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

DEPARTMENT OF LAND CONSERVATION)
AND DEVELOPMENT,)
Petitioner,)
vs.)
MORROW COUNTY,)
Respondent.)

LUBA No. 92-173
FINAL OPINION
AND ORDER

Appeal from Morrow County.

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

Valerie B. Doherty, Deputy District Attorney, Heppner, filed the response brief and argued on behalf of respondent. With her on the brief was Jeffrey M. Wallace, District Attorney.

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

REVERSED 01/14/93

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 challenges a county decision adopting
4 amendments to Morrow County Zoning Ordinance (MCZO)
5 Section 3.030 (Forest Zone).

6 **FACTS**

7 On August 26, 1992, the Morrow County Court adopted a
8 revised version of MCZO 3.030.¹ The revised Forest Zone
9 applies to all forested areas of the county, some 240,000
10 acres. Approximately 42% of these acres are in 112 private
11 ownerships. Morrow County Comprehensive Plan 75.

12 **ASSIGNMENT OF ERROR**

13 "The County misconstrued the applicable law by
14 adopting land use regulations governing its forest
15 lands that do not comply with OAR [Chapter] 660,
16 Division 6."²

17 DLCD contends the Goal 4 rules apply to local
18 government land use regulation amendments.
19 OAR 660-06-003(1)(d);³ DLCD v. Columbia County, ___ Or LUBA

¹While the revised text of MCZO 3.030 adopted by the county court is included in the record submitted to us (Record 8-20), the county ordinance that adopted the revised text is not. The parties agree that the county adopted no findings in support of its decision.

²On December 3, 1992, after this case was briefed, the Land Conservation and Development Commission (LCDC) adopted amendments to OAR Chapter 660, Division 6 (Goal 4 rules), effective December 10, 1992. Of the provisions of the Goal 4 rules relied on by petitioner Department of Land Conservation and Development (DLCD) in its petition for review, none were amended in a way that affects the outcome of this appeal.

³The December 10, 1992 amendments to the Goal 4 rules renumber this provision as OAR 660-06-003(5).

1 ____ (LUBA No. 92-073, September 10, 1992), slip op 14-15,
2 aff'd 117 Or App 207 (1992).⁴ DLCD argues that under
3 ORS 197.835(7)(a)(D), the county's decision should be
4 reversed because it improperly construes several provisions
5 of this applicable law. DLCD contends there are essentially
6 seven respects in which the challenged MCZO amendments fail
7 to comply with the Goal 4 rules. We briefly summarize each
8 contention.

9 First, MCZO 3.030(D)(20) allows the establishment of
10 "unpaved personal use airports for airplanes and helicopter
11 pads" in the Forest zone. DLCD argues that, with regard to
12 airports, under OAR 660-06-025(4)(t), the county may allow
13 only the expansion of existing airports in a forest zone.

14 Second, under OAR 660-06-027(4), the county may allow
15 the establishment of forest management dwellings in a forest
16 zone only if it finds the subject property "qualifies for
17 and is enrolled in one of Oregon's forest tax programs."
18 DLCD contends there is no such requirement in the county's
19 revised Forest zone.

20 Third, under OAR 660-06-028(5) and (7), the county may
21 allow the establishment of dwellings not related to forest
22 management in a forest zone only if the parcel on which the

⁴Petitioner also points out that ORS 197.646 requires local governments to "amend [their] comprehensive plans and land use regulations to implement new or amended statewide planning goals, [LCDC] rules and land use statutes when such goals, rules or statutes become applicable to the jurisdiction." (Emphasis added.)

1 dwelling would be located (1) was lawfully created prior to
2 the adoption of this rule on February 5, 1990; and (2) is
3 composed primarily of soils with certain levels of wood
4 fiber production capability. DLCD contends there are no
5 such requirements in the revised Forest zone.

6 Fourth, under OAR 660-06-028(6), the county may allow
7 the establishment of dwellings not related to forest
8 management in a forest zone only if the parcel on which the
9 dwelling would be located "has been disqualified from
10 receiving a farm or forest tax deferral." DLCD contends
11 there is no such requirement in the county's revised Forest
12 zone.

13 Fifth, under OAR 660-06-028(2), the county may allow
14 the establishment of dwellings not related to forest
15 management in a forest zone only if the parcel on which the
16 dwelling would be located is "within a rural fire protection
17 district or the proposed resident has contracted for
18 residential fire protection." DLCD points out the revised
19 Forest zone requires an applicant for a nonforest management
20 dwelling to:

21 "Execute a document acknowledging that no public
22 body, whether state, federal or local, has any
23 responsibility whatsoever for providing fire
24 protection or fire fighting services for the
25 benefit of the proposed dwelling unit or other
26 structures." MCZO 3.030(F)(5).

27 DLCD argues the above quoted provision is not the equivalent
28 of the requirement imposed by OAR 660-06-028(2).

1 Sixth, OAR 660-06-035(3) requires the owners of all
2 dwellings and other structures in a forest zone to "clear
3 and maintain a secondary fuel-free [fire] break area." DLCD
4 points out that MCZO 3.030(I)(8)(a) requires the owners of
5 structures in the Forest zone to "make provisions for a
6 secondary fire break, if required by statute." (Emphasis
7 added.) DLCD contends that because MCZO 3.030(I)(8)(a)
8 mandates secondary fire breaks only if they are required by
9 statute, it does not comply with OAR 660-06-035(3).

10 Seventh, OAR 660-06-029(1)(c) and (d) require that
11 dwellings and other structures in a forest zone must be
12 sited to "minimize" (1) the amount of forest land used to
13 site access roads, service corridors, dwellings and other
14 structures; and (2) risks associated with wildfires. DLCD
15 points out that MCZO 3.030(G)(3) and (4) require that the
16 siting of dwellings and other structures in the Forest zone
17 "limit," rather than "minimize," these factors. DLCD points
18 out the MCZO does not define the term "limit." However,
19 according to DLCD, the dictionary definition of "limit" is
20 "to set a point beyond which something cannot go," whereas
21 the dictionary definition of "minimize" is "to reduce
22 something to the least amount possible." Petition for
23 Review 8. DLCD argues that by requiring only that the
24 siting of structures "limit" the amount of forest land used
25 and wildfire risks, the challenged amendments do not require
26 that the amount of forest land used and the wildfire risks

1 be reduced as much as possible, as required by
2 OAR 660-06-029(1)(c) and (d).

3 The county does not dispute that the Goal 4 rules are
4 applicable to the challenged code amendments, or that
5 revised MCZO 3.030 is inconsistent with the language of the
6 Goal 4 rules in the ways alleged by DLCD. However, the
7 county maintains that the challenged amendments do not
8 "offend the spirit of either the goal or the administrative
9 rule, and alter the letter of the rule only as far as is
10 necessary to give [the revised MCZO provisions] real meaning
11 when applied to actualities in Morrow County." Respondent's
12 Brief 3. The county argues that local government plans and
13 land use regulations "need not simply parrot LCDC's goals
14 and rules." Oregonians in Action v. LCDC, 106 Or App 721,
15 726, 809 P2d 718 (1991).

16 The county further argues that an administrative rule
17 requirement that makes sense when applied verbatim in one
18 locale may become a nonsequitor when applied in another.
19 The county cites OAR 660-06-025(4)(t), which allows the
20 expansion of existing airports in a forest zone, as an
21 example. The county contends there are no airports
22 presently located in the county's Forest zone; and,
23 therefore, if the MCZO were consistent with the letter of
24 OAR 660-06-025(4)(t), no airport could ever be approved.
25 The county argues the intent of OAR 660-06-025(4)(t) is not
26 to ban all airports on forest lands. Therefore, the county

1 reasons, MCZO 3.030(D)(20) is consistent with the intent if
2 not the letter of the rule, because it strikes a balance
3 between banning airports completely and allowing them
4 indiscriminately.

5 Local government land use regulations are required to
6 comply with LCDC's administrative rules. ORS 197.646;
7 Oregonians in Action v. LCDC, supra. We agree with DLCD
8 that the Goal 4 rules apply to the challenged land use
9 regulation amendments. OAR 660-06-003(1)(d); DLCD v.
10 Columbia County, supra. We also agree with DLCD that
11 revised MCZO 3.030 fails to comply with the Goal 4 rules in
12 the seven respects summarized above.

13 The county's decision is reversed.