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

DEPARTMENT OF LAND CONSERVATION)
AND DEVELOPMENT,)
)
Petitioner,)
)
vs.)
)
CLATSOP COUNTY,)
)
Respondent,)
)
and)
)
KENNETH RIECK and SANDRA RIECK,)
)
Intervenors-Respondent.)

LUBA No. 91-219
FINAL OPINION
AND ORDER

Appeal from Clatsop County.

Jane Ard, Salem, filed the petition for review. With her on the brief were Charles S. Crookham, Attorney General; Jack Landau, Deputy Attorney General; and Virginia L. Linder, Solicitor General.

No appearance by respondent.

Kenneth Rieck and Sandra Rieck, Astoria, represented themselves.

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

REMANDED 04/22/92

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

1 Opinion by Sherton.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a county decision rezoning a 22.5
4 acre tax lot from Forestry - 80 acre minimum (F-80) to
5 Agriculture/Forestry - 20 acre minimum (AF-20).

6 **MOTION TO INTERVENE**

7 Kenneth Rieck and Sandra Rieck, the applicants below,
8 move to intervene in this proceeding on the side of
9 respondent. There is no opposition to the motion, and it is
10 allowed.¹

11 **FACTS**

12 Intervenors-respondent (intervenors) own two AF-20
13 zoned tax lots, with a combined area of 30 acres. A house,
14 barn and two storage structures are located on these tax
15 lots. The western portion of these tax lots is used for
16 cattle grazing. Intervenors also own the subject 22.5 acre
17 F-80 zoned tax lot, which adjoins the AF-20 zoned tax lots
18 to the north. The subject parcel was acquired by
19 intervenors through a lot line adjustment, after being
20 logged in 1987. We cannot determine from the record whether
21 the subject tax lot is a separate legal parcel, or whether
22 intervenors' total 52.5 acre ownership comprises one legal
23 parcel.

24 The subject tax lot is designated Conservation - Forest

¹We note, however, that neither respondent nor intervenors-respondent filed a response brief in this proceeding.

1 Lands on the county comprehensive plan map. This plan map
2 designation is not proposed to be amended. The subject tax
3 lot is bordered by F-80 zoned property in commercial forest
4 use to the north and east. It is bordered by AF-20 zoned
5 property to the south and west.

6 On June 26, 1991, intervenors applied for a zone change
7 from F-80 to AF-20 for the subject tax lot. The application
8 states the following with regard to the intended use of the
9 property:

10 "The subject [tax lot] will be used for some form
11 of agricultural and/or forest use in the future.
12 The future development may include a farm
13 residence or forest residence."² Record 71.

14 After a public hearing and an affirmative recommendation
15 from the planning commission, the board of commissioners
16 adopted the challenged ordinance rezoning the subject tax
17 lot AF-20. This appeal followed.

18 **ASSIGNMENT OF ERROR**

19 "The County's decision does not meet the
20 requirements for approving a zone change on this
21 22.52-acre parcel. In addition, the County's
22 decision lacks necessary findings and is not
23 supported by substantial evidence."

24 LWDUO 5.412 establishes four criteria for
25 quasi-judicial zone changes:

²The AF-20 zone allows forest residences and farm residences as conditional uses. Clatsop County Land and Water Development and Use Ordinance (LWDUO) 3.518(1) and (2). The F-80 zone allows forest residences as uses permitted with review. LWDUO 3.553(1). The F-80 zone makes no provision for farm residences.

1 "(1) The amendment shall be consistent with the
2 Comprehensive Plan.

3 "(2) The revision will not interfere with the
4 development or value of other land in the
5 vicinity when compared to the public interest
6 in allowing the change in zone.

7 "(3) A demand exists for the development and uses
8 listed in the proposed zone at the proposed
9 location.

10 "Factors which should be considered in
11 determining whether or not this demand exists
12 include (a) availability, including an
13 assessment of the public facilities and
14 services and roads to supply the area, and
15 (b) an assessment of availability of other
16 appropriate zoned property.

17 "(4) The revision will not be detrimental to the
18 general interests of the community."

19 Petitioner challenges the adequacy of, and the
20 evidentiary support for, the county's findings of compliance
21 with each of the above criteria. We first consider
22 petitioner's arguments concerning LWDUO 5.412(3).

23 The county findings addressing LWDUO 5.412(3), in their
24 entirety, state:

25 "[T]he applicant has detailed his intentions to
26 utilize the involved property for a mixed
27 farm/forest resource use. He has described the
28 general need to eventually add a second residence
29 to his overall ownership in order to more
30 effectively manage this farm/forest resource
31 parcel in the future. We find this to be a
32 reasonable and equitable request which will at the
33 same time protect resource lands and promote
34 efficient management practices. We conclude that
35 a demand exists for the proposed rezoning."
36 (Emphasis added.) Record 12.

1 Petitioner contends the most that can be inferred from
2 these findings is that the county believes there is a demand
3 for a residence on the subject tax lot. According to
4 petitioner, the only basis stated for concluding there is a
5 demand for a house on the subject property is the desire of
6 the property owners to add a second dwelling at some future
7 date. Petitioner argues this is insufficient to constitute
8 a "demand * * * for the development and uses listed in the
9 proposed zone at the proposed location," as required by
10 LWDUO 5.412(3). Petitioner argues that the factors which
11 LWDUO 5.412(3) states the county should consider indicate
12 that a "demand" exists only if the subject area has adequate
13 public facilities and roads and other appropriately zoned
14 property is not available for the proposed use. Petitioner
15 contends the "demand" required by LWDUO 5.412(3) must be "a
16 general demand for that type of use or development in the
17 area, not [a property owner's] desire to eventually have a
18 house on a particular parcel." Petition for Review 6.

19 The LWDUO does not contain a definition of "demand."
20 However, considering that LWDUO 5.412(2) requires comparison
21 of the impacts of a proposed zone change to "the public
22 interest in allowing the change in zone," and that
23 LWDUO 5.412(3) states the "availability of other
24 appropriate[ly] zoned property" should be considered in
25 determining whether a "demand" exists at the location
26 proposed for a zone change, we agree with petitioner that

1 the desire of an individual property owner for a particular
2 use on a particular parcel is not sufficient, in and of
3 itself, to constitute a "demand" under LWDUO 5.412(3).³

4 The above quoted findings do not identify the nature of
5 the "demand" for "development and uses listed in the [AF-20]
6 zone" which the county found to exist. However, even if we
7 assume that the "demand" found is for a second farm
8 residence on the subject ownership, which is the only use
9 referred to in the findings that would not be allowed under
10 the current F-80 zoning, the only basis for that demand is
11 the expressed desire of the property owner to "eventually"
12 add a second residence sometime in the future. This does
13 not satisfy LWDUO 5.412(3).⁴

14 The assignment of error is sustained.⁵

15 The county's decision is remanded.

³In Slatter v. Wallowa County, 16 Or LUBA 611, 624 (1988), we upheld a county interpretation of "demand," as used in a conditional use permit approval standard, to mean "market demand."

⁴Because the county's findings are inadequate to demonstrate compliance with LWDUO 5.412(3), no purpose would be served by determining whether they are supported by substantial evidence Benjamin v. City of Ashland, ___ Or LUBA ___ (LUBA No. 90-065, November 13, 1990); DLCD v. Columbia County, 16 Or LUBA 467 (1988); McNulty v. City of Lake Oswego, 14 Or LUBA 366, 373 (1986).

⁵Petitioner also argues that the challenged decision fails to satisfy LWDUO 5.412(1), (2) and (4). However, resolution of petitioner's additional arguments would require an extension of the deadline for issuing our final opinion and order. ORS 197.830(14). We therefore do not consider petitioner's remaining arguments under this assignment of error. ORS 197.835(9)(a).