

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

3
4 VIRGINIA WISSUSIK,)
5)
6 Petitioner,)
7)
8 vs.)
9)
10 YAMHILL COUNTY,)
11)
12 Respondent,)
13)
14 and)
15)
16 FRED G. POEHLER,)
17)
18 Intervenor-Respondent.)

LUBA No. 93-131

FINAL OPINION
AND ORDER

19
20
21 Appeal from Yamhill County.

22
23 Virginia Wissusik, Newberg, filed the petition for
24 review and argued on her own behalf.

25
26 No appearance by respondent.

27
28 William A. Monahan, Portland, filed the response brief
29 and argued on behalf of intervenor-respondent. With him on
30 the brief was O'Donnell, Ramis, Crew & Corrigan.

31
32 KELLINGTON, Chief Referee; HOLSTUN, Referee; SHERTON,
33 Referee, participated in the decision.

34
35 AFFIRMED 04/01/94

36
37 You are entitled to judicial review of this Order.
38 Judicial review is governed by the provisions of ORS
39 197.850.

1 Opinion by Kellington.

2 **NATURE OF THE DECISION**

3 Petitioner challenges a county order approving a lot
4 line adjustment.

5 **MOTION TO INTERVENE**

6 Fred G. Poehler moves to intervene on the side of
7 respondent in this appeal proceeding. There is no objection
8 to the motion, and it is allowed.

9 **FACTS**

10 The subject properties are zoned Agricultural-Forestry
11 (AF-20). Intervenor and the owner of an adjacent property
12 submitted an application for a lot line adjustment.¹ The
13 challenged decision states the following additional facts:

14 "The request is for a lot-line adjustment between
15 lots owned by [an adjacent property owner and
16 intervenor]. Tax lots 3214-301 and 704 constitute
17 one ownership held by [the adjacent property
18 owner], totaling just over 20 acres. Tax lot
19 3214-700, also just over 20 acres, is owned by
20 [intervenor]. The lot-line adjustment proposes an
21 even trade of three acres between [the two lots].
22 After the adjustment, [the adjacent property
23 owner's] lot would be about 20.35 acres and
24 [intervenor's] lot would be about 20.69 acres. *
25 * *" Record 5.

26 The county planning department approved the

¹This is the second time an appeal of a county land use decision involving intervenor's property has been before this Board. In Wissusik v. Yamhill County, 20 Or LUBA 246 (1990), petitioner challenged a county decision approving a conditional use permit for a personal use airport on the subject property. This Board remanded the county's decision approving the personal use airport. The county reaffirmed that decision, and no appeal was filed.

1 application. An appeal was filed with the county board of
2 commissioners. After a public hearing, the board of
3 commissioners affirmed the planning director's decision and
4 approved the lot line adjustment. This appeal followed.

5 **PRELIMINARY ISSUE**

6 Subject to certain exceptions not relevant here, our
7 scope of review is limited to the record created during the
8 local proceedings. ORS 197.830(13)(a).

9 Intervenor contends appendices D, G, H, and I to the
10 petition for review are documents not included in the local
11 record and, therefore, are documents that we may not
12 consider. Petitioner does not dispute that appendices D, G,
13 H and I are not included in the record submitted by the
14 county to this Board.

15 Because appendices D, G, H and I are not included in
16 the local record, we do not consider them.

17 **FIRST ASSIGNMENT OF ERROR**

18 "The County erred in finding that the proposed use
19 meets the criteria of Yamhill County Land Division
20 Ordinance, No. 529, 1992, Section 7.020(2) as
21 amended * * * because the record does not support
22 a finding that the land will be maintained for
23 Agricultural purposes."

24 Petitioner argues that because the subject property
25 contains U.S. Soil Conservation Service Class III soils, the
26 challenged decision violates ORS 215.203 (which defines farm

1 use), Yamhill County Land Division Ordinance (LDO) 7.020(2)²
2 and comprehensive plan section II(A) (Agricultural Lands).

3 Petitioner's arguments concerning compliance with
4 LDO 7.020(2) depend upon petitioner's contentions that the
5 proposal violates plan section II(A) and the ORS 215.203
6 definition of farm use. Plan section II(A) contains several
7 goals and policies regarding agricultural lands. Petitioner
8 does not identify which provisions of plan section II(A) she
9 believes to be violated by the challenged decision.
10 Petitioner's argument regarding Plan section II(A) is
11 insufficiently developed for review. Deschutes Development
12 Corp. v. Deschutes County, 5 Or LUBA 218, 220 (1982).

13 With regard to petitioner's arguments that the
14 challenged decision violates the ORS 215.203 definition of
15 farm use, the decision contains the following findings:

16 "The only state requirement raised by opponents
17 was ORS 215.203, the statutory definition of 'farm
18 use.' This argument was made during the July 7,
19 1993 hearing. The opponents' argument was
20 apparently that the new configuration allowed by
21 the lot-line adjustment would result in the
22 property not being able to be used for farming
23 within the meaning of ORS 215.203. The Board [of
24 Commissioners] rejects this argument. First, the
25 statutory definition of 'farm use' is not of
26 itself an independent criterion for a lot-line

²LDO 7.020(2) provides:

"Lot-line adjustments shall conform to the Comprehensive Plan and Official Map, any criteria of the Zoning Ordinance, and any state requirements of Oregon Revised Chapters 92, 197, and 215."

1 adjustment. Second, testimony from the applicant
2 indicated that there would be no change in the
3 farming activities taking place on the property.
4 The Board [of Commissioners] agrees with the
5 statement of the applicant that a new lot
6 configuration would not affect grazing
7 activities." Record 7.

8 We agree with the county that the definition of "farm
9 use" in ORS 215.203 is not an independent approval criteria
10 for a lot line adjustment.

11 The first assignment of error is denied.

12 **SECOND ASSIGNMENT OF ERROR**

13 "The County erred when [it] found that [LDO] 6.010
14 and 6.020 apply only to public road access and to
15 authorization of dwellings."

16 Petitioner argues the challenged decision violates
17 LDO 7.020(4), 6.010(8)(C) and 6.020(1). LDO 7.020(4)
18 provides: "[a]ll lots resulting from a lot-line adjustment
19 shall have legal access to a public road pursuant to [LDO]
20 6.010 and 6.020." LDO 6.010(8)(C) states "[n]o more than
21 three parcels may be served by a private easement." LDO
22 6.020(1) provides "[t]here shall be direct legal access to
23 and abutting on every lot or parcel." At the outset, we
24 note petitioner's arguments under this assignment of error
25 are unfocused and difficult to understand. It appears
26 petitioner argues that (1) more than three parcels will be
27 served by a private easement after the approval of the
28 disputed lot-line adjustment, and (2) intervenor's and the
29 adjacent property owner's lots will not have access to a
30 public road.

1 First, although the approved lot line adjustment causes
2 an additional lot to be contiguous to an existing private
3 easement, nothing in the challenged decision purports to
4 approve access to that private easement. Therefore, we do
5 not understand why provisions governing the provision of
6 access by private easement apply here.

7 Second, the challenged decision determines the public
8 street access currently enjoyed by intervenor's lot and the
9 adjacent property owner's lot is unchanged by the proposal.
10 Specifically, the findings state:

11 "The Board [of Commissioners] finds that the
12 existing physical access to public roads from the
13 two subject lots is unaffected by the lot-line
14 adjustment. Therefore, this standard is
15 satisfied. * * *" Record 8.

16 The county determined both intervenor's lot and the
17 adjacent property owner's lot have access to public roads
18 that is unaffected by the proposal. In the absence of more
19 focused arguments from petitioner, we are unable to
20 determine any error.

21 The second assignment of error is denied.

22 **THIRD ASSIGNMENT OF ERROR**

23 "The County erred in not completing the Approval
24 Standards for this lot-line adjustment."

25 Petitioner argues the lot line adjustment application
26 was incomplete. Specifically, petitioner contends
27 LDO 7.010(4) and (9) require, and the lot line adjustment
28 application did not include, a notation on the preliminary

1 map establishing the existing and proposed access roads,
2 easements, public rights-of-way, existing structures, sewage
3 disposal facilities, wells, and the distance of improvements
4 to proposed lot lines. Petitioner argues the county lacked
5 power to approve the application without this information.³

6 We have previously determined that a developer's
7 failure to include particular information on an application
8 provides no basis for reversal or remand unless petitioner
9 explains why the missing information is necessary to
10 determine compliance with specific applicable approval
11 standards. Murphy Citizen Advisory Committee v. Josephine
12 County, 25 Or LUBA 312, 325 (1993). Petitioner provides no
13 such explanation. Therefore, this assignment of error
14 provides no basis for reversal or remand of the challenged
15 decision.

16 The third assignment of error is denied.

17 The county's decision is affirmed.

³Petitioner also argues the application submitted below is invalid because the applicants did not submit certain deeds. However, petitioner does not explain what standard is violated by the applicants' failure to include deeds, and we are not aware of any.