation and other factors bearing on
15 whether this property should be zoned Forest Resource
16 or Woodland Resource."

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19 We will adopt petitioner's characterization of the issues.

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22 In its petition for review, petitioner argued that the
23 acknowledgement order was not a basis for review. Petitioner
24 did, however, include an alternative argument. Petitioner
25 argued that should the Board conclude that reference to the
26 acknowledgement order and findings is permissible in its
27 review, petitioner posits that the acknowledgement order and
28 the findings therein established that the WR zone designation
29 was limited to particular lands in small ownerships in Jackson
30 County. The subject property, according to petitioner, was not
31 included as suitable for WR zone designation. We note size,
32 however, is only one of several criteria the county uses when
33 designating forest lands.