

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

DOROTHY E. LYON,)
)
Petitioner,)
)
vs.)
)
LINN COUNTY,)
)
Respondent,)
)
and)
)
BEVERLY SMITH, VERNON SMITH,)
and JOHN MARBLE,)
)
Intervenors-Respondent.)

LUBA No. 94-165

FINAL OPINION
AND ORDER

Appeal from Linn County.

Dorothy E. Lyon, Crawfordsville, filed the petition for review and argued on her own behalf.

Thomas N. Corr, County Counsel, Albany; and Anne C. Davies, Eugene, filed the response brief. With them on the brief was Harrang, Long, Gary, & Rudnick. Thomas N. Corr argued on behalf of respondent. Anne C. Davies argued on behalf of intervenors-respondent.

HOLSTUN, Chief Referee; SHERTON, Referee; KELLINGTON, Referee, participated in the decision.

AFFIRMED 12/09/94

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

1 Opinion by Holstun.

2 **NATURE OF THE DECISION**

3 Petitioner challenges a decision by the Linn County
4 Board of Commissioners denying approval of a 25-space
5 recreational vehicle park on approximately 8 acres of an
6 approximately 45-acre Exclusive Farm Use (EFU) zoned parcel.

7 **MOTION TO INTERVENE**

8 Beverly Smith, Vernon Smith and John Marble move to
9 intervene on the side of respondent. There is no opposition
10 to the motion, and it is allowed.

11 **FACTS**

12 The subject 45-acre parcel is bordered on the north by
13 the Calapooia River. Forested hills border the property on
14 the south and west. The portion of the property proposed
15 for development as a recreational vehicle park is located in
16 the southeastern part of the property between the Calapooia
17 River and the forested hills to the south and west. The
18 property directly across the river from the proposed
19 recreational vehicle park, between Highway 228 and the
20 river, is zoned Rural Center (RCT-2.5) and is developed with
21 rural residences and a county park. Other property north of
22 Highway 228 and property adjoining the subject property to
23 the west are zoned EFU. The forested hills bordering the
24 property to the south and west are zoned Forestry
25 Conservation Management (FCM).

1 **PRELIMINARY MATTERS**

2 At oral argument, respondent provided an oversized map
3 of the recreational vehicle park, as well as five original
4 photographs, photocopies of which appear at Record 52 and
5 53. Petitioner does not object, and the documents shall be
6 considered part of the record.

7 Respondent also submitted a proposed supplemental
8 record consisting of ten pages that respondent contends
9 inadvertently were not copied and included when the record
10 was filed. Pages 24-26 and 39-45 of the record are copies
11 of only the front sides of the two-sided original pages.
12 The proposed supplemental record is comprised of copies of
13 the back sides of those original pages.

14 Petitioner objects to allowing the record to be
15 supplemented at oral argument. Respondent's request to
16 supplement the record is not timely, and is denied.

17 At oral argument, intervenors offered an aerial
18 photograph with two overlays. We understand this document
19 is the original of the map included at Record 38.
20 Petitioner objects to our consideration of the original
21 aerial photograph and overlays.

22 Because a photocopy of the aerial photograph was
23 included in the record, the more legible original from which
24 it was prepared is properly included in the record.¹

¹At oral argument petitioner offered a number of documents that clearly were not included as part of the record submitted by the county, and

1 **DECISION**

2 As we explained in Weyerhaeuser v. Lane County, 7 Or
3 LUBA 42, 46 (1982):

4 "The proponent of a land use change has a heavy
5 burden to prove the findings of fact and
6 conclusions in support of denial of the change
7 were not supported by substantial evidence. In a
8 typical denial case, the proponent must prove the
9 denial was erroneous as a matter of law.
10 Jurgenson v. Union County Court, 42 Or App 505,
11 600 P2d 1241 (1979). * * * It is not enough for
12 the proponent to introduce evidence supporting
13 affirmative findings of fact and conclusions on
14 all applicable legal criteria. The evidence must
15 be such that a reasonable trier of fact could only
16 say the [proponent's] evidence should be
17 believed."

18 We understand the challenged decision to find that one
19 of the bases for denying petitioner's application is her
20 failure to carry her burden of proof with regard to two of
21 the requirements of Linn County Zoning Ordinance (LCZO)
22 21.430(5). As relevant, LCZO 21.430(5) provides:

23 * * * * *

24 "(B) The use will not force a significant change
25 in accepted farm or forest practices on
26 surrounding lands devoted to farm or forest
27 use. This criteria [sic] may be satisfied
28 through the imposition of conditions. Any

respondents objected to our consideration of those documents. The Board refused to accept or consider those documents. Some of the documents were soils maps similar to soils maps included in the record, but we could not confirm they are the same soils maps from which the photocopied soils maps included in the record were made. In a post oral argument letter to the Board, petitioner complains that the Board allowed the record to be supplemented by considering an appellate court and LUBA decisions cited by respondents. We may consider appellate court and LUBA decisions without regard to whether they are included in the record.

1 conditions so imposed shall be clear and
2 objective.

3 "(C) The use will not significantly increase the
4 cost of accepted farm practices on
5 surrounding lands devoted to farm or forest
6 use. This criteria [sic] may be satisfied
7 through the imposition of conditions. Any
8 conditions so imposed shall be clear and
9 objective.

10 " * * * * *"²

11 The board of commissioners found petitioner failed to
12 carry her burden to demonstrate the proposal would be
13 compatible with, and would not interfere with, existing farm
14 and forest practices in the surrounding area.

15 Petitioner's fourth assignment of error is as follows:

16 "The Linn County Board of Commissioners erred in
17 not identifying the surrounding farm uses nor
18 identifying substantial evidence as to why the
19 proposed RV park would cause a significant change
20 in these farm practices or the cost of the
21 practices. [Berg v. Linn County, 22 Or LUBA 507
22 (1992)]."³ Petition for Review 3.

²These standards essentially replicate statutory limits on certain nonfarm uses in EFU zones. ORS 215.296 allows approval of certain nonfarm uses only where it can be found the use will not:

"(a) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or

"(b) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm use."

³While petitioner's petition for review includes five assignments of error, neither the fourth assignment of error nor any of the other assignments of error is supported with argument, as required by our rules. OAR 661-10-030(3)(d). At oral argument, petitioner stated she intended

1 The county found that allowing a commercial
2 recreational development on the south side of the Calapooia
3 River would compromise the river's function as a buffer
4 separating farm and forest uses to the south of the river
5 from the rural residential and recreational uses to the
6 north of the river. The county found that sheep and cattle
7 are raised on surrounding farms and that campers' dogs
8 chasing livestock would pose a conflict. The findings also
9 note that a farmer expressed concern that smoke and dust
10 associated with his farming operation would conflict with
11 the proposed recreational vehicle park. Finally, the
12 findings note petitioner's willingness to take steps to
13 minimize potential conflicts, but point out it cannot be
14 assumed petitioner will own the park in the future and that
15 "some guests' behavior is beyond the best efforts of a park
16 operator." Record 4. These findings are adequate to
17 demonstrate why the county believes the proposal does not
18 comply with LCZO 21.430(5)(B) and (C).

19 Had the county decided petitioner carried her burden
20 with regard to compliance with LCZO 21.430(5)(B) and (C), it
21 would have been required to identify the proposal's effects
22 on relevant farm practices with greater particularity than
23 is found in the above described findings. Blosser v.
24 Yamhill County, 18 Or LUBA 253, 270 (1989); Sweeten v.

documents from the record attached to her petition for review to constitute her argument.

1 Clackamas County, 17 Or LUBA 1234, 1247-48 (1989);
2 Billington v. Polk County, 13 Or LUBA 125, 131-32 (1985);
3 Stefansky v. Grant County, 12 Or LUBA 91, 93-94 (1984);
4 Resseger v. Clackamas County, 7 Or LUBA 152, 155-57 (1983).

5 However, as respondents correctly note, it is petitioner who
6 has the burden of proof concerning compliance with these
7 standards. It is petitioner who must identify the relevant
8 accepted farm and forest practices and produce evidence
9 showing those practices will not be significantly changed
10 and that the costs of those accepted farm practices will not
11 be significantly increased.

12 With regard to petitioner's evidentiary challenge, the
13 evidence cited by petitioner at oral argument does not
14 establish as a matter of law that LCZO 21.430(5)(B) and (C)
15 are satisfied. Therefore, the board of commissioners'
16 decision that petitioner failed to carry her burden with
17 regard to those standards is supported by substantial
18 evidence. See Jurgenson v. Union County Court, supra, 42 Or
19 App at 510.

20 Petitioner's remaining assignments of error challenge
21 other aspects of the board of county commissioners'
22 decision. However, because we have already sustained one of
23 the bases given by the board of county commissioners for
24 concluding the request must be denied, even if petitioner is
25 correct that the other bases for denial are defective in
26 some way, that would not provide a basis for reversing or

1 remanding the decision. A single sustainable basis for
2 denying a request for land use approval is sufficient.
3 Reeder v. Clackamas County, 23 Or LUBA 583 (1992).

4 The county's decision is affirmed.