

LAND USE
BOARD OF APPEALS

Oct 24 9 12 AM '80

BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

3 CRAIG and LINDA MANNING)
4)
5 Petitioners,)
6 vs.)
7 JOSEPHINE COUNTY and)
8 DONALD BRAY,)
9 Respondents.)

LUBA NO. 80-068

FINAL OPINION
AND ORDER

Appeal from Josephine County.

Craig and Linda Manning, Grants Pass, filed a petition for review and argued the cause on their own behalf.

Josephine County did not appear either by brief or by oral argument.

Donald Bray, Grants Pass, filed a brief and argued the cause on his own behalf.

COX, Referee; REYNOLDS, Chief Referee; BAGG, Referee; participated in the decision.

Reversed. *

10/24/80

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of Oregon Laws 1979, ch 772, sec 6(a).

*At their October 15 Commission meeting, the Land Conservation and Development Commission agreed with the LUBA recommendation with regard to the allegations of goal violations.

1 COX, Referee

2 NATURE OF PROCEEDING

3 Petitioners contest the May 28, 1980 decision by Josephine
4 County approving Applicant Donald Bray's request to partition
5 his 19.2 acre parcel into two parcels of 15.4 acres and 3.8
6 acres. The property is located in an exclusive farm use zone.

7 STANDING

8 Petitioners standing is not an issue in this case.

9 ALLEGATIONS OF ERROR

10 Petitioners assert "The County Board of Commissioners has
11 clearly violated the intentions of the Josephine County
12 Comprehensive Plan and LCDC goal #3 by allowing Exclusive Farm
13 property to be split for residential development." In light of
14 our decision and the fact that this Board doesn't understand
15 the petitioners' point regarding respondent's comprehensive
16 plan, we will address only that portion of their allegation
17 dealing with Statewide Goal No. 3.

18 FACTS

19 Applicant's property consists of 19.2 acres containing two
20 tax lots, one of which contains 3.8 acres and the other 15.4
21 acres. The property is bounded on the north by Applegate River
22 and is surrounded on the east, west and south by farmland. The
23 property consists of Takilma cobbly loam which without water
24 has an agricultural rating of Class VI. There is an indication
25 in the record that water is available to the property; however,
26 it is not clear from the record what effect irrigation has on

1 the soil classification.

2 The property is relatively level and a dwelling is
3 presently located in the northeast edge of the proposed 3.8
4 acre parcel. The northern portion of the property is
5 historically subject to periodic flooding by the Applegate
6 River.

7 The property is zoned for exclusive farm use, 40-acre
8 minimum lot size (EF). According to Respondent's Finding of
9 Fact, Section 9 of the County Zoning Regulations delineates lot
10 size requirements for the EF district. Respondent states:

11 "The minimum lot size for all permitted uses
12 except agriculture shall be one acre; agricultural
13 shall maintain a 40 acre minimum lot size. However, a
14 request may be made for a division of land to create
one or more parcels less than 40 acres . . ."
(Findings, p. 3; Record, p. 50).

15 DECISION

16 Josephine County's findings in this matter regarding the
17 requirements of Statewide Goal 3 are inadequate and for that
18 reason their decision must be reversed. Statewide Goal No. 3
19 defines agricultural land as follows:

20 "in western Oregon is land of predominately Class
21 I, II, III and IV soils * * * as identified in the
22 Soil Capability Classification System of the United
23 States Soil Conservation Service, and other lands
24 which are suitable for farm use taking into consider-
25 ation soil fertility, suitability for grazing,
26 climatic conditions, existing and future availability
of water for farm irrigation purposes, existing land
use patterns, technological and energy inputs
required, or accepted farming practices. Lands in
other classes which are necessary to permit farm
practices to be undertaken on adjacent or nearby
lands, shall be included as agricultural land in any
event."

1 Based on zoning commission findings adopted by the County
2 Commissioners, the property consists of SCS Class VI soil if it
3 does not have irrigation available to it. Assuming for the
4 sake of argument that this is a sufficient finding regarding
5 the class of soil, there are nevertheless no findings relating
6 to the other two classifications of land which make up Goal 3's
7 definition of agricultural land.

8 There is no finding regarding whether this land falls within
9 the classification of "other lands which are suitable for farm
10 use taking into consideration soil fertility, suitability for
11 grazing, climatic conditions, existing and future availability of
12 water for farm irrigation purposes, existing land use patterns,
13 technology and energy inputs required, or accepted farming
14 practices." A review of the record, in fact, indicates that it
15 is likely soil productivity would improve provided irrigation was
16 available to the property. In addition, there is evidence in the
17 record that irrigation is available to the property and that
18 crops have been grown on the property in the past. Applicant's
19 own statement indicates the property is capable of producing
20 crops. The record indicates that on March 26, 1979 applicant
21 sent a letter to the Josephine County Planning Commission in
22 which he states in pertinent part:

23 "The 15.40 acres is not being used for farming at
24 this time, but it would be if I could build on it."

25 The Josephine County Commission does not address these issues
26 in its findings.

1 The third type of land which can be defined as agricultural
2 is that containing "soils in other classes which are necessary
3 to permit farm practices to be undertaken on adjacent or nearby
4 lands." Respondent Josephine County made no findings regarding
5 that element of Statewide Goal No. 3. The evidence in the
6 record indicates the subject property is surrounded on three
7 sides by exclusive farm use zoned property. No effort was made
8 by the County Commission in its findings to indicate the effect
9 on neighboring land of allowing this property to be divided.

10 In light of the foregoing, the decision of Josephine County
11 in this case is reversed.