

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 BICYCLE TRANSPORTATION ALLIANCE,)
5 an Oregon nonprofit corporation,)
6 FRIENDS OF CEDAR MILL, an Oregon)
7 nonprofit corporation, and)
8 SENSIBLE TRANSPORTATION OPTIONS)
9 FOR PEOPLE, an Oregon nonprofit)
10 corporation,)

11)
12 Petitioners,) LUBA Nos. 92-213, 92-214
13) and 92-215

14 and)

15) FINAL OPINION
16) AND ORDER

16 DEPARTMENT OF LAND CONSERVATION)
17 AND DEVELOPMENT,)
18))
19 Intervenor-Petitioner,)

20)
21 vs.)
22))

23 WASHINGTON COUNTY,)
24))
25 Respondent.)

26
27
28 On Remand from the Court of Appeals.

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30 Keith A. Bartholomew and Jay W. Beattie, Portland,
31 represented petitioners.

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33 Larry Knudsen, Assistant Attorney General, Salem,
34 represented intervenor-petitioner.

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36 David C. Noren, Assistant County Counsel, Hillsboro,
37 represented respondent.

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

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42 REMANDED (LUBA No. 92-213) 01/10/95
43 AFFIRMED (LUBA Nos. 92-214 and 92-215)
44

1 You are entitled to judicial review of this Order.
2 Judicial review is governed by the provisions of ORS
3 197.850.

1 Opinion by Holstun.

2 This appeal is before us on remand from the Court of
3 Appeals. Bicycle Transportation Alliance v. Washington Co.,
4 26 Or LUBA 265 (1993), remanded 127 Or App 312, 873 P2d 452,
5 modified 129 Or App 98 (1994). The Court of Appeals
6 remanded to LUBA for reconsideration of subassignment of
7 error 2c, but otherwise affirmed our prior decision.

8 **SUBASSIGNMENT OF ERROR 2c**

9 Under this subassignment of error, petitioners
10 challenge Washington County Ordinance 419 which, among other
11 things, adopts textual and map amendments to the
12 Transportation Plan element of the county's acknowledged
13 comprehensive plan.

14 OAR Chapter 660, Division 12 is the Land Conservation
15 and Development Commission's Transportation Planning Rule
16 (TPR). One of the purposes of that rule is to "identify how
17 transportation facilities are provided on rural lands
18 consistent with the goals." OAR 660-12-000. OAR 660-12-065
19 "identifies transportation facilities, services and
20 improvements which may be permitted on rural lands
21 consistent with Goals 3 [Agricultural Land], 4 [Forest
22 Lands], 11 [Public Facilities and Services] and 14
23 [Urbanization] without a goal exception." OAR 660-12-
24 065(1). Under subassignment of error 2c, petitioners
25 contend the following provisions of OAR 660-12-065 are
26 relevant:

1 1. Two categories of transportation facilities
2 and improvements are identified as consistent
3 with Goals 3 and 4 and may be sited on rural
4 agricultural and forest lands without an
5 exception to those goals. OAR 660-12-
6 065(3).¹

7 2. Several categories of transportation
8 facilities and improvements are identified as
9 consistent with Goals 11 and 14 and may be
10 allowed on rural lands without an exception
11 to those goals. OAR 660-12-065(4).²

12 In adopting amendments to the Rural Washington County
13 Functional Classification System Map with regard to three
14 proposed rural road improvements, the county failed to

¹Those two categories are set out at OAR 660-12-065(3)(a) and (b):

"(a) On land zoned for agricultural use, transportation facilities and improvements permitted outright or conditionally under ORS 215.213(1) or (2) or ORS 215.283(1) or (2); and

"(b) On land zoned for forest use, transportation facilities and improvements permitted outright or conditionally under OAR 660, Division 6."

²The three categories identified by petitioners appear at OAR 660-12-065(4)(q) through (s):

"(q) New Local service roads and extensions of existing of existing local service roads on farm and forest lands as provided in [OAR 660-12-065(5)];

"(r) Major road improvements to state highways or regional and statewide significance as provided in [OAR 660-12-065(6)];

"(s) Other transportation facilities, services and improvements serving local needs as provided in [OAR 660-12-065(7)]."

OAR 660-12-065(5) through (7) impose detailed standards and limitations on the facilities and improvements authorized by OAR 660-12-065(4)(q) through (s).

1 demonstrate those improvements comply with the above noted
2 TPR provisions.³ Petitioners argue the county must
3 demonstrate those improvements comply with the above noted
4 TPR provisions or, in the alternative, take exceptions to
5 Goals 3, 4, 11 and 14 for those improvements.⁴

6 The county concedes that in amending its Transportation
7 Plan to adopt a corridor concept for location and
8 construction of rural transportation improvements it must
9 address the above cited requirements of OAR 660-12-065, as
10 relevant.⁵ If the three disputed rural transportation

³Ordinance 419 adopts the "Rural Washington County Functional Classification System" map and the "East Washington County Functional Classification System" map in place of the "Functional Classification System" map, which is part of the county's Transportation Plan. The Transportation Plan is part of the county's acknowledged comprehensive plan.

⁴The three improvements challenged by petitioners under this subassignment of error are as follows:

"* * * (1) a new road extending 185th to Cornelius Pass Road, (2) a new road connecting Beef Bend, Elsner and Scholls/Sherwood Roads, and (3) an expansion of Scholls Ferry Road from 2 lanes to 5 lanes for the section between the metropolitan UGB and Tile Flat Road." Petition for Review 33.

⁵Prior to adoption of the amendments challenged in this appeal, Transportation Plan Monitoring Policy 21.0 required that the Transportation Plan be amended when identified road alignments were changed, except for "insignificant adjustments to proposed road alignments." Under Ordinance 419, a proposed rural roadway could be realigned within 1/2 mile of existing or proposed roadway centerlines without amending the Transportation Plan and, therefore, without addressing any statewide planning goal issues that might be raised by such realignments. In another subassignment of error, we sustained petitioners' argument that the county failed to demonstrate its new "corridor" approach complies with the statewide planning goals:

1 facilities and improvements do not comply with the relevant
2 provisions of OAR 660-12-065, they may not be adopted as
3 part of the Transportation Plan, unless exceptions to the
4 relevant statewide planning goals are taken. The findings
5 adopted by the county are not adequate to demonstrate the
6 three facilities comply with OAR 660-12-065, and the
7 challenged decision does not purport to take statewide
8 planning goal exceptions for the three facilities. In the
9 absence of such findings, the record is inadequate for LUBA
10 to determine whether the three facilities comply with
11 OAR 660-12-065.

12 Subassignment of error 2c is sustained.

13 Ordinance 419 is remanded. Ordinances 420 and 421 are
14 affirmed.

"If the county wishes to establish such broad alignment corridors and adopt provisions eliminating the need to address the goals at the time a particular alignment is selected within those corridors, it must explain in its decision why selection of an alignment anywhere within the adopted alignment corridors will be consistent with the goals. The challenged decision does not provide that explanation." Bicycle Transportation Alliance v. Washington Co., supra, 26 Or LUBA at 283.

The error in our prior decision was in assuming any OAR 660-12-065 issues presented by the three facilities disputed under subassignment of error 2c necessarily would be addressed by the county in responding to our remand concerning statewide planning goal issues under this other subassignment of error.