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

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

LUBA No. 96-259
FINAL OPINION
AND ORDER

Appeal from Tillamook County.

Celeste J. Doyle, Assistant Attorney General, Salem, filed the petition for review on behalf of petitioner. With her on the brief was Hardy Myers, Attorney General, David Schuman, Deputy Attorney General, and Virginia L. Linder, Solicitor General.

No appearance by respondent.

LIVINGSTON, Referee; HANNA, Chief Referee; GUSTAFSON, Referee, participated in the decision.

REMANDED 06/26/97

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

1 Opinion by Livingston.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a decision of the county board of
4 commissioners that adopts an "irrevocably committed"
5 exception to Goal 3 and changes the comprehensive plan and
6 zone designation of approximately 23 acres of agricultural
7 land from Farm (F-1) to Rural Residential (RR).

8 **FACTS**

9 We adopt petitioner's statement of facts:

10 "The subject property consists of a single parcel
11 totaling 23 acres. Prior to the challenged
12 decision, and since 1982, the subject property was
13 designated agricultural land and zoned F-1 (Farm).
14 The property is currently developed with a single
15 family dwelling and a barn in the upper, northeast
16 corner. Apparently, the subject property is
17 otherwise undeveloped, and had been in farm use as
18 part of the applicant's dairy until 1995.

19 "The subject property is located in an area known
20 as Pleasant Valley, south of the City of
21 Tillamook. The area is characterized by [a] mix
22 of resource and rural residential zoning.
23 Apparently, much of the area zoned for rural
24 residential use is not developed. The property is
25 bordered on the north, east and west by lands
26 zoned for rural residential use. However, the
27 parcel to the east is an undivided 21 acre parcel
28 with only one dwelling. The land to the north is
29 a narrow strip of 5 or six lots zoned for rural
30 residential use. Only 2 of those lots is
31 currently developed with a dwelling. Lands just
32 beyond those few lots are in large blocks and are
33 zoned SFW-20 (Small Farm Woodlot), which is a
34 resource zone under the County's comprehensive
35 plan. Similarly, lands to the south and east are
36 also in large blocks and are zoned F-1 and F.
37 These are also resource zones under the County's
38 comprehensive plan.

1 "On June 28, 1996, the applicant made a request
2 with the County to change the zone and plan
3 designations for the subject property from F-1 to
4 RR. The Planning Commission conducted hearings,
5 accepted evidence and testimony into the record.
6 On September 12, 1996, the Planning Commission
7 deliberated, but was unable to reach a decision on
8 the request. The request was then forwarded to
9 the Board of Commissioners without a
10 recommendation from the Planning Commission. The
11 Board of Commissioners * * * held hearings and
12 conducted a review of the request. On December
13 11, 1996, the [Board of Commissioners] voted to
14 approve the request. This appeal followed."
15 Petition for Review 2-3 (citations to record
16 omitted).

17 **FIRST ASSIGNMENT OF ERROR**

18 **A. Content of Decision**

19 The challenged decision is a two-page order which
20 states that the county board "adopts staff's findings and
21 conclusions as reflected in Exhibit '1' attached hereto and
22 by this reference made a part hereof * * *." Record 16.
23 The staff report which follows, at Record 17-25, is not
24 labeled "Exhibit 1," although it seems likely it was
25 intended to be so labeled. Some of the findings in the
26 staff report refer to information provided by the applicant
27 in support of the zone change request. That information,
28 accompanied by the applicant's arguments, is attached as
29 Exhibit A to the staff report. Record 27-33.

30 Petitioner points out that there is a second staff
31 report at Record 51-54, entitled "Addendum to August 1, 1996
32 Staff Report to Include Goal 4 (Forest) Exception
33 Justification" (Goal 4 Addendum), and notes that it is

1 unclear whether or not this constitutes a part of the
2 "staff's findings and conclusions" incorporated by reference
3 into the challenged decision. Petitioner urges the Board to
4 remand to permit the county to identify "the findings it
5 wishes to include and rely on in support of this action."
6 Petition for Review 6.

7 We have repeatedly emphasized the importance of
8 findings to this Board, the appellate courts and
9 participants in land use proceedings. Final decisions may
10 incorporate findings in other documents prepared by staff or
11 an applicant, but, as petitioner notes, they may not do so
12 in a way that leaves the parties and this Board guessing
13 which documents are made part of the decision or where the
14 necessary findings may be located in the record. In
15 Gonzalez v. Lane County, 24 Or LUBA 251, 259 (1992), we held

16 "that if a local government decision maker chooses
17 to incorporate all or portions of another document
18 by reference into its findings, it must clearly
19 (1) indicate its intent to do so, and (2) identify
20 the document or portions of the document so
21 incorporated. A local government decision will
22 satisfy these requirements if a reasonable person
23 reading the decision would realize that another
24 document is incorporated into the findings and,
25 based on the decision itself, would be able both
26 to identify and to request the opportunity to
27 review the specific document thus incorporated."
28 (Footnote omitted.)

29 We agree with petitioner that the county has not
30 adequately identified the staff findings and conclusions
31 that are to be incorporated in the challenged decision.

1 Although it is almost certain that the staff report which
2 follows the challenged decision in the record is
3 incorporated by reference, the status of the Goal 4 Addendum
4 is unclear. And although it is almost certain that most, if
5 not all, of the references to the specific sections of the
6 applicant's submission, which is attached as Exhibit A, are
7 intended to incorporate those sections as additional
8 findings, some of the references are unacceptably obscure.
9 For example, the finding in response to OAR 660-04-
10 028(6)(c), "Parcel Size and Ownership Patterns," simply
11 states, "The applicant's Supplemental Report in Exhibit 'A'
12 deals entirely with this information." Record 24. The
13 first document in the record thereafter called "Supplemental
14 Report" is the "Supplemental Report II" found at Record 55-
15 60 and labeled "Exhibit B." That document follows the
16 "August 1, 1996 Public Works response letter" at Record 50,
17 which the staff report indicates is the last exhibit to the
18 staff report ("Exhibit C"). Record 25.

19 This subassignment of error is sustained.

20 **B. Remaining Subassignments of Error**

21 Because the actual content of the challenged decision
22 is not clear, we do not reach petitioner's remaining
23 subassignments of error, which depend on petitioner's best
24 guess as to what the decision includes. However, we note
25 our agreement with petitioner's analysis of the apparent
26 deficiencies in the decision. That analysis has not been

1 challenged by either the county or the applicant below,
2 neither of whom filed a brief in this proceeding.

3 The county's decision is remanded.