

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39

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

DEPARTMENT OF LAND CONSERVATION)
AND DEVELOPMENT,)

Petitioner,)

vs.)

COOS COUNTY,)

Respondent,)

and)

PETER BUSSMAN and DIANNA BUSSMANN,)

Intervenors-Respondent.)

LUBA No. 92-103

FINAL OPINION
AND ORDER

On Remand from the Court of Appeals.

Jane Ard, Assistant Attorney General, Salem,
represented petitioner.

No appearance by respondent.

Douglas M. DuPriest, Eugene, represented intervenors-
respondent.

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

REMANDED 07/26/93

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

1 Opinion by Kellington.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a county ordinance taking an
4 exception to Statewide Planning Goal 3 (Agricultural Land),
5 for a 20 acre portion of a 175 acre parcel, and amending the
6 comprehensive plan designation for the 20 acres from Forest
7 to Rural Residential and the zoning map designation from
8 Forest/Mixed Use to Qualified Residential 5.

9 **FACTS**

10 This appeal is before us on remand from the court of
11 appeals. DLCD v. Coos County, 117 Or App 400, ___ P2d ____
12 (1992) (Coos County II). In our opinion in DLCD v. Coos
13 County, ___ Or LUBA _____ (LUBA No. 92-103, October 9,
14 1992) (Coos County I), slip op 4-5, we set out the facts as
15 follows:

16 "The subject property is the undivided westernmost
17 20 acre portion of a 175 acre parcel. The history
18 of the 175 acre parcel is relevant to this appeal
19 proceeding.

20 "Until 1986, the 175 acre parcel was part of a
21 larger parcel. In 1986, intervenors sought and
22 were granted approval to partition the larger
23 parcel into the 175 acre parcel, of which the
24 subject 20 acres are a part, and two other
25 parcels. The purpose of the partition was "to
26 reorganize two working ranches and create smaller,
27 more efficient management units."

28 "The subject 20 acres consist of sand and wetland
29 soils having an agricultural capability
30 classification of SCS Class VII. Between 26% and
31 40% of the soils on the 175 acre parcel are SCS
32 class III and IV. The balance of the soils are
33 SCS Class VII.

1 "The planning commission recommended approval of
2 the proposed plan and zone change. The board of
3 commissioners followed the planning commission's
4 recommendation, and adopted the challenged
5 decision. * * *." (Record citations and
6 footnotes omitted.)

7 In Coos County I, we remanded the challenged decision
8 on two bases. First we determined that findings in the
9 challenged decision that the subject 20 acres are not
10 properly considered agricultural land are erroneous. That
11 basis for our decision was sustained by the court of appeals
12 in Coos County II.

13 Second, we determined the county's alternative
14 determination, that if the subject land is properly
15 considered "agricultural land" a "reasons" exception to
16 Statewide Planning Goal (Goal) 3 is justified under
17 OAR 660-04-020 and 660-04-022, is erroneous.¹ Specifically,
18 we determined the county's exception to Goal 3 to be
19 erroneous under OAR 660-04-022(1).² The court of appeals
20 stated that OAR 660-04-022(1)(a) is inapplicable to
21 exceptions to Goal 3 for "rural residential" development,

¹The county also found the subject 20 acres are not "forest lands" as defined by Goal 4. Record 28-32. Petitioner did not challenge those findings, and the county did not adopt an exception to Goal 4. Therefore, we did not consider any issue raised by petitioner concerning Goal 4.

²OAR 660-04-022(1)(a) requires the following determination in approving an exception:

"There is a demonstrated need for the proposed use or activity based on one or more of the requirements of Statewide Goals 3 to 19 * * *."

1 and remanded the decision to this Board to apply
2 OAR 660-04-022(2) to the challenged decision.

3 **SECOND ASSIGNMENT OF ERROR**

4 "The county misconstrued the applicable law,
5 failed to make adequate findings, and made a
6 decision not supported by substantial evidence in
7 the record when it concluded that the proposal met
8 the requirements for a reasons exception to [Goal
9 3]."

10 OAR 660-04-022(2) provides as follows:

11 "For rural residential development the reasons
12 [justifying a goal exception] cannot be based on
13 market demand for housing, except as provided for
14 in this section of this rule, assumed continuation
15 of past urban and rural population distributions,
16 or housing types and cost characteristics. A
17 county must show why, based on the economic
18 analysis in the plan, there are reasons for the
19 type and density of housing planned which require
20 this particular location on resource lands. A
21 jurisdiction could justify an exception to allow
22 rural residential development on resource land
23 outside an urban growth boundary by determining
24 that the rural location of the proposed
25 residential development is necessary to satisfy
26 the market demand for housing generated by
27 existing or planned rural industrial, commercial,
28 or other economic activity in the area."
29 (Emphasis supplied.)

30 The challenged decision contains general statements
31 concerning the desirability of allowing rural residential
32 development in the older stabilized dune formations in the
33 southern coastal portions of the county. However, it does
34 not contain any explanation, based on economic analysis in
35 the plan, of the reasons for the particular type and density
36 of proposed development on the particular resource parcel at

1 issue in this appeal, as required by OAR 660-04-022(2).
2 While the challenged decision may establish the existence of
3 a market demand for rural residential homesites generally,
4 the challenged decision falls far short of establishing a
5 justification for the particular development on the
6 particular piece of resource property at issue in this
7 appeal.

8 The second assignment of error is sustained.

9 The county's decision is remanded.