

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

3
4 LOWELL E. PATTON,)
5)
6 Petitioner,)
7)
8 vs.)
9)
10 CLACKAMAS COUNTY,)
11)
12 Respondent.)
13

LUBA No. 91-124
FINAL OPINION
AND ORDER

14
15 Appeal from Clackamas County.

16
17 Terrance L. McCauley, Estacada, filed the petition for
18 review on behalf of petitioner.

19
20 Gloria Gardiner, Oregon City, filed the response brief
21 on behalf of respondent.

22
23 SHERTON, Referee; HOLSTUN, Chief Referee; KELLINGTON,
24 Referee, participated in the decision.

25
26 AFFIRMED 12/05/91

27
28 You are entitled to judicial review of this Order.
29 Judicial review is governed by the provisions of ORS
30 197.850.

1 Opinion by Sherton.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a county hearings officer decision
4 denying his application for a nonforest dwelling.

5 **FACTS**

6 The subject property is an undeveloped 4.56 acre
7 parcel. It is designated Forest by the Clackamas County
8 Comprehensive Plan and zoned Transitional Timber 20-Acre
9 (TT-20). There is residential development on land to the
10 north and west of the subject property. To the south and
11 east of the subject property is undeveloped land zoned
12 TT-20.

13 Petitioner applied to the county for approval of a
14 dwelling not in conjunction with forest use. The county
15 planning department administratively approved his
16 application. That decision was appealed by the Holcomb-
17 Outlook Community Planning Organization (CPO). After a
18 public hearing, the county hearings officer issued the
19 challenged decision denying the application.

20 **ASSIGNMENT OF ERROR**

21 "The findings that the proposal is not compatible,
22 or consistent, with the forest use potential of
23 the property, that the property is generally
24 suitable for the production of forest products,
25 and that it will be in conflict with applicable
26 provisions of the Plan, are not supported by
27 substantial evidence in the whole record."

28 A nonforest dwelling can only be approved in the TT-20
29 zone if it satisfies seven standards set out in Clackamas

1 County Zoning and Development Ordinance (ZDO) 403.05A. The
2 county denied the subject application because of failure to
3 comply with three of those standards. Petitioner challenges
4 the evidentiary support for the county's findings of
5 noncompliance with each of the three approval standards.

6 A local government's denial of a land development
7 application will be sustained if the local government's
8 determination that any one approval standard is not
9 satisfied is sustained. McCaw Communications, Inc. v. Polk
10 County, ___ Or LUBA ___ (LUBA No. 88-083, February 25,
11 1991), slip op 6; Douglas v. Multnomah County, 18 Or LUBA
12 607, 619 (1990); Van Mere v. City of Tualatin, 16 Or LUBA
13 671, 687 (1988). Further, in challenging on evidentiary
14 grounds the local government's determination that applicable
15 approval standards are not met, petitioner must demonstrate
16 that as the applicant, he carried his burden to demonstrate
17 compliance with those standards as a matter of law. See
18 Jurgenson v. Union County Court, 42 Or App 505, 510, 600 P2d
19 1241 (1979); Douglas v. Multnomah County, supra;
20 Consolidated Rock Products, Inc. v. Clackamas County, 17
21 Or LUBA 609, 619 (1989).

22 We first consider the county's determination of
23 noncompliance with ZDO 403.05A.4, which requires that a
24 proposed nonforest dwelling:

25 "Is situated upon generally unsuitable land for
26 the production of farm or forest products,
27 considering the terrain, adverse soil or land

1 conditions, drainage and flooding, vegetation,
2 location and size of the tract[.]"

3 The county found that the size and slope of the subject
4 property and the presence of residential development to the
5 north and west are limiting factors. However, the county
6 also found that because the soils on the property are well
7 suited to the production of Douglas Fir and there are
8 undeveloped parcels adjoining the property to the east and
9 south in conjunction with which the subject property could
10 be managed, the subject property is generally suitable for
11 the production of forest products.

12 We have reviewed the evidence in the record cited by
13 the parties. There is testimony that marketable timber is
14 currently being logged on the subject property.¹ Record 43,
15 49. There is evidence that logging is occurring on other
16 small parcels in the area. Record 44. There is evidence
17 that a second undeveloped five acre parcel adjoining the
18 subject parcel to the south is also owned by petitioner, and
19 that the undeveloped 40 acre parcel to the south of that is
20 owned by a timber company. Record 43, 49, 78. There is
21 conflicting testimony with regard to the soils and slopes on
22 the subject property, including testimony by the planning
23 director that the soils are predominantly Cornelius silt
24 loam, 15 to 30% slopes, which is well-suited to Douglas fir

¹Petitioner's rebuttal testimony, that he is "clearing and building road in the area," does not refute this. Record 52.

1 production. Record 15, 34-35, 44-45, 72-73.

2 This evidence does not demonstrate as a matter of law
3 that the subject property is generally unsuitable for the
4 production of forest products. This requires us to sustain
5 the county's determination of noncompliance with
6 ZDO 03.05A.4 and affirm the county's decision.

7 The assignment of error is denied.

8 The county's decision is affirmed.